



## New gTLD Program Explanatory Memorandum

### “Limited Public Interest” Objection (Morality and Public Order Objection)

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#### Background – New gTLD Program

ICANN was founded ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet’s addressing system, one of its foundational principles, recognized by the United States and other governments, has been to promote competition in the domain-name marketplace while ensuring Internet security and stability. The expansion of the generic top-level domains (gTLDs) is a platform to allow for more innovation, choice and change to the Internet's addressing system.

The decision to introduce new gTLDs followed a detailed and lengthy consultation process with all constituencies of the global Internet community represented by a wide variety of stakeholders – governments, individuals, civil society, business and intellectual property constituencies, and the technology community. Also contributing were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO), and Security and Stability Advisory Committee (SSAC). The consultation process resulted in a policy on the introduction of new gTLDs completed by the Generic Names Supporting Organization (GNSO) in 2007, and adopted by ICANN's Board in June, 2008.

This explanatory memorandum is part of a series of documents published by ICANN to help the global Internet community in understanding the requirements and processes presented in the Applicant Guidebook. Since late 2008, ICANN staff has been sharing the program development progress with the Internet community through a series of public comment fora on the Applicant Guidebook drafts and supporting documents. All comments received are carefully evaluated and used to further refine the program.

Please note that this document is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision consultation and revision.

#### Summary of Key Points in this Paper

- A cross-stakeholder working group was established and published recommendations on the implementation of the GNSO Policy recommendation regarding “Morality & Public Order objections.
- This working group included government, commercial, non-commercial and at-large stakeholders and demonstrated the effectiveness of the ICANN multi-stakeholder model.
- ICANN has developed preliminary responses to this work, implemented some of the recommendations in the Guidebook, and scheduled a consultation to discuss the others

## **Introduction**

A cross-stakeholder working group convened for the purpose of examining the implementation model for the GNSO Policy recommendation that: new gTLD “strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.”

This paper describes: (i) recommendations made by the New gTLD Recommendation #6 Cross-Community Working Group (“Working Group”); and (ii) ICANN responses to the recommendations and rationale for those responses. This information was presented to the Board during its Board meeting on 28 October 2010.

The new version of the Applicant Guidebook published November 2010 adopts several of the Working Group’s recommendations and ICANN is committed to additional consultations with the Working Group in order to achieve additional areas of agreement. Therefore we expect that there could be changes to the “Proposed Final Applicant Guidebook,” although such revisions will not markedly change the environment for applicants. The adopted revisions are preliminary, however, and ICANN is committed to additional consultations with the Working Group and the rest of the community in order to achieve even further consensus on this objection.

## **Background:**

On 21 September 2010, the Working Group published a Report on Implementation of the GNSO New gTLD Recommendation # 6 (“Report”).<sup>1</sup> The idea for this working group began when the Governmental Advisory Committee (“GAC”) suggested that a cross-community effort be commenced to identify improvements to the implementation of the GNSO New gTLD Recommendation 6.

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<sup>1</sup> See Report linked to <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>

At its retreat in Trondheim the Board passed the following resolution:

The Board acknowledges receipt of the Working Group report. This is a difficult issue, and the work of the community in developing these recommendations is appreciated. The Board has discussed this important issue for the past three years.

The Board agrees that ultimate responsibility for the new gTLD program rests with the Board. The Board, however, wishes to rely on the determinations of experts regarding these issues.

The Board will accept the Working Group recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and will work to resolve any inconsistencies. Staff will consult with the Board for further guidance as required.

See <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.9>.

As set for in the resolution above, the “existing process” means an objection process (such as described in versions 2, 3 and 4 of the Applicant Guidebook) that satisfies the following goals:

(1) provides a predictable path for applicants; and (2) mitigates risks by having: (i) an independent dispute resolution process; (ii) dispute resolution panels with the appropriate expertise; and (iii) the clearest and most uniform set of standards possible (“Proposed Process”)<sup>2</sup>

The Working Group made 14 implementation recommendations with several sub-subsections of each, and with varying degrees of consensus among the group members on each. For the sake of discussion, these overall implementation recommendations can be grouped into the following categories: (1) the Board role; (2) terminology, criteria and references; (3) the role of the Independent Objector (“IO”); (4) Procedure; (5) General Statements about Process.

Below are two tables describing initial responses to the Working Group recommendations based on our understanding of the Report and the new gTLD process objectives. Each of the

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<sup>2</sup> In short, the current standard calls for a party to object to a string, through an independent dispute resolution process, if the string incites or promotes: (i) violent lawless action; (ii) discrimination; (iii) child pornography; or (iv) other similar issues that reaches the same level of the first three grounds. (See <http://www.icann.org/en/topics/newgtlds/draft-rfp-clean-28may10-en.pdf>.)

14 Working Group recommendations, along with ICANN's responses are described in detail in Appendix A. Before that (just below) is a condensed version of the Report and responses where the 14 recommendations are synthesized into the five categories.

The first consultation with the Working Group has been scheduled and, in addition, a block of time and a room is reserved for a subsequent consultation at ICANN's meeting in Cartagena.

## Summary: Recommendations and Responses

<b>Working Group Issue 1: The Board Role</b>	
<b>Working Group Recommendations</b>	<b>ICANN Recommendations and Rationale</b>
<p>The working group generally noted that the ultimate resolution of a Morality and Public Order (or Recommendation 6) based objection rests with the Board. The wording in the report indicates the Working Group recommends that objections be submitted to the Board for resolution and not be referred to a dispute resolution process. Instead related report sections indicate that the Board contract with independent experts (the number to be selected by the Board), with specific expertise in the subject area, to provide advice on objections to the Board.</p>	<p>We agree with the Working Group concept that the Board retains the ultimate responsibility for the new gTLD Program. We also agree with the Working Group recommendation that the experts maintain their independence. Such a requirement is crucial and to the extent necessary additional language will be included.</p> <p>However, it is still planned the Board shall rely on determinations by expert dispute resolution providers regarding these issues and not make the determination within the Board. (See Resolution passed by Board relating to its role at <a href="http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.7">http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.7</a>.) Independent dispute resolution is a cornerstone of the risk mitigation strategy. Without outside dispute resolution, ICANN would have to re-evaluate risks and program costs overall.</p> <p>There are several Working Group recommendations that are contrary to the goals of this Proposed Process, which calls for a dispute resolution process outside of ICANN. Further, it should be noted that GNSO’s Implementation Guideline (“IG”) H states that “[e]xternal dispute resolution providers will give decisions on objections.” (See <a href="http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015">http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015</a>.) Thus, to the extent the report calls for elimination of the objection and independent dispute resolution process, we disagree. No changes to the Guidebook are recommended with respect to these related issues, including to the objection process, use of independent dispute resolution providers and reliance on expert panel determinations.</p>

<b>Working Group Issue 2: Terminology, Criteria and References</b>	
<b>Working Group Recommendations</b>	<b>ICANN Recommendations and Rationale</b>
The Working Group suggested changes as follows:	Addressing specific Working Group recommendations in (a)-(d):
(a) change the name and other language included in Recommendation 6	(a) The name of the recommendation and some of the language in the description will be revised to reflect the intent of the Working Group recommendations <sup>4</sup> ;
(b) include references to other treaties as part of the recommendation	(b) Including references to additional treaties can and will be done <sup>5</sup> ;
(c) change terms in the standards such broadening the discrimination standard and changing incitement or promotion to incitement and instigation <sup>3</sup> ; and	(c) Changing certain references in the standards can and will be proposed. Changing the discrimination standard as suggested, and the inclusion of the term instigation in the three specific standards is not advised. The standards were developed through significant research in various jurisdictions around the world. Amending them without a similar fact-based analysis is inconsistent with goals of the process. However, we agree that the fourth standard can be revised to reflect the revisions to the language of Recommendation 6 upon completion; and
(d) elaborate on terms referenced in the Quick Look Procedure.	(d) We agree that additional elaboration on terms in the Quick Look Procedure can be helpful and will be included.

<sup>3</sup>E.g., the current standard, “incites or promotes violent lawless action” would be changed to “incites, instigates, or promotes violent lawless action” or “incites or instigates violent lawless action,”(it is not clear which).

<sup>4</sup>Some working group suggestions include: ordre public objection; public interest objection; public policy objection.

<sup>5</sup>Care must be taken as many treaties were suggested and signatories vary across each.

### Working Group Issue 3: The Role of the IO

Working Group Recommendations	ICANN Recommendations and Rationale
Some members (although without consensus) have recommended the following changes to the Role of the IO:	<p>Each of the proposed Working Group modifications to the IO would, in fact, change the scope and the mandate of the IO and infringe on the IO’s independence. The Guidebook calls for the dispute resolution provider to receive, administer and publish objections, not the IO. Further, the dispute resolution panel, not the IO, is meant to complete a “Quick Look” of the claims to determine if they should proceed to full evaluation. In any case, objections go to a dispute resolution panel, not the Board. The procedural assistance to potential objectors is an inappropriate change in the IO<sup>6</sup>. Finally, while the GAC and ALAC could provide public comments that the IO should consider, the IO should not serve at the pleasure of the GAC or ALAC, as this would infringe on his/her independence and mandate to act in the public interest.</p> <p>The rationale for authorizing the IO to file an objection if no other party has raised a question remains pertinent and is another cornerstone of our risk mitigation strategy.</p> <p>In light of the above, no revisions to the Guidebook are recommended, except emphasis on the use of the public comment forum process.</p>
(a) that the IO may not initiate an objection against a string if no community or government entity has expressed an interest in doing so;	
(b) the IO must provide procedural assistance to groups unfamiliar with ICANN or its process that wish to “register” an objection with the IO;	
(c) the IO receive, register and publish objections by bona fide communities and governments;	
(d) the IO perform a “quick look” evaluation of registered objections to determine which ones are to be forwarded to the Board for consideration;	
(e) organizations using this suggested new “registration” process with the IO will be required to pay a fee to register, except small groups without sufficient funds; and	
(f) the IO must submit an objection if the GAC or ALAC request that it do so and must liaise with the GAC and the ALAC in drafting the Objection.	

<sup>6</sup>ICANN agrees that forms of assistance should be available and will provide assistance to applicants and objectors through a combination of online support and mechanisms furnished by the dispute resolution providers.

**Working Group Issue 4: Objection Procedure**

<b>Working Group Recommendations</b>	<b>ICANN Recommendations and Rationale</b>
Working Group members made several suggestions that gained varying degrees of consensus:	
(a) allow for a “notification” from governments that a string could be contrary to national laws, where such notification shall not be treated as an objection;	(a) We agree that a notification process for governments can be made available; a mechanism for such notifications already exists in the public comment forum process and the Guidebook can be amended to clarify how governments can contact applicants directly;
(b) require super-majority (2/3) Board vote to uphold an objection;	(b) requiring more than a majority Board vote on aspects of the new gTLD Program is not recommended, as it is not consistent with the Board Resolution from 25 September 2010 on the Role of the Board, which does not generally contemplate individual approval of applications by the Board;
(c) Recommendation 6 objections should be resolved earlier in the process than other objections or evaluations;	(c) resolving Recommendation 6 objections on a different timeline than other objections is not recommended as analysis indicates that making any changes would lengthen the process, and the relatively expensive and time consuming dispute resolution process should only be undertaken after applications pass technical and financial evaluation;
(d) GAC, ALAC and individual governments may use the Community Objection;	(d) the use by governments of the Community objection is not inconsistent with the Proposed Process and, indeed, is contemplated by it – additional language can be added for clarification;
(e) standards for the Community Objection be lowered for GAC or At-Large objections;	(e) we do not agree that there should be a lower threshold or standard for objections for two particular groups while they remain for everyone else and would, among other consequences, subject the GAC and ALAC to lobbying;
(f) fees for both GAC and At-Large Community objections be lowered or removed; and	(f) lowering or removing objection fees for GAC or At-Large or their members is not recommended because the new gTLD program is a revenue neutral effort and there is no indicated source for those fees; and
(g) that the resolution of the dispute take into account the purpose of the TLD as well as the string alone.	(g) we agree that the intended purpose of the TLD as stated in the application should be taken into account in the dispute resolution – all evidence should be used.



**Working Group Issue 5: General Statements about Process**

<b>Working Group Recommendations</b>	<b>ICANN Recommendations and Rationale</b>
<p>The Working Group states that individual government objections on national public interest issues should not be a basis for a Morality and Public Order (or Recommendation 6) objection. These types of objections should be identified and rejected during the Quick Look Procedure. Rather, national public interest objections should utilize the Community objection. The group also comments that it hopes the mechanism will help limit blocking of whole TLDs at the national level, but that absence of blocking is of little value if overburdened by an objection process or the name space does not reflect diversity of ideas, cultures and views on the Internet. Finally, the group encourages applicants to identify possible sensitivities before applying and consult as needed to resolve any issues in advance</p>	<p>All of the statements are well taken. Particularly, the recommendation regarding identification of possible sensitivities will be incorporated into the Guidebook.</p>

## Appendix A

The following table reproduces the table at pp. 13-23 of the **Report on Implementation of GNSO New gTLD Recommendation # 6**, dated 21 September 2010, (*see* <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>), with the addition of a column on the right in which ICANN initially responds to the recommendations.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>1</b>	<b>Definition of the ‘Morality’ &amp; ‘Public Order Objection’ in AGv4</b>		
1.1 <b>Full Consensus</b>	Change Name of Objection	ICANN should remove the references to Morality & Public Order in the Draft Applicant Guidebook as far as these are being used as an international standard and replace them with a new term. Further details about what is meant with the new term would need to be worked out to ensure that it does not create any confusion or contravene other existing principles such as GNSO New gTLD’s Principle G and Recommendation 1.	Agreed. The name of the objection can be revised, as can the Applicant Guidebook (“AGB”), in accordance with the intent of this recommendation. The various options provided in 1.2 below will be explored.
1.2 <b>Full Consensus</b>	New Name	The name of the Rec6 objection should not be “Morality and Public Order.” The Rec6 CWG identified the following alternative names for consideration, with varying levels of support:	See Response to 1.1 above.
<b>No Consensus-Strong Support</b>		“Objections Based on General Principles of International Law”	
<b>Divergence</b>		“Objections based on the General Principles of Ordre Public or International Law”	
<b>Divergence</b>		“Public Interest Objections”	
<b>Divergence</b>		“Objections Based on the Principles of Ordre Public”	

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>2</b>	<b>International Principles of Law</b>		
2.1 <b>Full Consensus</b>	Other treaties	<p>ICANN should seriously consider adding other treaties as examples in the Draft Applicant Guidebook, noting that these should serve as examples and not be interpreted as an exhaustive list. For example, the following treaties could be referenced:</p>	<p>Agreed. A more extensive list of treaties and other international instruments could be included in the AGB, with the statement that they serve only as examples.</p> <p>However, when referring to treaties, one must take into consideration not only their ratification status, but also the reservations and declarations that may be made when States ratify or accede to the treaties. These reservations and declarations may indicate how the States will interpret and apply certain provisions of the treaties. States may thereby in practice limit the scope of certain provisions through such reservations and declarations.</p>
		<ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights (1948)</li> <li>• Declaration on the Elimination of Violence against Women</li> <li>• International Covenant on Economic, Social and Cultural Rights (1966)</li> <li>• International Covenant on Civil and Political Rights</li> </ul>	<p>Consider, for example, Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination (1966), pursuant to which, “with due regard to the principles embodied in the Universal Declaration of Human Rights”, States Parties shall make “an offence punishable by law all dissemination of ideas based on racial</p>

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
		<p>(1966)</p> <ul style="list-style-type: none"> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</li> <li>• International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)</li> <li>• Convention on the Elimination of all Forms of Discrimination against Women (1979)</li> <li>• Slavery Convention</li> <li>• Convention on the Prevention and Punishment of the Crime of Genocide</li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination (1966)</li> <li>• Convention on the Rights of the Child (1989)</li> </ul>	<p>superiority or hatred”. The United States Senate, when giving its consent to the ratification of this Convention, made the following reservation: “... the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.”</p>
2.2 Full Consensus	AGB Revision	The AGB should refer to “principles of international law” instead of “international principles of law.”	The AGB could be revised in accordance with the intent of this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<p>2.3</p> <p><b>No Consensus – Strong Support</b></p>	<p>Gov't Objection for National Law (alternative)</p>	<p>The Applicant Guidebook should allow individual governments to file a notification (not an objection) that a proposed TLD string is contrary to their national law. The intention is that an “objection” indicates an intent to block, but a “notification” is not an attempt to block, but a notification to the applicant and the public that the proposed string is contrary to the government’s perceived national interest. However, a national law objection by itself should not provide sufficient basis for a decision to deny a TLD application.</p>	<p>The AGB can make clear that governments should feel free to express concerns to applicants, but that should be done by using ICANN’s existing mechanism of the public comment forum. The AGB can be revised to indicate how governments can communicate directly with applicants.</p> <p>Agreed that a government’s statement of concern would not in itself be deemed to be an objection; nor would the statement be taken into account in any objection proceeding that may be commenced.</p> <p>It should be stressed that a government’s filing of an objection should not be interpreted as the expression of an intent to block the gTLD. One would expect that most governments will participate in the New gTLD Dispute Resolution Procedure in good faith. Such participation would include accepting the dismissal of objections. Governments should not consider that blocking a gTLD is the logical or necessary step to take after the dismissal of an objection.</p>

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
			More generally, it is agreed that a national law objection by itself does not constitute grounds for rejection of a gTLD application.
2.4 <b>No Consensus-Strong Support</b>	Gov't Objection for National Law (alternative)	The Applicant Guidebook should <b>not</b> include as a valid ground for a Rec6 objection, an objection by an individual government based on national public interest concerns that are specified by the objection government as being contrary to national laws that are not based on international principles.	Agreed. No revision of the AGB is necessary to implement this recommendation. <i>See also</i> , Response to 2.3 above.
2.5 <b>Full Consensus</b>	Gov't Objection for National Law	If individual governments have objections based on contradiction with specific national laws, such objections may be submitted through the Community Objections procedure using the standards outlined in AGv4.	Agreed. No revision of the AGB is necessary to implement this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>3</b>	<b>Quick Look Procedure</b>		
<b>3.1 No Consensus- Strong Support</b>	Explicit Guidelines	Further and more explicit guidelines needed, such as common examples from a substantial number of jurisdictions where the term “manifestly” has been defined through judicial decisions, and in particular where such analysis was in the context of disputes relating to Principles of Ordre Public (or whatever term is used per Rec. 1.2), be added to the Quick Look Procedure.	<p>Agreed. More guidelines can be provided.</p> <p>The jurisprudence of the European Court of Human Rights offers specific examples of how the term “manifestly ill-founded” has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides:</p> <p>“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.”</p>

			<p>The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court’s website: <a href="http://www.echr.coe.int">http://www.echr.coe.int</a>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. <i>E.g.</i>, Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: <i>Décision sur la Recevabilité de la requête n° 65831/01 présentée par Roger Garaudy contre la France</i> (2003); <i>Décision sur la Recevabilité de la requête n° 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal</i> (2004).</p>
<p><b>3.2 Consensus</b></p>	<p>Standards for an Abusive Objection</p>	<p>Further guidance as to the standards to determine what constitutes an abusive objection is needed and consideration of possible sanctions or other safeguards for discouraging such abuses.</p>	<p>The jurisprudence of the European Court of Human Rights provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR</p>



			<p>Article 35(3). See, for example, Décision partielle sur la Recevabilité de la requête n° 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête n° 18589/02 contre la France (2003).</p> <p>An objector whose objection is dismissed as an abuse of the right to object will forfeit the filing fee that it paid.</p>
<b>3.3 Consensus</b>	National Law not a valid ground for an objection	In determining whether an objection passes the quick look test, there should be an evaluation of the grounds for the objection to see if they are valid. National law not based on international principles should not be a valid ground for an objection.	Agreed. No revision of the AGB is necessary to implement this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
4	<b>Contracted Expert Consultation</b>		
4.1 <b>Full Consensus</b>	Board Responsibility	Ultimate resolution of the admissibility of a TLD subject to a Rec6 objection rests with the Board alone and may not be delegated to a third party.	<p>While relying upon the determinations of experts regarding these issues, it is the case that the Board retains ultimate responsibility for the new gTLD program.</p> <p>No revision of the AGB is necessary to implement this recommendation.</p>
4.2 <b>Consensus</b>	Board Consultation with Experts	Under its authority to obtain independent expertise as stated in Article XI-A of the ICANN Bylaws, the Board shall contract appropriate expert resources capable of providing objective advice in regard to objections received through this process.	<p>The existing process provides for the designation of a dispute resolution service provider (“DRSP”, which is the ICC International Centre for Expertise for Rec 6 objections). Objections to applied-for strings are submitted to the DRSP, not to the Board. The DRSP then appoints a panel of experts. In an adversarial proceeding, the expert panel considers the objection and the applicant’s response to the objection, and then renders a reasoned “expert determination”, which either sustains the objection or rejects it.</p> <p>Note that this recommendation is inconsistent with the GNSO’s Implementation Guideline H, which states that “[e]xternal dispute resolution</p>

			<p>providers will give decisions on objections.”</p> <p>The process will not be changed to provide for the submission of objections directly to the Board or for the Board to contract directly with the experts who consider objections.</p>
<p>4.3 <b>No Consensus- Strong Support</b></p>		<p>Such experts advising the ICANN Board are to be independent of any conflict in accordance with other provisions in the AGB. Their advice will be limited in scope to analysis of objections, based upon the criteria as expressed within these recommendations.</p>	<p>Under the proposed process, the experts are not directly “advising the ICANN Board”, but rather rendering an expert determination. See Response to 4.2 above. As a matter of day-to-day management, ICANN does not expect its Board to review and discuss the neutral advice and recommendations received for each and every objection.</p> <p>It is certainly agreed, however, that the experts should not have any conflict of interest. The New gTLD Dispute Resolution Procedure, Article 13(c), provides for the experts to be impartial and independent.</p>
<p>4.4 <b>No Consensus- Strong Support</b></p>		<p>The number of experts to be consulted, the method of their selection and terms of their engagement, are to be determined by the Board subject to these recommendations.</p>	<p>Agreed, to the extent that this recommendation refers to the dispute resolution process set out in AGBv4, which calls for three experts for each panel. But the Board will not consult experts directly. See Response to 4.2 above.</p>
<p>4.5 <b>No Consensus- Strong Support</b></p>		<p>The contracted advisors will be expected to have specific expertise in interpreting instruments of international law and relating to human rights and/or civil liberties. The</p>	<p>The experts who are appointed by the DRSP are not “contracted advisors” in the sense that may be intended here (see</p>

		CWG recommends that the Board augment this with complementary expertise in other relevant fields such as linguistics.	Response to 4.2 above). The New gTLD Dispute Resolution Procedure, Article 13(b)(iii), stipulates in general terms the qualifications of the experts. The AGB could be revised to develop this point, referring to complementary expertise.
4.6 <b>No Consensus- Strong Support</b>	Name of Process	This process for Rec6 objections should not be referred to as a Dispute Resolution Process.	<p>The rationale for this recommendation has not been explained. If the recommendation is based upon the idea that “dispute resolution” implies a procedure that yields a final and binding decision (i.e., in this context, a decision that is binding even upon the Board), this point can be clarified.</p> <p>As stated above in Response to Recommendation 4.1, the Board retains ultimate responsibility for the New gTLD Program. Thus, while relying upon the determinations of experts regarding these issues and the day-to-day analysis and management by ICANN staff following such determinations, the Board does reserve the right under exceptional circumstances to consider an individual application for a new gTLD to determine whether approval would be in the best interest of the internet community.</p> <p>In light of this clarification, no revision of the AGB appears to be necessary.</p>

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
5		<b>Threshold for Board decisions to reject an application based on objections</b>	
5.1 <b>No Consensus- Strong Support</b>	Higher Threshold	A higher threshold of the Board should be required to uphold an objection.	The existing process does not provide for the Board to consider and approve individual applications for new gTLDs (of which there may be hundreds in the first round). Under exceptional circumstances, the Board may consider an individual application for a new gTLD to determine whether approval of that application would be in the best interest of the internet community. In that event, the Board's existing rules and procedures for making decisions would apply.
5.2 <b>Consensus</b>		The higher threshold should be at least 2/3.	
5.3 <b>Consensus</b>		Approval of a string should only require a simple majority of the Board regardless of the input from the experts.	

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>6. Incitement to discrimination criterion.</b>			
6.1 <b>Consensus</b>	Revision to Criteria	This criteria should be retained, but rephrased as follows: “Incitement to and instigation of discrimination based upon race, age, colour, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.”	This revision of the criterion would extend the scope of Rec6 objections beyond the legal norms that are generally accepted under principles of international law. For example, “discrimination based upon ... political or other opinion” is, in fact, widely accepted and practiced in democratic societies. Employment by the government may be based upon a person’s political opinions (known and widely practiced in the United States as the “spoils system”). The <i>Proporz</i> system in post-war Austria allocated jobs in the government and in other important sectors according to political party membership.  Accordingly, the AGB will not be revised in accordance with this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>7. The use of ‘incitement’ as a term for the determination of morality and public order.</b>			
7.1 Consensus	Replace “incitement”	<p>The new proposed language should read:</p> <ul style="list-style-type: none"> <li>• <b>Incitement and instigation</b> of violent lawless action;</li> <li>• <b>Incitement and instigation</b> of discrimination, based upon race, age, colour, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.</li> <li>• <b>Incitement and instigation</b> of child pornography or other sexual abuse of children.</li> </ul>	<p>There is a distinction in some contexts between “incitement” and “instigation”. For example, in international criminal law, “incitement” has been held to be an inchoate crime (in which the crime is completed despite the fact that the person incited fails to commit the act to which he or she has been incited), while “instigation” is not an inchoate crime (hence, punishable only where it leads to the commission of the substantive crime). The “direct and public incitement to commit genocide” is punishable pursuant to Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide.</p> <p>See also the European Union’s Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, which provides for Member States to take the measures necessary to ensure that certain intentional conduct is punishable, including “publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by</p>

			<p>reference to race, colour, descent or national or ethnic origin” (Article 1(1)(a)).</p> <p>In light of the nature of a gTLD string, incitement alone may suffice to make a string worthy of objection.</p> <p>The AGB could be revised in some way to reflect the intent of this recommendation, but it would be likely to include an “or” rather than an “and”.</p>
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Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>8. String only?</b>			
8.1 <b>No Consensus-Strong Support</b>	Analysis based on string and context	The experts should conduct their analysis on the basis of the string itself. It could, if needed, use as additional context the intended purpose of the TLD as stated in the application.	Agreed (subject to 4.2 above). No revision of the AGB is necessary to implement this recommendation.
8.2 <b>Divergence</b>	Analysis based on string only (Alternative)	The experts should conduct their analysis on the basis of the string only.	See above § 8.1.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>9. Universal Accessibility Objective with Limited Exceptions</b>			
9.1 <b>Consensus</b>	Limiting Blocking of TLDs	The Rec6 CWG hopes that the mechanisms it proposes in this Report will help limit blocking of whole TLDs at the national level. Blocking of TLDs should remain exceptional and be established by due legal process. The group also recognized that reduced blocking of TLDs is of little value if the result is that the opportunity to create new TLDs is unduly constrained by an objection process. The absence of blocking is of little value if it creates a name space that does not reflect the true diversity of ideas, cultures and views on the Internet.	Agreed. No revision of the AGB is necessary to implement this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>10. Independent Objector</b>			
10.1 <b>Divergence</b>	Modifications to role of IO	<p>The Rec6 CWG proposes modifications to the mandate and function of the Independent Objector as described in section 3.1.5 of the AGv4, without changing its scope. Unlike the current intention as expressed in the AGv4, it is suggested that the Independent Objector may not initiate an objection against a string if no community or government entity has expressed an interest in doing so. A valid Independent Objector objection must be tied to a specific party who claims it will be harmed if the gTLD is approved. The Independent Objector must not encourage communities or governments to file objections, however the Independent Objector should be mandated to:</p>	<p>The proposed modifications to the IO’s “mandate and function” would, in fact, change its “scope” in ways that are inconsistent with the existing process and the independence of the IO.</p> <ul style="list-style-type: none"> <li>▪ The rationale for authorizing the IO to file an objection if no other objection on the relevant grounds has been filed remains pertinent.</li> <li>▪ The provision of procedural assistance to potential objectors would represent a change in the IO’s role that ICANN considers to be inappropriate.</li> <li>▪ Under the existing process, the appropriate DRSP shall receive, register and publish all objections, as part of the DRSP’s responsibility to administer</li> </ul>
		1. Provide procedural assistance to groups unfamiliar with ICANN or its processes that wish to register an objection;	
		2. Receive, register and publish all objections submitted to it by bona fide communities and governments of all levels (which can demonstrate direct impact by the proposed application);	
		3. Perform a “Quick look” evaluation on objections against a specific set of criteria of what is globally objectionable, to determine which ones are to be forwarded to the Board for consideration as legitimate challenges to applications;	

		<p>4. Be given standing for objections which survive “Quick Look” evaluation, but whose backers lack the financial resources and/or administrative skills necessary to process their objections;</p>	<p>the dispute resolution procedure (which also includes the important task of appointing the expert panel). It would not be appropriate for the IO to undertake these tasks in parallel with or in place of the DRSP.</p> <ul style="list-style-type: none"> <li>▪ The “Quick Look” evaluation is to be performed by the panel of experts and may result in a final determination dismissing the objection. For the IO to make such a determination would be incompatible with his/her mandate to file objections.</li> <li>▪ Objections are not, in any case, to be forwarded to the Board. The existing process provides for objections to be submitted to the DRSP and then heard by an expert panel, which renders a determination that either upholds the objection or rejects it.</li> </ul> <p>Accordingly, the AGB will not be revised in</p>
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			accordance with this recommendation.
		The scope of the Independent Objector -- limited to filing objections based only on Community and Public Policy grounds -- is unchanged from the current AGB. Applications processed by/through ALAC or the GAC are not required to use this process. Organizations using this process will be expected to pay a fee to register objections, though this may be waived for small groups without sufficient financial means.	See comments above.
		As the potential exists for the position of Independent Objector to be misused to harass or impede a legitimate applicant, special attention must be given to the transparency of the Independent Objector's actions. All correspondence is by default open and public unless required otherwise to protect privacy or other rights.	In the existing process, the IO is accountable before the Expert Panel. If the IO submits an objection that is manifestly unfounded or an abuse of the right to object, the objection will be dismissed in the "Quick Look" procedure. An objection filed by the IO that passes the "Quick Look" test is still subject to the same scrutiny by the experts as any other objection. So the IO would not have a privileged position, wielding unchecked power.
		The "independence" of the Independent Objector relates to the role's unaffiliation with any applicant or contracted party. The Independent Objector role remains accountable to ICANN with regards to its integrity and fairness.	Agreed. No revision of the AGB is necessary to implement this recommendation.
10.2 <b>Consensus</b>	Requests by GAC or ALAC	If requested in writing by the GAC or ALAC the Independent Objector will prepare and submit a relevant Objection. The Independent Objector will liaise with the GAC or ALAC in drafting such an Objection. Any Objection	The GAC and ALAC are encouraged to express concerns with applications through the existing public comment forum process, which the IO will review. But the

		initiated from a GAC or ALAC request will go through exactly the same process as an Objection from any other source and must meet the same standard for success as an Objection from any other source.	IO does not serve at the pleasure of the GAC or ALAC, as this would infringe upon his/her independence and mandate to act in the public interest. The IO does not act as the agent of any other person or entity.  No revision of the AGB is necessary to implement this recommendation.
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Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>11. Timing of Rec6 Dispute Resolution</b>			
11.1 <b>No Consensus-Strong Support</b>	Early Resolutions	Applicants should be encouraged to identify possible sensitivities before applying and where possible try to consult with interested parties that might be concerned about those sensitivities to see how serious the concerns are and to possibly mitigate them in advance.	The AGB will be revised to incorporate this recommendation regarding identification of possible sensitivities.
11.2 <b>Full Consensus</b>		The dispute resolution process for Rec. 6 objections should be resolved sooner in the process to minimize costs.	<p>The opportunity to file an objection – and thereby to set in motion the dispute resolution process – follows the initial evaluation stage, which comprises string reviews and applicant reviews. The initial evaluation thus involves only the applicant; no third party (such as an objector) incurs any costs. Reversing that sequence would be more likely to generate increased, wasted costs.</p> <p>Accordingly, the AGB will not be revised in accordance with the rationale behind this recommendation.</p>
11.3 <b>Full Consensus</b>		Applicants should be informed of Rec6 complaints as early as possible to allow applicants to decide whether they want to pursue the string.	Agreed. The objector is required to send a copy of its objection to the applicant simultaneously with its submission to the DRSP. See New gTLD Dispute Resolution Procedure, Article 7(b). Further, the DRSP is required to post at least a weekly notice

			of filed objections. Hence, no revision of the AGB is necessary to implement this recommendation.
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Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>12. Use of the Community Objections.</b>			
12.1 <b>Full Consensus</b>	Available to At-Large and GAC	The CWG notes that ICANN GAC and At-Large Advisory Committees or their individual governments in the case of the GAC have the possibility to use the ‘Community Objection’ procedure. A “Community Objection” can be filed if there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.	<p>The objector, whatever the entity, must satisfy the existing Community Objection criteria for standing. Governments are contemplated in the existing Community Objection criteria for standing to file an objection.</p> <p>No revision of the AGB is necessary to implement this recommendation.</p>
12.2 <b>Full Consensus</b>	Fees for ALAC and GAC	The CWG recommends that the fees for such objections by the GAC or the At-Large Advisory Committees be lowered or removed.	<p>The rationale for this recommendation and the manner of implementing it have not been explained.</p> <p>Currently, ICANN does not see the need to establish lower fees or any form of discrimination in the treatment of objections depending on the identity of the objector or the type of objection. Every objector would like to have its fees lowered or removed, but the fees and expenses of the experts and the DRSP must still be paid, so this recommendation would require some other entity – not identified – to pay those fees.</p> <p>Accordingly, the AGB will not be revised in accordance with this recommendation.</p>

<p>12.3 <b>Divergence</b></p>		<p>ICANN should consider looking into a slight lowering of this threshold for Objections from the GAC or At-Large Advisory Committees. Staff should explore ways to reasonably lower the required standard for a successful At-Large or GAC Advisory Committee objection in the areas of standing (3.1.2.4), level of community opposition (3.4.4) or likelihood of detriment (3.4.4).</p>	<p>Specific details of the proposed modifications, with their rationale, would need to be presented for consideration. Currently, ICANN does not see the need to establish lower thresholds or any form of discrimination in the treatment of objections depending on the origin of the objection.</p> <p>For the present, therefore, the AGB cannot be revised in accordance with this recommendation.</p>
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Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>13. Guidebook Criterion 4</b>			
13.1 <b>Full Consensus</b>	Revision to Criterion 4	<p>The current language from the fourth criterion of AGv4 reads:</p> <ul style="list-style-type: none"> <li>• “A determination that an applied-for gTLD string would be contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law.”</li> </ul> <p>However, the current language should be revised to read:</p> <ul style="list-style-type: none"> <li>• “A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.”</li> </ul>	Agreed that the fourth standard can be revised to reflect the revisions to the language of Recommendation 6 upon completion.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
14	Next Steps for Rec6.		
No Consensus-Strong Support		The Rec6 CWG recommends that the ICANN New gTLD Implementation Team form a Recommendation 6 Community Implementation Support Team (Rec6 CIST) to provide input to ICANN Implementation Staff as they further refine implementation details for Recommendation 6.	The formation of a new “formal” team with a specific mandate does not appear to be possible or desirable, given the current timeline and budget. Furthermore, the community, including members of the New gTLD Recommendation #6 Cross-Community Working Group, will have an opportunity to comment upon ICANN’s response to the Rec6 CWG Report and to the final AGB.