

**Key source documents:**

- Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>
- Draft Final Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/draft-final-report-new-gtld-subsequent-21sep20-en.pdf>
- Final Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf>

**Shortcut to:**[ICANN Board Non-Adoption](#)

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot	Should the Council seek to modify recommendations (e.g., via Section 16 or non-adoption/Supplemental Recommendation)?
<b>ICANN Board Non-Adoption</b>					
<b>Topic 9: Registry Voluntary Commitments / Public Interest Commitments</b>					
<p><b>Recommendation 9.2:</b> Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).<sup>1</sup></p>	<p>The Board is concerned that a waiver to Spec 11 3 (a) and 3 (b) could lead to DNS abuse for second level registrations in a single registrant TLD going undeterred, unobserved and therefore unmitigated.</p> <p>The Board is also concerned that a waiver to Spec 11 3 (a) and 3 (b) could require a change to the RA's Specification 13, which would introduce significant implementation efforts to harmonize current 2012 agreements with future rounds if ICANN org elected to leverage the current agreement for the future rounds.</p> <p>28 March Context: Skipped, may want to revisit during next meeting.</p> <p>3 April Context: Not all single registrant registries will operate in the same way so it might not make sense to exempt all single-registrant TLDs.</p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- Unclear if the concern is more about the harmonization of future RAs with the 2012 agreement or if it's more about waiving requirements for all single-registrant TLDs.</li> <li>- As noted in the 3 April Context, this is primarily about the waiver applying to all single-registrant TLDs, understanding that not all registries will operate in the same manner.</li> </ul> <p><b>Assessment:</b></p> <p>Consistent with the small team's consideration of Recommendation 22.7, because registrants in a .brand will always be the registry, an affiliate, or licensee, it is difficult to understand why these contractual provisions would be necessary.</p> <p><b>Proposed Path Forward:</b></p> <p><b><u>a) Provision of clarifying information to the Board.</u></b></p> <p>The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.</p>	<p>Specification 11 3(a) are required to be passed down to a registrar and from there to the registrant. Therefore, they are not relevant in the case of a single registrant TLD." Without Recommendation 9.2, a single registrant registry would be required to include a provision in its RAA which itself requires a provision in their Registration Agreements that prohibits certain activities for registrants. In this scenario this appears to create a circular set of contractual requirements that are unusual in nature.</p> <p>Regarding 11 3 (b), the rationale states, "The Working Group further believes that security threat monitoring and reporting requirements under Specification 11 3(b) should not be applicable to single registrant TLDs because the threat profile for such TLDs is much lower compared to TLDs that sell second level domains." In a single registrant registry, the registry operator would be in the position of conducting analysis in a TLD where it is the registrant for every domain name. In other words, the registry operator, which is also the perpetrator of abuse and also be required to faithfully report abuse in its domain space. In addition, the WG discussed that .brands in particular have a keen interest in monitoring their TLD space to ensure it is not being used for abusive practices because it is part of their infrastructure.</p>	<p>Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council".</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16).</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board's non-adoption and take no further action; Accept the Board's non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>
<b>Topic 17: Applicant Support</b>					
<p><b>Recommendation 17.2:</b> The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over the open ended nature of these fees as affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board.</p> <p>Note, this concern does not extend to</p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- As noted in the 28 March Context, these concerns are about the open-ended nature of the fees, and that payments are to qualified applicants' vendors not under the control of ICANN, and potential liability issues from the suppliers of these</li> </ul>	<p>The Council understands the set of concerns, which includes: the potential for open-ended costs, nature of payments (e.g., direct disbursement of cash to parties), ambiguity concerning whether "application writing fees and attorney fees" should be considered inter alia or exhaustive.</p> <p>The Council believes that these concerns can likely be addressed by ICANN org and the IRT address during implementation, but welcomes dialogue with</p>	<p>Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council".</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16).</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board's non-adoption and take no further action; Accept the Board's non-adoption with the assumption that</b></p>

<sup>1</sup> For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

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	<p>facilitation of <i>pro bono</i> services.</p> <hr/> <p>28 March Context: The issue here appears to be mainly focused on the open-ended nature of the potential payments.</p> <p>18 May Context: Ambiguity about whether application writing fees and attorney fees are examples or limiting.</p>	<p>services.</p> <ul style="list-style-type: none"> <li>- The small team believes that there can be measures put in place that would eliminate or at least mitigate these concerns (e.g., establish an upper bound for payments and make it reimbursement based rather than handing out money, etc.).</li> <li>- The small team discussed the possibility of referring this issue to the GGP Charter to address this issue, but there was not agreement to do so, due to concerns about impacting the GGP's work plan.</li> </ul> <p><b>Proposed Path Forward:</b></p> <p><b><u>b) Determination that the issue can be resolved during implementation</u></b></p> <p>The Small team notes that the Final Report provided Implementation Guidance recommending the creation of an IRT devoted just to Applicant Support issues. This recommendation is indicative of the fact that the SubPro WG expected important work to be completed during implementation.</p>	<p>the Board to determine the best path forward.</p>		<p>the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>
<b>Topic 18: Terms and Conditions</b>					
<p><b>Recommendation 18.1:</b> Unless required by specific laws, ICANN Board members' fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over this recommendation unduly restricting ICANN's discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation.</p> <hr/> <p>28 March Context: The issue here is that the potential reasons for rejecting an application are unknown. Because ICANN and the Board are required to abide by the Bylaws, providing rationale (that is consistent with the Bylaws) would seem to suffice.</p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- The SubPro PDP felt very strongly that allowing ICANN to reject an application at its sole discretion was a fundamental problem.</li> <li>- There are carve outs that appear to be quite broad, including fiduciary duty, so it's unclear what would arise that wouldn't fit into the allowable reasons.</li> </ul> <p><b>Assessment:</b></p> <p>The small team appreciates that the Board has this concern but does not share it. The small team considers that this is a matter of balancing contractual risk. There are broad</p>	<ul style="list-style-type: none"> <li>• There are carve outs that appear to be quite broad, including fiduciary duty, so it remains unclear what would arise that would not fit into the allowable reasons. It appears that the risk identified here is a fear of the unknown unknowns.</li> <li>• The Council would welcome an example of a particularly problematic application that must be rejected but the Board would be limited in its ability to do so because of this recommendation.</li> <li>• The Council, in adopting the recommendations in the SubPro Final Report, is concerned that if the Board were not to adopt this recommendation, that it would allow ICANN to reject an application at its sole discretion, which remains fundamentally problematic.</li> <li>• The Council believes that if the Board reasonably adopts a standard prohibiting a</li> </ul>	<p>Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council".</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16).</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board's non-adoption and take no further action; Accept the Board's non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p>

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		<p>carve outs to allow the rejection of an application and that allowing ICANN to reject an application at its sole discretion is fundamentally problematic.</p> <p><b>Proposed Path Forward:</b></p> <p><b><u>g) Other - Dialogue between the Council and Board</u></b></p> <p>The dialogue on this topic should be centered around the SubPro WG's rationale and small team's Assessment.</p>	<p>string/class of strings from proceeding in order to meet its obligations under the Bylaws, e.g. in order to protect the security, stability and resilience of the DNS then the rejection of application(s) due to the fair and consistent application of that standard by the Board would fall inside the parameters of this Recommendation.</p>		<p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>
<p><b>Recommendation 18.3:</b> In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over undue legal exposure.</p> <hr/> <p>28 March Context: The issue here is the potential for an aggrieved party to assert that the appeals/challenge mechanisms are not implemented precisely as described in Topic 32, thereby allowing them to challenge the validity of the covenant not to sue.</p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- The SubPro PDP made clear that the covenant not to sue could remain only if an appeals/challenge mechanism was established.</li> <li>- The SubPro PDP has already carefully considered the Board's concerns that recommendation 18.3 may be argued to be dependent upon the appeals/challenge mechanism being implemented precisely as Topic 32 dictates through policy recommendations and implementation guidance.</li> <li>- The SubPro WG provided rationale in its review of public comments (see line 19 <a href="#">here</a>). In brief, the purpose of the recommendation is not to give applicants grounds to allege that the appeal process did not meet their satisfaction, but rather to state the WG's view that a covenant not to sue in favor of ICANN is only palatable if an Appeals / Challenge mechanism is implemented.</li> <li>- The provision not to sue cannot easily be argued away.</li> </ul> <p><b>Assessment:</b></p> <p>The small team does not agree with this concern as the SubPro WG has thoroughly considered the concerns</p>	<p>The WG received and considered the public comment from the Board on its Draft Final Report, which in part stated that, "The Board understands the intent behind this recommendation, but is concerned that dissatisfied applicants or objectors might argue based on this policy recommendation that the covenant not to sue is not valid because they did not like the way the appeals/challenge mechanism was built or operated."</p> <p>The WG, in considering (see line 19 in the WG's public comment analysis <a href="#">here</a>) the Board's concern, concluded that, "The purpose of this provision is not to give applicants grounds to allege that the appeal process did not meet their satisfaction, but rather to state the Working Group's view that a covenant not to sue in favor of ICANN is only palatable if the Appeals / Challenge mechanism (as described in Section 32 is actually implemented)."</p> <p>[Additional potential next steps For Council:</p> <ul style="list-style-type: none"> <li>• Written statement that makes clear that the requirement in Rec 18.3 is that an Appeals / Challenge mechanism is needed, implemented in line with Topic 32, but that it does NOT include a requirement that the challenger be satisfied with the result. The mere implementation and existence of an Appeals / Challenge mechanism is all that was intended by the recommendation]</li> </ul>	<p>Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council".</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16).</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board's non-adoption and take no further action; Accept the Board's non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>

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		<p>in the context of public comments and concluded that the covenant not to sue can remain if AN appeals/challenge mechanism is established. The deliberations of the SubPro WG can be found at the link above regarding the WG's deliberations for public comments.</p> <p><b>Proposed Path Forward:</b></p> <p><b><u>a) Provision of clarifying information to the Board.</u></b></p> <p>The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.</p>			
<b>Topic 22: Registrant Protections</b>					
<p><b>Recommendation 22.7:</b> TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from Continued Operations Instrument (COI) requirements or requirements for the successor to the COI.</p>	<p>The Board is concerned that an exemption from an COI for Spec 9 applications would have financial impact on ICANN since there would be no fund to draw from if such a registry went into EBERO.</p> <p>Further, not moving a Brand TLD into EBERO might have a security and stability impact, especially if Brands allocate second level TLDs to customers -such as a car manufacturer providing a second level registration for their cars.</p> <hr/> <p>3 April Context: Similar to row 8, not all registries will operate the same way and therefore, a blanket exemption may not be advisable.</p> <p>17 Apr Context: It may be advisable that instead of having an exemption for all .Brands, it be subject to a case-by-case review.</p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- The additional context notes that not all brands/single registrant registries will operate in the same manner. There may be instances where a consumer or end-user is impacted (see car manufacturer example).</li> <li>- The rationale for this recommendation is centered on the lack of 3rd party registrants. Requiring .brand TLDs to still go through the arduous process of obtaining a COI where there is minimal to no risk to registrants does not seem warranted.</li> <li>- It is also not necessarily ICANN's job to prop up every registry, especially if there are no registrants to protect. Businesses in the real world can and do fail.</li> <li>- For the example of a car manufacturer, the registrant must still be the registry, an affiliate, or licensee. There should not be third-party registrants in a .brand registry.</li> <li>- A licensee could seek recourse with the Registry.</li> </ul>	<p>The WG sought community feedback in advance of developing its Initial Report (see public comment proceeding for Community Comment 2 (CC2) <a href="#">here</a>), which included the topic of Registrant Protections. The <a href="#">public comments received to 2.3.1</a> in CC2 were nearly unanimously in favor of limiting registrant protections for .Brands qualified for Spec 13. Respondents cited what the WG ultimately agreed upon: since all domains must be registered to the registry, an affiliate, or licensee in a .brand registry, there is no set of registrants that require protections.</p>	<p>Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council".</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16). which could be based on developing criteria for a path to exemption based on an application by the single registrant TLD.</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board's non-adoption and take no further action; Accept the Board's non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>

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		<p><b>Assessment:</b></p> <p>The small team understands the concern but consistent with the deliberations and outcomes captured in the SubPro Final Report, it believes that registrants in a .brand will always be the registry, an affiliate, or licensee and that there are no third-party registrants to protect.</p> <p><b>Proposed Path Forward:</b></p> <p><b><u>a) Provision of clarifying information to the Board.</u></b></p> <p>The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.</p>			
<b>Topic 24: String Similarity Evaluations</b>					
<p><b>Recommendation 24.3:</b> The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round.</p> <p>Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .EXAMPLE<sup>2</sup> and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over the wording in section (a) and (c) of this Recommendation as they stipulate ‘intended use’ of a gTLD, which implies that ICANN will have to enforce the ‘intended use’ post delegation, which could be challenged as acting outside its mission. See also Topic 9 above.</p> <p>_____</p> <p>3 April Context: This one is similar in nature to 9.1, but it is explicitly content related, making this even more challenging. The solution to 9.1 could address this recommendation, but that is not a given (without knowing specifically what the solution to 9.1 is).</p> <p><b>Bylaws concerns</b></p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- Similar in nature to 9.1, but content is explicitly implicated in this recommendation.</li> <li>- The solution to 9.1 could also address this concern, but that is not a given.</li> </ul> <p><b>Assessment:</b></p> <p>The small team understands the concern and believes that the solution to 9.1 should also address concerns with this recommendation.</p> <p><b>Proposed Path Forward:</b></p> <p><b><u>e) Explore starting a Bylaw process.</u></b></p> <p>The small team believes that the solution to 9.1 (i.e., a narrow Bylaws amendment to make it explicit that ICANN can enforce the Registry Agreement, including PICs/RVCs) will</p>	<p>See proposed discussion points provided to recommendation 9.1.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• The Council understands that the resolution of the Board’s concern for this recommendation may not be the same as for the other PICs/RVC related concerns. However, the Council expects that a potential Bylaws amendment should address the concern for this recommendation.</li> <li>• The Council understands that the Board’s concerns with this recommendation is limited to the “intended use” aspect and not the singular/plural recommendation.</li> </ul>	<p>Board Non-adoption with the Board to “articulate the reasons for its determination in a report to the Council”.</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16)</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board’s non-adoption and take no further action; Accept the Board’s non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p>

<sup>2</sup> .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

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<ul style="list-style-type: none"><li>• An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted.</li><li>• If there is an application for the singular version of a word and an application for a plural version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because they are confusingly similar.</li><li>• Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified.</li></ul> <p>The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts</p>		address the concern with this set of recommendations. As with Topic 9, the small team believes that it is important to communicate clearly the limited nature of the Bylaws amendment and underlying reasons for considering doing so (i.e., ensuring implementation of consensus recommendations from the GNSO).			TBD

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<p>globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.</p>					
<p><b>Recommendation 24.5:</b> If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings,<sup>3</sup> the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application</p>	<p>See 24.3 above</p>			<p>Board Non-adoption with the Board to “articulate the reasons for its determination in a report to the Council”.</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16)</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board’s non-adoption and take no further action; Accept the Board’s non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p> <p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>
<b>Topic 32: Limited Challenge/Appeal Mechanism</b>					
<p><b>Recommendation 32.1:</b> The Working Group recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.<sup>4</sup> The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with,</p>	<p>The Board is still assessing the concerns regarding this recommendation, as set out in <a href="#">Operational Design Assessment</a>, at topic 32 (pp. 169-176)</p> <p>4 April Context: Besides specific concerns identified in the ODA, the Board wants to make sure it understands how it will coexist with the Bylaws mechanisms, and not only wait until implementation. Need to make sure that the mechanisms do not</p>	<p><b>Deliberations:</b></p> <ul style="list-style-type: none"> <li>- This set of recommendations is intended to be discrete from the Bylaws mechanisms and is an important piece of the recommendations.</li> <li>- Need to make sure that the mechanisms do not interfere with the Bylaws mechanisms.</li> <li>- The recommendations and the supporting annex are quite detailed regarding the limited grounds and eligibility for challenges and appeals.</li> </ul>	<p>The small team has pulled the highlighted text from the concerns identified in the ODA and has sought to find references in the various outputs from the SubPro WG which help address the concerns.</p> <p><b>1. Extending a limited challenge/appeal mechanism to cover evaluation decisions made by ICANN or third-party providers may cause unnecessary cost and delay, given the availability and purpose of Extended Evaluation.</b></p> <ul style="list-style-type: none"> <li>• The WG did not specifically discuss the interplay between the challenge / appeal mechanism and Extended Evaluation. However, Rec 32.10 does note that, “The limited</li> </ul>	<p>Board Non-adoption with the Board to “articulate the reasons for its determination in a report to the Council”.</p> <p>Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation (or Section 16).</p>	<p><b>1. Does the small team have enough information to make this assessment? If not, what sorts of additional information are needed, if known?</b></p> <p>TBD</p> <p><b>2. If yes, there is enough information, what is the preferred course of action (e.g., Modify recommendations to address Board concerns; Accept the Board’s non-adoption and take no further action; Accept the Board’s non-adoption with the assumption that the rationale for non-adoption will direct ICANN org in a certain manner, i.e., to match the intent of the recommendation; Other). Why? Note, the mechanism to amend does NOT need to be decided at this stage.</b></p> <p>TBD</p>

<sup>3</sup> As an example, if the two applicants applied for .SPRING and .SPRINGS, one might intend to use the TLD .SPRING in connection with the season and the other might intend to use the TLD .SPRINGS in connection with the elastic object.

<sup>4</sup> Examples of such actions or inactions include where an evaluator misapplies the Guidebook or omits Guidebook criteria or where a panel relies on incorrect information or standard to decide an objection.

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<p>be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws.</p> <p>The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions<sup>5</sup>:</p> <p><b>Evaluation Challenges</b></p> <ol style="list-style-type: none"> <li>1. Background Screening</li> <li>2. String Similarity</li> <li>3. DNS Stability</li> <li>4. Geographic Names</li> <li>5. Technical / Operational Evaluation</li> <li>6. Financial Evaluation</li> <li>7. Registry Services Evaluation</li> <li>8. Community Priority Evaluation</li> <li>9. Applicant Support</li> <li>10. RSP Pre-Evaluation</li> </ol> <p><b>Appeals of Formal Objections Decisions</b></p> <ol style="list-style-type: none"> <li>11. String Confusion Objection</li> <li>12. Legal Rights Objection</li> <li>13. Limited Public Interest Objection</li> <li>14. Community Objection</li> <li>15. Conflict of Interest of Panelists</li> </ol>	<p>just create bureaucracy and complications.</p> <hr/> <p>For ease of reference, the concerns stated in the ODA are:</p> <ul style="list-style-type: none"> <li>● Challenges/ appeals ending in decisions which are not in the best interest of ICANN</li> <li>● The possibility of challenges/ appeals against Initial/Extended Evaluation decisions by ICANN or third-party providers and the likelihood of challenges concerning conflict of interest causing excessive, unnecessary costs or delays to the application process.</li> <li>● Risk of gaming</li> <li>● Endless loop of challenges / appeals</li> <li>● Finding suitable arbiters to hear the challenge / appeal</li> <li>● Details for challenge / appeal mechanism in implementation on process, timing, impact to the round</li> <li>● Risks involved</li> </ul>	<ul style="list-style-type: none"> <li>- The recommendations and rationale can be reviewed to see if they help address the concerns identified in the ODA.</li> <li>- Discussion with the Caucus is likely warranted. The “answers” to the concerns in the ODA can help form the basis for that conversation.</li> </ul> <p><b>Assessment:</b></p> <p>The small team understands that the Board is still assessing potential issues with these recommendations, but believes that it can respond to the concerns addressed in the ODA.</p> <p><b>Proposed Path Forward:</b></p> <p><b>a) Provision of clarifying information to the Board.</b></p> <p>The small team believes the Council should develop responses to the concerns identified in the ODA and share those with the Board. Following the provision of that information, the Council should remain available to discuss with the Board.</p>	<p>challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.” As such, the interplay could likely be explored during implementation.</p> <p><b>2. This potentially challenges the ability to predictably plan for the opening and closing of the application submission period.</b></p> <ul style="list-style-type: none"> <li>● There are several Recs/IG that will likely mitigate these concerns. These include: <ul style="list-style-type: none"> <li>○ IG 32.7, which limits the scope of what can be appealed.</li> <li>○ IG 32.12, which suggests a “quick look” mechanism to eliminate frivolous activity.</li> <li>○ IG 32.12, which limits challenges to a single round.</li> </ul> </li> <li>● The concern in the ODA specifically cites RSP Pre-Evaluation as potentially creating timing issues in the context of the challenge / appeal mechanisms. The WG reviewed the <a href="#">New gTLD Program Implementation Review Report</a> as part of its deliberations. One of the elements that was important in the WG’s recommendations on RSP Pre-Evaluation was the limited number of RSPs. The Operational Design Assessment (ODA) estimates on page 319 that there are, “about 40 RSPs in the gTLD space now. This number is not expected to increase significantly. However, for capacity-planning purposes, ICANN will plan for 60 RSPs to go through evaluation.” The limited number of entities going through the process should also limit the reliance on the challenge mechanism.</li> </ul> <p><b>3. The broad scope of parties who are recommended in the Final Report to have standing could potentially open the door to gaming/manipulating the process.</b></p> <ul style="list-style-type: none"> <li>● The WG believes that there are several recommendations that will collectively aid in mitigating this concern. These</li> </ul>		<p><b>3. If seeking to modify, at a high level, what would be the nature of the modification?</b></p> <p>TBD</p> <p><b>4. If seeking to modify, what characteristics should the process include (e.g., community consultation, reconvened SubPro PDP consultation, who performs the work, etc.)?</b></p> <p>TBD</p>

<sup>5</sup> The list of challenges and appeals herein are based on the current and envisaged processes and procedures for the New gTLD Program. In the event that additional evaluation elements and/or objections are added, modified or removed from the program, the challenges and/or appeals may have to be modified as appropriate.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot	Should the Council seek to modify recommendations (e.g., via Section 16 or non-adoption/Supplemental Recommendation)?
			<p>include:</p> <ul style="list-style-type: none"> <li>○ IG 32.3, which establishes the limited set of parties that should have standing to initiate a challenge or appeal process.</li> <li>○ IG 32.7, which limits the scope of what can be appealed.</li> <li>○ IG 32.8, which generally makes the party bringing the challenge responsible for paying for the challenge.</li> <li>○ IG 32.11, which provides for timeframes for appeals.</li> <li>○ IG 32.12, which suggests a “quick look” mechanism to eliminate frivolous activity.</li> </ul> <p><b>4. ICANN org notes another potential challenge related to the possibility for an “endless loop” of challenges/appeals regarding an application. Implementation Guidance 32.13 states, that “A party should be limited to a single round of challenge/appeal for an issue....”</b></p> <ul style="list-style-type: none"> <li>● As the concern notes, IG 32.13 makes clear that, “A party should be limited to a single round of challenge/appeal for an issue.”</li> <li>● Specifically, the IG states, “parties should only be permitted to challenge/appeal <b>the final decision</b> on an evaluation or objection” (emphasis added). This text would appear to address the concern of numerous appeals against appeals.</li> </ul> <p><b>5. Finding suitable arbiters to hear the challenge / appeal</b></p> <ul style="list-style-type: none"> <li>● The rationale for IG 32.5 notes that, “The Working Group believes that it is important for the mechanism to remain lightweight and cost-effective, and therefore believes that it is appropriate to use the original entity/panel that conducted the evaluation or handled the objection to also consider the challenge/appeal.” This rationale goes on to describe other options that were considered, which could presumably be considered during implementation if the specific mechanism in IG 32.5 proves to not be feasible.</li> </ul>		

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<p><b>Recommendation 32.2:</b> In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.</p>	<p>See recommendation 32.1</p>			<p>See potential landing spot for recommendation 32.1.</p>	
<p><b>Recommendation 32.10:</b> The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.</p>	<p>See recommendation 32.1</p>			<p>See potential landing spot for recommendation 32.1.</p>	