

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

NCSG Comments

February 7, 2025

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries. As a network of academics, Internet end-users, civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

We appreciate the special opportunity to submit our comments in this PDF format.

About this Public Comment

<https://www.icann.org/en/public-comment/proceeding/third-proceeding-for-proposed-language-for-draft-sections-of-next-round-agb-19-12-2024>

Our Comment:

Do you have any additional or general comments? (The Final Question on the Form)

A. Titles

We'll open with this question because we do have an important comment to make. We find the titles of three sections confusing, and with a little rewrite (and later we'll propose a division of the first one), they will be much clearer to a general audience, including those not familiar with the SubPro procedures or ICANN-specific work.

- Community Input and Dispute Resolution
- ICANN Dispute Resolution
- ICANN Objection Appeals Procedure.

In our ICANN world of many different types of dispute resolutions from UDRP, PICDRP, and RDRP, among others, as well as the “dispute resolution” provisions with ICANN within the Registry Agreement. These sections will benefit from reference to **Objections as the specific type of Dispute Resolution category**. The Four Objections are a very specific class of dispute resolution and using the “Objections” name in the title will provide great clarity to those seeking to use these Objections as part of their form of input to the New gTLD Process.

Accordingly, we suggest adopting the following titles (and below we set out the reasons we recommend for separating the very large *Community Input and DR* section into two parts:

- **Public Comments, GAC Early Warnings, and GAC Advice; and Separately “Objections”**
- **ICANN Objection Procedure**
- ICANN Objection Appeals Procedure (unchanged)

B. Summarizing our order of comments below.

We'll review the documents out for public comment in the following order:

- I. Community Input and Dispute Resolution
- II. ICANN Dispute Resolution Procedure
- III. ICANN Objection Appeals Procedure
- IV. DNS Stability (*joined with item V*)
- V. Security and Stability (*joined with item IV*)
- VI. Legal Compliance Check
- VII. Different TLD Types (Topic 4: Different TLD Types)
- VIII. New gTLD Program: Next Round Privacy Policy (pdf, 196.01 KB)
- IX. Post-Contracting (pdf, 70.91 KB)

I. Community Input and Dispute Resolution (Hopefully to be changed to (i) Public Comments, GAC Early Warnings and GAC Advice and (ii) Objections: Community, Legal Rights, String Confusion and Limited Public Interest)

General Comment on this document(s)

Too big and unwieldy for the public to manage - two shorter sections would be easier to navigate and understand.

Weighing in at a massive 42 pages, this important section about public input - aimed at those who participate least in ICANN - is very long and combines too many concepts to be in one place. We recommend dividing this section/chapter into *two separate sections/chapters for the AGB* to allow better navigation and help readers understand their various comment and objection options. It will help us separate matters adequately.

We suggest the following titles:

- 1. (Section 1) Public Comments, GAC Early Warnings and GAC Advice, Singular and Plural String Notification**
- 2. (Section 2) Objections: Principles, Grounds for Objection, Standing, and other Overview Information.**

Grouping the sections in this manner makes sense as Public Comments, GAC Warnings and Advice, and Singular/Plural Notification are processes filed with and coming before ICANN directly. While Objections are filed with and handled by independent arbitration tribunals pursuant to special rules and processes developed by the ICANN community— they involve outside Panelists and considerable fees.

Overall, it will be very important for people and entities to have easy access to these various forms of participation in the New gTLD process, and share their thoughts, concerns, comments, and formal objections. Having different comment & objection sections will (a) help the public find their mechanism for input, and (b) easily access the description and rules for using it (and we note the Objection section alone is almost 30 pages).

Additional Comment on Specific Sections of this Document:

A. An Overarching Comment about the SubPro Recommendations and the IRT implementation. Regarding “Application Comments”, Recommendation 28.9 of the final Subsequent Procedures (“SubPro”) report calls for “the New gTLD Program [to] be clear and transparent about the role of application comment in the evaluation of applications.” This does not seem to have been sufficiently covered in this section.

Similarly, per implementation guidance 28.10, the AGB “should also be clear to what extent different types of comments will or will not impact scoring.” *Per this guidance, the Implementation Review Team should also develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the Applicant Guidebook.* People need to know if their contributions will make a difference.

We ask that the IRT, using the Applicant Guidebook, adopt a more straightforward approach and add clarifying language here in addition to a set of guidelines, as recommended in the SubPro final report, to help people understand how their contributions will impact the Application and its processing.

B. In the Objections section, we recommend moving “**Dispute Resolution Principles**”, (hopefully to be changed to **Objection Principles**), from its current place at the very end of the materials to a location much earlier in the Objections section. These are important principles for everyone - from parties to panelists - to know. They can be stated much earlier in the document to help newcomers and potential parties, and referenced later for panelists.

C. Redundancies should also be removed. We see a lot of redundancy between the (1) Initial Objections document (currently part of *Community Input and Dispute Resolution*) and the two procedural documents, namely: the *ICANN Dispute Resolution Procedure* and *ICANN Objection Appeals Procedure* docs.

We ask the IRT to leave the introductory and high level information and orientation sections in the introductory document - and move the procedural details to the two Procedural Documents: ICANN Objection Procedure (DR Procedure) and ICANN Objection Appeals Procedure.

The result will be a high-level introductory document and two detailed procedural documents (and eliminate the current problem of details that may be duplicated and/or inconsistent). The distinction will provide great clarity to newcomers and community

members seeking to understand the four Objection Procedures, and then route them to the details of the filing procedures, and appeal procedures. We note that this is consistent with how the original AGB introduced Objections, while highlighting that appeals did not exist in the first round).

D. In the Application Comments, Section 1.2, we see a section that appears to allow “secret comments” and ask that it be changed to make much of the comment open and the submission of the comment public (although some of the data/writing may be redacted).

Section 1.2 of the *Community Input* document states:

*“Should a commenter believe that they possess information related to confidential portions of the application, which may not be appropriate to submit publicly, they will have the option to submit a confidential comment, which will only be visible to ICANN, the applicant, and evaluators. **To ensure transparency, this option should only be used for comments related to confidential portions of the application, and ICANN will review the comment before making it visible to the applicant and the relevant evaluator(s); should ICANN determine that the comment refers to public portions of the application, the comment will not be accepted and the commenter informed. It should be noted that ICANN will not process confidential comments received outside of official comment periods.**” [bold added]*

NCSG seeks clarification in this document that **there are no confidential comments and that every part of the comment that is not related to the *limited confidential portion of the submission* will be made public, including the commenter, new gTLD, date submitted, and all other header information. Thus, it should be clearly visible to the public that a comment has been submitted, who has submitted it, and that certain sensitive portions of the comment have been redacted, and further, that the commenter has requested confidentiality for some wording.**

In the event that some level of confidentiality for some comments, it should be done under clear and objective criteria. It must be extended particularly to protect the data of those seeking to comment on the application who could be harmed by the process, including human rights organizations, who believe that their comments may create some physical danger to the comment writer, their families, the organization, or its members and community.

Otherwise, comments are part of a discussion for the world, ICANN, and the applicant and it is important that all comments must be seen and known to the public and across the world.

E. Comment count and deadline, 1.3.1 Application Comments Timeline after Application Publication

This section states:

“ICANN will open an application comment period on String Confirmation Day. Only application comments received during the following 90 days will be considered by the evaluation panels. ICANN reserves the right to extend the comment period for one, more, or all applications.”

We seek clarification that the 90 days will begin the day after the public notice is sent and clearly state the final date and time for filing responses on the notice.

This is necessary because, while ICANN in California may circulate a notice on day X, for many parts of the world, that notice will be received on Day X+1. It will never occur to these groups that the first day of the count *is the day before they* receive the notice.

We note that starting a deadline count *on the day after a notice or other triggering event* is also a common practice for courts, agencies, and other organizations.

As an examples, we ask for express confirmation in the AGB that for String Confirmation Day and the big “reveal” – perhaps a Tuesday in California but with Asia and the Pacific are already well into their Wednesday,, in the interest of fairness and traditional counts, the 90 day period for application comments **should start officially the day after Reveal Day**. Ditto for the counts of all comments relating to their application.” The world will thank you!

F. Application Comments, Section 1, is missing an important notification tool recommended by the SubPro Working Group:

In the SubPro Final Report, the Working Group called on ICANN to create a list for each application - one in which those interested in that application could sign up and receive notices about it - including notices about later changes that, in turn, open a public notice.

The expectation is that those who are interested in this Initial Comment Period may also be interested in later comments, revisions, and changes. Since the period for those changes will be sporadic and could be months later (for example, Settlements in response to Objections that must be put out for public notice and comment), the list is designed to ensure that all with an interest in comments and changes to an application are notified of proposed changes and revisions to it.

We note that such changes may come from Evaluation Panels, Objection Proceedings, Early Warnings, GAC Advice and other avenues and include changes to the Application and its public portions and/or changes to Public Interest Commitments and proposed Registry Voluntary Commitments. Those on the listserve will be able to track these changes, some coming months or even years later.

Overall, to be fair to all who want to follow the path of a New gTLD Application that is relevant to their community, SubPro called for ICANN to set up a list and notify people and groups of all proposed changes to these applications.

We ask that: a) ICANN expressly shows that such a list and notification system will be established; and b) that this resource be referenced here in this AGB section (and other relevant sections), e.g.:

“Changes that result in material changes to public portions of the application will be subject to a 30-day comment period, during which the community will have the opportunity to raise any concerns they might have on the change(s). **The community that had previously commented on this application or otherwise expressed interest in following the progress of this application through *all public comment processes* will be notified by ICANN at the start of any public notice period for material changes to public portions of the application. [bold text added]**

Noting the SubPro Final Report Implementation Guidance (page 91) for Topic 20 on Application Changes:

“Implementation Guidance 20.5: Community members should have the option of being notified if an applicant submits an application change request that requires an operational comment period to be opened at the commencement of that operational comment period.”)

G. GAC Early Warnings

As an overall comment regarding GAC Member Early Warnings and GAC Advice, to help the public understand (3.1 **GAC Advice Overview**), *what is the time limit for when these can be issued?*

As a reminder, as stated in the ICANN Bylaws, GAC Early Warnings and GAC Consensus Advice must include a clearly articulated rationale. We therefore recommend that the drafters include in the AGB that GAC Early Warnings and Consensus Advice must be limited to the scope set out in the applicable ICANN Bylaws provisions and elaborate on any “interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.”¹

This is laid out in the March 2023 scorecard and should be reiterated in the AGB. For the sake of transparency and understandability of potential applicants, it is important that this be clarified so that applicants can know at what stage of the process they could expect a GAC Consensus Advice or Early Warning. The application process should define a specific time period during which GAC Early Warnings can be issued and require that the government(s) issuing such warning(s) include both a written rationale with a legal basis and specific reasonable action requested of the applicant. The applicant should also have an opportunity to engage in direct dialogue in response to such warnings and amend the application during a specified time period. The public and ICANN Community should be given notice of these proposed modifications-- and the opportunity to comment to agree, disagree, or modify such proposals. Nothing should be bilateral or done in secret; all modifications to the gTLD applications must be done openly and publicly with the opportunity to review, comment, and contest.²

Additionally, special care must be taken to ensure that ICANN's decision to follow GAC Advice would not infringe an applicant's freedom of expression rights, which are explicitly protected in ICANN's New gTLD Policy, its legal bylaws, and international legal treaties. ICANN should refrain from taking sides in political disputes and should ensure that the policy prevents governments from using the gTLD objection process as a handy means to control or eliminate certain speech in the Internet's domain name system.³ The limited scope of GAC Advice should be reiterated in the AGB.

¹ Scorecard: Subsequent Procedures (16 March 2023)

<<https://www.icann.org/en/system/files/files/scorecard-subpro-pdp-board-action-16mar23-en.pdf>>

² Statement of the Non-Commercial Stakeholders Group on the Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4)
<<https://www.ncuc.org/wp-content/uploads/2017/05/NCSGproposedCommentonCC2.pdf>>

³ Statement of the Non-Commercial Stakeholders Group on the Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4)
<<https://www.ncuc.org/wp-content/uploads/2017/05/NCSGproposedCommentonCC2.pdf>>

Further, under **3.2 Notice to Applicants**, we would recommend allowing all applicants to have a period of 30 days from the day after being notified that their application is subject to GAC advice to submit a statement to ICANN in response, **as 21 days may not be sufficient time for smaller applicants with fewer resources to respond**. Alternatively, we would propose a system that provides additional time for those categorized as under-resourced (such as those eligible for the Applicant Support Program ‘ASP’) while keeping a 21-day response time window for all other applicants.

Lastly, it is important to remind ourselves of the reasoning behind creating the AGB: to encourage as diverse a set of applicants to enter the DNS ecosystem. As such, the drafters should consider ensuring that all technical terminology and subject matter-related concepts are clearly defined. ***As such, we highly recommend editing section 3.4 GAC Advice and Registry Voluntary Commitments for clarity, paying special attention to defining new terms (such as “remedial RVCs” and how the concept differs from normal ‘RVCs’).***

H. Singular/Plural Notification

The section about Singular/Plural Notifications could benefit from further clarification. For those reading the AGB, it should be clear what a “notification” means for them: from a procedural standpoint, what happens to their application(s) if a singular/plural notification is filed? What are the possible outcomes, and how would that impact their application(s), if at all? As it stands, these questions are not answered in this section, which risks causing confusion and at worst, discouraging potential applicants from entering or remaining in the application process. **We urge ICANN Staff and the IRT to revise this section and help it become as accessible as possible for marketing the program for New gTLDs.**

Additionally, under **4.2 Singular/Plural Notification Requirements**, *how are ‘legitimate’ notifications defined? Who decides what is a legitimate notification?* **Further clarity is needed on the process ICANN uses to decide what notifications are made publicly available and why.**

Finally, in **4.6 Challenges to Singular/Plural Notification**, we note that, as above, 21 days is unlikely to be sufficient time for a smaller applicant with fewer resources to prepare and submit all facts necessary to demonstrate the rationale for their challenge. We would suggest allowing for 30 days to challenge the results, in line with the time provided for the notifications filing window (**4.4**). Alternatively, in line with our recommendation under **3.2**, we propose a system that provides additional time for those categorized as under-resourced (such as those eligible for the Applicant Support

Program 'ASP') while keeping a 21-day window for all other applicants to challenge the results of a Singular/Plural Notification.

F. Section 5.1, Objections Dispute Resolution Overview

1. In keeping with the suggestions above, we recommend changing the title of **5.1 to Objections Dispute Resolution Overview**.
2. We request that the following section be highlighted in bold to draw the attention of all applicants to it: **“Applicants are therefore encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding gTLD strings and their uses before applying and, where possible, consult with interested parties to mitigate any concerns in advance.”**
3. We request an abridged version of the 5.4 Objection Principles (from DR Principles) be moved up to this introductory section. This addition will help many people and entities to see a clear overview of the four Objections and their relevant criteria and standing. This is key information to determining whether they want to dig further into the procedures. Grounds for Objection can follow.
4. Pursuant to changes we are strongly recommending to the ICANN Objection Procedures, in 5.2.5 **Consolidation of Objections**, the Dispute Resolution Service Provider *should not have unqualified discretion to consolidate certain objections – but only with the approval of the parties (or at least consideration of their input and concerns), whether the consolidation is requested by the parties or initiated by the Provider*.
5. We will note under Procedural comments that the phrase “based on the same ground” in 5.2.5 Consolidation of Objections is ambiguous and could be interpreted to refer broadly to the type of objection – string confusion, community, etc. We will argue that “the same ground” is much narrower and actually means similar substantive arguments within a given Objection. Any changes made to the Objections Procedures(s) should be reflected here.
6. **5.2.6 Appointment of the Objections Panel (DR Panel)**. We request that the title be updated to reflect the Objections Panels being involved, and question and request changes to the Experts of the Panel (noting that if there is *only one Panelist*, then the requirement becomes mandatory - and a few of these requirements *do not make sense*.
 - Specifically, NCSG objects to “legal rights” experts (“experience in legal rights disputes” being mandated for String Confusion Objections. Why? This is a study of aural and visual string comparison, not legal rights. We need linguists and comparative language specialists, and definitely (and as recommended) panelists (and perhaps scholars) with knowledge of the

relevant script(s). Many of these stings may have nothing to do with trademarks or other legal rights - but that's a different objection.

- Legal Rights Objections - this seems to be the place to require a Panelist with "legal rights" expertise.
- Community Objections - ***we do not understand how a panelist with "experience in the relevant academic field of study" is useful here, as an academic research for cell phone spectrum technology may have no idea how the mobile wireless business operates – and further many "communities" are not academic at all in their orientation, e.g., the many sporting communities of the world.*** What we need here are panelists who are excellent lawyers, fair and impartial jurists, and have a strong knowledge of related communities. Thus, a jurist coming from the skiing community will probably have a conflict of interest presiding over a .SKI Community Objection, but a jurist with deep expertise in the organization of another sport and its international communities could bring that understanding into this decision.
- We need a modification to the unlimited waiver of liability. If the experts, DRSP and others intentionally violate their agreements, they should be liable. Thus, if a Panelist misrepresents their independence (and there is a real, genuine and known conflict of interest that they do not disclose) and/or if there are other acts and omissions that are intentional and blatant and harmful, there should be appropriate level of accountability and redress.
- **5.23.7 Quick Look Review.** We do not know why the details of the Quick Look Review, and we will address our issues and concerns regarding them in the ICANN Objections Procedure (ICANN DR Procedure) section below. We request this section be greatly reduced and streamlined to review the existence of a Quick Look Review process (with details to be found in the separate procedures AGB section).
- Ditto for Payment of Dispute Fees, Responding to Objections, and all other Objections Procedures that follow. This is the overview section and should route the reader to the procedures for all of the details. This is only the introduction.
- Ditto for the **5.3 Appeals, which we think should be titled more fully 5.3 Appeals of Objection Decisions. As with the Objection Procedures, we recommend that the overview be provided here with reference to the ICANN Objection Appeals Procedure where details will follow.**
- **As above, we like 5.4 Objection Principles (DR Principles) and strongly request that a summary be moved up early in the materials**

– with this full section being moved to ICANN Objections Procedure (ICANN DR Procedure).

II. ICANN Dispute Resolution Procedure, which we recommend (above) be clarified to be ICANN Objection Procedure

We offer the following comments consistent with and continuing on comments offered in the prior section:

A. Article 6. Communications and Time Limits - because of the global nature of the ICANN Community and the common practice of many judicial and regulatory systems to count the first day of public notice as the day after it is sent, we strongly urge the following change:

“e. For the purpose of calculating a period of time under this Procedure, such period shall begin to run *on the day after the notice or other communication was sent.*”

B. NCSG strongly, strongly, strongly requests some additional words of clarification and explanation of Article 7, section e(ii), which is currently rather cryptic:

“e. Objections may be filed when ICANN announces the opening of an Objection window during the following time periods;

ii. For 30 days following ICANN’s acceptance of a .brand application’s string change request, for String Confusion Objections only: should no String Confusion Objections against the proposed .brand gTLD (as revised) be filed, then [adding: ICANN will announce somewhere (to be filled in a space that the public can monitor, and also placed on the listserve for those interested in change to this application as discussed above)] that **a new 30-day window has opened for the filing of other Objection proceedings, including Community Objections and Legal Rights Objections.**

C. Article 11. Consolidation of Objections.

We are deeply concerned that the rush to consolidation of objections can result in combining substantive concerns that are very different. Just because the strings are the same or very similar does not mean that the Applicants are similarly situated. In the first round, very different Community Objections

proceeded by CTIA against Dish DBS and Amazon for .MOBILE. It would not have made sense to combine them as the facts, issues, and substance were different - and ultimately the resolutions were very different, with Amazon withdrawing its application and Dish DBS significantly changing its application to allow in members of CTIA and GSMA.

- a. **We strongly request that ICANN Staff and the IRT modify the language of (a) to include the language of (c) so everything is visible in the same place and at the same time, otherwise readers are left with the impression of “consolidation at all costs.”**
- b. **Further, we ask that no party be thrown into a consolidated proceeding without the opportunity to defend why equity and fairness would be better served by keeping the Objections separate.**
- c. **Accordingly, we request the language of (a) be updated to:**

=> The DRSP is encouraged, where possible and practicable, to consolidate Objections. In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. Further, the DRSP, if it seeks to consolidate the objections on its own evaluation, shall provide reasonable input to all parties (Objectors and Applicants) as to whether they agree that the consolidation will serve the best interest of the proceeding. Similarly, if parties request a consolidation, e.g., the Applicants of the same/significantly similar strings, then the Objector(s) written opinion shall be solicited and evaluated by the DRSP in determining the outcome.

D. Article 12. Appointment of the Panel

We repeat our deep concern about the unusual expertise being required of the Panelists and urge that our changes recommended above be moved here for consistency and fairness. We are happy to engage in a further discussion with the IRT about how unusual we think these requirements are, how inconsistent with any recommendations of the SubPro WG, and how much inequity and unfairness, and utter confusion, we think the current wording will introduce into these Objections.

However, since this wording and the expertise of the Panelists can be easily aligned with the nature of the Objection, and this wording may be an error, we copy our comments from above and look forward to significant changes.

- Specifically, NCSG objects to “legal rights” experts (“experience in legal rights disputes”) being mandated for String Confusion Objections. String Confusion is a study of aural and visual string comparison, not legal rights. We need linguists and comparative language specialists, and definitely (and as recommended) panelists (and perhaps scholars) with knowledge of the relevant script(s). Many of these stings may have nothing to do with trademarks or other legal rights - and requiring panelist with this type of expertise *will inevitably introduce unnecessary bias and unfairness— there is a separate legal rights objection (below) where this expertise is needed*
- Legal Rights Objections - this seems to be the place to require a Panelist with “legal rights” expertise. Not having these specific expertise expressly named needs an odd thing to leave out in this section - making us wonder what is the difference between “experience in intellectual property rights” and “experience in Legal Rights disputes.” We recommend the latter to be used to be consistent and avoid these questions by others.
- Community Objections - we do not understand how a panelist with “experience in the relevant academic field of study” is useful here, as an academic research for cell phone spectrum technology may have no idea how the mobile wireless business operates – and further many “communities” are not academic at all in their orientation, e.g., the many sporting communities of the world. What we need here are panelists who are excellent lawyers, fair and impartial jurists, and have a strong knowledge of related communities. Thus, a jurist coming from the skiing community will probably have a conflict of interest presiding over a .SKI Community Objection, but a jurist with deep expertise in the organization of another sport and its international communities could bring that understanding into this decision.

E. Article 13. Quick Look Review

- a. First, we want to make sure that this Quick Look Review (QLR) is not done as an administrative matter, but only once a Panelist is assigned, and done by that Panel. One of the reasons for this important request is that the evaluation of “standing” is a core plank of what the Objector must prove and the decision on this issue *must be made by a Panelist*. Accordingly, we ask that special language be added indicating that these evaluations will be made by the Panel after it is assigned and seated.
- b. We do not understand section vii and ask that it be removed, at least for Community Objections and Public Interest Objections. For Community and Public Interest Objections, but their very nature, are looking beyond the string to the Applicant– and evaluating the nature of their relationship with the string, its meaning, and the community and/or users associated

with it. (Alternatively, there may be a reason to keep this section, but only, only for String Confusion Objections.)

F. Article 18. Evidence

Objections are very important procedures and are not fast or inexpensive. Accordingly, the Panelist(s) should be able to get access to the evidence they need, and that would be appropriate for their resolution of the Objection, and the standard must not be so outrageously high as to cause an appeal whenever they do so.

Accordingly, we request the following revision of the paragraph:

=> In order to achieve the goal of resolving disputes over new gTLDs rapidly and at a reasonable cost, procedures for the production of documents shall be limited. However, should the Panelist(s) feel it is necessary and appropriate for their resolution of the Objection, they may request a Party or Parties to provide additional evidence. The standard here shall be a “reasonableness” one.

G. Article 19. Hearings

Ditto for hearings.

=> Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing, but the Panel may decide, on its own initiative or at the request of the Party that a hearing is necessary, appropriate and helpful for the resolution of the Objection [continuing with b. In that event [details of the online, one-day hearing]

III. ICANN Objection Appeals Procedure

Consistent with the changes above, the NCSG calls on SubPro to make the following changes to this section in the interest of consistency and fairness:

A. Article 6. Communications and Time Limits.

See the changes mentioned above in relation to ICANN Objection Procedures.

B. Filing of an Appeal

It is standard practice in many forums to allow at least 30 days for the filing of an appeal. We feel any less will be unfair to communities, NGOs, indigenous people and tribes, and the microbusinesses from the Global South that we are working so hard to bring into the New gTLD Program.

It is hard for all but the largest players to evaluate the decision, find counsel and raise the funds for an appeal - and it is both reasonable and fair to allow them time and opportunity (of 30 days) to do so.

- C. Where is the Quick Look Review? What's good for the goose is good for the gander. We are surprised not to find a Quick Look Review here, as it is in the Objections Procedure and seems even more appropriate here. Accordingly, we ask the Quick Look be added here (with the changes requested to it above).
- D. Article 12. Consolidation of Appeals.

We think the *only consolidation of appeals, by right, can take place when the Objections were consolidated in the underlying Objection.*

Otherwise, we think this rush to consolidation is misplaced and could result in manifest unfairness. Accordingly, we call for the same changes above and ask that joinder be allowed - on request of some parties or by the DRSP - *only after the other parties have received notice and a reasonable opportunity to share their concerns and reasons for not consolidating the Appeals*, and these filings are duly considered.

IV. DNS Stability & V. Security and Stability

We respond to these two sections together.

Ensuring the stability, security, and resilience of the Domain Name System (DNS) is crucial to maintaining trust in the internet infrastructure. **However, we believe that the current suggestions from the SSAC could mean *significant challenges for smaller gTLD applicants and marginalized communities, who may have difficulties with fundamental aspects of DNS operations. There is a need for flexibility and guidance for those applicants, or else the mentioned criteria could inadvertently harm the aim of achieving more diversity in the DNS.***

Rather than mandating for strict and detailed criteria to be met without any differentiation among different applicants, the Guidebook should consider this diversity and work with, for example, variations in timeframes and deadlines, determining the availability of templates and examples (and other resources, such as best practices documents), tiered approaches, etc.

VI. Legal Compliance Check

The current text focuses on ICANN's compliance with U.S. sanctions without fully addressing the international nature of ICANN's mandate. A brief clarification of ICANN's global role in the broader context of Internet governance would be helpful. The current language seems biased or too focused on the limitations imposed by U.S. law. A more neutral tone could be adopted to avoid presenting the U.S. sanctions as a central constraint. A sentence emphasizing ICANN's commitment to fairness, neutrality, and equal access to Internet governance can be added to alleviate concerns about its adherence to geopolitical pressures.

VII. Different TLD Types (Topic 4: Different TLD Types)

We have a few comments and questions for this section. First, the table on pages 3 and 4 is very helpful, but we propose the following change for clarity and accuracy:

- An asterisk after the column title "Additional Contract Schedules*" with the asterisk stating that it is an available option for applicants in all categories to adopt RVCs as part of their Spec 11s.
- For CAT 1 Safeguard gTLD Type, Additional PICs and RVCS, as applicable, in Spec 11" [as broad set of applications may generate a new PIC from the GAC, but only a few applications may result in RVCs arising from GAC Early Warnings or Advice - or public comments or objections]
- **Exclusive Use TLDs are baffling to us.** We note that *the only time the term "exclusive use" is used in the SubPro Final Report is in reference to Closed Generics: "Closed Generics: Should there be restrictions around exclusive use of generics TLDs?"* These Exclusive Use TLDs appear to be extensions of .BRANDs and in the footnotes even reference the .BRAND Code of Conduct and Code of Conduct exemptions. ***NCSG strongly objects to this category of gTLDs as unsupported by the SubPro WG's recommendations and outside of the policy recommendations made by SubPro and asks that it be deleted in the AGB.***

VIII. New gTLD Program: Next Round Privacy Policy

A. Article 5, Sharing of Personal Information

We urge ICANN Staff to revisit Article 5. Sharing of Personal Information to ensure that it more closely complies with the GDPR sections that it cites and provides the protection that the GDPR requires for data subjects, which appear to have been stripped out of the

section. We provide some examples below, but urge that the data sharing section be reviewed with European experts on the GDPR, as they are in the best position to know their laws and the current interpretations of the National Data Protection Authorities.

The section on “Consultants and Advisors, Government Authorities and Agencies” is too broad and seems to allow ICANN to do anything that it wants in response to any type of law enforcement request - whether formal or informal, legal or illegal – and protect ICANN’s legal rights, or strangely “a third party’s legal rights,’ ***without the balancing protection for the data subject, in this case the applicant, that Article 6(1)(f) of the GDPR requires. It’s not a carte blanche, but a proportionality test that ICANN must comment to honoring, specifically:***

“GDPR Article 6 – Lawfulness of processing:

“Processing shall be lawful only if and to the extent that at least one of the following applies: ***

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”

This AGB section appears to be a carte blanche to allow ICANN to reveal sensitive and personal data of Applicants to nearly anyone who asks for it for nearly any purpose, including informal requests from law enforcement, informal allegations of impropriety or infringement by third parties, or any indication of error and much more.

All cite to GDPR Article 6(1)(f) yet none of these disclosures (except 1) are allowed in the open and unfettered form that the six bullet points allow and seem to encourage.

For the sake of compliance with the GDPR, notice to the public, law enforcement, consultants and others hoping to go fishing in ICANN’s New gTLD personal and sensitive data, we ask that next version of this AGB section **expressly cite the language of Article 6(1)(f) and note that for all disclosures, large and small, except court orders, the “interests or fundamental rights and freedoms of the data subject which require protection of personal data” will be weighed and included prior to disclosure. No disclosure of personal data will be rote or automatic.**

B. 7. Security

Under **7. Security**, while we applaud the drafters’ inclusion of ICANN’s to “use reasonable industry safeguards....to protect against the unauthorized disclosure of Personal Information it collects and holds,” the NCSG is concerned that neither this

section - nor any other section of this policy for that matter - explicitly commits ICANN to uphold user privacy and security considerations. Service providers (in this case, ICANN) should only be required to disclose personal information about their users subject to a court order, which must be in line with the requirements of legality, legitimate aim, necessity, and proportionality under international human rights law (IHRL). We urge the drafters to reiterate ICANN's commitment to upholding IHRL when it comes to protecting applicants' right to privacy and anonymity online, such as by including language ensuring that storage and usage of applicants' data is governed by rigorous privacy standards and is equipped with safeguards to prevent data exploitation.⁴

XI. Post-Contracting

We have no comment on this section.

Conclusion: Thank you for these important sections of the Applicant Guidebook and the Opportunity to Comment. We appreciate your careful consideration of NCSG's comments and would be happy to meet with ICANN Staff and the IRT to discuss any issues that need additional clarification.

Best regards,

The Noncommercial Stakeholder Group

1) Is the proposed Next Round Applicant Guidebook language for Application Comments (Topic 28: Role of Application Comment) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

The Noncommercial Stakeholder Group (NCSG) submitted its comment in PDF format to ICANN Staff. We understand they will be printed in full in the upcoming summary

⁴ ARTICLE 19 The Global Principles on Protection of Freedom of Expression and Privacy (Policy Brief) <<https://www.article19.org/data/files/medialibrary/38657/Expression-and-Privacy-Principles-1.pdf>>

report. If you would like a copy, please write to Pedro de Perdigão Lana at pedrodeperdigaolana@gmail.com

Re: Topic 28: Our comments are submitted in the pdf file.

2) Is the proposed Next Round Applicant Guidebook language for GAC Member Early Warnings (Topic 30: GAC Consensus Advice and GAC Early Warning) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 30: Our comments are submitted in the pdf file.

3) Is the proposed Next Round Applicant Guidebook language for GAC Advice (Topic 30: GAC Consensus Advice and GAC Early Warning) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 30: Our comments are submitted in the pdf file.

4) Is the proposed Next Round Applicant Guidebook language for Singular/Plural Notification (Topic 24: String Similarity Evaluations) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 24: Our comments are submitted in the pdf file.

5) Is the proposed Next Round Applicant Guidebook language for Objections (Topic 31: Objections and Topic 32: Limited Challenge/Appeal Mechanism) consistent with the relevant SubPro Final Report and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Topic 31 and 32: Our comments are submitted in the pdf file.

6) Is the proposed Next Round Applicant Guidebook language for ICANN Dispute Resolution Procedure (Topic 31: Objections and Topic 32: Limited Challenge/Appeal Mechanism) consistent with the relevant SubPro Final Report and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Topic 31 and 32: Our comments are submitted in the pdf file.

7) Is the proposed Next Round Applicant Guidebook language for ICANN Objection Appeals Procedure (Topic 31: Objections and Topic 32: Limited Challenge/Appeal Mechanism) consistent with the relevant SubPro Final Report and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Topic 31 and 32: Our comments are submitted in the pdf file.

8) Is the proposed Next Round Applicant Guidebook language for New gTLD Program: Next Round Privacy Policy consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Next Round Privacy Policy: Our comments are submitted in the pdf file.

9) Is the proposed Next Round Applicant Guidebook language for Post-Contracting consistent with the relevant SubPro Final Report recommendations

Yes

No

If no, please explain

0/8000

10) Is the proposed Next Round Applicant Guidebook language for DNS Stability consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

0/8000

Re: DNS Stability: Our comments are submitted in the pdf file, joined with topic 26.

11) Is the proposed Next Round Applicant Guidebook language for Security and Stability (Topic 26: Security and Stability) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 26: Our comments are submitted in the pdf file, joined with DNS Stability.

12) Is the proposed Next Round Applicant Guidebook language for Different TLD Types (Topic 4: Different TLD Types) consistent with the relevant SubPro Final Report recommendations and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Topic 4: Our comments are submitted in the pdf file.

13) Is the proposed Next Round Applicant Guidebook language for Legal Compliance Check consistent with the relevant SubPro Final Report recommendations and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Legal Compliance Check: Our comments are submitted in the pdf file.

Do you have any additional or general comments?

Yes

See our comments submitted in the pdf file, as detailed in question n.1 of this form.