

Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

15 April 2011

This document contains the ICANN reply notes to the:

- "[GAC indicative scorecard on new gTLD outstanding issues](#)" of 23 February 2011, and
- "[GAC comments on the ICANN Board's response to the GAC Scorecard](#)" of 12 April 2011.

The original "[Notes](#)" document has been revised to reflect the ICANN reasoning based on discussions in San Francisco and the GAC Response dated 12 April 2011. In order to keep the document from becoming unwieldy and to make it relatively easy to follow, the original Board Notes column has been "redlined." However the rest of the document remains the same and does not contain the most recent "GAC comments", which are posted at the link indicated above. (Note: the simple formatting has some drawbacks. For example, the issue numbers no longer completely match those in the new "GAC comments" where the GAC have realigned the comments in a way that makes more sense.)

As before, each **GAC scorecard item is noted with a "1A", "1B", or "2"**. Some scores have been adjusted to reflect changes made by the GAC and Board.

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, but that the implementation of the advice might be different than the GAC's recommendation.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard and GAC Response.

Results:

The recent ICANN Board – GAC consultations were successful in a number of ways. They were substantive, effective, results-oriented working sessions that created the gravamen for an effective ICANN - government working model going forward.

These consultations have resulted in several victories for ICANN and the GAC: the GAC agreed that ICANN should prepare for an economic study to be undertaken after the first round to measure program effectiveness and indicate improvements; ICANN agreed

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to implement a “GAC Advice for New gTLDs” process. In these and other areas, both sides have made accommodations and also reached areas of agreement.

It should be noted that in any negotiation of 80 separate points, such as we have here, the final score is not going to be 80 to zero. At the end of the day, it seems the Board is going to have to say in some cases, “we are going against GAC advice,” but the Board has made serious and effective changes in response to the first GAC scorecard – as has the GAC. It is important to recognize that although there are “2’s” remaining, some of the solutions generated were intended to address the set of GAC concerns, even if they do not specifically address each point.

For example, the GAC Early Warning and the GAC Advice processes are intended to address specific GAC concerns about their role vis-à-vis the Board, but these processes were designed to address other GAC issues as well, e.g., broadening definitions of community and geographic TLDs. So while the Scorecard indicates that there are still areas of disagreement (i.e., “2s”) some of those areas are addressed in the broad nature of some of the solutions.

Item #	GAC Scorecard Actionable Item	Position	Notes
1.	The objection procedures including the requirements for governments to pay fees		
1.	Delete the procedures related to “Limited Public Interest Objections” in Module 3.	<u>1A1B</u>	The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and its 12 April “GAC comments” therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for <u>entities other than GAC members and other governments, instead of the original GAC recommendation that the entire section be deleted. New, proposed GAC review procedures have been created (please see below). ICANN will also adopt the GAC recommendation that ICANN amend the title of Module 3 to “Objection</u>

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			<p><u>Procedures” to more accurately reflect the intention to provide the GAC with a separate procedure for objections based on public policy concerns.</u> general purposes, but the GAC (as a whole) would not be obligated to use the objection process in order to give advice.</p>
2.	Procedures for the review of sensitive strings		
2.1.1	<p>1. String Evaluation and Objections Procedure Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC. At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications. Any GAC member may raise an objection to a proposed string for any reason. The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board.</p>	1B	<p><u>The Board certainly respects that there are no mandated timeframes for GAC policy advice, nor a requirement to provide consensus advice to the Board. It is nonetheless useful for the efficiency of the process that GAC advice be timely, useful and documented. The Board appreciates that the GAC will endeavor to respond within the comment period and agrees that ICANN should attempt to set the time for the early warning period to be at 60 days.</u></p> <p><u>Coincident with the posting of this summary is also a proposal where the current application evaluation process flow would be augmented to include a GAC Early Warning procedure and a GAC Advice on New gTLDs (i.e., objection) procedure. GAC Early Warning and GAC Advice on New gTLDs can be applied to any application, e.g., sensitive, community, sector, or geographic strings of any type.</u></p>

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			<p><u>The Early Warning Notice does not require GAC consensus; it requires a GAC decision to issue a notice based upon statements of member states or governments.</u></p> <p><u>The GAC Advice on New gTLDs procedure does not require GAC consensus but GAC advice that is stated to be a “GAC consensus” position and that states “this application should not proceed,” will create a strong presumption for the Board that the application should not be approved. If the Board then decides to approve the application, a Bylaws-required good faith attempt at reconciliation would be triggered.</u></p> <p><u>Additional detail and rationale for the positions is included in the companion paper posted with this summary.</u></p> <p>A procedure for GAC review will be incorporated into the new gTLD process. The GAC may review the posted applications and provide advice to the ICANN Board. As discussed with the GAC, such advice would be provided within the 45 day period after posting of applications, with documentation according to accountability and transparency principles including whether the advice from the GAC is supported by a consensus of GAC members (which should include identification</p>

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			<p>of the governments raising/supporting the objection).</p>
2.1.2	<p>GAC advice could also suggest measures to mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and conditions should apply to strings that could impact on public trust (e.g. ‘.bank’).</p>	<p>2</p>	<p><u>The Board appreciates that the Bylaws do not limit the GAC’s ability to provide advice on public policy matters. We hope that GAC Early Warning would encourage applicants to resolve the issue or withdraw if appropriate. The refund is set at a higher rate than the otherwise maximum refund in order to encourage withdrawal in the face of the potential government-level objection.</u></p> <p>If the GAC were to provide suggested changes to mitigate concerns <u>that lead to changes in the application</u>, we are concerned that the advice would lead to ad hoc changes to the evaluation process based on subjective assessments.</p> <p><u>The current process, for good reason, provides very limited ability for applicants to amend their application. Allowing amendments would encourage abuses and, we believe, actually increase the number of controversial applications. For example, if the GAC Early Warning required government approval for an application to go forward, that could be</u></p>

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			<p><u>remedied. However, if the GAC advised that the string itself raised impermissible sensitivities, the applicant is not allowed to amend the application to change the string. That applicant could withdraw for a greater refund.</u></p>
2.1.3	<p>In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision.</p>	1A	<p><u>This is settled.</u></p>
2.2	<p>2. Expand Categories of Community-based Strings Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following:</p>		
2.2.1	<p>“Community-based strings” include those that purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered “community-based” strings.</p>	2	<p><u>It is true that the Board has rejected the idea that community name definitions be expanded to include other sectors and regulated business, but it the Board does not suggest substituting a Community objections procedure for the more proactive and preventative mechanism that would require an affirmative demonstration of Community support.</u></p> <p><u>Expansion of categories in a clear way is extremely difficult. This is reflected in the public comment received. Community definitions have been drawn narrowly in the</u></p>

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			<p><u>Guidebook to prevent abuses. Even expansion of categories will probably not address GAC concerns in some way as even the expanded definition might leave some genuine area of sensitivity unaddressed.</u></p> <p><u>The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern, i.e., so the GAC can provide input on any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and give indications to applicants on ways to avoid formal objections.</u></p> <p>Any community is eligible to designate its application as community-based. Bona fide community applicants are eligible for preference in the event of contention for a string.</p> <p>Also, ICANN has provided a community objection process in the event that there is "substantial opposition to it from a significant portion of the community." (A community objection may be lodged against any application, whether or not it is designated as community-based.)</p>

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			<p>The GAC's list of groups and sectors appears to be an example of the kinds of communities that may be able to achieve standing to raise a community objection.</p> <p>ICANN will review the standards for the community objection process to ensure that they are appropriate. Revised standards will be included in the forthcoming version of the Applicant Guidebook.</p>
2.2.2	Applicants seeking such strings should be required to affirmatively identify them as “community-based strings” and must demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD.	2	<p><u>See section above. The GAC Early Warning and GAC Advice procedures can be applied to any application, regardless of whether the applicant has been self-designated as a community TLD.</u></p> <p>The GAC’s suggestion would require applicants to designate themselves as a community, even if they might not be.</p> <p>Strings may have many meanings, not all of which might implicate a community.</p> <p>Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice.</p>
2.2.3	In the event the proposed string is either too broad to effectively identify a single entity as the relevant	2	<p><u>As described above and in the accompanying paper, the GAC may object to any application.</u></p>

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	<p>authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected.</p>		<p>The community objection process is intended to deal with applications where "there is substantial opposition" to the application "from a significant portion of the community."</p> <p>This GAC advice seems to suggest that unless everyone can agree on an appropriate applicant for a given string then the string should not be approved. Again, this seems contrary to the goal of increasing competition and providing additional choice to all consumers.</p> <p>Further, the phrase "sufficiently contentious" is vague and it is unclear who the GAC is suggesting would need to agree on an "appropriate manager." Thus, this suggestion does not seem to be workable in light of the goals of the new gTLD program.</p>
2.2.4	<p>The requirement that objectors must demonstrate "material detriment to the broader Internet community" should be amended to reflect simply "material detriment", as the former represents an extremely vague standard that may prove impossible to satisfy.</p>	<u>1A1B</u>	<p>Applicant Guidebook has been Staff will return with revised wording to clarify/address this aspect of the standards.</p> <p><u>The new standard in the Guidebook reads: "The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted."</u> concern.</p>

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2.2.5	Individual governments that choose to file objections to any proposed “community-based” string should not be required to pay fees.	1B	<p><u>A companion paper considers several models that balance the government interests and the need for ICANN to maintain a reasonable extent of control over expenditures. It recommends that a pre-determined amount of funding be designated by ICANN for each individual government, for the purpose of funding objection fees where a government wished to file a formal objection. Each government would be allotted an equal amount, and could continue to draw on such funds up to the maximum at its discretion, with the guarantee that at least one objection be fully funded. By fixing the funding amount (instead of the number of objections), governments could tailor the objections to minimize dispute resolution costs. This would provide ability for governments to object without cost and even collaborate on which governments will file objections, while putting a ceiling on the maximum costs.</u></p> <p><u>This leaves several options for governments: GAC Early Warning and GAC Advice on New gTLDs (no fee); the loser pays model where governments who win their objections pay no fees; limited number of objections paid by ICANN; and, in an option to be explored further, the possibility that governments faced with high numbers of objectionable</u></p>

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			<p><u>applications in their region request extraordinary funding from ICANN or some other source to be identified.</u></p> <p><u>Detail and rationale are provided in the paper.</u></p> <p>ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).</p>
3.	Root Zone Scaling		
3.1.1	The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and	1A	<p>Root zone monitoring systems are currently in place. ICANN will work with root zone operators to identify relevant reporting metrics and establish a process to report such metrics to the GAC and the Internet community.</p> <p>Furthermore, a process will be implemented that enables the delegation of TLDs to be slowed or stopped in the event there is a strain to the root zone system.</p> <p>ICANN also commits to review the effects of the new gTLD program on the operations of the root zone system, and defer the delegations in the second round until it is determined that the delegations in the first round did not jeopardize root zone system</p>

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			<p>security or stability.</p> <p><u>Pleased with concurrence on this issue and taking the next step to execute on its commitments, ICANN has drafted a companion paper to this document describing root zone scaling efforts: monitoring root zone stability and planning ICANN operations for increased delegation rates and provision of services to larger numbers of registries. This plan includes a hold on new delegations after the first round until stability is tested and assured. Included as an annex to that paper is a draft document: Root Server System Management Strategy. This document is the first draft of the plan to monitor root zone performance.</u></p>
3.1.2	b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application Guidebook before the start of the first application round.		See 3.1.1 above .
3.2	The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system.		See 3.1.1 above .
3.3	The Board commits to make the second round or batch of applications contingent on a clean sheet from		See 3.1.1 above .

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	full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for approval.		
3.4	The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications.	<u>1A</u>	ICANN commits that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected. <u>The companion paper on Root Zone Scaling describes staffing plans to ensure ongoing day-to-day operations at ICANN. These operations include delegation, redelegation, root zone changes, contractual compliance and registry liaison. Be advised that these calculations of manpower are not yet part of the ICANN operational plan. ICANN will continue to test these assumptions in order to create and execute an operating plan that addresses these requirements.</u>
3.5	The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments.	<u>1A</u>	<u>ICANN's planning routinely takes into account non-English speaking and different legal environments. We will ensure that planning is included for handling new gTLDs. See note on 3.4 above.</u>
3.6	The Board should monitor the pace and effectiveness of ICANN's management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations.	1A	
3.7	The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed	1A	

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	<p>about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre delegation checking, approvals, implementation of potentially 200 to 300 root zone changes a year and expected post-delegation changes.</p>		
4.	Market and Economic Impacts		
4.1	<p>Amend the final Draft Applicant Guidebook to incorporate the following:</p> <p style="padding-left: 40px;">Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.</p>	<u>1A2</u>	<p><u>The Board notes and appreciates the revised GAC proposal that the Board should identify criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs</u>It is not planned that information gathered as part of the application will be used to predict the net benefit of the prospective TLD — that would be too speculative to be of real value. However, during the discussions between the GAC and the Board in Brussels, the GAC indicated that the weighing of costs and benefits should instead take place as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments.</p> <p><u>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the “extent to which the introduction or expansion of gTLDs has promoted</u></p>

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			<p><u>competition, consumer trust and consumer choice, as well as effectiveness of: (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.”</u></p>
4.2	<p>A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.</p>	<p><u>1A1B</u></p>	<p><u>The Guidebook will be amended, i.e., the applicant questions will be augmented, to include questions requiring new gTLD applicants to provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.</u></p> <p><u>ICANN retained economists familiar with these issues to suggest which questions should be asked.</u></p> <p><u>After some discussion and iteration, questions have been developed and are provided in the annex to the explanatory memorandum on this topic. The questions will be public facing, i.e., the answers will be published. The answers will not be used to score or otherwise evaluate the applications.</u></p> <p><u>Two series or sets of questions are now included in the Guidebook, (see explanatory memorandum on this subject) headed by:</u></p>

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			<p><u>1. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?</u></p> <p><u>2. What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers? As clarified through the discussions with the GAC in Brussels, ICANN will continue to explore with the GAC during the ICANN Public meeting in March 2011 what data might be included in the application to provide useful input to later economic studies and community analysis.</u></p>
4.3	Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.	1A	<p>ICANN will continue to work to ensure that post-delegation dispute mechanisms adequately address this concern. <u>The ICANN Board resolved that the GNSO should be provided a briefing paper and should examine this question (see, http://icann.org/en/minutes/resolutions-10dec10-en.htm - 8). The GNSO was provided that paper, including a proposed model for determining under which circumstances a community TLD registry operator may amend the registration restriction in the registry agreement. The procedure is intended to</u></p>

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			<p><u>allow changes to Community TLD restrictions, recognizing that changes will be necessary to best meet community needs.</u></p>
5.	Registry – Registrar Separation		
	<p>Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power.</p>	2	<p><u>As indicated in the original Board Notes:</u> <u>"ICANN sought to implement a marketplace model that would enhance competition, opportunities for innovation and increase choice for consumers while preventing abuses in cases where the registry could wield market power. While lifting restrictions on cross-ownership, ICANN reserves the right to refer issues to appropriate competition authorities if there are apparent abuses of market power. As previously resolved by the Board, registry agreements will include requirements and restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross ownership, including without limitations provisions protecting against misuse of data or violations of a registry code of conduct."</u></p> <p><u>The GAC Comments from 12 April 2011 stated that "The Board response is considered insufficient by the colleagues of some GAC members who are responsible for Competition and anti-Trust issues. They have requested that ICANN provide a more reasoned argument as to why they have rejected the GAC's proposal and why the Board feels that</u></p>

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			<p><u>ex-ante measures are less preferable to ex-post measures for minimising problems associated with anti-competitive behavior."</u></p> <p><u>To answer: ICANN considered several options with respect to the vertical separation issue, including a blanket prohibition against cross-ownership by registries with market power. The problem with such an ex ante prohibition is that it is overly restrictive; that is, a prohibition of vertical integration based purely on market power is likely to deprive consumers of the competitive benefits of cross-ownership. From a consumer welfare perspective, a better approach is to allow generally pro-competitive vertical integration while referring any potentially suspect arrangements to expert competition enforcement authorities, who can then take action when their ex post expert evaluation determines it is appropriate. This is particularly important because it is difficult to accurately measure market power. Market definition and the evaluation of market power are contentious issues in most antitrust cases and often require complex economic and econometric analysis. Market share can be used as a proxy, but antitrust authorities around the world recognize that it is an imperfect proxy. Moreover, there are various</u></p>

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			<p><u>ways to measure market share. Delegating this expert analysis and post ante determination to competition authorities avoids the problem of mistakenly ex ante deterring competitively beneficial vertical integration while also ensuring that consumers are protected when economic conditions merit competition policy intervention.</u></p>
6.	Protection of Rights Owners and consumer protection issue		
6.1.1	<p>1. Rights Protection: Trademark Clearing House (TC)</p> <p>The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and court-validated common law trademarks.</p>	<u>1A1B</u>	<p>Overall - Based on ICANN will update the GAC Indicative Scorecard, discussions in Applicant Guidebook to permit the Silicon Valley meeting, and follow-up with stakeholder groups, ICANN has made several changes in Trademark Protections in an effort to meet GAC Scorecard requests.</p> <p><u>(a) All nationally or multi-nationally Clearinghouse to include intellectual property rights for marks in addition to registered trademarks and those protected by treaty or statute. Of those marks, registry operators will be accepted into the Clearinghouse. The proposed date cut-off will not be utilized required to recognize national, supranational and marks protected by treaty and statute as a requirement for entry into the Clearinghouse.</u></p> <p><u>(b) All trademarks that have been validated</u></p>

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			<p><u>via court proceeding, or have protection under statute or treaty in effect at the time the mark is submitted to the Clearinghouse</u> eligible for inclusion, will be accepted into the Clearinghouse.</p> <p><u>(c) All marks that constitute intellectual property will now be accepted into the Clearinghouse.</u></p> <p><u>(d) Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.</u></p> <p><u>For their sunrise and Trademark Claims services - Registries must recognize and honor all marks in (a) and (b) above.</u></p> <p><u>For Sunrise services – Registries must recognize and honor all marks in (a) and (b) above, provided that: the holders of marks in (a) above have submitted (subject to proof of use of the mark, which can be demonstrated by a declaration and one specimen of current use; and as described below relating to sunrise services):</u></p> <p style="padding-left: 40px;"><u>(i) the holders of marks in (b) above have been validated by a court</u></p>

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			<p style="text-align: center;"><u>or protected by a statute or treaty on or before 26 June 2008.</u></p> <p>The Clearinghouse must clearly note when entering the marks into the database, which marks are registered trademarks <u>and which marks have been submitted with proof of use.</u></p> <p>The proposed date cut-off will not be utilized as discussed with the GAC.</p>
6.1.2	Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase.	<u>1A2</u>	<p><u>The IRT and STI suggested an either/or approach. After discussion with the GAC and some other community members, including those representing trademark interests, the Board has determined to make both a limited Trademark Claims service, and Sunrise service, mandatory. All registries will be required to offer: (i) a Sunrise program, and (ii) for at least 60 days from launch, a Trademark Claims service using the Clearinghouse database. Thereafter, utilization of Trademark Claims services will be at the registry's discretion.</u></p> <p><u>The adjusted program provides flexibility to holders of registered trademarks from all jurisdictions because it provides the trademark holders with the option to receive notice through the Clearinghouse when someone else is attempting to register a domain name using the mark, rather than</u></p>

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			<p><u>paying to obtain a sunrise registration itself.</u> The IRT and STI suggested an either/or approach. Please advise reasons for advocating both.</p>
6.1.3	<p>IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark) e.g. “Kodakonlineshop”) and typographical variations identified by the rights holder.</p>	2	<p><u>Sunrise services provide trademark holders with “first rights” in domain names, and as such must be limited to identical matches.</u> <u>Moreover, unlike the URS, where a qualified Examiner will be capable of using discretion to determine if a mark is identical or confusingly similar, no such discretion is afforded the Trademark Clearinghouse that will be used for the mandatory 60-day Trademark Claims services. The Clearinghouse should not and will not have discretion in what marks are deemed anything but an identical match.</u> ICANN recognizes that trademark holders have an interest in receiving notification in the event that strings are registered that include their mark and a key term associated with goods or services identified by the mark. This remains an area of discussion.</p>
6.1.4	<p>All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms.</p>	1A1B	<p>All <u>nationally or multi-nationally (trademark registrations of national and supranational) registered trademarks effect</u>, regardless of <u>where registered and</u> whether examined on substantive or relative grounds, will be eligible</p>

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			<p>to participate for inclusion in either the <u>60-day Trademark Clearinghouse and for the Sunrise/TM-Claims service or Sunrise service</u>, subject to the following:-</p> <p><u>(a) For marks in the Clearinghouse to be recognized and honored in Sunrise services, proof of current use of those marks must have been submitted to the Clearinghouse before the Sunrise service begins.</u></p> <p>Registries that utilize a sunrise process must require submission of evidence of use of the mark by holders of all trademark registrations, regardless of the jurisdiction of registration.</p> <p><u>(b) Use of the trademark may be demonstrated by providing a declaration from the trademark holder and along with one specimen of current use.</u></p> <p>Further discussion should take place relating to proof of use.</p>
6.1.5	<p>Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.</p>	1A	<u>Agreed.</u>

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6.1.6	The IP claims service should notify the potential domain name registrant of the rights holder's claim and also notify the rights holder of the registrant's application for the domain name.	1A	Agreed. Note: the notification to the rights holder will be sent promptly after the potential registrant has acknowledged the Trademark ^{IP} Claim and registers ^{proceeds with} the application to register the name.
6.1.7.1	The TC should continue after the initial launch of each gTLD.	1A ²	<p>The Trademark Clearinghouse will be an ongoing operation. The Sunrise services and TM Claims service will operate <u>as a pre-only at launch mechanism and (in accordance with the recommendations of the IRT and the STI).</u> Trademark <u>Claims services operate during the first 60 days that registration in the registry is open for general registration.</u></p> <p><u>Trademark</u> holders will continue to be able to subscribe to <u>ongoing</u> "watch" services that will be able to utilize the Centralized Zone File Access system in order to be able to efficiently monitor registrations across multiple gTLDs.</p> <p><u>The Board originally marked this as a 2 and asked for clarification from the GAC. Based on discussions and comments, the Board has determined that the parties were in agreement and thus this item should have been marked 1A.</u></p>
6.1.7.2	Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it.	1B	Trademark ^{Rights} holders will pay the Trademark Clearinghouse when the rights holders register their marks, registries ^{and the}

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			<p>registry will pay <u>the Trademark Clearinghouse</u> when administering <u>their Trademark Claims and Sunrise services</u>. In turn registrars will pay <u>the registries when using their rights protection mechanisms, and registrants will pay the registrars when using the registrars' services to manage access to rights protection mechanisms</u>its sunrise/trademark claims service.</p>
6.2.1	<p>2. Rights Protection: Uniform Rapid Suspension (URS):</p> <p>Significantly reduce the timescales. See attached table for proposed changes.</p>	1A	<u>Agreed.</u>
6.2.2	<p>The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website.</p>	1A	<u>Agreed.</u> Note: The word limit will not apply to respondents.
6.2.3	<p>Decisions should be taken by a suitably qualified 'Examiner' and not require panel appointments.</p>	1A	<p>Examiners <u>with demonstrably relevant legal background, such as in trademark law,</u> will be appointed by the URS Provider. Only one Examiner will be appointed per URS proceeding.</p>
6.2.4	<p>Where the complaint is based upon a valid registration, the requirement that the jurisdiction of</p>	<u>1A1B</u>	<p>There is no requirement that any registration of a trademark must include substantive</p>

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	<p>registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be removed.</p>		<p>evaluation.</p> <p>Each trademark registration must be supported by evidence of use in order to be the basis of a URS complaint.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use <u>that the Clearinghouse will validate upon receipt. Proof may also be provided directly with the URS Complaint.</u></p> <p><u>After review of the comments above, the Board has determined that this item be changed to 1A.</u></p> <p>Further discussion should take place relating to proof of use.</p>
6.2.5	<p>If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant.</p>	<u>1A1B</u>	<p>An Examiner <u>examiner</u> will review the merits of each Complaint <u>complaint</u> to ensure that the standard is met, even in the event of a default. The Examiner <u>examiner</u> will not be required to imagine possible defenses.</p> <p><u>Seeking clarification on— this GAC advice, the Board posed the following question to the GAC during the Brussels meeting “Is the GAC advising that, when no response is filed, there provision will be no Examination of a complaint? Or it is just advising that the</u></p>

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			<p>reference to possible defenses be omitted?" http://icann.org/en/topics/new-gtlds/questions-on-scorecard-protection-of-rights-28feb11-en.pdf</p> <p>In response, the GAC stated "The GAC is advising that removed from the Guidebook be amended by deleting 8.4 (2) because the Examiner should not be placed in the position of having to anticipate all potential defences where none was presented. However, the Examiner should still evaluate the complaint on its merits. The complainant must still meet his/her burden." http://icann.org/en/topics/new-gtlds/gac-replies-rights-protection-questions-09mar11-en.pdf</p> <p>In light of the GAC's clarification, this point has been changed to 1A.</p>
6.2.6	The standard of proof (para 8.2) should be lowered from "clear and convincing evidence" to a preponderance of evidence".	2	<p>The principle of the URS is that it should only apply to clear-cut cases of abuse.</p> <p>"Clear and convincing" is the burden of proof that was recommended by the IRT and endorsed by the STI.</p>
6.2.7	The "bad faith" requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare	2	The standard applied for the URS is based on the UDRP standard. Both require a finding of

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	cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) (“bona fide”) and b) “been commonly known by the domain name”) can hardly allow a domain name owner to prevail over the holders of colliding trademarks.		bad faith. <u>Given that the URS is meant only to apply to the most clear-cut cases of abuse, bad faith shall remain a requirement.</u>
6.2.8	A ‘loser pays’ mechanism should be added.	<u>1B2</u>	<p>A <u>straight</u> loser pays mechanism was <u>considered and discussed extensively by the IRT</u> investigated, but ultimately was not recommended. <u>Rationale includes that the adopted. The</u> UDRP does not have a loser-pays mechanism <u>and the fact that it-#</u> is unlikely that complainants would ever be able to effectively collect based on clear-cut cases of abuse, since the names in question will already have been suspended.</p> <p>Notwithstanding, ICANN will monitor URS procedures once launched to see whether a loser pays mechanism or some other methodology to reimburse mark holders is feasible.</p> <p><u>Notwithstanding, after participating in further consultations with the GAC and representative of trademark interests, the Board has decided to include a limited “loser pays” mechanism that was originally developed by the IRT. Specifically, complaints involving twenty-six (26) or more domain names will be subject to</u></p>

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			<p><u>a “Response Fee” which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.</u></p> <p><u>Given the inclusion of the Response Fee, this item is now 1B.</u></p>
6.2.9	Registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the “two strikes” provision which applies to rights holders).	2	Due process principles require that every registrant should always have the opportunity to present a defense.
6.2.10.1	However, there should be a clear rationale for appeal by the complainant.	<u>1A2</u>	<p><u>In response to the Board’s request for clarification, the GAC clarified that either party seeking appeal should demonstrate a clear basis for objecting to the decision. The Board agrees that an appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner’s Determination was incorrect.</u></p> <p><u>In light of the GAC’s clarification, this item is now 1A.</u></p> <p>The Board has asked the GAC to clarify if it intended to refer to “complainant” (as opposed to respondent) in this statement. Every appeal will be decided de novo, and therefore the appeal process does not require a separate evaluation of the rationale for filing</p>

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			the appeal.
6.2.10.2	The time for filing an appeal in default cases must be reduced from 2 years to not more than 6 months.	<u>1B2</u>	<p>The IRT originally suggested a URS without any appeal process. The STI suggested the inclusion of an appeal process (without any mention of a limitation on the ability to seek relief from a default). In response to comments, the Applicant Guidebook was revised to include a two-year limitation period on the opportunity to seek relief from a default.</p> <p><u>After consideration of the GAC advice, the Board has determined that the time for a Registrant to seek relief from default should be limited to six months, but the Respondent may seek an extension of up to a further six months (for the total of up to one year) if the Respondent requests the additional time before the initial six month period has expired.</u></p>
6.2.10.3	In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant.	1A	<u>See 6.2.5</u>
6.2.11	The URS filing fee should be US\$200-US\$300 and minor administrative deficiencies should not result in dismissal of the URS complaint.	1B	ICANN will negotiate with URS service providers for the best prices and services. The fee range mentioned will be a target.
6.2.12	A successful complainant should have the right of first refusal for transfer of the disputed domain name after	<u>21A</u>	<u>The Board initially agreed to this item in the GAC scorecard. Upon consideration of</u>

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	the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer.		<p><u>significant community feedback, however, the Board has determined that the Guidebook position on the available remedy in a URS proceeding should stand. That is, domains shall be suspended for the duration of the registration period and the successful complainant will be provided an option to extend the registration period of the name for an additional year after expiration of the initial registration period (at commercial rates). The suspension remedy was what the IRT recommended and the additional one-year extended-registration was recommended by the STI. Moreover, as stated in public comments on this issue, the URS was and is not meant to replace or mirror the UDRP transfer remedy. Accordingly, this item has been changed to a 2.</u></p> <p>A successful complainant should have the right of first refusal to register the disputed domain name after the expiration of the registration period and any extension of the suspension period. This right of first refusal upon expiration will not diminish the registration period, or the period of time available for the registrant to seek relief from default, or in any other way harm the rights of any registrant.</p>
6.2.13	The URS should go beyond 'exact' matches and should at least include exact + goods/other generic words	<u>1A2</u>	As recommended by the IRT, the URS only applies to registrations that are identical or

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	e.g. “Kodakonlineshop”.		confusingly similar to protected marks as described in the Guidebook. <u>As part of the public comment period, trademark owners stated that they agree that this standard is appropriate here, and that this is what was meant by this GAC comment.</u> As noted above, the URS is only intended to apply to clear cut cases of abuse.
6.3.1	<p>3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)</p> <p>The standard of proof be changed from “clear and convincing evidence” to a “preponderance of evidence”.</p>	2	This was the standard developed by the IRT <u>and will not be revised.</u>
6.3.2	The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted.	2	The registrants are not parties to the proceedings, thus keeping a registrant from using the domain name or stripping the name from the registrant should be effected through an alternative proceeding, such as URS or UDRP. Note that to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator, then deletion of registrations may be a recommended remedy.
6.3.3	The requirement of “substantive examination” in para 9.2.1(i) should be deleted.	<u>1A1B</u>	There is no requirement that any registration of a trademark must include substantive

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			<p>evaluation.</p> <p>Each trademark registration must be supported by evidence of use in the Clearinghouse in order to be the basis of a PDDRP complaint.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.</p>
6.3.4	<p>A new para 6.1 a) be added: “being identical to the complainant’s mark in relation to goods and services which are identical to those for which the complainant’s mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant’s mark.”</p>	<p>2(?)</p>	<p>Section 6.1 sets out the standards for filing a PDDRP against a Registry Operator relating to the top-level domain. The GAC is requesting that, in some cases, a PDDRP complainant would prevail merely by having a mark identical to the registration and “a better right” to that mark. The existing standard requires that some harm must result to the trademark holder as a result of the registration. The Board does not believe that being identical to the complainant’s mark is proper as a sole basis for allowing a PDDRP complaint. If a competing trademark holder wants to challenge the Registry Operator for simply operating the TLD, it has the right to file a Protection of rights pre-delegation objection and seek a variety of other court</p>

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			remedies. (Clarification from the GAC requested.)
6.3.5	Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in relation to the circumstances listed in para 6.a)-d).	2	Changing the standard from requiring "affirmative conduct" to "gross negligence" would effectively create a new policy imposing liability on registries based on actions of registrants.
6.3.6	The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely.	2	The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry.
6.3.7	Para 19.5 should be amended as follows: "In cases where the Expert Determination decides that a registry operator is liable under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination.	1A	ICANN agrees that it will impose appropriate remedies that are "in line" with the determination. It should be noted however that ICANN is ultimately responsible for determining the appropriate remedy.
6.4.1	<p>4. Consumer Protection</p> <p>Amend the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection:</p>	1B	<p><u>In its letter dated 12 April 2011, the GAC has provided suggested changes to the Registry Agreement as follows:</u></p> <p><u>A registry operator must respond in a timely manner to a request concerning any name registered in the TLD from any government agency that is conducting a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation,</u></p>

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			<p><u>rule, or order legally issued pursuant thereto.</u></p> <p><u>ICANN appreciates this input and has amended to the text to require Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD.</u></p> <p><u>The purpose of this text amendment is to ensure that all reports of abuse are appropriately considered within a reasonable time period.</u></p>
6.4.2	A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues.	1B	<p><u>See 6.4.1</u></p> <p>ICANN agrees that the registry operator must assist appropriately in law enforcement investigations. There might be a difference between local and international law enforcement agencies. There is a question about whether this requirement would be stronger than what is already required by law. Changes to the Guidebook will be made after consideration of those issues.</p>
6.4.3	Ensure that ICANN's contract compliance function is adequately resourced to build confidence in ICANN's ability to enforce agreements between ICANN and registries and registrars.	1A	<p><u>In its letter dated 12 April 2011, the GAC respectfully requests ICANN, in the upcoming weeks, to identify the amount of personnel it intends to hire to support the compliance function and the timeline for hiring. In addition the GAC would like to know how</u></p>

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			<p><u>many staff ICANN intends to have in place prior to the expected launch of new gTLDs.</u></p> <p><u>ICANN has undertaken studies across various departments, including contract compliance, to determine the impact to processes, people, and systems resulting from the delegation of strings. An initial analysis projects contract compliance staff to grow from its current level to specified numbers indicated in an explanatory memo. These numbers will continue to be refined as analysis continues.</u></p> <p><u>Note, the delegation of new strings may not occur until approximately one year after the launch of the program. However, ICANN will continue to update these plans as the number of delegations becomes clearer and processes change and those plans will be shared with the GAC and other community members when available. Augment ICANN's contractual compliance function with additional resources to support the program of contracts between ICANN and the registries and registrars.</u></p>
6.4.4	<p>Vetting of certain strings gTLD strings which relate to any generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs.</p>	<u>1B2</u>	<p><u>In its letter dated 12 April 2011, the GAC has requested that ICANN conduct more stringent vetting of all new gTLD applicants to ensure that registries are not operated by entities/individuals who will use the platform for criminal purposes or otherwise abuse the</u></p>

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			<p><u>domain name system.</u></p> <p><u>ICANN agrees with this recommendation. Although it is nearly impossible to ensure no "bad actors" secure a new top-level domain ICANN has implemented several measures to minimize this risk. Those measures include:</u></p> <ul style="list-style-type: none"> • <u>Expanding the scope of the background screening check to include other crimes as suggested by the GAC. This also includes obtaining input from selected law enforcement on the selection of a background screening service provider – see 11.3.</u> • <u>Adding language to the Registry Agreement that requires Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD. Failing to comply with this provision could lead to termination of the Registry Agreement.</u> • <u>Making public the names and titles of key officers, directors, partners and controlling shareholders of each applicant for comment.</u> • <u>Providing a GAC Early Warning process</u>

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			<p><u>that allows members of the GAC or any individual government through the GAC to provide a notice to certain applicants.</u></p> <p>ICANN has requested clarification from the GAC of the intended meaning of "generally regulated industries", but generally believes that a priori categorization of strings is inherently problematic.</p>
7.	Post-Delegation Disputes		
7.1	<p>Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new paragraph 7.13 of the new gTLD registry agreement with the changed wording from "may implement" to "will comply". E.g change the wording from "may implement" back to "will comply" with a legally binding decision in the relevant jurisdiction.</p>	1B	<p>ICANN <u>has previously indicated that it</u> will modify the suggested wording of the letter of support or non-objection, and make clear its commitments to governments in additional text of the Applicant Guidebook, <u>and in its response the GAC has acknowledged and accepted that modification.</u></p> <p><u>The original Board Notes stated that "-</u> However, the registry agreement will continue to indicate that ICANN <u>'may implement'</u>"may implement" instead of <u>'will comply'</u>"will comply" with such decisions for legal reasons. As discussed previously with the GAC, ICANN's commitment to comply with legally binding decisions is made to governments, not to registries, Therefore, it is not necessarily in the interests of ICANN, or of governments, to place that obligation in registry agreements, giving registry operators the ability, and perhaps duty, to force ICANN to implement</p>

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			<p>decisions in every case. (ICANN has a mechanism to enforce its contracts with registry operators.)"</p> <p><u>In order to attempt to address the GAC's concerns and provide further comfort to governments that ICANN will implement court orders, ICANN proposes to modify section 7.13 of the registry agreement to read as follows: "ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this agreement, ICANN's implementation of any such order will not be a breach of this Agreement."</u></p> <p><u>In its response, the GAC position is that ICANN change the agreement provision from a right of ICANN (ICANN may implement) into a duty that ICANN will owe the registry (ICANN will implement). The GAC's rationale asserts that this will give governments assurance that governments will be able to "enforce the conditions given when providing a letter of</u></p>

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			<p><u>support or non-objection." The GAC argues that if ICANN does not give registry operators the power to force ICANN to implement such court orders that this will discourage governments from granting the support that governments have asked ICANN to require as a condition necessary for ICANN to delegate certain "geographic" TLD strings.</u></p> <p><u>ICANN has previously suggested that governments could enforce any conditions agreed to with the registry operator through other means, either through an enforceable bilateral agreement between the government and operator, or by insisting that the operator subject itself to the government's jurisdiction either through consent or a requirement that the operator maintain a presence inside the jurisdiction.</u></p> <p>→</p>
7.2	In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator.	1B	<p>The <u>Guidebook language now states that, "Applicants should be aware that ICANN has committed suggestion to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support</u></p>

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			<p><u>from that government or public authority, ICANN will comply with a change "court decision" to "legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application."</u></p> <p><u>The initial Board Notes stated that this required decision" requires</u> further discussion as it may in some cases amount to a redelegation request. <u>The notes also stated that</u> Also, there could be multiple jurisdictions that have given their support to one application (e.g., multiple "Springfield"s), thus, it may not be appropriate to implement a particular action based on one such decision.</p> <p><u>The GAC response suggests changing the wording to "final legally binding decision".</u></p> <p><u>The GAC is essentially asking ICANN to expand the respect afforded to court orders to also include any "final legally binding decision", which the GAC notes would include "an administrative decision." ICANN is concerned that such a provision could have a very broad scope (including "decisions" from multiple overlapping or competing local and national governmental agencies. (For example, agencies from the governments of the City of</u></p>

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			<p><u>Los Angeles and the County of Los Angeles might theoretically issue inconsistent administrative decisions regarding the operation of a TLD registry operating in Los Angeles.) ICANN is not equipped to sort out what constitutes a "final legally binding decision" in every jurisdiction in the world, and will be on much clearer ground working with orders from courts. Courts would presumably be available to confirm any legally binding decisions, and as noted above ICANN has committed to respect such orders.</u></p>
8.	Use of geographic names:		
8.1.1.1	<p>1. Definition of geographic names Implement a free of charge objection mechanism would allow governments to protect their interest</p>	1B	<p><u>As described in Issue 2 above, ICANN proposes procedures for GAC Early Warning and GAC Advice that may be applied to geographic names. In addition, the response to issue 2 also describes a process where, for individual governments, ICANN will provide limited financial support for objections. ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).</u></p>
8.1.1.2	and to define names that are to be considered geographic names.	2	<p><u>The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern, i.e., so the GAC can provide input any application for any</u></p>

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			<p>reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and encourage efforts to prevent formal objections. The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.</p>
8.1.2	<p>This implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.</p>	1B	<p><u>The Board appreciates the need to ensure national interests in those cases where country names are not listed in the established list.</u></p> <p><u>Language has been added to the Guidebook, augmenting the definition of geographic names that, “A string shall be considered to be a country or territory name if: ... it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty</u></p>

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			<p>organization." ICANN will continue to rely on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties. (See related note above.)</p>
8.1.3	<p>Review the proposal in the DAG in order to ensure that this potential [city name applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p>	2	<p>The Board notes the GAC comment that there are post-delegation mechanisms might not be effective in cases where the application has not been designated as a community-based TLD or a geographic TLD, or where the government has some legal right to the name.</p> <p>The GAC Early Warning and GAC Advice on New gTLDs processes provide the best opportunities to address the this situation. Applications including city-names as TLD strings can be the subject of both those processes.</p> <p>It should be noted that the application requires applicants to describe the purpose of the TLDs; this information in addition, the "early warning" opportunity will be used to inform evaluation, offer an additional means to indicate community objections, and importantly, the GAC as it considers public policy implications of the application and string.-</p>

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8.1.4	Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest.	1B	<p><u>Borrowing from the same issue as in section 2:</u></p> <p><u>A companion paper considers several models that balance the government interests and the need for ICANN to maintain a reasonable extent of control over expenditures. It recommends that a pre-determined amount of funding be designated by ICANN for each individual government, for the purpose of funding objection fees where a government wished to file a formal objection. Each government would be allotted an equal amount, and could continue to draw on such funds up to the maximum at its discretion, with the guarantee that at least one objection be fully funded. By fixing the funding amount (instead of the number of objections), governments could tailor the objections to minimize dispute resolution costs. This would provide ability for governments to object without cost and even collaborate on which governments will file objections, while putting a ceiling on the maximum costs.</u></p> <p><u>Detail and rationale are provided in the paper. ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other</u></p>

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8.2.1	<p>2. Further requirements regarding geographic names</p> <p>The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the Applicants Guidebook.</p>	1A	<p style="color: red;">considerations).</p> <p>This principle is agreed, and this can be clarified in the Guidebook. ICANN invites governments to identify appropriate points of contact on this issue.</p>
8.2.2	<p>According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate for ICANN to determine the most relevant governmental entity; the same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC</p>	<u>1A1B</u>	<p>ICANN will continue to suspend processing of applications with inconsistent/conflicting support, but will allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.</p> <p>This area needs further discussion on the potential situations that could lead to redelegation requests.</p>

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	encourages ICANN to process those applications as other competing applications that apply for the same string.		
9.	Legal Recourse for Applications:		
9.	Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural justice. For example, if ICANN deviates from its agreed processes in coming to a decision, the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard.	1A	<p>As discussed with the GAC, ICANN has examined these legal questions carefully and considering the results of these examinations still adheres to this provision. ICANN will clarify in the Applicant Guidebook that: if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard.</p> <p><u>In its response, the GAC stated that it "welcomes the Board's clarification that the legal implications of the clause have been considered for various jurisdictions. The GAC appreciates the Board's notice that the Applicant Guidebook will be amended to clarify that internal accountability mechanisms will allow complaints to be heard."</u></p>
10.	Providing opportunities for all stakeholders including those from developing countries		
10.1	<p>Main issues</p> <p>1. Cost Considerations</p> <p>Set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new</p>	TBD	ICANN's Board recognized the importance of an inclusive New gTLD Program and issued a Resolution forming a Joint Working Group (JAS WG) which is underway. ICANN would like to receive the report of the JAS WG as soon as possible. JAS WG is requested to provide a

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	gTLD process.		<p>possible deadline for his work during the ICANN meeting in SFO allowing the Board to act.</p> <p>It is noted that one of the challenges in developing support mechanisms for applicants is to ensure that such support is actually received by those applicants with the most need, rather than being used advantageously by other participants. This issue has also been taken into account in the work of the JAS WG.</p> <p>The minimum technical requirements for operating a registry are expected to be consistent across applications.</p> <p><u>The Board notes that the GAC recommends a 70% fees reduction for developing country applicants, free for least developed countries and shares the concern to determine real needy applicants. The fees reductions recommended by the GAC have been passed on to the JAS WG. The Board is looking forward to receiving the Final Report and notes that, given the cost recovery policy, sources of funds must be identified.</u></p> <p><u>The Board notes the GAC seeks further clarification about the certain mechanisms for technical and logistical support. ICANN has</u></p>

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			<p><u>budgeted a sum of \$300,000 to provide non-financial support to potential applicants. The Board has resolved that the targets include outreach and education to encourage participation across all regions.</u></p> <p><u>ICANN will publish a list of organizations that request assistance and organizations that state an interest in assisting with additional program development, for example pro-bono consulting advice, pro-bono in-kind support, or financial assistance so that those needing assistance and those willing to provide assistance can identify each other and work together.</u></p>
10.2.1	<p>2. Language diversity Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round.</p>	1A	<p>Some documents are already available in the 6 UN languages. The Final Application Guidebook will be also in due course, and the web site will be organize to find easily all the documents available in each language.</p> <p><u>The Board notes GAC’s recommendation to extend the communications beyond the 6 UN languages and is taking into account the additional language needs in its communications strategy.</u></p>
10.2.2	<p>The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p>	1A	<p><u>The Board agrees with the GAC and staff is committed to a global communications approach. The goal of that approach is ensure that any person that would take steps to take</u></p>

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			<u>advantage of or mitigate cost due to the new gTLD program, is aware of the program.</u>
10.3	3. Technical and logistics support	1B	<p>ICANN has agreed to provide certain mechanisms for technical and logistical support, such as assisting with matching needs to providers. ICANN is also considering setting up regional help desks to provide more responsive and relevant technical support to new gTLD applicants in developing countries.</p> <p><u>The Board agrees with the GAC and has directed staff to produce a webpage where entities willing to assist applicants and applicants seeking assistance can find each other. The webpage is expected by end of June.</u></p> <p><u>Other targets include outreach and education to encourage participation across all regions.</u></p>
10.4	4. Outreach – as per Joint AC/SO recommendations	1A	
10.5	<p>5. Joint AC/SO Working Group on support for new gTLD applicants. GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group.</p>	TBD	<p>This item from the GAC Scorecard appears to reflect the interim report <u>(Milestone Report)</u> of the JAS WG <u>published 11 Nov 2010</u> http://www.icann.org/en/announcements/announcement-11nov10-en.htm. ICANN is awaiting their final report <u>that is targeted-</u> (ICANN would like to be published by endreceive the report of May, the JAS WG as soon as possible.)</p>
10.6	6. Applications from Governments or National authorities (especially municipal councils and	TBD	<p>This set of issues overlaps with and is addressed in the other items in this section.</p>

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	<p>provincial authorities) – special consideration for applications from developing countries</p> <p>The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p> <p>ii. Nairobi Communiqué</p> <p>The GAC believed that instead of the then proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:</p> <ul style="list-style-type: none"> a) prevent cross subsidization and b) better reflect the project scale, <p>This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round. Further the board believes that :</p> <ul style="list-style-type: none"> a. New gTLD process is developed on a cost recovery model. b. Experience gained from first round will inform 		<p><u>The JAS WG interim report (Milestone Report) has addressed the fees. The Board is looking forward to receiving the Final Report with a more detailed proposal.</u></p> <p><u>The Board notes the GAC is recommending a different cost structure given to Governments and National Authorities from developing and least developed countries. This recommendation has been passed to the JAS WG and the Board is looking forward to receiving the Final Report. The Board notes that, given the cost recovery policy, sources of funds must be identified.</u></p>

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	<p>decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds.</p> <p>c. Non-financial means of support are being made available to deserving cases.</p> <p>i. Proposed that the following be entertained to achieve cost reduction:</p> <ul style="list-style-type: none"> • Waiving the cost of Program Development (\$26k). • Waiving the Risk/Contingency cost (\$60k). • Lowering the application cost (\$100k) • Waiving the Registry fixed fees (\$25k per calendar year), and charge the Registry- Level Transaction Fee only (\$0.25 per domain name registration or renewal). <p>ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an application that passes the initial evaluation.</p> <p>iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions. ICANN’s commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions.</p>		
10.7	A. Other Developing world Community comments	1B	ICANN is investigating and intends to provide

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	<p>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some representatives, this is a massive roll out of gTLDs and IDNs that will find many developing countries unprepared and unable to absorb it. There is the fear that there might be serious consequence in terms of economic impact to developing countries.</p>		<p>mechanisms for assisting with matching needs to providers, and will continue to investigate mechanisms for providing additional forms of support (such as providing documents in additional languages beyond the official U.N. languages).</p> <p><u>As described above, the Board has directed staff to produce a webpage where entities willing to assist applicants and applicants seeking assistance can find each other. The webpage is expected by end of June.</u></p>
11.	<p>Law enforcement due diligence recommendations [to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué] (Note: ICANN will provide an update on the status of the RAA-related recommendations from law enforcement)</p>		
11.1	<p>Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs.</p>	<u>1A1B</u>	<p><u>In its letter dated 12 April 2011 the GAC is confirming responses held in the Brussels and San Francisco meetings to add a broad number of convictions to the background screening process. The inclusion of certain crimes without a standard definition across international, and in some cases, national jurisdictions remains a concern, for the following reasons:</u></p> <ul style="list-style-type: none"> <u>• It will lead to a background screening process that will not be consistent and fair for all applicants and</u>

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			<ul style="list-style-type: none"> <li data-bbox="1346 240 1892 386">• <u>It puts ICANN in a position of trying to implement a set of standards that are not agreed to among various nations, including members of the GAC</u> <p data-bbox="1297 435 1906 699"><u>However, ICANN has continued to investigate this concern and has, with the help of subject matter experts, agreed to expand the scope of the background screening to cover some of the concerns raised by the GAC. Accordingly, the following will now be included in the background screening process:</u></p> <ul style="list-style-type: none"> <li data-bbox="1297 748 1906 1052">• <u>Has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[1];</u> <li data-bbox="1297 1057 1906 1247">• <u>Has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)[2]; and</u> <li data-bbox="1297 1252 1906 1398">• <u>Has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications, or the Internet to facilitate the commission of</u>

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			<p><u>crimes.</u></p> <p><u>[1] http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html</u></p> <p><u>[2] http://www.unodc.org/unodc/en/treaties/CTOC/index.html</u></p> <p><u>It is recognized that not all countries have signed on to the UN conventions reference above. These conventions are solely being used for identifying a list of crimes for which background checks will be performed. It is not intended that an applicant have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions.</u></p> <p><u>Other crimes suggested by the GAC have not been included due to the lack of any consistent internationally accepted definitions for such crimes or based on significant public comment against such an inclusion (i.e., terrorism) when last placed in the Guidebook. ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes however that there is no consistent definition of criminal behavior across multiple</u></p>

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			<p>jurisdictions, and the existing proposed Applicant Guidebook consciously targets "crimes of trust".)</p>
11.2.1	<p>Assign higher weight to applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to children, health-care, financial services, etc.)</p>	1B	<p><u>In its letter dated 12 April 2011, the GAC has reiterated its request to provide a greater weight to those applicants who offer more security. The GAC also requests that ICANN publicly disclose whether the applicant has offered augmented security levels. ICANN has carefully considered this advice and has amended the following in the AGB:</u></p> <ul style="list-style-type: none"> • <u>Security –the application questionnaire has been amended to reflect two sections for Security;</u> <ol style="list-style-type: none"> <u>1. A section, open to comment, that describes the:</u> <ol style="list-style-type: none"> <u>a. Augmented security levels or capabilities commensurate with the nature of the applied-for string including the identification of international or industry-relevant standards and</u> <u>b. The commitments made to registrants concerning security levels.</u> <u>2. A section that will continue to remain confidential which requires that applicants provide the security policy that aligns with the first section of this</u>

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			<p><u>question.</u></p> <ul style="list-style-type: none"> • <u>Abuse Prevention and Mitigation – the application questionnaire has been amended to provide an extra point to applicants where they include measures that promote Whois accuracy and include:</u> <ol style="list-style-type: none"> <u>1. A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Agreements for resolution or</u> <u>2. Adequate controls to ensure proper access to domain functions.</u> <p><u>The additional information being provided by the applicant in these questions in conjunction with application comments received from the Internet community will enable careful consideration by the evaluation panels of the measures to be implemented by applicants.</u></p> <p><u>It should be noted that results from the evaluation process will be in the form of “Pass” or “Fail” for each application. The scoring methodology requires that an application receive at least a minimum passing score for each question as well as an “exceeds” score for at least two questions to</u></p>

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			<p><u>pass the technical/operational evaluation. Therefore, the scoring methodology (while not assigning a “higher weight” to applicants offering the highest levels of security), does create a limited incentive to meet the higher standard. ICANN could consider providing extra points in some aspects of the qualification evaluation scoring process. (ICANN notes however that a priori categorization of strings is inherently problematic.)</u></p>
11.3	Add domestic screening services, local to the applicant, to the international screening services.	<u>1A1B</u>	<p><u>In its letter dated 12 April 2011, the GAC has requested more information on the type of background screening services to be used by ICANN and has indicated services used by other organizations such as ARIN which uses sources that essentially conducts searches of publically available data such as KnowX, Dun & Bradstreet, Westlaw, and relevant federal and state websites for corporate and financial information.</u></p> <p><u>It has always been ICANN’s intent to use a background screening service that conducts searches of publically available data such as those used by the services mentioned in the GAC example.</u></p> <p><u>ICANN is in the process of drafting a Request for Proposal (RFP) from International Background Screening providers to provide</u></p>

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			<p><u>such a service. The RFP, currently being circulated to a select number of law enforcement and security professionals for input, will be posted in the next few weeks.</u></p> <p><u>The RFP calls for providers to, at a minimum, have significant experience conducting international record checks of criminal and civil courts, law enforcement agencies and regulatory authorities in all countries where such records are available; have significant experience performing and possess a thorough knowledge of global, regional, and country specific background screening processes; provide background screening services in an expedited, orderly, consistent, and cost effective manner; and can efficiently scale to meet the demands of an unknown number of applications. ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN is mindful that this particular recommendation could lead applicants to locate in certain regions in order to game the depth of domestic screening. International screening is likely to include the reports of local agencies and could therefore be duplicative.)</u></p>

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11.4	Add criminal background checks to the Initial Evaluation	1A1B	<p>See response to 11.1. ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook already addresses serious crimes of trust.)</p>
11.5	Amend the statement that the results of due diligence efforts will not be posted to a positive commitment to make such results publicly available	1A1B	<p><u>In its letter dated 12 April 2011 the GAC requests that at a minimum, the identification of the individuals named in the application, e.g., officers, controlling shareholders, should be released for comment.</u></p> <p><u>ICANN agrees with this recommendation and will make available the names and titles of the key officers, directors, partners and controlling shareholders for comment.</u></p> <p><u>The GAC also reiterates its endorsement of Law Enforcement Agency recommendations for due diligence and amendments to the Registrar Accreditation Agreement and requests that the Board provide in writing its indication of how it intends to implement these recommendations prior to the Singapore meeting. ICANN and the Board appreciate this reminder; however, this is</u></p>

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			<p><u>beyond the scope of this scorecard and will be separately addressed by the Board in due course.</u></p> <p>ICANN will explore possible ways to make results public, but is concerned that posting such information poses concerns about privacy that should be explored further.</p>
11.6	Maintain requirements that WHOIS data be accurate and publicly available.	1A	From the Affirmation of Commitments: "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information."
12.	The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)		
12.1	Reconsider its objection to an “early warning” opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities.	1B	<p>Please<u>The principle of an early warning is already included in the Guidebook. The exact process needs to be discussed further — please</u> see the Board’s notes above with respect to the GAC’s advice on “Procedures for the review of sensitive strings.”</p>

The score as estimated by ICANN (without GAC agreement or consultation):

	1A	1B	2	TBD
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Post Brussels Consultation	25	28	23	4
Post Silicon Valley Consultation	42	18	17	3