

The New TLD Applicant Group (NTAG) takes this opportunity to respond to a number of assertions made by the ICANN GNSO Business Constituency (BC) in its letter of 5 September 2012 to the New gTLD Program Committee.

In summary, the NTAG contend that:

- A seven month objection filing period does not constitute a change to the Applicant Guidebook (AGB)
- Ending the objection filing period in June/July 2013 was not ‘advertised’ by ICANN
- There is questionable value in extending the objection filing period until Initial Evaluation results are published
- Dispute Resolution and Initial Evaluation are independent processes
- ICANN may consider refunding the objection filing fee where an application does not pass Extended Evaluation
- A seven month objection filing period promotes fairness, transparency, predictability and smooth operations

A seven month objection filing period does not constitute a change to the Applicant Guidebook (AGB).

The AGB states, in section 1.1.2.6, that the objection filing period will be open for seven months following the posting of applications and will close two weeks following the posting of Initial Evaluation results.

These dates are no longer concurrent given the delays to the Initial Evaluation process. Either date may be used to signal the end of the objection filing period whilst maintaining consistency with the text of the AGB.

A seven month objection period therefore does not, as wrongly purported by the BC, constitute a change to the AGB. As such, there is no requirement for ICANN to mandate a public comment period to address the community’s concerns in relation to a ‘change’ to the AGB which has not occurred.

Ending the objection filing period in June/July 2013 was not ‘advertised’ by ICANN.

An objection filing period of seven months, consistent with the AGB, was announced by ICANN during the [New gTLD Program Update](#) in Prague on 25 June 2012. Any expectation by objectors that the objection filing period will close in June/July 2013 was presumably based on the posting of Initial Evaluation results in June 2013 – a fact that only became known to the community in late July 2012.

The reliance on an incorrect set of facts by certain members of the community should not form the basis of ICANN’s decision to now extend the objection filing period until June/July 2013, three months after an announcement was made to the contrary.

There is questionable value in extending the objection filing period until Initial Evaluation results are posted.

The BC maintain that extending the objection filing period to two weeks after the posting of Initial Evaluation results will allow a potential objector to base its decision to object on the posted results, and would lead to the filing of fewer objections.

ICANN’s efforts to assist the majority of applicants in passing Initial Evaluation by issuing Clarification Questions where an applicant does not achieve a passing score somewhat undermines this claim – fewer applicants will now fail Initial Evaluation. In any case, the Initial Evaluation results are not

absolutely determinative of an application's failure given the opportunity to enter into Extended Evaluation during which Clarification Questions may further be issued. Furthermore, an applicant in receipt of an objection prior to, and not after, the posting of Initial Evaluation results will be more inclined to withdraw its application and collect the 70%, as opposed to 35%, refund of the application fee. Therefore, the requested extension of the objection filing period to two weeks after the posting of Initial Evaluation results is actually detrimental to an objector's efforts to oppose an application.

The BC also claims that the work necessary to prepare objections is extensive. As such, a two week period after initial evaluation results are posted would be insufficient by the BC's own admission. There is therefore arguably little value to a potential objector in waiting for the posting of Initial Evaluation results to decide whether an objection should be filed as these results are by no means determinative of the failure of the application nor would the time period be sufficient for an objector to even prepare its objection.

Dispute Resolution and Initial Evaluation are independent processes - the Dispute Resolution process is intended to handle filed objections whereas the Initial Evaluation process is designed to review the contents of the submitted TLD application by reference to specified criteria. The filing of an objection has no bearing on the evaluation of the submitted application. As such, there is no need for an evaluator to 'reconsider approval' following the expert determination of the Dispute Resolution Service Provider (DRSP). Such determination will be accepted by ICANN during the Dispute Resolution process.

Refund of objection filing fee - the BC concede that regardless of when the objection filing period closes, extensive work must be completed prior to the filing of the objection. A seven month objection period would merely bring forward the payment of the filing fees prior to the posting of the non-determinative initial evaluation results. ICANN may consider refunding objection filing fees where the application subject to an objection fails Extended Evaluation in an effort to address the BC's concerns.

NTAG Rationale

The NTAG's position is that a seven month objection filing period promotes fairness, transparency, predictability and smooth operations. An objection period lasting over one year unreasonably raises the uncertainty for applicants who continue to expend resources on maintaining and expanding operations when, for objectors, the objection grounds and standing requirements are clearly articulated in the AGB.

Allowing the filing of objections until "June/July 2013" is therefore unfair, particularly when there is scope to expedite the review time period. There is uncertainty regarding when and how Initial Evaluation results will be announced. They may be announced simultaneously in June/July 2013 as targeted by ICANN, or in earlier batches in a continuous manner as suggested by ICANN. An extension to the objection filing period would result in additional uncertainty for applicants, unreasonably delay the evaluation and delegation of TLDs and could provide competitive reasons to file objections. A seven month objection filing period would provide a more efficient Dispute Resolution process than the extended period suggested by the BC. Furthermore, there is a lower risk to the stability of the objection and dispute resolution process, and consequently the New gTLD Program, where the objection filing period is seven months as opposed to over one year. Therefore, we strongly support a firm objection filing period of seven months ending on January 13, 2013 as specified in the Applicant Guidebook.