Staff Report of Public Comment Proceeding

GNSO Community Comment 2 (CC2) on New gTLD Subsequent Procedures Policy Development Process	
Publication Date:	13 June 2017
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Public Comment Proceeding		
Open Date:	22 March 2017	
Close Date:	1 May 2017 extended 22 May 2017	
Staff Report Due Date:	12 June 2017	

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Section I: General Overview and Next Steps

This public comment sought input from the community on the Community Comment 2 (CC2) questionnaire developed by the GNSO's New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG). The focus of this questionnaire is on the subjects being considered by the PDP WG's 4 work tracks. Input received is critical to enabling these subjects to be considered fully and achieving a thoughtful outcome, which could include new policy recommendations, amendments to existing policy recommendations, or implementation guidance to be considered upon implementation.

Section II: Contributors

At the time this report was prepared, a total of twenty five (25) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
dotgay LLC	Jamie Baxter	DGL
Demys Limited	David Krizanic	DL
National Association of Boards of Pharmacy (NABP)	Gertrude "Gg" Levine	NABP
Canadian Internet Registration Authority (CIRA)	Richard Schreier	CIRA
International Trademark Association	Lori Schulman	INTA
Governmental Advisory Committee	Tom Dale	GAC
UNINETT Norid AS	Annebeth B. Lange	NORID
Security & Stability Advisory Committee (SSAC)	Julie Hedlund	SSAC
Nominet UK	Nick Wenban-Smith	NUK
ICANN Business Constituency (BC)	Steve DelBianco	BC
Verified Top-Level Domains Consortium	Craig Schwartz	vTLD

The Galway Strategy Group	Jim Prendergast	GSG
DomainMondo.com	John Poole	DM
Afilias	Melinda Clem	AF
Registrar Stakeholder Group	Zoe Bonython	RrSG
Google Registry	Stephanie Duchesneau	GR
United Kingdom, GAC	Mark Carvell	UKGAC
Registries Stakeholder Group	Paul Diaz	RySG
At-Large Advisory Committee	ICANN At-Large Staff	ALAC
Brand Registry Group	Martin Sutton	BRG
Valideus	Ashley Roberts	VA
Non-Commercial Stakeholder Group	Rafik Dammak	NCSG
Thomsen Trampedach GmbH	Jannik Skou	TT

Individuals:

Name	Affiliation (if provided)	Initials
Jean Guillon		JG

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

1.1 RSP Accreditation Programs
Many commenters are supportive of some sort of Registry Service Provider (RSP) program, noting that it has the potential to improve efficiency within the application submission and evaluation processes. Some commenters noted that establishing minimum technical standards could potentially lead to a race to the bottom. Other commenters noted that efficiencies could be gained without establishing an RSP pre-approval mechanism. Overall, there were a number of comments about the benefits, risks, testing requirements, and continuing obligations for a potential program. There were a number of comments related to what party should administer such a program and who would be responsible for enforcing technical requirements. There were also a number of comments that if such a program is implemented, it needs to be done well in advance of the opening of an application window.

1.2 Applicant Support
There were a number of comments regarding broadening support to Internationalized Domain Names (IDNs) and potentially including the "middle applicant," defined as struggling regions that are further along in their development compared to underserved or underdeveloped regions. Some noted the need to expand support beyond financial assistance, targeting application processes, education, and awareness. Suggestions were received to improve publicity and outreach to potential beneficiaries of an Applicant Support program.

1.3 Clarity of Application Process
A number of commenters provided examples of how clarity, transparency, and predictability could be enhanced. Many commenters agreed that the rules contained in the Applicant Guidebook (AGB) should not be changed after program launch. Some noted that if the AGB does change, it must be done in concert with the community and that there should be some level of recourse afforded to applicants to react accordingly.

1.4 Application Fees
A number of commenters are supportive of basing the application fee on the principle of breaking even. Many noted that for future procedures, they would expect that adhering to that principle would result in a fee lower than the $185,000 USD fee from the 2012 round. Some said that a floor might be warranted to maintain security and stability and to avoid speculation. Others noted that a cost recovery approach would likely still result in a fee adequately high enough to avoid speculation. There were several comments about how to handle excess or deficient funds.

1.5 Variable Fees
A number of comments agreed with the preliminary sentiment of the WG that the application fee should essentially be standardized for all applications, with the possible exception of a scenario where there is significant variance in costs associated with different types of applications. Many comments were opposed to the concept of a variable fee based on the volume of applications from a single applicant.

1.6 App Submission Period
While some commenters noted their preference for a first-come-first-serve mechanism rather than rounds, many considered a three-month application submission period to be adequate in the event of rounds. Some noted additionally that their opinion was contingent upon there being adequate time between the finalization of the rules (e.g., updated Applicant Guidebook) and the opening of the submission period. There were several comments that discussed the transition from "rounds" to some form of continuous application process. Many commenters did not believe that the application period would have any specific impact on a potential Applicant Support program in subsequent procedures.

1.7 Application Queuing
Some commenters noted their preference for a first-come-first-serve mechanism rather than rounds, but said that some form of prioritization was a good approach in the case of round-based application period. There were a number of comments about whether or not certain categories of applications should be prioritized in the processing queue, with some citing IDNs, .BRANDS, GAC Category 1 and 2 applications, and Applicant Support candidates as possible types for receiving priority.

1.8 Systems
Many commenters agreed with the targets for improvement described in the question, such as improved security and stability, more robust user testing, and a more integrated experience. Commenters also identified other areas to target for improvement, such as improved usability, better communication channels in the system, consolidation of messaging, etc. Many commenters noted their support for the system being capable of producing invoices for applicants.

1.9 Communications
Many commenters agreed with the targets for improvement noted in the question, such as improving the knowledge base, improving the distribution and better consolidating communication materials, and leveraging the Global Stakeholder Engagement team to promote global awareness. Commenters also made specific suggestions related to communication alerts, applicant communication systems, and educational methods (e.g., webinars). In terms of defining success for communications, commenters noted that participation in training programs and the number of outreach opportunities within the various regions could act as measurement tools. Other commenters provided a suggestion to hire an experienced communication firm to manage outreach.

1.10 Applicant Guidebook
Many commenters recommended making the AGB more concise and more targeted to the audience. However, some comments cautioned against fragmenting the AGB. Many commenters agreed that the AGB should be partitioned based on the anticipated audience (e.g., applicant, objector, etc.) or perhaps on the focus of the content (e.g., historical context, procedures, etc.). Some cautioned against

making multiple versions, as that could lead to confusion and inconsistencies.

2.1 Base Registry Agreement
A number of comments supported the approach of a single base registry agreement with exemptions for Top Level Domains (TLDs) with different operational models, noting that such an approach can help to ensure consistency. Several other comments favored using different base Registry Agreements, arguing that such an approach better supports different business models, in particular Brand TLDs. Some contributors expressed support for additional restrictions in the Registry Agreement with respect to sunrise pricing and the treatment of Premium and Reserved names. While some comments supported including all or part of the application in the base Registry Agreement, a number of others opposed this approach.

2.2 Reserved Names
A number of commenters submitted input on the topic of reserved names. Regarding String Requirements at the top level, some comments suggested a review of certain restrictions. Examples include letter number combinations (including single letter-single number combinations), dotBrand applications that coincide with geographic terms but are not representing themselves as the geographic place, and single IDN characters. Some comments supported leaving the current reserved names list unchanged, while other suggested reviewing the contents or proposed specific changes to the list. A number of comments favored adding Special Use Domain Names to the Applicant Guidebook section on reserved names at the top level. Other input offered feedback on the Registry Operator's right to reserve domain names at the second level.

2.3 Registrant Protections
Comments provided feedback on Emergency Back-End Registry Operator (EBERO), Continued Operations Instrument (COI), Data Escrow requirements, and Registry Performance Specifications in Specification 10 of the base Registry Agreement. Some proposed changes to the system of registrant protections, and a few proposed exemptions for Brand TLDs. A number of comments supported preliminary agreement among Working Track members that the EBERO funding model requires review and potential modification, noting that the current COI model is difficult to implement for many registries, ICANN and even financial institutions. Comments offered input on the background screening that takes place as part of the application evaluation process, some of which suggested potential modifications to criteria and requirements.

2.4 Closed Generics
Comments weighed in on whether rules from the 2012 round related to closed generics should be enforced for subsequent application windows. Some input supported allowing the operation of closed generics. Many of such comments noted that in permitting these TLDs, ICANN could better support innovative new business models. Other comments favored maintaining restrictions on closed generics. Arguments for this position included concerns about consumer choice and consumer confusion. An additional set of comments provided input of the definition of "generic" in the context of new generic TLDs (gTLDs). A number of comments stated that the current definition is acceptable, while some noted that if restrictions on closed generics are lifted it will no longer be necessary to define the term "generic."

2.5 Terms and Conditions
Comments focused on Section 3, Section 6, and Section 14 of the Applicant Terms and Conditions. A number of comments address Section 3, including interpretation of the language and the extent to which this provision is appropriate in future editions of the AGB. Feedback was mixed, and several comments stated that it may be helpful to clarify language in Section 3 to reference applicable obligations under ICANN's Bylaws and provisions on eligibility and application requirements in the AGB. In reflecting on Section 6 of the Applicant Terms and Conditions regarding the "covenant not to sue ICANN," several responses advocated for an appeals mechanism for rejected applications. In addressing ICANN's ability to make changes to the AGB (Section 14), a number of commenters

stressed the need for predictability and the importance of having a clear framework for change management.

2.6 Registrar Non-Discrimination and Registry/Registrar Separation

CC2 contained several specific questions on this topic of Registrar Non-Discrimination and Registry/Registrar Separation. In response to a question about whether issues have been observed with respect to the operation of vertically integrated registries and registrars, a number of respondents indicated that they were not aware of specific problems. A second question asked if there are additional circumstances under which Code of Conduct exemptions should be granted. Most comments did not identify any additional circumstances, although one supported an exemption where the Registry Operator can demonstrate that the term comprising the TLD string directly corresponds to a product name of the Registry Operator. Comments also provided feedback on an argument that rules contained within section 2.9 of the Registry Agreement and in the Code of Conduct prevent an integrated registry/registrar from achieving economic efficiencies by prohibiting a registry from discriminating in favor of its own registrar.

2.7 TLD Rollout

Commenters offered input on timelines specified in the 2012 AGB by which applicants had to complete the contracting (9 months) and delegation (12 months) steps of the process. Comments generally supported the requirements and timelines used in the 2012 round. Some comments emphasized the importance of both applicants and ICANN completing necessary steps in a timely manner to ensure predictable progression of the rollout process. One comment indicated that the requirement to begin escrowing data for only a nic.TLD site was premature.

2.8 Contractual Compliance

Noting that the role of Contractual Compliance is to enforce the registry agreement and any changes to that role are beyond the scope of the New gTLD Subsequent Procedures PDP, and anticipating that new contractual requirements will be made enforceable by inclusion in the base agreement, the CC2 questions stated that the WG does not anticipate policy development on this topic. Many of the comment agreed with this approach. Some operational concerns regarding Contractual Compliance were also flagged in the comments.

2.9 Global Public Interest

A number of comments provided input on existing mechanisms to serve the public interest and potential additional mechanisms that should be employed. Some comments indicated that Public Interest Commitments (PICs) have served their intended purpose and no additional mandatory measures are necessary. Other comments advocated for additional mechanisms, asserting that they are necessary to protect the public interest. Some of these comments specifically focused on requirements that may be appropriate for specific types of TLDs. An additional set of comments provided input on processes and timing related to implementation of safeguards. The need for additional data was also raised in one of the comments.

3.1 Objections

Many commenters said that the existing policy recommendations were adequate and should continue to be implemented in the form of objections. Some commenters suggested changes to recommendation 2 and 20. Many commenters provided specific guidance to improve the implementation and procedures around the four grounds for objections. Some commenters had concerns around the standing requirements for filing an objection, particularly around recommendation 20 (i.e., Community Objections) and the grounds for the Legal Rights Objection.

A number of commenters said that the objection outcomes were inconsistent for similar objections, particularly around String Confusion. There were some comments about preventing the gaming of the objection processes, particularly with respect to the Community Objections. Several commenters provided input on choosing the number of panelists and how to consolidate objections.

Several commenters supported the concept of an Independent Objector (IO), but stressed the need for improving the structure of such a mechanism and in particular, ensuring that the IO is free from conflict.

Many commenters said that the costs of objections were prohibitively high and hampered access to them as challenge mechanisms. Many noted, in particular, the high costs of Community Applications.

Commenters suggested improvements to the GAC Early Warning and GAC Advice processes, noting that both were unpredictable. Commenters noted that the procedures for both mechanisms should be better defined, available ahead of the launch of the program, and not changed after program launch.

3.2 Applicant Freedom of Expression
There were only a few comments on this topic, with one commenter supporting the balancing of the rights of applicants and rights holders, as captured in the existing GNSO policy recommendations.

3.3 Community Applications and Community Priority Evaluations
Several commenters said that the implementation of Community Priority Evaluation (CPE) was consistent with the GNSO recommendations, but nevertheless, suggested adjustments to improve the mechanism. Several commenters said that the evaluations lacked consistency, clarity, and transparency. Many commenters support the continued usage of CPE or a similar mechanism, with some offering suggestions about how to add nuance to the outcomes (e.g., expanding beyond an "all or nothing" basis). Some commenters said that community applications are more likely to serve the public good than a standard application, and that should be factored into determining which party should secure the TLD. Some commenters stressed the importance of robust registration policies to ensure that registrants within the TLD are bona fide members of community represented by the gTLD.

3.4 String Similarity
Many commenters provided suggestions for adjusting the standard of string confusion, such as considering synonyms, and particularly around singular/plurals. Others suggested improvements to the String Confusion Objection process. Some commenters agreed that the approach for string similarity in gTLDs should be harmonized with how they are handled in country code TLDs (ccTLDs), and others noted the importance of adherence to technical advice and guidelines (e.g., SSAC Advice and Requests for Comment (RFCs)).

A number of commenters provided input on the singular/plurals issue, with some suggesting that these strings should automatically be placed in contention sets, that the basis for identifying singular/plurals could be dictionary based (in a single language), and that there perhaps be an exception procedure that takes into account usage.

There were divergent opinions about allowing applicants to change the string in their applications upon being placed in a contention set. According to some, for strings that are applied for and follow the requirements in the AGB, yet are later determined to be ineligible for delegation, applicants should be able to change their string or receive a refund. Several commenters said that CPE and last-resort auctions were a reasonable approach, but that this approach should not preclude improvements, especially to CPE. Several comments were received about private auctions to resolve contention and the speculation that they may incentivize.

3.5 Accountability Mechanisms
Commenters noted that the existing accountability mechanisms were inadequate for the specific purposes of the program, highlighting objections as an area that would benefit from a program-specific appeals mechanism. There was also a question of whether discussing accountability mechanisms might be beyond the scope of the WG. Commenters presented a number of options to consider regarding an appeal process specific to the New gTLD Program.

4.1 Internationalized Domain Names

A number of comments spoke to the issue of allowing 1-character IDN TLDs in specific combinations of scripts and languages where a single character can mean a whole idea or a whole word (ideograms or ideographs). Many of the comments supported allowing such TLDs, although some warned that 1-character IDN TLDs should be treated as exceptions and only permitted, on a case-by-case basis, after careful review of potential confusability both within and across scripts. Some commenters offered perspectives on policy and process for the delegation and operation of IDN Variant TLDs. Others provided input on possible coordination and harmonization of processes related to 1-char IDN TLDs and IDN Variant TLDs with ccTLDs. An additional set of comments offered perspectives on possible additional areas for policy development with respect to IDNs.

4.2 Universal Acceptance

Several comments provided input on the issue of policy development work related to Universal Acceptance. Noting work already underway in other groups, in particular the Universal Acceptance Steering Group, the majority of commenters stated that the WG does not need to pursue additional policy development work on this topic. Some responses pointed to additional considerations for the WG to take into account related to Universal Acceptance. For example, one comment mentioned the work of the Universal Acceptance Initiative (UAI).

4.3 Application Evaluation

Commenters provided input on different aspects of the application evaluation process. A number of responses provided feedback on the timing of technical and financial evaluation. With respect to structure of the technical evaluation, many comments supported improving efficiency by consolidating testing. Some of these comments supported aggregate evaluation requirements taking into account applied-for TLDs and currently operated TLDs. Some responses favored the possibility of consolidating financial evaluations by registry family, while others supported a per-application evaluation. Some of the commenters providing input on the financial evaluation offered feedback on the templates and requirements in the application designed to support financial evaluation. Finally, many respondents expressed support for maintaining a single financial standard for applicants, regardless of the country of origin.

4.4 Name Collisions

Commenters offered guidance on the topic of namespace collisions for subsequent procedures. In particular, several responses indicated that ICANN should develop a clear and fair process to determine which strings will pose a risk for name collision and make sure that the plan is developed and communicated in advance of subsequent procedures. Several responses also advocated for rigorous methodology for determining the potential risk associated with an applied-for string. Some responses provided support for reducing the controlled interruption period in future rounds, while another comment opposed it. No additional measures were suggested for TLDs that already ended or will end their emergency readiness after two years of delegation or for gTLDs delegated prior to the 2012 round.

4.5 Security and Stability

Comments provided feedback on whether per-label security and stability review is necessary in subsequent procedures. Some respondents supported continued requirements for per-label security and stability. Others expressed that such a review may not be required. One response indicated that reviews may be eliminated in most cases, but should be required under specific circumstances. Commenters also provided input on root zone scaling. Most expressed support for continuing to use a cautious approach of gradually delegating new gTLDs.

Additional Questions

A number of commenters suggested that not all issues needed to be completely address before proceeding to subsequent procedures. Examples of issues recommended for this critical path include

a registry service provider program and geographic names. Some commenters suggested that lower priority items could be resolved separately and independently from the opening of subsequent procedures.

Commenters presented a number of suggestions to allow for the timeline to subsequent procedures to be contracted, including targeting a specific category of TLDs, focusing on a critical path, or more specifically, allowing non-policy issues to be driven through an implementation review mechanism.

There were also a number of comments that brought up additional elements for the WG to consider. For example, there were suggestions related to annual fees, effective promotion of competition and innovation, and standardization around registrar-registrar agreements.

Section IV: Analysis of Comments

General Disclaimer: *This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.*

The comments received were generally in response to the questions posed by the New gTLD Subsequent Procedures PDP WG. To the extent that there were comments that did not relate to the questions asked, these have also been included for WG consideration. It is important to note that at the time that this document was drafted, the PDP WG had not considered comments received. As such, this document is focused solely on providing a high-level summary of comments and does not provide analysis on the potential impact of the comments on the PDP WG's outputs.

A matrix of comments received, the PDP WG's deliberations, and ultimate disposition of comments will be provided on the WG's public Wiki here: https://community.icann.org/x/Gq7DAw