

At-Large's Subsequent Procedures Scorecard: Role of Application Comment

CPWG SubPro Small Team

At-Large Consolidated Policy Working Group (CPWG) Call
Wednesday, 13 May 2020, 19:00 UTC



APPLICATION EVALUATION/CRITERIA

Topic/Area:	[31] ROLE OF APPLICATION COMMENT [S2.3]	Priority:	MEDIUM	Settled On:	07.05.2020
Related:	<ul style="list-style-type: none"> Community Applications [2.9.1] Systems [2.4.3] Application Change Request [S2.4] 				
Key Issues:	<ul style="list-style-type: none"> To what extent can the Application Comment process be improved? Who should the Application Comment System benefit? What is the impact of received comments on a corresponding application in respect of standard applications vs. Community-based applications? Should resolution of comments include allowance for application changes? 				
Policy Goals:	<ul style="list-style-type: none"> Support continuing guidance in Implementation Guideline C, particularly around provision of comment forums. 				
Assigned CCT-RT Rec's:	None				
References:	<ul style="list-style-type: none"> 04. SubPro Role of Application Comment & Application Change Request – CPWG updated consensus summary, 7 May 2020 03. SubPro Role of Application Comment & Application Change Request – CPWG consensus summary, 27 April 2020 02. SubPro Role of Application Comment & Application Change Request – CPWG consensus building, 14 April 2020 Working Document_SubPro Draft Final Recommendations, 11 April 2020 SubPro WG Application Evaluation/Criteria_Summary Document, 7 January 2020 				
What has SubPro PDP WG concluded?	<u>What will SubPro PDP WG recommend?</u>		Is this acceptable? What else needs to be done and by/with whom?		
<ol style="list-style-type: none"> Applicants should continue to be given the opportunity through Clarifying Questions to respond to comments that might impact scoring Applicants should be given a certain amount of time to 	<u>Affirmation (1):</u> <ul style="list-style-type: none"> WG affirms Implementation Guideline C from 2007, "ICANN Will provide frequent communications with applicants and the public including comment forums." Sec. 1.1.2.3 of AGB, "ICANN will open a comment period (the Application Comment Period) at the time applications are publicly posted on ICANN's website ...This period will allow time for the community to review and submit comments on posted application 		<ul style="list-style-type: none"> Acceptable in principle. General support for need and continued use of Application Comment but more attention needed for system to be user-friendly for commenters, applicants and reviewers. 		

<p>respond to the public comments prior to the consideration of those comments.</p>	<p>materials.” WG affirms that as was the case in the 2012 round, community members must have the opportunity to comment through the Application Comment Period on applications submitted. Comments must continue to be published online as they were in the 2012 round so that they are available for all interested parties to review.</p> <ul style="list-style-type: none"> As was the case in the 2012 round, when application comment might cause an evaluator to reduce scoring, ICANN must issue a Clarifying Question to the applicant and give the applicant an opportunity to respond to the comment. <p><u>WG’s Rationale</u></p> <ul style="list-style-type: none"> Agreed on importance for ICANN to maintain lines of communication with applicants and public through Application Comment, thus affirms Implementation Guideline C. Also, where application comments might impact application scoring, the applicant should have opportunity to respond through Clarifying Questions (per 2012 round) to ensure evaluators take into account different perspectives and information before making adjustments to a score. 	<p>See also point 4.</p>
<p>3. Implementation Guidance: The system used to collect application comment should better ensure that the email and name used for an account are verified in some manner.</p>	<p><u>Recommendation (2):</u> For purposes of transparency and to reduce possibility of gaming, there should be clear and accurate information available about the identity of a person commenting on an application as described in the IG below.</p> <p><u>Implementation Guidance:</u></p> <ul style="list-style-type: none"> The system used to collect application comment should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. To the extent possible, ICANN 	<ul style="list-style-type: none"> Acceptable in principle. This is useful to weed out frivolous comments and to identify comments by any party who holds a conflict of interest, whether perceived, potential or actual. On “definitions of conflicts of interest” suggest that second IG will take this into account. Additional query – what is the consequences of a commenter

	<p>org should seek to verify the identity of the person submitting the comment.</p> <ul style="list-style-type: none"> In addition, each commenter should be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant. If so, they must reveal that relationship and whether their comment is being filled on behalf of that applicant. <p><u>WG's Rationale</u></p> <p>Recognizing that evaluation panelists perform due diligence in considering application comment, in light of challenge in confirming the true identity of all commenters, WG encourages ICANN to seek opportunities to verify identify of commenters in meaningful way to reduce risk of gaming and to require commenters to disclose relationship with a commenter for transparency.</p>	<p>not disclosing a relationship with an applicant in violation of this request?</p> <ul style="list-style-type: none"> Would the commenter be barred and their comment marked "Disregarded" (or something to that effect)? Should some burden be placed on each applicant as a meaningful way to reduce risk of gaming / increase transparency, especially when a comment purports to cast "doubt" on a competing application?
<p>4. Implementation Guidance: The system used to collect application comment should support a filtering and/or sorting mechanism to better review a high volume of comments. The system should also allow for the inclusion of attachments.</p>	<p><u>Recommendation #3:</u></p> <p>Systems supporting application comment should emphasize usability for those submitting comments and those reviewing comments submitted. This is consistent with PIRR rec. 1.3.a, "Explore implementing additional functionality that will improve the usability of the Application Comment Forum."</p> <p><u>Implementation Guidance:</u></p> <ul style="list-style-type: none"> System used to collect application comment should better support filtering and sorting of comments to help those reviewing comments find relevant responses, particularly when there is a large number of entries. Eg. an ability to search comments for substantive text within the comment itself. In the 2012 round, a search can be done on categories of comments, but not a search of the actual text within the comment itself. System used to collect application comment should allow those submitting comments to include attachments. ICANN should 	<ul style="list-style-type: none"> Acceptable in principle. Needed as more attention required for system to be user-friendly for submission, review, searchability of comments as well as responses to comments. Usability improvements should not favour applicants over reviewers.

	<p>investigate whether there are any commercially reasonable mechanisms to search attachments.</p> <p><u>WG’s Rationale</u></p> <p>Concerns about usability challenges with Public Comment Forum, needing ways to improve it – meaningfully sorting large volumes of comments, including attachments with submissions. ICANN should explore tools to allow these, in light of usage by reviewers and evaluators also.</p>	
<p>5. ICANN should be more explicit in the Applicant Guidebook on how public comments are to be utilized or taken into account by the relevant evaluators, panels, etc. and to what extent different types of comments will or will not impact scoring. In addition, to the extent that public comments are to be taken into account by the evaluators, panels, etc., applicants must have an opportunity to respond to those comments.</p> <p>Note: Preliminary recommendation 2.3.c.2 states that “ICANN should be more explicit in the Applicant Guidebook on how public comments are to be utilized or taken into account by the relevant evaluators, panels,</p>	<p><u>Recommendation #4:</u></p> <p>The New gTLD Program should be clear and transparent about the role of application comment in the evaluation of applications.</p> <p><u>Implementation Guidance:</u></p> <ul style="list-style-type: none"> • The IRT should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the AGB. • The AGB should also be clear to what extent different types of comments will or will not impact scoring. In addition, to the extent that public comments are to be taken into account by evaluators and panels, applicants must have an opportunity to respond to those comments. <p><u>WG’s Rationale</u></p> <p>Lack of clarity in 2012 round about use of application comments in application evaluation process to be rectified – guidelines needed and to be included in AGB for greater transparency and accountability in evaluation process.</p>	<ul style="list-style-type: none"> • Yes, acceptable in principle. • But the guidelines developed by IRT must be guided by or subject to community input. <p>RE: New Issue & Omission #1 - whether the public comment period for applications opting for CPE should be longer than for standard applications</p> <p>Of particular concern to At-Large is how public comments which impact scoring for Community Priority Evaluation (CPE) will be handled – At-Large likely proposing changes to the CPE Criteria & Guidelines, inter alia, that:</p> <ul style="list-style-type: none"> • The call for submission of comments or documentation of support or in opposition to all applications be incorporated into the Application Comment system, and strictly during the

<p>etc. and to what extent different types of comments will or will not impact scoring.”</p>		<p>Application Comment Period only. There must be no separate call for Letters of Support or Letters of Opposition made by or on behalf of CPE panelists wrt Community-based applications.</p> <ul style="list-style-type: none"> • CPE panel must be informed of: <ul style="list-style-type: none"> ○ The identity of commenters who have submitted comments in opposition (or Letters of Opposition), and ○ The commenter’s relationship to an opposing applicant (if declared, or if discoverable by ICANN Org)
<p>6.</p>	<p><u>Recommendation (5):</u> Applicants should have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.</p> <p><u>Implementation Guidance:</u> Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.</p> <p><u>WG’s Rationale</u></p> <ul style="list-style-type: none"> • WG believe evaluators should as far as possible, have full picture of the different perspectives on an application including arguments or evidence from applicant. • If applicant proposes changes to its application in response to public comments, additional processes apply, including additional public comment period, where applicable. 	<ul style="list-style-type: none"> • Yes, acceptable in principle. • But the IG should allude to allowance for reasonable time after close of public comment period to address late submissions of comments during the public comment period – eg if a comment is submitted within the last week of the public comment period. <p>RE: New Issue & Omission #2 - whether the community should have opportunity to comment following window for applicant’s response to (original) comments</p> <p><u>Question:</u> Should commenters then be allowed to reply to applicant’s</p>

		<p>response? And end process there? Or should commenters be made to rely on the objections process?</p> <p><u>Answer:</u> Stop at response by Applicant. Ensure Applicant have reasonable time/opportunity to respond to comments that are filed late (like in the last week of Application Comment Period)</p>
7.	<p><u>Recommendation #6:</u> ICANN must create a mechanism for third-parties to submit information related to confidential portions of the application, which may not be appropriate to submit through public comment. At a minimum, ICANN must confirm receipt and that the information is being reviewed.</p> <p><u>WG's Rationale</u> Third parties may want to submit information pertaining to confidential portions of an application also on a confidential basis – information for background screening; ICANN should allow this.</p>	Acceptable. No further intervention needed.
<u>NEW/PENDING ISSUES:</u>	SubPro PDP WG reaction	What else needs to be done and by/with whom?
8. New Issue & Omission #1 - On whether the public comment period for applications opting for CPE should be longer than for standard applications	WG discussed whether public comment period for Community-based applications opting for CPE should be longer than for standard applications (as was the case in 2012 round) or if the period should be equal for all applications. No agreement, therefore no recommendation.	See intervention under Recommendation (4)
9. New Issue & Omission #2 - On whether the community should have opportunity to	With reference to IG for Recommendation (5), WG discussed this question but did not come to a conclusion. Notes this may be an item for consideration in implementation phase.	See intervention under Recommendation (5)

comment following window for applicant's response to (original) comments.		
Main Positions of Concern:	<p><u>On SubPro Recommendations</u></p> <p>All appear acceptable in principle, with some additional interventions under this topic and “Community Applications” topic, in particular Community Priority Evaluation (CPE):</p> <ul style="list-style-type: none"> • Additional query to Recommendation (2) – what is the consequences of a commenter not disclosing a relationship with an applicant in violation of this request? • With respect to Recommendation (3) and New Issue & Omission #1, of particular concern to At-Large is how public comments which impact scoring for Community Priority Evaluation (CPE) will be handled. • Additional intervention to Recommendation (5) – Implementation Guidance should allude to allowance for reasonable time after close of public comment period to address late submissions of comments during the public comment period – eg if a comment is submitted within the last week of the public comment period. <ul style="list-style-type: none"> ○ Related to Recommendation (5), i.e. New Issue & Omission #2 - whether the community should have opportunity to comment following window for applicant's response to (original) comments, answer is: Stop at response by Applicant. Ensure Applicant have reasonable time/opportunity to respond to comments that are filed late (like in the last week of Application Comment Period) 	