

At-Large's Subsequent Procedures Scorecard: Application Change Request

CPWG SubPro Small Team

Revised and shared on At-Large Consolidated Policy Working Group (CPWG) Call
On Wednesday, 16 September 2020, 19:00 UTC



APPLICATION PROCESSING

Topic/Area:	[20] APPLICATION CHANGE REQUEST [S2.4]		Priority:	MEDIUM	Settled On:	07.05.2020 updated on 15.09.2020
Related:	<ul style="list-style-type: none"> • Role of Application Comment [S2.3] • Community Applications [2.9.1] • Voluntary Registry Commitments (RVCs) [2.3.2] • Private Resolution of Contention Sets [S2.2] 					
Key Issues:	What Implementing Guidance should be provided for change requests intended to resolve (i) string contention and/or (ii) application comments: What should be allowed and how to hand such requests?					
Policy Goals:	The framework for considering and responding to change requests should be clear, consistent, fair and predictable.					
Assigned CCT-RT Rec's:	None					
References:	<ul style="list-style-type: none"> • SubPro Draft Final Report, 20 August 2020 • 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 Processing_Summary Document, 7 January 2020 • 01A. SubPro Applicant Change Request, 6 August 2019 					
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?		
1. To maintain high-level, criteria-based change request process employed in 2012 with operational improvements.	<p><u>Affirmation 20.1:</u> WG supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 round.</p> <p><u>Implementation Guidance 20.2:</u> ICANN org should provide guidance on both changes that will likely be approved and changes that will likely no be approved.</p>			<p>Acceptable. No further intervention needed.</p> <ul style="list-style-type: none"> • Just to note that consideration be on case-by-case basis and on the merits of each case, using 		

<ul style="list-style-type: none"> • ICANN Org to provide guidance on changes likely to be approved and likely to not be approved • ICANN Org to state types of changes required to be posted for public comments or otherwise • AGB to state types of changes requiring re-evaluation of some/all parts of the application or otherwise 	<p><u>Implementation Guidance 20.3</u>: ICANN org should identify in AGB the types of changes that will require a re-evaluation of some or all of the application vs those that do not.</p> <p><u>Recommendation 20.4</u>: ICANN Org should document the types of changes which are required to be posted for public comment and which are not required to be posted for public comment. (those not be limited to an explicit “Do Not Require” list @https://newgtlds.icann.org/en/applicants/global-support/change-requests)</p> <p>Non-exhaustive list of changes requiring public comment:</p> <ul style="list-style-type: none"> • Addition of Registry Voluntary Commitments in response to public comments, objections (formal or informal), GAC Consensus Advice, or GAC Early Warnings • Changes to Registry Voluntary Commitments in response to public comments, objections (formal or informal), GAC Consensus Advice, or GAC Early Warnings • Changes association with formation of JVs to resolve string contention (see Rec. 20.6) • Changes to applied-for string (see Rec. 20.8) <p>Types of application changes that did not require public comment in 2012 round to remain as not requiring public comment in subsequent rounds.</p> <p><u>Implementation Guidance 20.5</u>: Community Members should have the option of being notified if an applicant submits an application change request that requires a public comment period to be opened at the commencement of that public comment period.</p>	<p>existing 7 criteria with 2 minor tweaks:</p> <ul style="list-style-type: none"> ▪ #1: Reasonable explanation – can be supplemented by letter of support from non-applicant interested stakeholder ▪ #7: Timing – interference with evaluation process should carry least weight
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<p>2. To allow application changes to support formation of JVs; ICANN Org may determine if re-evaluation needed in order to ensure new entity still meets program requirements; applicant to be responsible for any additional costs and accept reasonable delays</p>	<p><u>Recommendation 20.6:</u></p> <ul style="list-style-type: none"> WG recommends allowing application changes to support the settling of contention sets through business combinations or other forms of joint ventures. In the event of such a combination or joint venture, ICANN Org may require that re-evaluation is needed to ensure that the new combined venture or entity still meets the requirements of the program. The applicant should be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays. <p><u>Implementation Guidance 20.7:</u> ICANN Org should explore possibility of allowing applicants to request that evaluation of their own application is delayed by 60-90 days so that they can submit an applicant change request on the basis of business combination or JV etc. This request would need to be made prior to Initial Evaluation of the application.</p>	<p>We support allowing application changes to resolve string contention through business combinations or by creating JV with conditions.</p> <ul style="list-style-type: none"> <p>Yes, we lobbied for this.</p>
<p>3. On allowing change to applied-for <u>.Brand strings</u> where original string is in a contention set</p>	<p><u>Recommendation 20.8:</u> WG recommends allowing .Brand TLDs applicants to change the applied-for string as a result of a contention set where (a) change adds descriptive word to string, (b) descriptive word is in the description of goods and services of TM registration, (c) such change does not create a new contention set or expand an existing contention set, and (d) change triggers a new public comment period and opportunity for objection, and (e) new string complies with all Program requirements</p>	<p>Yes, we also supported this earlier and note the addition of (e) to reflect input given.</p>
<p><u>PENDING ISSUES:</u></p>	<p>SubPro PDP WG reaction</p>	<p>What else needs to be done and by/with whom?</p>
<p>4. On allowing change to applied-for string (<u>other than .Brand strings</u>) where original string is in a contention set, WG considered public comments</p>	<p>WG did not come to conclusion and therefore did not include any recommendation on this issue. There was both support and opposition:</p> <p><u>Support</u></p> <ul style="list-style-type: none"> Effective measure for eliminating contention while avoiding need for auction 	<p>If this were to be re-considered then we would require strict conditions to allow changes to applied-for string to resolve string contention by limited ability to select different string, subject to:</p>

<p>to Supplemental Initial Report etc to this issue.</p>	<ul style="list-style-type: none"> • Subject to caveats eg. (i) if new string does not create a new contention set or result in application entering into another existing contention set; and (ii) new string should be closely connected to original string <p><u>Opposition</u></p> <ul style="list-style-type: none"> • Encourage gaming, allowing applicants to cherry-pick uncontended strings, providing unfair advantage over those who followed standard application process • Makes it difficult for public / ICANN community to monitor applications and raise objections where appropriate • Necessitates repeat of string similarity evaluation, causing delays and disruptions to all (other) applications, impacting program timelines and costs. <p>WG had considered a more limited proposal involving .Brand TLDs which is now reflected in Recommendation 20.8.</p>	<ul style="list-style-type: none"> • Only for resolving string contention and no other circumstances • New string must be closely related to original string – although the question of “<i>Who decides on closely related?</i>” remains unanswered. • New string does not create or expand an existing contention set • Will triggers a new public comment period, and be open to Objections process • New string must pass fresh string similarity tests, name collision risk assessment
<p>Main Positions of Concern:</p>	<p>None. We have a position on allowing change to applied-for string (<u>other than .Brand strings</u>) where original string is in a contention set, if that should come up for reconsideration again.</p>	