At-Large's Subsequent Procedures Scorecard:
Applicant Support Program (ASP)

CPWG SubPro Small Team

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

Topic/Area:	**[17] APPLICANT SUPPORT PROGRAM (ASP)**		Priority:	**HIGH**	Settled On:	05.05.2020, revised 13.09.2020
Related:	• **Global South/Middle Applicant outreach – *Communication [2.4.2]*** • **Nature of support – use of funds, beyond funds, funding source** • **Criteria – Metrics** • Accountability Mechanism – appeal against SARP evaluation determination • Contention set resolution involving ASP Applicants • Support – Accreditation Programs [2.2.6] • Application Fees [2.5.1] & Variable Fees [2.5.2]					
Key Issues:	The ASP for the 2012 application round offered USD2mil in financial support but yielded only 3 ASP applicants. Only 1 of the 3 ASP applicants was found to have met the selection criteria, resulting in 2 of the 3 applications being terminated. In hindsight, the selection criteria standard was said to have been set too high, driven primarily by overwhelming caution against risk of 'gaming'. Four other issues which arise are to do with: • Metrics for measuring success of ASP Program; • *Appeals process to SARP determinations (which did not exist before);* • *If successful ASP applicants should receive priority in contention sets (and under what circumstances); and* • *How far should ICANN-funded financial support be contemplated for successful ASP applicants? Should it be limited to just the application process or for eg, should it extend to registry fees for up to a limited period post delegation?*					
Policy Goals:	• Increase "success" of program, using a set of metrics – awareness/outreach, total EOIs, total applicants, total ASP "grantees" etc • Provide financial support and non-financial support/pro-bono services to certain eligible applicants • Ensure that information about the program and participation in the program is accessible to the target audience.					
Assigned CCT-RT Rec's:	• Rec. 32: Revisit the Applicant Financial Support Program (prerequisite for SubPro) • Rec. 29: Set objectives/metrics for applications from the Global South (prerequisite for SubPro) • Rec. 30: Expand and improve outreach into the Global South (prerequisite for ICANN Org) • Rec. 31: ICANN Org to coordinate the pro bono assistance program (prerequisite for ICANN Org)					
References:	• SubPro Draft Final Report, 20 August 2020 • 06. SubPro Applicant Support – CPWG consensus summary, 22 April 2020					

	• 05. SubPro Applicant Support – CPWG consensus summary, 14 April 2020 • 04. SubPro Applicant Support – CPWG consensus building, 6, April 2020 • Working Document_SubPro ICANN67 Discussion Topics, 1 April 2020 • SubPro PDP WG Application Submission_Summary Document, 7 January 2020 • 02. SubPro Applicant Support Update to CPWG, 31 July 2019	
What has SubPro PDP WG concluded?	**What will SubPro PDP WG recommend?**	Is this acceptable? If not What else needs to be done & by/with whom?
	WG notes CCT-RT Rec 32, "Revisit the Applicant Financial Support Program" has puts forward the following recommendations to support improving ASP in subsequent procedures.	CCT-RT Rec 32 not met satisfactorily; in particular: • <u>Actual metrics</u> to measure success of ASP per CCT-RT Rec 29 or success of outreach and awareness to Global South per CCT-RT Rec 30, while suggested in interim, <u>are not properly developed but instead punted to IRT to develop</u>. • Recommendation 17.2 vis a vis CCT-RT Rec 31, ICANN must <u>actively coordinate</u> the pro-bono assistance program, not merely facilitate it.
1. No objection to ASP continuing, successful applicants should enjoy financial support vis application fee reduction	<u>Affirmation with Modification 15.3 (Under "Application Fee"</u>: • Affirm Implementation Guideline B from 2007 with addition, "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer new gTLD process. Application fees may differ for applicants *that qualify for application support*."	Yes, since impact is Applicants that qualify will enjoy reduced application fee (the Financial Support limb) No further intervention needed.
2. ASP should: (a) Be open to applicants regardless of their location as long as they meet	<u>Recommendation 17.1</u>: • Recommends that Implementation Guideline N be replaced with, "ICANN must <u>retain the ASP</u>, which includes <u>fee reduction for eligible applications</u> and	Yes, but with major provisos! • Support ASP to continue in subsequent procedures & be available to applicants which meet eligibility

program criteria – ie eligibility
 	
(b) Extend financial support beyond subsidy on application fees
 	
(c) Target Global South & "Middle Applicant" (ie still struggling regions which may not be underserved or underdeveloped)
	facilitate the provision of <u>pro-bono non-financial assistance</u> to <u>applicants in need</u>."
	• Updating original IG to:
	   ○ Acknowledge ASP in place in 2012 round
	   ○ Include reference to pro-bono non-financial assistance in addition to fee reduction
	   ○ Eliminate reference to economies classified by the UN as least developed, as Program not limited to these applicants.
		criteria, <u>regardless of location</u>. However, there is still need to press for requirement on demonstration of specific service to beneficiary target region or community - advocate for IRT to ensure requirement that <u>applicant must demonstrate how they would serve beneficiary target region or community, not propose merely a general public interest benefit as an evaluation criterion</u>.
		• Yes, amendment is needed to regularize/ update existing Implementation Guidance N
		• **Major proviso being**: per CCT-RT Rec 31, <u>ICANN Org must actively encourage and coordinate</u> participation of parties wishing to offer pro-bono assistance as well as communication between those parties and eligible applicants to ensure eligible applicants have effective access to pro-bono assistance, and not be left with just a list of offerors – advocate for this change.

(d) Extend financial support towards expenses like application writing fees, related attorney fees, *[ICANN registry-level fees]*	<u>Recommendation 17.2</u>: Expand scope of financial support to ASP beneficiaries beyond application fee to also cover costs such as application writing fees, attorney fees related to application process. *WG's Rationale* *Recognizes costs of applying for a TLD extend beyond application fee and these additional costs could be uncertain and prohibitive for applicants with limited financial resources.*	• Yes, but need to push the envelope on <u>financial support to include operational costs, consistent with the ICANN Board's decision made in Nairobi</u> in initiating the ASP which is <u>for ICANN Community to find a way to support applicants that are in need of means to make the application and to operate</u>. • More detailed suggestions are found below (under the WG omissions section)
	<u>Recommendation 17.3</u>: ICANN to improve outreach, awareness-raising, application evaluation, and program	

		evaluation elements of the ASP, as proposed in the Implementation Guidance below	• Yes, because outreach was very poor for 2012 round.
(e) Employ longer lead times to create awareness, draw on regional experts, leverage tools & expertise to evaluate applicant business cases		Implementation Guidance 17.4: Outreach and awareness-raising activities should be delivered well in advance to application window opening, as longer lead times help to promote more widespread knowledge about the program. Such outreach and education should commence no later than the start of the Communication Period.	• More importantly, the element of education around the business model for applicants as identified by AM Global Study is missing – there is need for the inclusion of business model education (eg. different business case studies) to increase the utility of the ASP.
		Implementation Guidance 17.5: A dedicated IRT be established / charged with developing implementation elements of ASP – giving regard to the JAS WG Final Report and 2012 implementation of ASP.	Major concern that "implementation elements of ASP" lacks sufficient policy guidance details; that these are highly necessary yet has been punted off to IRT which typically does not incorporate extensive community participation; CCT-RT Rec. 29 not met.
		Implementation Guidance 17.6: Outreach efforts should not only target the Global South, but also "middle applicants" (those located in struggling regions that are further along in development compared to underserved or underdeveloped regions). Evaluation criteria in ASP must treat "middle applicants" similar to those currently set forth in Criteria #1, Section 4 (Operation in a developing economy) of the Financial Assistance Handbook *(i.e. benefiting LDCs, LLDCs, SIDS per UNDESA list)*	Agree in principle, but we still have no visibility on ICANN Org's on definition of "Global South", or agreement on how to describe underserved or underrepresented regions.
		Implementation Guidance 17.7: Support PIRR rec 6.1.b, "Consider researching globally recognized procedures that could be adopted for implementing ASP".	In principle, yes, since impact: • Assists with transparency and predictability for applicants and community. • Documentation of rationale particularly assist with appeals process.

	Implementation Guidance 17.8: Have dedicated IRT should draw on experts with relevant knowledge, including from targeted regions, to develop appropriate program elements related to outreach, education and application evaluation. Regional experts may be particularly helpful in providing insight on the evaluation of business plans from different parts of the world.	Major concern that "implementation elements of ASP" lacks sufficient policy guidance details; that these are highly necessary yet has been punted off to IRT which typically does not incorporate extensive community participation; CCT-RT Rec. 29 not met.

(f) Consider number of successful applicants as a measure of success – PROGRAM METRICS framework for measuring success	Implementation Guidance 17.9: Dedicated IRT should seek advice from experts in the field to develop framework for analysis of metrics to evaluate success of ASP – identified non-exhaustive list of potential data points to support further discussion in implementation phase. WG anticipates dedicated IRT will consider how these and other potential metrics may be prioritized:
	• Awareness and Education:
	    o Number of outreach events and follow up communications with potential applicants
	    o Level of awareness about the Program/ASP
	    o Level of interest expressed/number that considered applying
	    o Number of applicants
	    o Diversity of applicant pool (including geographic diversity and IDNs)
	    o Number of service providers offering pro-bono assistance
	• Approval Rate:
	    o Number of approved applicants
	• Success of Launched gTLD:
	    o Number of registrants of domain name registered in "regional" TLDs (eg TLDs focusing mainly on a local, limited market) KIV other barriers registrants in developing countries to
		Major concern that "identified metrics" offer a "piecemeal view approach lacking sufficient policy guidance details; that these are highly necessary yet has been punted off to IRT which typically does not incorporate extensive community participation; CCT-RT Rec. 29 not met.

	access domain names, such as inability to access online payment services and a lack of global registrars. ○ Number of domain names registered in "regional" new gTLDs compared to the number of Internet users in such regions. These numbers could be compared with same numbers for Internet users and "regional" new gTLDs in developed regions such as Europe and North America.	
3. Method for selecting recipients if applicants exceeds funds allocated	Implementation Guidance 17.10: Dedicated IRT to consider how to allocate financial support in the case that available funding cannot provide fee reductions to all applicants that meet the scoring requirement threshold.	Major concern that "implementation elements of ASP" lacks sufficient policy guidance details; that these are highly necessary yet has been punted off to IRT which typically does not incorporate extensive community participation. If expecting uptake to improve then more consideration ought to be given to having established approach. We had suggested: • Using points earn during evaluation to determine dispersion of funds if there are more applicants than funds • Using "quota per region" approach
	Recommendation 7.11: Support PIRR rec 6.1.a, "Consider leveraging the same procedural practices used for other panels, incl. publication of process documents and documentation of rationale."	In principle, yes, since impact: • Assists with transparency and predictability for applicants and community. • Documentation of rationale particularly assist with appeals process.
4. Source of ASP funding	Recommendation 17.12: ICANN Org must develop plan for funding ASP, as proposed in IG below	• Major concern over how ICANN org will develop such plan, need more visibility on concrete steps

	Implementation Guidance 17.13: ICANN Org should evaluate whether it can provide funds (per 2012) or whether additional funding is needed for the ASP in subsequent rounds

Implementation Guidance 17.14: ICANN Org should seek funding partners to help financially support the ASP as appropriate | • Advocate for ICANN Org to actively inform, encourage and liaise with National banks and aid agencies worldwide to participate in sponsoring applicants or ASP funding. |
| 5. No consensus for priority to successful ASP applicant in string contention but support for the concept of a "multiplier" (or equivalent) for bids placed by successful ASP applicants that participate in an auction of last resort to resolve a contention set. | Recommendation 17.15: If an applicant qualifies for ASP and is part of a contention set that is resolved through an auction of last resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant.

Implementation Guidance 17.16: Research should be conducted in implementation phase to determine exact nature and amount of bid credit, multiplier, or other mechanism described in Recommendation 17.15. Research should also be completed to determine a max value associated with the bid credit, multiplier, or other mechanism. | Support in in principle – this is something that the ALAC had proposed earlier and continue to advocate for as a feature of any auction of last resort participated in by eligible applicants such as successful ASP applicants. However, again, there is major concern over lack of sufficient policy guidance details; that these are highly necessary yet has been punted off to IRT which typically does not incorporate extensive community participation. |
| 6. Partly dealing with risk of gaming – conditions governing transfers of TLDs | Implementation Guidance 17.17: If the applicant getting ASP prevails in an auction, there should be restrictions placed on the applicant from assigning the RA, and/or from any Change of Control for a period of no less than 3 years. This restriction seeks to prevent gaming of the ASP whereby an applicant transfers its ownership of a registry to a 3rd party for financial gain. | Acceptable. |

		However, necessary assignments shall be permitted, limited to: • Assignments due to going out of business • Assignments due to death or retirement of a majority shareholder • Assignments due to EBERO • Assignments to affiliates or subsidiaries • Assignments required by competition authorities All assignments after such time shall be governed under then RA standard provisions; provided that any assignment or Change of Control after the 3rd year, but prior to the 7th year, shall require applicant to repay full amount of financial support received through the ASP + additional 10%.	
7.	No automatic termination of applications which do not meet ASP criteria	<u>Recommendation 17.18</u>: • Unless the SARP reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether "Qualified" or "Disqualified") must <u>have the option to pay balance of full standard application fee and transfer to standard application process</u>. • Applicants must have limited period of time to provide any additional information necessary to convert theirs to a standard application, without causing unreasonable delay to other elements or other applicants eg in a contention set.	Yes, we advocated strongly for this. Unsuccessful ASP applicants should be allowed to choose either withdraw or transfer to standard application regime, with reasonable time given to pay balance application fee amount if choose to transfer. <u>While mostly consistent with our past comments, concern remains</u> as to: • How SARP's evaluation methodology will be expanded to include determination of wilful gaming • Development of broad agreement on penalty to be applied to applicants found to be wilful gamers.
8.	Financial Assistance Handbook (details of ASP) to be in AGB	<u>Recommendation 17.19</u>: The Financial Assistance Handbook or its successor, subject to changes included in	Agree.

the above recommendations, must be incorporated into the AGB for subsequent rounds.		
What has SubPro PDP WG concluded?	**What SubPro PDP WG has omitted?**	**Is this acceptable? If not, what else needs to be done and by/with whom?**
9. No consensus for priority to successful ASP applicant in string contention	Any recommendation on priority for successful ASP applicant in string contention	• We commented, "Applicants who are subject to string contention resolution procedures and auctions are expected to have the financial wherewithal to see through the resolution procedure or participate in an auction as a last resort. Applicants who qualify for ASP are by default disadvantaged in this regard given their need to obtain Application Support in the first place. One this basis, propose that <u>an applicant who qualifies for ASP should be given priority in any string contention set, and not be subjected to any further string contention resolution process</u>." • "In advocating for greater participation in New gTLD Program – to meet need for diversity, competition, choice etc – priority in string contention ought to be given to successful ASP applicants." • A denial of outright priority in string contention to a successful ASP applicant demands inclusion of provisions to help level the playing field for successful ASP applicants to effectively compete in an auction of last resort against applicants that are better resourced and not in need of application or operational support – <u>this proposal has been taken up in some form but details remain lacking</u>.

10. Dedicated Application Round for ASP potential applicants	Any recommendation for separate application windows based on types of applications	• We commented, "Some support for dedicated round for applicants from developing countries and which proposes to benefit communities in developing countries or indigenous communities." • Some support but no consensus within At-Large
NEW/PENDING ISSUES:	SubPro PDP WG seeking input on:	What else needs to be done and by/with whom?
11. Whether ASP should include financial support beyond a reduction of application fees	• Whether ASP should include reduction or elimination of ongoing registry fees specified in Article 6 of RA for eligible candidates? • It included a preliminary recommendation that ASP should include coverage of such fees and a compromise proposal was put forward that ICANN should cover registry fees for a limited period of time but has now omitted it for lack of consensus.	Yes, it should. We also provide input on guardrails to mitigating risk of gaming while increasing appeal, utility of ASP, to boost overall success of ASP, as follows: **Joint financing of Applicant Support applications** • ICANN Applicant Support must take account of the overall investment costs necessary for the success of the proposed independent Registry, including how these costs will be financed.
12. Dealing further with risk of gaming – Effect of Transfer on timing of ASP process	• WG noted recommendation to allow unsuccessful ASP candidates to transfer to a standard application raises questions about timing of the ASP process relative to timing of overall application evaluation process • WG considered a proposal to address concerns about gaming associated with transfer but found that under that proposal, ASP applicant had no information to gain, and is therefore not in a position to game the system.	• The financial evaluation of the application must be undertaken by qualified staff within ICANN Org. The applicant's submitted financial data should be kept confidential, except that in the event of joint financing by third party entities (e.g. regional development banks) such data would have to be shared under conditions of confidentiality and with the applicant's consent. • 'Portfolio applicants' or incumbent Registry/ Registrar entities with 10 or more delegated gTLDs (new and legacy) are ineligible to apply for Applicant Support. • To be eligible for Applicant Support, an applicant for:

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- o A geographic name string, must be incorporated in the jurisdiction corresponding to that geographic name, on the basis of prior authorization and regardless of intended use of the string.
  - o A non-geographic name string, must not be incorporated in the jurisdiction considered as tax havens by the OECD.
- To implement joint financing, ICANN Org must:
  - (a) Undertake a review of the financing of independent gTLD applications arising from the 2012 Round. And publish the anonymised data arising from that review. This is not to be out-sourced.
  - (b) Conduct a proactive information and promotional activity with possible third party entities to facilitate subsequent approaches from ICANN and applicants for Applicant Support.
  - (c) Establish confidentiality rules and procedures with respect to the sharing of the applicants' information with third party entities, including all of the applicant's financial data.

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<td>Main Positions of Concern:</td>
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At-Large is concerned over many aspects of these recommendations and implementation guidance:

On CCT-RT Recommendations
- CCT-RT Rec 32 not met satisfactorily; in particular:
  - o Actual metrics to measure success of ASP per CCT-RT Rec 29 or success of outreach and awareness to Global South (or any other target groups) per CCT-RT Rec 30 are not adequately addressed by way of policy but instead 'delegated' to implementation

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o   On Recommendation 17.2 vis a vis CCT-RT Rec 31, ICANN must <u>actively coordinate</u> the pro-bono assistance program, the pro-bono assistance program, not merely facilitate it.

<u>On SubPro Recommendations & IGs</u>

At-Large has major concerns with many of the recommendation and implementation guidance which we believe either do not go far enough to improve the utility of ASP and/or suggest "implementation elements of ASP" which lack adequate policy guidance details which are highly necessary. Instead these are punted off to IRT/implementation phase which typically does not incorporate extensive community participation. In particular:

- Recommendation 17.1 – Should include within ASP framework, a requirement that applicants must demonstrate how they would serve a beneficiary target region or community, not propose merely a general public interest benefit as an evaluation criterion.

- Recommendation 17.2 – Financial support must include operational costs, consistent with the ICANN Board's decision made in Nairobi in initiating the ASP which is for ICANN Community to find a way to support applicants that are in need of means to make the application and to operate.

- Recommendation 17.3 and IG 17.4 – Express inclusion of business model education (eg. different business case studies) to increase the utility of the ASP.

- Implementation Guidance 17.5, 17.8, 17.9, 17.10: Will a dedicated IRT established / charged with developing implementation elements of ASP – even if giving regard to the JAS WG Final Report and 2012 implementation of ASP – allow for effective community participation and/or input to be incorporated?

  We have some suggestions related to IG 17.10: If expecting uptake to improve then more consideration ought to be given to having established approach, suggest:

  o   Using points earn during evaluation to determine dispersion of funds if there are more applicants than funds
  o   Using "quota per region" approach

- Recommendation 17.12 and IGs 17.13 ad 17.14: Given that the success of the ASP is intrinsically tied to the amount of ASP funds available, we have keen interests in how ICANN org will develop such plan to source for ASP funds. In particular, we believe more concrete steps should be established to secure funding for ASP; that ICANN Org ought to actively inform, encourage and liaise with National banks and aid agencies worldwide to participate in sponsoring applicants or ASP funding; and that request for cooperation by GAC be made, as appropriate.

- Recommendation 17.15 and IG 17.16: We are concerned about being asked to support important elements which lack adequate policy guidance details. To be clear, we maintain our proposal to allow an applicant who qualifies for ASP should be given priority in any string contention set, and not be subjected to any further string contention resolution process but note that if 2 or more applicants that qualify for Applicant Support were to be placed in a contention set, then a mechanism is still required to resolve

that contention set. In this scenario, and should priority not be given to an applicant that qualifies for Applicant Support, then a version of the Vickrey auction should be the mechanism of last resort where the benefit of a multiplier should apply to bids placed by applicants that receive Applicant Support.

- Recommendation 17.18: While we fully support the move to allow applicants that fail ASP evaluation the option to pay balance of full standard application fee and transfer to standard application process, we remain concern over questions on (i) how SARP's evaluation methodology will be expanded to include determination of wilful gaming; and (ii) the development of broad agreement on penalty to be applied to applicants found to be wilful gamers.

Issues omitted in Recommendations *- no priority to successful ASP applicant in string contention*

- In advocating for greater participation in New gTLD Program – to meet need for diversity, competition, choice etc – we maintain that an applicant who qualifies for ASP should be given priority in any string contention set, and not be subjected to any further string contention resolution process, especially an auction which such an application would be inherently disadvantaged in this regard given their need to obtain Application Support in the first place.
  - o A denial of outright priority in string contention to a successful ASP applicant demands inclusion of provisions to help level the playing field for successful ASP applicants to effectively compete in an auction of last resort against applicants that are better resourced and not in need of application or operational support – eg allowing benefit of multiplier in auction bids for successful ASP applicants – this proposal has been taken up in some form but details remain lacking.

On the question of whether ASP should include financial support beyond a reduction of application fees

- Our input by consensus is "yes, it should". We also provide input on guardrails to mitigating risk of gaming while increasing appeal, utility of ASP, to boost overall success of ASP (see above under "New/Pending Issues")

In general

The term "Community" is subject to different interpretation by different groups, including evaluators and dispute resolution panelists. It is inherently difficult and unfair to expect an applicant or an objector to accept that a group determined to be a "community" within one aspect of the Program can then be rejected as a "community" in respect of another. An eg. might be an applicant that qualifies for Applicant Support because it has been able to persuade the Support Applicant Review Panel (SARP) that its application target/benefits a community while failing to do the same with a Community Priority Evaluation panelist. We not only support a recommendation that "Community" should be broadly interpreted, but would go further to advocate that the way "community" is interpreted should be applied consistently throughout each aspect of the application process.