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

CPWG SubPro Small Team

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

APPLICATION PROCESSING

Topic/Area:	[21] APPLICATION CHANGE REQUEST [S2.4]	Priority:	MEDIUM	Settled On:	07.05.2020
Related:	• 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:	• 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?	**What will SubPro PDP WG recommend?**	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. • ICANN Org to provide guidance on changes likely	Recommendation (1): WG supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 round. Implementation Guidance: • ICANN org should provide guidance on both changes that will likely be approved and changes that will likely no be approved.	Acceptable. No further intervention needed. • Just to note that consideration be on case-by-case basis and on the merits of each case, using existing 7 criteria with 2 minor tweaks:

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	• 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)** • Additional Registry Voluntary Commitments should require public comment. • 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. • ICANN should identify in the AGB the types of changes that will require a re-evaluation of some or all of the application and which do not require any re-evaluation. <u>WG's Rationale</u> • Agreed on importance to have a framework for considering and responding to change requests that is clear, consistent, fair and predictable. Generally agreed that the criteria-based framework developed to address change requests in the 2012 round met these objectives, and that a similar approach continues to be appropriate for subsequent procedures. • WG considered it might be helpful to provide additional specific information to applicants about the way different types of change requests will be handled in order to increase predictability and clarity. • Specifically, WG believes that ICANN Org should provide additional guidance on: ❑ types of requests that will be accepted or rejected, ❑ those that will or will not be subject to public comment, and ❑ those which or will not require evaluation. and to introduce mechanism to inform community when an application change request triggers public comment.	▪ #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

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	Recommendation (2): • 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. WG's Rationale • WG believes there may be benefits to supporting applicants seeking means other than an auction of last resort to resolve a contention set. In particular, WG sees merit in allowing applicants in a contention set to form a joint venture and make corresponding changes to the application, even if this may cause delays and require re-evaluation, in order to reduce need for auction of last resort. • Note: Accordingly, that AGB Module 6 "Terms and Conditions" – "Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application" will need to be reconsidered.	We support allowing application changes to resolve string contention through business combinations or by creating JV with conditions. Where proposed resolution through Application Change Requests is submitted early • In the interest of transparency and predictability, SubPro PDP WG should clarify if Applicant Change Requests are allowed immediately after close of the Application Period and all applications (applied-for strings and applicants) are revealed. • If yes, consider allowing applicants which have applied for strings which match exactly or in their belief run the risk of being confusingly similar an opportunity to delay their Initial Reviews pending decision on an Applicant Change Request on the basis of contemplating business combination or forming a JV etc. • This may help avoid need for re-evaluation, also save time and costs by just evaluating the merged entity/JV etc.

		• And withdrawals of application and corresponding refunds should be allowed. <u>Where proposed resolution through Application Change Requests is submitted post Initial Evaluation</u> • In the event a re-evaluation is needed, then additional costs and delays due to such re-evaluation must not unreasonable.
<u>PENDING ISSUES:</u>	SubPro PDP WG reaction	What else needs to be done and by/with whom?
3. **Pending Issue #1** - On allowing change to applied-for string where original string is in a contention set, WG considered public comments to Supplemental Initial Report etc to this issue.	WG did not come to conclusion and therefore did not include any recommendation on this issue. There was both support and opposition: <u>Support</u> • Effective measure for eliminating contention while avoiding need for auction • 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 <u>Opposition</u> • 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	In principle, we support allowing application changes to resolve string contention by limited ability to select different string, subject to: • Only for resolving string contention and no other circumstances • New string must be closely related to original string - ***Clarifying question to SubPro PDP WG: Who decides on "closely related"?*** • New string does not create or expand an existing contention set • Will triggers a new public comment period, and be open to Objections process

	• Necessitates repeat of string similarity evaluation, causing delays and disruptions to all (other) applications, impacting program timelines and costs. WG considered a more limited proposal that would allow .Brand TLDs to change 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.	• New string must pass fresh string similarity tests, name collision risk assessment • And in the case of .brand TLDs, (a) change merely adds descriptive word to string and (b) such descriptive word refers to the description of goods and services
Main Positions of Concern:	**<u>On SubPro Recommendations</u>** • Recommendation (1): Acceptable. No further intervention needed. Just to note possible adjustments to 2 of existing 7 criteria. • Recommendation (2): We support allowing application changes to resolve string contention through business combinations or by creating JV. Care should be given to avoiding having Applicant incur re-evaluation costs if their Application Change Request submission preceded Initial Evaluation (Applicant Review) but where re-evaluation is needed, then additional costs and delays due to such re-evaluation must not unreasonable. **<u>On Pending Issue #1</u>** • In principle, we support allowing application changes to resolve string contention by limited ability to select different string subject to rigorous conditions being met. These conditions are as reflected above. o With respect to condition of "New string must be closely related to original string" - ***Clarifying question to SubPro PDP WG: Who decides on "closely related"?***	