At-Large's Subsequent Procedures Scorecard: Application Fees

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ICANN
AT-LARGE

APPLICATION SUBMISSION

Topic/Area:	[15] APPLICATION FEES [2.5.1] AND VARIABLE FEES [2.5.2]		Priority:	MEDIUM	Settled On:	(13.09.2020)
Related:	• Cost Recovery Principle • Applicant Support Program [2.5.4]					
Key Issues:	• Do we keep to the Cost Recovery Principle (or "revenue neutral" principle) in setting application fees? • If "yes" to Cost Recovery, it is for ICANN Org / GDD to tabulate and present the cost of the 2012 Program; the difficulty is the 2012 Program hasn't concluded and there are still "costs" pending/budgeted for. However, what elements should be factored into "cost"? • Notwithstanding, should we stipulate an application fee floor which sufficiently mitigates risk of speculation, warehousing, "abuse" etc while still making it attractive to invest in running a new gTLD? • In such situation if we were to set a fee level based on best estimate, how should we deal with any excess collected or shortfall incurred in subsequent procedures?					
Policy Goals:	The gTLD evaluation fee is set to **recover costs** associated with the new gTLD program. The fee is set to ensure that the program is **fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions;** <u>subject to the use of a fee floor intended to deter undesired behaviours</u>					
Assigned CCT-RT Rec's:	None					
References:	• SubPro Draft Final Report, 20 August 2020 • SubPro WG Application Submission_Summary Document, 7 January 2020 • SubPro WG Working Document_SubPro Draft Final Recommendations, 26 January 2020					
What has SubPro PDP WG concluded?	**What will SubPro PDP WG recommend?**		Is this acceptable? If not, why so? What else needs to be done and by/with whom?			
1. After considering various inputs regarding the question of single base fee, differing circumstances experienced from 2012 round, GAC Nairobi Communique (2010) etc –	<u>Affirmation 15.1</u>: Subject to IG 15.2, per 2012 round: • All applications in subsequent procedures should <u>pay the same base application fee regardless of application type or number of applications submitted by same applicant</u>, not precluding additional fees as needed (ie. for Community Priority Evaluation, Registry Service Evaluation Process, etc);		Yes, agree that there should be no surcharge or discounts on application fee under any circumstances <u>save for</u> successful Applicant Support Program candidates who will be eligible for reduced application fee.			

	• no agreement to recommend charging different fees for different types of application • no agreement on feasible path for different fees • retain single base fee with additional fees where additional costs incurred to avoid excessive cross-subsidization • enhance Applicant Support Program in SubPro to better service ASP goal	• <u>Successful Applicant Support Program candidates will be eligible for reduced application fee</u>. Implementation Guidance 15.2: Fees for the technical and operational evaluation for the core registry services should be charged to an applicant if they are using a registry service provider that is not pre-evaluated ("Technical Evaluation Fee"). The Technical Evaluation Fee should be the same – for eg. if that fee portion of the overall application fee is US$25,000, that portion of the application fee should only be charged to those applicants that do not select a pre-evaluated registry service provider.	
2.	Support for overall funding approach in 2012 round – should be self-sustaining and operate on cost recovery basis with goal of being revenue neutral	<u>Affirmation with Modification 15.3</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*." • For subsequent procedures, the only historical cost that should be part of the cost structure in determining application fees are those actual costs directly related to the implementation of the Program. <u>Affirmation with Modification 15.4</u>: Affirm principle of cost recovery per 2012 AGB, "The gTLD evaluation fee is set to <u>recover costs</u> associated with the new gTLD program. The fee is set to ensure that the program is <u>fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions</u>; modified by Implementation Guidance 15.5 and 15.6.	Yes, agree that Implementation Guideline B must be updated to expressly provide that application fees may only differ for applicants that qualify for application support.

3.	Guidance on application fee vs application fee floor	Implementation Guidance 15.5: For next round and beyond, as assessment should take place prior to each round to estimate the application fee that would be necessary for cost recovery. In the event that the estimated application fee, based on the revenue neutral principle, falls below a predetermined threshold amount (i.e. application fee floor), the actual application fee should be set at that higher application fee floor instead.	Yes.
		Implementation Guidance 15.6: Development of the application fee should be fully transparent with all cost assumptions explained and documented.	Yes.
4.	Excess fees collected should at least in part be returned to applicants – disbursement mechanism to be communicated in advance	Recommendation 15.7: In managing funds for New gTLD Program, ICANN **must** have a plan in place for managing any excess fees collected or budget shortfalls experienced. The plan for management and disbursement of excess fees (if any) must be communicated in advance of accepting applications and collecting fees; per Implementation Guidance 15.8.	Yes to ICANN having a plan, especially to manage budget shortfalls.
		Implementation Guidance 15.8: If excess fees collected and cost recovery model is followed (i.e. application fee floor not used), then any excess should be returned to applicants where possible. Disbursement mechanism should be communicated before submission of applications and fees to ICANN.	On the basis of cost recovery model, in principle, yes.
5.	In event of excess fees, excess should be used to benefit one or more of: (a) general outreach (b) long-term program need (c) Applicant Support Program (d) Top-up of shortfall in segregated fund	Recommendation 15.9: In the event that an application fee floor is used to determine the application fee, excess fees received **must** be used to benefit the Program, <u>and not any other ICANN program or </u> purpose; that includes one or more of: (a) global communication and awareness campaign about the introduction and availability of new gTLDs; (b) long-term program needs – system updates, fixed assets etc; (c) Application Support Program; (d) top-up any shortfall in the segregated fund described below; or (e) other purpose(s) that benefits the Program.	Yes.

6. Need for mechanism to deal with potential overall budget shortfall	Implementation Guidance 15.10: To help alleviate potential burden of overall shortfall, set up <u>separate segregated fund to absorb any shortfall and topped-up in a later round</u>. <u>Amount of contingency should be a predetermined value, reviewed periodically to ensure adequacy</u>.	Yes.
<u>PENDING ISSUES:</u>	SubPro PDP WG reaction	What else needs to be done and by/with whom?
7. ICANN Org's request for guidance on fee floor amount or criteria by which it is established	No agreement on specific amount or criteria, noting some public comments received to IR, suggests further study in implementation phase of what level of fee floor would effectively deter behaviours that fee floor seeks to prevent.	Maintain ongoing line of enquiry with GDD on (1) elements that should be factored into "cost" and (2) whether 2012 fee amount generate(d) excess or shortfall.
Main Positions of Concern:	In general, acceptable. Specifically: • Support Affirmation 15.1 and Affirmation 15.3 with Modification which seek to expressly confirm different treatment on fees with respect to successful Applicant Support Program candidates who will be eligible for reduced application fee. • On Recommendation 15.7, agree to ICANN having a plan, especially to manage budget shortfalls. • On Implementation Guidance 15.8, in holding purely to the basis of cost recovery model, in principle, agreeable. • Support Implementation Guidance 15.10 i.e. for separate segregated fund to be set up to absorb any shortfall and topped-up in a later round and reviewed periodically to ensure adequacy.	