

At-Large's Subsequent Procedures Scorecard: Applications Assessed in Rounds

CPWG SubPro Small Team

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



OVERARCHING ISSUES

Topic/Area:	[3] APPLICATIONS ASSESSED IN ROUNDS [2.2.3]	Priority:	MEDIUM	Settled On:	(14.09.2020)
Related:	<ul style="list-style-type: none"> Continuing Subsequent Procedures [2.2.1] Different gTLDs Types [2.2.4] Feedback to Neustar’s proposal for a 3-phased application model 				
Key Issues:	<p>Assuming that there will be a next round of applications for new gTLDs (which looks to be recommended):</p> <ul style="list-style-type: none"> When does the round commence and end or how would either be triggered? What are the prerequisites or limitations in allowing new applications? 				
Policy Goals:	(Captured under first column below)				
Assigned CCT-RT Rec’s:	None				
References:	<ul style="list-style-type: none"> SubPro Draft Final Report, 20 August 2020 Working Document_SubPro Draft Final Recommendations, 4 March 2020 SubPro WG Overarching Issues_Summary Document, 7 January 2020 At-Large feedback on Neustar’s Proposal for 3-Phased New gTLD Application Model, 6 February 2019 01. SubPro WT1-4 IR – Neustar proposal ppt, 5 January 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. Change needed to Rec #13 from 2007 policy in order to maintain assessment in rounds independent to demand. <u>No consensus for First-Come-First-Served model.</u>	<p><u>Affirmation with Modification 3.1:</u> WG affirms Recommendation 13 from the 2007 policy, “Applications must initially be assessed in rounds until the scale of demand is clear.” However, WG believes that the recommendation should be revised to simply read, “Applications must be assessed in rounds.”</p> <p><i>Rationale: Even if demand is unclear, next application opportunity should be processed in the form of a round.</i></p>			Yes, we argued that regardless of demand and regardless of whether applications are accepted by way of rounds or not, applications must be assessed in rounds or placed in clear batches for processing. Otherwise, we cannot effectively deal with the	

		necessary evaluations – string similarity, string contention.
2. Clarity needed around timing and/or criteria for initiating subsequent procedures at close of or after next round.	<p><u>Recommendation 3.2:</u> Upon commencement of next application submission period, there <u>must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth</u>. More specifically, prior to commencement of the next application submission period, <u>ICANN must publish either:</u></p> <p>(a) The date in which the next subsequent round will take place; or (b) The specific set of criteria and/or events that must occur prior to the opening up of the next subsequent round.</p> <p><u>Implementation Guidance 3.3:</u> A new round may initiate even if steps related to application processing and delegation from previous application rounds have not been completed.</p>	At-Large maintains caution over the continued push for expansion of Program, and expresses concern regarding the provision of option (a) in Recommendation 3.2. This Recommendation option (a) read together with Recommendation 3.5 and Recommendation 3.6 seemingly mandates a very high threshold for pausing and/or stopping the Program in order to allow Community consideration and/or input on the impact of future reviews and/or policy development processes to be effectively taken into account.
3. Barring of new applications for a string which application is still being processed from a previous round.	<p><u>Implementation Guidance 3.4:</u></p> <ul style="list-style-type: none"> • Where TLD has been delegated, no application for that string will be allowed in a subsequent round. • In general, should not be possible to apply for a string that is still being processed from a previous round – if an application is marked “Active”, “Applicant Support”, “In Contracting”, “On-hold” or in “In PDT”, a new application for that string will not be allowed in subsequent round (SR). • However, <ul style="list-style-type: none"> ○ If all applications for a particular string are Withdrawn, then new applications allowed in SR. ○ If all applications for a given string are “Will Not Proceed”, an application will be allowed if: <ul style="list-style-type: none"> ▪ All appeals and/or accountability mechanisms are disposed with no applicant succeeding; or 	Yes, support because: <ul style="list-style-type: none"> • One of the weaknesses of the 2012 round was that only the application period was definitive. While we can understand initial application processing might take time and is subject to volume, and that evaluations will take more time and are subject to challenges (objections, appeals), we ought to prevent a recurrence of applications which remain in the system indefinitely – those

	<ul style="list-style-type: none"> ▪ Applicable time limitations (statute of limitations) have expired, so no further recourse possible • If all applications for a given string are “Not Approved”, an application will be allowed if: <ul style="list-style-type: none"> ▪ All appeals and/or accountability mechanisms are disposed with no applicant succeeding; or ▪ Applicable time limitations (statute of limitations) have expired, so no further recourse possible; and ▪ ICANN Board has not approved new policies or procedures allowing applicant in prior round to cure reasons for the “Not Approved” designation but has approved new policies or procedures allowing such application in SR – in which case, ICANN Board to determine if applicant in prior round has any preferential right to string subject to commitment to adopt the new policies or procedures put in place. • In addition, <ul style="list-style-type: none"> • If RO has terminated its RA and (i) TLD has not been reassigned to different RO, and (ii) re: Spec 13 .brand TLD, 2 years has lapsed following RA Expiration Date, then applications will be allowed during SR. 	<p>which have no chance of proceeding but are not withdrawn.</p> <ul style="list-style-type: none"> • Defining “proper” rounds will also affect when an undelegated string next becomes available again for application, where no application in a current round having succeeded. • Scenarios now necessarily incorporate allowance for appeals.
<p>4. When it becomes operationally feasible, application procedures should take place at predictable, regularly occurring intervals without indeterminable periods of review.</p>	<p><u>Recommendation 3.5:</u> Application procedures must take place at predictable, regularly occurring intervals <u>without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board.</u> Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use “rounds” as part of the New gTLD Program.</p>	<ul style="list-style-type: none"> • Agreement limited to that ICANN must only use “rounds” as part of the New gTLD Program. • At-Large maintains caution over the continued push for expansion of Program, and expresses concern regarding the provision of option (a) in Recommendation 3.2, which read together with Recommendation 3.5 and Recommendation 3.6, seemingly
<p>5. Alignment with CCT Review needed but not at expense of subsequent round</p>	<p><u>Recommendation 3.6:</u> Absent extraordinary circumstances, future reviews and/or PDP, including the next CCT Review, should take place concurrently</p>	

	with subsequent application rounds. In other words, <u>future reviews and/or PDP must not stop or delay subsequent new gTLD rounds.</u>	mandate a very high threshold for pausing and/or stopping the Program in order to allow Community consideration and/or input on the impact of future reviews and/or policy development processes to be effectively taken into account.
6. No retrospective application of outcomes of reviews or PDPs	<u>Recommendation 3.7</u> : If the outputs of any reviews and/or PDP has, or could reasonably have, a material impact on manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to the adoption of the relevant recommendations by the ICANN Board.	Yes, this is fair.
<u>PENDING ISSUES:</u>	<u>SubPro PDP WG reaction</u>	What else needs to be done and by/with whom?
7. Insufficient consensus on recommending priority rounds for certain types of TLDs, even though discussion undertaken on idea for rounds consisting only of .brands, geonames, IDNs and/or community-based TLDs prior to general open application period.	No recommendation on priority rounds for specific categories of TLDs.	Inconclusive since we did not reach consensus ourselves per <u>At-Large feedback on Neustar’s Proposal for 3-Phased New gTLD Application Model, 6 February 2019</u> . Perhaps, this needs to be revisited given any new information.
Main Positions of Concern:	At-Large maintains caution over the continued push for expansion of Program, and expresses concern regarding the provision of option (a) in Recommendation 3.2, which read together with Recommendation 3.5 and Recommendation 3.6, seemingly mandate a very high threshold for pausing and/or stopping the Program in order to allow Community consideration and/or input on the impact of future reviews and/or policy development processes to be effectively taken into account.	