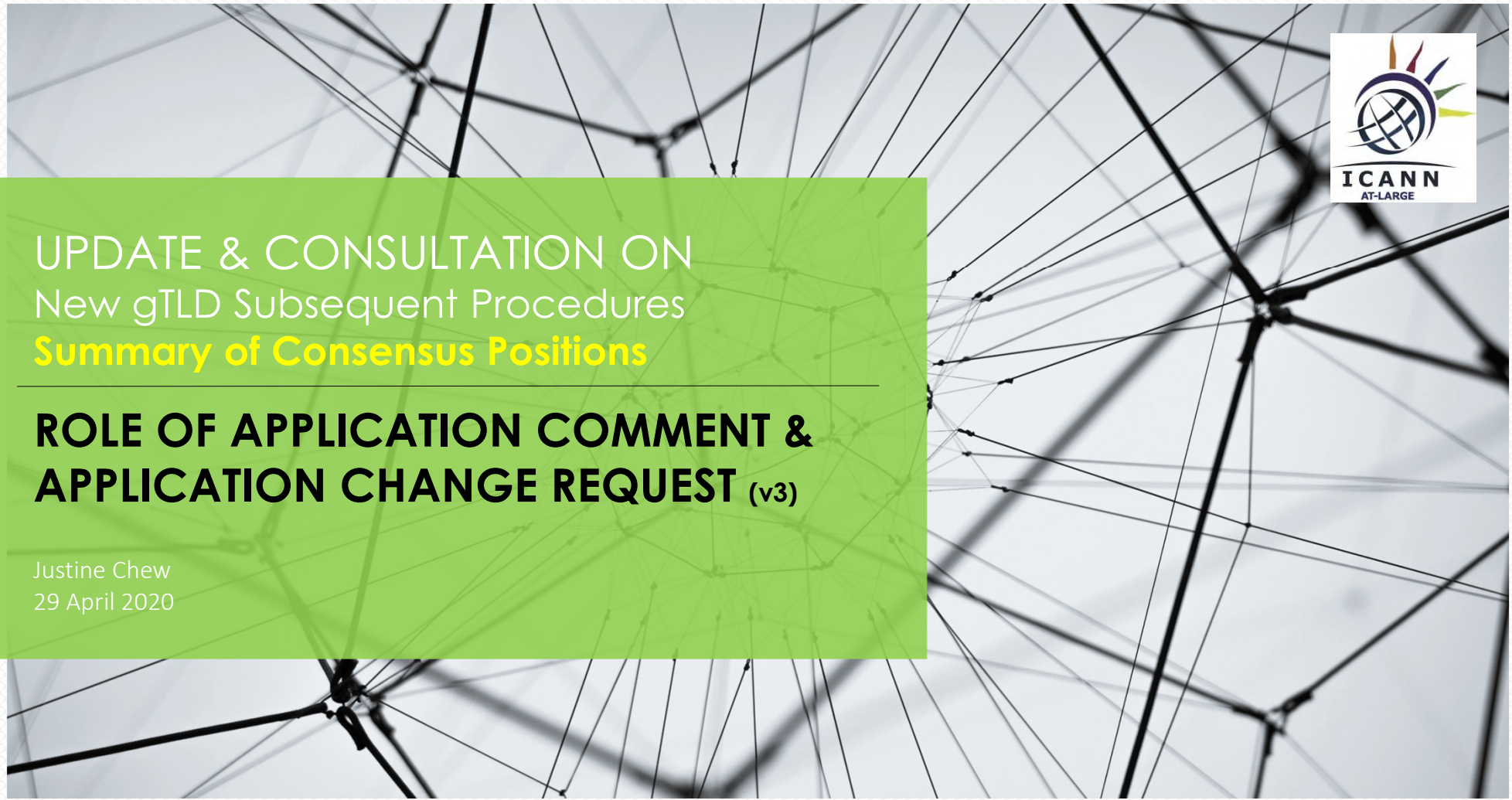

UPDATE & CONSULTATION ON

New gTLD Subsequent Procedures

Summary of Consensus Positions

ROLE OF APPLICATION COMMENT & APPLICATION CHANGE REQUEST (v3)

Justine Chew

29 April 2020

Reminder of Key Issues in SubPro

Role of Application Comment

- To what extent can the Application Comment process be improved?
- Who should the Application Comment System benefit?
- What is the impact of received comments on a corresponding application in respect of standard applications vs. Community-based applications?
- Should resolution of comments include allowance for application changes?

Application Change Request

- 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 handle such requests?

- What is the New gTLD Subsequent Procedures ("SubPro")?
  - The set of rules and mechanisms applicable to the next round for New gTLDs, i.e. they DO NOT apply to legacy TLDs, ccTLDs, or delegated new gTLDs or those still unresolved from the 2012 application round
  - "An update" to the 2012 Round rules and mechanisms

Summary of Consensus Positions
Role of Application Comment

SubPro PDP WG recommendations

Affirmation #1

- WG affirms Implementation Guidance C from 2007, "ICANN Will provide frequent communications with applicants and the public including comment forums."
- AGB s. 1.1.2.3, "ICANN will open a comment period (the Application Comment Period) at the time applications are publicly posted on ICANN's website … will allow time for the community to review and submit comments on posted application materials." WG affirms that community members must have the opportunity to comment through the Application Comment Period on applications submitted and comments must continue to be published online for all to review.
- When application comment might cause an evaluator to reduce scoring, ICANN must issue a Clarifying Question (CQ) to the applicant and give the applicant an opportunity to respond.

Acceptable. No further intervention needed.

Summary of Consensus Positions
Role of Application Comment

SubPro PDP WG recommendations

Recommendation #2

For purposes of transparency and to reduce possibility of gaming, there should be clear and accurate information available about the identity of a person commenting on an application as described in the IG below

Implementation Guidance

- System used to collect application comment should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. ICANN org should seek to verify the identity of the person submitting comment, as far as possible.
- Each commenter should be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant and to reveal such relationship.

Acceptable in principle.

Additional Intervention

- Christopher Wilkinson: *"However, there should be definitions of conflicts of interest and that these should be clarified because in different circumstances and for different purposes, different concepts of legal and political, both different concepts of conflict of interest do arise."*
  - ❑ ***Clarification: Does the 2nd Implementation Guidance not cover this sufficiently?***

- Justine Chew has raised a query to SubPro PDP WG as to the consequences of a commenter not disclosing a relationship with an applicant in violation of this request:
  - ❑ Would the commenter be barred and their comment marked "Disregarded" (or something to that effect)?
  - ❑ Should some burden be placed on each applicant as a meaningful way to reduce risk of gaming / increase transparency, especially when a comment purports to cast "doubt" on a competing application?

Summary of Consensus Positions
Role of Application Comment

SubPro PDP WG recommendations

Recommendation #3

Systems supporting application comment should emphasize usability for those submitting comments and those reviewing comments submitted. This is consistent with PIRR rec. 1.3.a, "Explore implementing additional functionality that will improve the usability of the Application Comment Forum."

Acceptable. No further intervention needed.

Implementation Guidance

- Application Comment System (ACS) should better support filtering and sorting of comments to help those reviewing comments find relevant response – eg. to search comments for substantive text within the comment itself.
- ACS should allow those submitting comments to include attachments – ICANN Org to investigate on commercially reasonable mechanisms.

Summary of Consensus Positions
Role of Application Comment

SubPro PDP WG recommendations

Recommendation #4
The New gTLD Program should be clear and transparent about the role of application comment in the evaluation of applications.

Implementation Guidance
- IRT should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the AGB.
- Must be clear to what extent different types of comments will or will not impact scoring, and where scoring is affected, to give the applicant an opportunity to respond.

New Issue & Omission #1
- On whether the public comment period for applications opting for CPE should be longer than for standard applications

Acceptable in principle.

Additional Intervention
Guidelines developed by IRT must be guided by or subject to community input.

- Of particular concern to At-Large is how public comments which impact scoring for Community Priority Evaluation (CPE) will be handled.
- At-Large likely proposing changes to the CPE Criteria & Guidelines, inter alia, that:
  - ❑ The call for submission of comments or documentation of support or in opposition to all applications be incorporated into the Application Comment system, and strictly during the Application Comment Period only. There must be no separate call for Letters of Support or Letters of Opposition made by or on behalf of CPE panelists wrt Community-based applications.
  - ❑ CPE panel must be informed of:
    - o The identity of commenters who have submitted comments in opposition (or Letters of Opposition), and
    - o The commenter's relationship to an opposing applicant (if declared, or if discoverable by ICANN Org)

Summary of Consensus Positions
Role of Application Comment

SubPro PDP WG recommendations

Recommendation #5

Applicants should have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

Implementation Guidance

- Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

Acceptable in principle.

Additional Intervention

However, IG should allude to allowance for reasonable time after close of public comment period to address late submissions of comments during the public comment period – eg if a comment is submitted within the last week of the public comment period.

New Issue & Omission #2

Question: Should commenters then be allowed to reply to applicant's response? And end process there? Or should commenters be made to rely on the objections process?

Summary of Consensus Positions
Role of Application Comment

SubPro PDP WG recommendations

Recommendation #6

ICANN must create a mechanism for third-parties to submit information related to confidential portions of the application, which may not be appropriate to submit through public comment. At a minimum, ICANN must confirm receipt and that the information is being reviewed.

Acceptable. No further intervention needed.

Summary of Consensus Positions
Application Change Request

SubPro PDP WG recommendations

Recommendation #1

WG supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 round. [1]

Implementation Guidance

- ICANN org should provide guidance on both changes that will likely be approved and changes that will likely not be approved.
- ICANN Org should document the types of changes which are required to be posted for public comment and which are not **(those not be limited to an explicit "Do Not Require" list [2])**
- 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.
- ICANN should identify in the AGB the types of changes that will require a re-evaluation – all, some parts, none.

Acceptable. No further intervention needed.

[1] https://newgtlds.icann.org/en/applicants/advisories/change-request-set-05Sep14-en
[2] https://newgtlds.icann.org/en/applicants/global-support/change-requests

Summary of Consensus Positions
Application Change Request

SubPro PDP WG recommendations

Recommendation #2

- Allowing application changes to support settling of contention sets through business combinations or other forms of JV.
- 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.

Additional intervention

Sebastien Bachollet: *"If JV happened before any evaluation done by ICANN, there is no cost involved. And even if there are two applications who merged, therefore, one applicant must get back the fees and the other will proceed If it happens in other stage, yes, we can imagine that there are small additional costs if needed."*

- 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.

- In the event a re-evaluation is needed, then additional costs and delays due to such re-evaluation must not unreasonable.

Role of Application Change Request:

Pending Issues as at 14 Apr 2020

Possible SubPro PDP WG recommendation

❑ 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. There was both support and opposition.

Support
- ❑ 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

Opposition
- ❑ 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

Perhaps limit to .brand TLDs? Where:
(a) Change adds descriptive word to string
(b) Descriptive word in the description of goods and services
(c) Change does not create or expand an existing contention set
(d) Change triggers a new public comment period, open to objection.

For At-Large Consensus Building

Additional intervention

- We supported allowing application changes to resolve string contention by limited ability to select different string that must be closely related to original string, and subject to:
  - ❑ New string put through
  - (a) name collision risk assessment
  - (b) public comment – provides important opportunity for community to raise concerns
  - (c) open to established Objection procedures
  - ❑ *Where applicable, any additional costs and delays due to re-evaluation not being unreasonable.*
- Do not see gaming risk.
- Applicant must justify selection of different string, how it is closely related to original string. ***Clarifying question to SubPro PDP WG: Who decides on "closely related"?***
- ***Question: Should we limit allowance to .brand applications?***