



UPDATE & CONSULTATION ON New gTLD Subsequent Procedures Consensus Building on Recommendations

Limited Challenge/Appeal Mechanism (v04)

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Challenges/Appeals in SubPro: Background

- 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
- No Scope in 2012 Round
 - ❖ Recourse was strictly by way of existing Accountability Mechanisms – RfR, IRP, Ombudsman
 - ❖ Accountability Mechanisms were clearly insufficient to properly facilitate challenges to decisions on evaluations (e.g. ASP, CPE), and objections (e.g. LPI, Community)

Key Issues with Challenges/Appeals in SubPro

In respect of Evaluations and Objections

- Who would be eligible to exercise which challenges or appeals?
- Who would preside over these challenges or appeals?
- What would be the processes for handling these challenges or appeals?
- What would be the remedies?
- What about costs – filing and losing challenge or appeal?
- How is the ALAC affected by this?

Limited Challenge/Appeal Mechanism



ALAC STATEMENTS support or have touched on:

- New substantive appeal mechanism specific to New gTLD Program
- Improvement to the post-delegation DRP - need for accessible, expeditious, **limited appeals process** which considers elements of accessibility, fairness, filtering of frivolous appeals, dealing with COI
- Standing to appeal
- Remedies
- Arbiter



RELATED SubPro Areas/Topics include:

Substantive vs Procedural appeals

- Objections – incl. distinction b/n Community Objections and opposition in CPE
- Application Evaluation
- Bylaw-related procedural appeals



COMPETITION, CONSUMER CHOICE & TRUST (CCT) RECOMMENDATIONS

- Rec. 35: SubPro PDP should consider adopting new policies to avoid potential for inconsistent results in string confusion objections. In particular, consider
....
❖ 3) Introducing a post dispute resolution panel review mechanism.

Impact of SubPro Recommendations * as at 15 June 2020

SubPro PDP WG

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Affirmation #1

- WG affirms Rec #12, “Dispute resolution and challenge processed must be established prior to the start of the process, *details of which must be published in the Applicant Guidebook.*”

WG’s Rationale

- It is important for New gTLD Program elements to be predictable for applicants and other interested parties, establishing dispute resolution and challenge processes in advance helps with that.

Impact

- Self-explanatory

Additional intervention

- **Any concerns?**

* From SubPro PDP WG, not limited to recommendations, but also affirmations and implementation guidance

Impact of SubPro Recommendations as at 15 June 2020

SubPro PDP WG

Recommendation #2

- WG recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that are inconsistent with AGB.
- The new substantive challenge/appeal mechanism is not a substitute or replacement for the Accountability Mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision.
- Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to, Accountability Mechanisms under Bylaws.
- Recommends that the new mechanism apply to the following:

Evaluation Challenges

1. Background Screening
2. String Similarity
3. DNS Stability
4. Geographic Names
5. Technical / Operational Evaluation
6. Financial Evaluation
7. Registry Services Evaluation
8. Community Priority Evaluation
9. Applicant Support
10. RSP Pre-Evaluation

Appeals of Objections Decisions

1. String Confusion Objection
2. Legal Rights Objection
3. Limited Public Interest Objection
4. Community Objection
5. Conflict of Interest of Panelists

WG's Rationale

- No challenge/appeal mechanism specifically designed to address decisions made as part of the New gTLD Program in 2012 round.
- In some cases, parties used ICANN's Accountability Mechanisms to challenge the outcome of objections decisions from the 2012 round, and that following two such instances, NGPC adopted a Final Review Mechanism for a limited set of objection - NGPC recommended further consideration of this issue in developing policy for subsequent rounds, to explore need for a formal review process with respect to Expert Determinations.
- Believes a targeted and limited challenge/appeals process is an appropriate and necessary in future rounds, to ensure that applicants and other interested parties have fair, clear, and predictable means to address specific types of actions or inactions that are inconsistent with AGB
- Consistent with PIRR rec 3.2a, "*Explore a potential review mechanism for the next round*"; and responsive to CCT-RT Rec 35, "*3) Introducing a post dispute resolution panel review mechanism*".

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Impact

- Self-explanatory

Additional intervention

- **Any concerns?**

Impact of SubPro Recommendations as at 15 June 2020

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Recommendation #3

- For transparency, clear procedures and rules must be established for challenge/appeal processes as described in the IG below

Implementation Guidance → Annex

- IG #4: Parties with standing to file a challenge/appeal should vary depending on the process being challenged/appealed - guidance summarized in Annex
- IG #5: The type of decision that may be challenged/appealed should vary depending on the process being challenged/appealed, guidance summarized in Annex
- IG #6: Guidance on the arbiter for each type of challenge/appeal is summarized in Annex –
 - ❑ In the case of challenges to evaluation decisions, the arbiter should typically be from the entity that conducted the original evaluation, but the person(s) responsible for making the ultimate decision in the appeal must be different from those that were responsible for the evaluation
 - ❑ In the case of an appeal of an objection decision, the arbiter will typically be a panelist or multiple panelists from the entity that handled the original objection, but will not be the same panelist(s) that provided the original objection decision

Implementation Guidance (cont'd)

- IG #7: For all types of appeals to objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly
- IG #8: All challenges and appeals except for the conflict of interest appeals should be reviewed under the “clearly erroneous” standard. Conflict of interests should be reviewed under a “de novo” standard.
- IG #9: Guidance on the party bearing the cost of a challenge/appeal is summarized in Annex
 - ❖ Regarding appeals filed by the Independent Objector and ALAC, WG notes that in the 2012 round, ICANN designated a budget for the IO. WG believes that this should continue to be the case in subsequent procedures, and that ALAC should similarly have a budget provided by ICANN. The IO and ALAC should pay for any costs related to the appeal out of the budget provided.
- IG #10: Guidance on the remedy for a successful challenge/appeal is summarized in Annex

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- Look at Annex on slides no. 11-18

SubPro WG Rationale for Recommendation #3 & IG

1. WG believes that challenges/appeals should be subject to clear procedures and rules in order to ensure transparency and predictability for all parties.
2. In general, WG believes that **parties affected by an evaluation or objections decision should have the opportunity to file a challenge/appeal**. The affected parties for each type of evaluation and objection under different circumstances are outlined in Annex.
3. WG has provided a summary of **specific types of actions or inactions** that are inconsistent with AGB for each type of evaluation and objection decision, and therefore should be **eligible for challenge/appeal**. Details are outlined in Annex.
4. It is important for the mechanism to remain lightweight and cost-effective, and therefore believes that it is **appropriate to use the original entity/panel that conducted the evaluation or handled the objection to also consider the challenge/appeal**. In both cases, the **ultimate decision maker(s) within the entity/panel handling the challenge/appeal should be different than those that conducted the original evaluation or considered the original objection**.
5. WG discussed whether there would be a large enough number of experts in all evaluation entities to ensure that a different individual(s) within the entity could serve as the arbiter of challenge – this may require further consideration in the implementation phase.
 - WG considered a proposal in which an alternate evaluation provider/entity would consider the challenge but noted in some cases there was only a single evaluation entity used in the 2012 round for a specific type of evaluation (for eg, CPE, ASP)
 - WG understands that there could be significant cost implications if additional providers needed to be onboarded in subsequent rounds solely for the purpose of addressing evaluation challenges.
 - WG considered the idea that in cases where there was a single evaluation provider, ICANN org could be the arbiter of a challenge - Did not come to a conclusion on whether this would be an appropriate path forward.
 - On balance, WG agreed that the “same-provider” approach would be the most efficient and cost-effective solution.
6. WG acknowledges that there are potential costs and benefits to dispute resolution provider panels composed of one or three expert panelist(s). Panels containing three panelists may be more reliable and less likely to result in the inconsistent application of criteria, procedures, or outcomes compared to panels composed of a single expert. At the same time, these larger panels are more costly. WG believes that parties to the appeal are in the best position to weigh the potential tradeoffs between cost and consistency and make this decision, and therefore recommends that they should collectively have the option to mutually agree whether the appeal of an objection is considered by a one- or three-expert panel, bearing the costs accordingly.
7. WG recognizes that reviews under the de novo standard would be time consuming and costly, and further that such reviews could substantially delay applications - expects ICANN to have a thorough screening process to pick its evaluators/panelists and believes that deference should be given to the determinations that evaluators/panels make. Therefore, it believes that the **clearly erroneous standard is sufficient and appropriate in most cases**. As an exception, WG believes that **determinations related to panelists' conflict of interest should use the de novo standard of review** because the original determination could be made by the party against whom the assertion of a conflict is made.
8. The party bearing the **cost of the challenge/appeal** will depend on what is being challenged/appealed, as well as the outcome of the challenge/appeal. In general, WG believes that in the case of evaluation, the filing party should pay for the challenge.; and for appeals of objections decisions, the non-prevailing party should bear the cost of the proceeding fees charged by the third-party arbiter.
9. WG considered whether it is appropriate to give **partial refunds** to those who are successful in challenging an evaluation decision. For example, one WG member proposed that a partial refund could be applied in limited cases where there is an additional finding of clear error on the part of the evaluator or fundamental failure to apply the standards. Other WG members noted challenges in implementing such a standard. Ultimately, WG determined that the most appropriate path forward is to ensure that fees are modest, transparent, and flat, so that they are not an excessive burden on those who want to file challenges.
10. The **remedy** will be dependent upon what is being challenged/appealed, but WG believes that it should typically involve a reversal of the original appealed decision in some form, as outlined in Annex.

Standards of Review

- ❑ For All challenges and appeals except for the conflict of interest appeals

Under a “**Clearly Erroneous**” standard of review, the appeals panel must accept the evaluator’s or dispute panel’s findings of fact unless the appeals panel is definitely and firmly convinced that a mistake has been made. In other words, it is not enough that the appeals panel may have weighed the evidence and reached a different conclusion; the evaluator’s/dispute panel’s decision will only be reversed if it is implausible in light of all the evidence.

- ❑ For Conflict of interest appeals

Under a “*De Novo*” standard of review, the appeals panel is essentially deciding on an allegation of conflict of interest without reference to any of the conclusions or assumptions made by the [evaluator/]dispute panel. It can refer to the [evaluator/]dispute panel to determine the facts, but it need not defer to any of the findings or conclusions. It would be as if the appeals panel is hearing the facts for the first time.

Impact of SubPro Recommendations as at 15 June 2020

SubPro PDP WG

Recommendation #11

- The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the IG below

Implementation Guidance

- A designated time frame should be established in which challenges and appeals may be filed. WG's guidance on the timeframe for filing appeals is summarized in Annex
- Mechanism should include a "quick look" step at the beginning of the process to identify and eliminate frivolous challenges/appeals.
- A party should be limited to a single round of challenge/appeal for an issue. With the exception of challenges to conflict of interest determinations, parties should only be permitted to challenge/appeal the final decision on an evaluation or objection and should not be permitted to file "interlocutory" appeals as the process progresses. Parties should be able to appeal a conflict of interest determination prior to the objection panel hearing the objection

WG's Rationale

- Mechanism must operate in an efficient manner that does not result in excessive costs or process delays – IG provided for specific measures.
 - ❑ Specifically, a "quick look" mechanism is proposed to avoid unnecessary costs and delays associated with frivolous challenges/appeals.
 - ❑ Suggestion that ICANN set a designated time frame in which challenges/appeals may be filed - see Annex.
 - ❑ Guidance that ICANN should prevent parties from filing multiple appeals for the same matter to avoid excessive delays

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- Look at Annex on slides no. 11-18

Annex for Limited Challenge to Evaluations, Apr 2020 (pg 1/3)

Process	Outcome That Might Warrant Appeal	Potential Affected Parties	Parties With Standing	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?
[1] Background Screening	(a) Failure - disqualification for application from program	- Applicant	- Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant
	(b) No issues found in background screening	- Applicant - Members of the contention set, if applicable	- Member(s) of the contention set, if applicable	Existing evaluator entity - different ultimate decision maker(s) within the entity	Disqualification from program	Member(s) of the contention set
[2] String Similarity	(a) Found to be similar to existing TLD, Reserved Names, 2-char IDNs against one-char (any) and 2-char (ASCII) - disqualification for application from program	- Applicant - Existing TLD Operator	- Applicant - Existing TLD Operator (No standing, but can file objection)	Existing evaluator entity - different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant
	(b) Found to be similar to another applied-for TLD - inclusion in a contention set	- Applicant - Other applicants in contention set	- Applicant - Other applicants in contention set	Existing evaluator entity - different ultimate decision maker(s) within the entity	Removal of string from contention set	Filing Party
	(c) Found NOT to be similar to an existing TLD, Reserved Names, 2-Char IDNs....	- Applicant - Existing TLD Operator	- May not be appealed; Existing TLD can always file an objection	N/A	N/A	N/A
	(d) Found NOT to be similar to another applied-for-TLD	- Applicant - Other applicants in contention set	- May not be appealed; Other applicants can file objection	N/A	N/A	N/A

Annex for Limited Challenge to Evaluations, Apr 2020 (pg 2/3)

Process	Outcome That Might Warrant Appeal	Potential Affected Parties	Parties With Standing	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?
[3] DNS Stability	Failure - disqualification for application from program	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant.
[4] Geographic Names	<i>(a) Designation as a geographic name as prescribed in the AGB</i>	<i>Applicant</i>	<i>Applicant</i>	Existing evaluator entity - different ultimate decision maker(s) within the entity	<i>Reversal of designation as a geographic name</i>	<i>Applicant</i>
	<i>(b) String is NOT designated as a geographic name as prescribed in the AGB</i>	<i>- Applicant - Relevant government or public authority</i>	<i>- Applicant - Relevant government or public authority</i>	Existing evaluator entity - different ultimate decision maker(s) within the entity	<i>Designation as a geographic name</i>	<i>Applicant/Relevant government or public authority</i>
	<i>(c) Definition of "relevant governments" disputed or other deficiency in documentation</i>	<i>- Applicant - Relevant government or public authority</i>	<i>- Applicant - Relevant government or public authority</i>	Existing evaluator entity - different ultimate decision maker(s) within the entity	<i>Change in definition or reversal of deficiency</i>	<i>Applicant/Relevant government or public authority</i>
[5] Technical & Operations	Failure - disqualification for application from program	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant.
[6] Financial	Failure - disqualification for application from program	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant.
[7] Registry Services	Assignment to extended review by RSTEP and RSTEP disapproves new service	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	New Service allowed to be included in New TLD Agreement	Applicant

Annex for Limited Challenge to Evaluations, Apr 2020 (pg 3/3)

Process	Outcome That Might Warrant Appeal	Potential Affected Parties	Parties With Standing	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?
[8] Community Priority Evaluation	(a) Applicant prevails in CPE - community-based applicant receives priority	Members of the contention set	Member(s) of the contention set	Existing evaluator entity - different ultimate decision maker(s) within the entity	Decision reversed - community-based application does NOT receive priority	Member(s) of the contention set
	(b) Applicant does not prevail in CPE - community-based applicant must resolve contention through other mechanisms	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Decision reversed - community-based application DOES receive priority	Applicant.
[9] Applicant Support	Applicant is determined to not meet the criteria - (in 2012, applicant had no recourse. Preliminarily, this WG is considering allowing the applicant to proceed at the normal application amount.)	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Decision reversed - applicant receives funding support	Applicant.
[10] RSP Pre-Evaluation	Failure - unable to be designated as pre-evaluated	RSP	RSP	Existing evaluator entity - different ultimate decision maker(s) within the entity	Successful designation as pre-evaluated	RSP

Annex for Limited Appeal to Objections, Apr 2020 (pg 1/5)

Process	Potential Appellant	Standing?	What is being Appealed?	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?	Notes
[1] String Confusion	Applicant	Yes	A determination that there is string confusion with an existing TLD	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
			A determination that there is string confusion with another application	Existing Provider; Different Panelist(s)	Application removed from contention set	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	Existing TLD Objector	Yes	A determination that there is not confusion with an existing TLD	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	Another Applicant Objector	Yes	A determination that there is not confusion with another application	Existing Provider; Different Panelist(s)	Application is placed into Objector's contention set	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Annex for Limited Appeal to Objections, Apr 2020 (pg 2/5)

Process	Potential Appellant	Standing?	What is being Appealed?	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?	Notes
[2] Legal Rights Objection	Applicant	Yes	A determination that the applied for string infringes the legal rights of the Legal Rights Objector	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	Legal Rights Objector	Yes	A determination that the applied for string does not infringe the legal rights of the Legal Rights Objector	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Annex for Limited Appeal to Objections, Apr 2020 (pg 3/5)

Process	Potential Appellant	Standing?	What is being Appealed?	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?	Notes
[3] Limited Public Interest Objection	Applicant	Yes	A determination that the applied for string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	3rd Party Objector	Yes	A determination that the applied for string is not contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	Independent Objector	Yes	A determination that the applied for string is not contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The IO must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	ALAC	Yes	A determination that the applied for string is not contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The ALAC must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Annex for Limited Appeal to Objections, Apr 2020 (pg 4/5)

Process	Potential Appellant	Standing?	What is being Appealed?	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?	Notes
[4] Community Objection	Applicant	Yes	There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	Community Objector	Yes	There is not substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	Independent Objector	Yes	There is not substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The IO must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal
	ALAC	Yes	There is not substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The ALAC must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Annex for Limited Appeal to Objections, Apr 2020 (pg 5/5)

Process	Potential Appellant	Standing?	What is being Appealed?	Arbiter of Appeal	Likely Results of Successful Appeal	Who Bears Costs?	Notes
[5] Conflict of Interest of Panelists	Applicant or Objector	Yes	One or more panelist(s) has actual conflict of interest which could influence the outcome	To be determined by IRT?	Panelist removed and replaced	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	Must be filed within 15 days from notice of the appointment of the Panelist(s); stops objection from proceeding until outcome of appeal

New Issues as at 15 June 2020

SubPro PDP WG

❑ Issue No. 1 – Appeals by ALAC

- There were discussions on ALAC's standing/ability to appeal against LPI or Community objections, including suggestions to withhold, limits in terms of number of appeals, needing to justify filing an appeal to ICANN, etc.
- **Resolved** - WG ultimately agreed that it was most logical to give the ALAC a finite budget from which it could pay for appeals

❑ Issue No. 2 – Arbiter for appeals on Conflict of Interest

- Who should serve as the arbiter in cases where a party appeals the determination that an objection panelist has no conflict of interest?
- In such a case, the applicant or objector has submitted a filing with the provider stating that they believe that the panelist has a conflict of interest. The provider has determined that there is no conflict of interest. The applicant or objector then appeals this decision.
- WG considered the possibility that a panel of ICANN community members could serve as the arbiter of such an appeal but did not come to agreement.
- WG ultimately decided that the IRT is best positioned to make a decision on this matter

❑ Issue No. 3 – Standard of review for Challenges to String Similarity Evaluation

Context:

- Initial DNS Stability Evaluation by a DNS Stability Panel includes a string similarity review (an evaluation).
- A second review can be requested by the applicant if the applied-for string is found to be confusingly similar by the DNS Stability Panel. An external and independent Extended Process Similarity Review Panel ("EPSRP") conducts a second review using a different standard
 - ❖ EPSRP conducts its analysis using a "behavioral metric." The behavioral metric "provides quantitative and statistical evidence about the likelihood of confusing two possible strings and its methods are open and repeatable to enable replication by third parties.

Issue for WG

- Discussed whether it might be appropriate to consider challenges under a different standard than the original String Similarity Evaluation, and specifically whether the standard used by the EPSRP should be used for these challenges.
- Considered whether such a methodology could provide a more accurate determination of string similarity but did not come to a conclusion on this issue.