



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

## Applications Assessed in Rounds, Different TLD Types & Application Queueing (v01)

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# Key Issues in Subsequent Procedures

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Assuming there will be a next round of applications,

## Topic 3: Applications Assessed in Rounds

- When does the round commend / end or how either be triggered?
- What are the prerequisites or limitations in allowing applications in the next round?

## Topic 4: Different TLD Types

- Should there be differential treatment and/or priority given to different categories of applicants and/or types of new gTLDs applied for?

## Topic 19: Application Queueing

- Should there be used of a prioritization draw method for application processing where applicants can choose to participate in by paying a small fee or given the type of TLD applied for eg IDNs?

### What is the New gTLD Subsequent Procedures (“SubPro”)?

- o 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
- o “An update” to the 2012 Round rules and mechanisms

# Review of existing positions on these 3 topics

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ALAC STATEMENTS support or have touched on or said:

## Topic 3: Applications Assessed in Rounds

- ❑ Regardless of demand and 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 etc etc

## Topic 4: Different TLD Types

- ❑ Support for existing categories – standard vs community-based TLDs, geo TLD, .BRAND TLDs, IGO or govt applicants
- ❑ No need or benefit to adding more categories

## Topic 19: Application Queueing

- ❑ Some prioritization draw method for application processing is acceptable.
- ❑ IDNs and community-based applications should received priority in processing.



RELATED SubPro Areas/Topics include:

- Continuing Subsequent Procedures

# Summary of SubPro Recs/IGs: Applications Assessed in Rounds

## SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

### Affirmation with Modification 3.1

- WG affirms Rec #13 from 2007 policy with modification, “Applications must initially be assessed in rounds until the scale of demand is clear.” but believes it should be, “Applications must be assessed in rounds.”

### Recommendation 3.2

- When next Application Submission Period starts, there must already be clarity around timing and/or criteria for initiating subsequent procedures from that point forth. Meaning specifically, ICANN must have published either (a) 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 opening up next round.

### Implementation Guidance 3.3

- A new round may initiate if steps related to application processing and delegation from previous round have not been fully completed.

## IMPACT For At-Large Consensus Building

- Aff. 3.1 – “Applications must be assessed in rounds.”
- Rec. 3.2 – for (a) to happen, must have ICANN Board resolution and for (b) what are the prerequisites?
- IG 3.3 – danger?

# Summary of SubPro Recs/IGs: Applications Assessed in Rounds

## SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

### Implementation Guidance 3.4

- 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,
  - 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:
    - 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
  - If all applications for a given string are “Not Approved”, an application will be allowed if:
    - 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,
  - 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.

## IMPACT For At-Large Consensus Building

- IGs 3.4 attempts inter alia to provide reasonable exhaustive scenarios for dealing with applications marked;
    - “Will Not Proceed”- designating either exhaustion of recourse avenue or time limits or
    - “Not Approved”- designating either exhaustion of recourse avenue or time limits or adoption of new policies or procedures which would not have lead to “Not Approved”, subject to applicant committing to adopt these,
- In order to avoid having “Will Not Proceed” or “Not Approved” applications being “stuck in the system”.

Also .Brand TLD that are subject of RA termination.



# Summary & Impact of SubPro Recs/IGs: Applications Assessed in Rounds

## SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

### **Recommendation 3.5**

- Application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless GNSO Council recommends pausing program & is approved by ICANN Board. In absence of other approved procedures, ICANN must only use “rounds” to administer the New gTLD Program.

### **Recommendation 3.6**

- Absent extraordinary circumstances, future reviews and/or PDP, including the next CCT Review, should take place concurrently with subsequent application rounds. i.e. future reviews and/or PDP must not stop or delay SR.

### **Recommendation 3.7**

- If outputs of reviews and/or PDP has, or could reasonably have a material impact on the manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to adoption by ICANN Board of relevant recommendations.

## IMPACT For At-Large Consensus Building

- Rec. 3.5 – ICANN to use “rounds” to administer program in absence of any amending policy. Only GNSO Council and ICANN Board can pause program, otherwise application procedures to proceed at predictable, regularly occurring intervals.
  - In principle, is “indeterminable periods of review” something to support or object to? Or subject to whether we prefer to err on the side of caution until we are reasonably confident that all major concerns have been identified and addressed through learning from previous round(s)?
- Rec. 3.6 – Future reviews (eg. CCT Review) and/or PDP must not stop or delay subsequent rounds.
  - Any issue with CCT Review running concurrently with a round?
- Rec. 3.7 – Outputs of reviews and/or PDP with reasonable material impact cannot be retroactive, must only be effective in the round starting after ICANN Board adoption or recommendations.

# Summary & Impact of Recs/IGs: Different TLD Types

## SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

### Recommendation 4.1

- Differential treatment based on either application type, string type or applicant type
- Such differential treatment may apply in one or more elements – Applicant eligibility; Application evaluation process / requirements, order of processing, string contention, objections, contractual provisions
  - Different application types:
    - Standard
    - Community-based (diff. app Qs, CPE, contractual requirements)
    - Geographic Names (diff. app Qs)
    - Spec 13 .brand TLDs (diff. app Qs, contractual requirements)
  - Different string types:
    - Geographic Names (diff. app Qs)
    - IDN TLDs (priority in order of processing)
    - IDN Variants
    - String subject to Category 1 Safeguards
  - Different Applicant Types
    - IGO or Govt entities (different contractual requirements)
    - Applicants eligible for Applicant Support

### Recommendation 4.2

- Other than above, adding new application types only under exceptional circumstances – where differential treatment is warranted and is NOT intended to validate or invalidate any other differences in applications.

### Implementation Guidance 4.3

- If prevailing application process and/or Base RA unduly impedes an otherwise allowable TLD application by application type, string type, or applicant type, there should be a predictable community process by which potential changes can be considered – should follow the Predictability Framework, processes for obtaining exemptions to certain provisions of Base RA

## IMPACT For At-Large Consensus Building

- Rec. 4.1 - Consistent with prior support expressed for existing categories – standard vs community-based TLDs, geo TLD, .BRAND TLDs, IGO or govt applicants
- Rec 4.2 – We said no need or benefit to adding more categories; but this is to allow for in case of exceptional need
- IG 4.3 – covering bases, with guardrails being “predictable community process” and application of existing process for varying Base RA.

# Summary & Impact of Recs/IGs: Application Queueing

## SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

### Affirmation 19.1

- Affirm 2012 approach to application queueing by ICANN drawing to randomize order of processing within an application window. This includes for prioritization of IDN applications (as addressed in Rec 19.2).
- Continuing randomized drawing approach is contingent upon local law and ICANN's ability to obtain the necessary license for such drawing
- But must not create a "skills-based" system like "digital archery"
- Replaces IG D from 2007 which recommended a FCFS method of processing applications.

### Recommendation 19.2

- All applications must be processed on a rolling basis, based on assigned priority numbers.
- Does not recommend "batches" to improve efficiency, based on ICANN Org's 2012 experience.
- Exception is IDN applications – if applications received = or > 125, applications will be assigned priority numbers per specified formula *which will still favour IDN applications, whether they participate in prioritization draw or not.*

### Recommendation 19.3

- Application queueing process should be clear, predictable, finalized and published in AGB, for consistency with Rec 1.2.a of PIRR "Assign priority numbers to applications prior to commencement of processing."

### Implementation Guidance 19.4

- Application queueing procedures should be simplified and streamlined as far as possible. For eg. Applicants could be provided opportunity to pay optional fee for participating in drawing + application fee. Or explore ways to assign prioritization number during application process without need to separate drawing event.

## IMPACT For At-Large Consensus Building

- Aff. 19.1 + Rec. 19.2 affect IDN application but in a reasonably fair, still prioritized manner.