

Internationalized Domain Names Expedited Policy Development Process

SubPro - Limited Challenge / Appeal Mechanism



EPDP on IDNs Team Call #11 | 21 October 2021

Understanding SubPro's Recommendations on its Limited Challenge / Appeal Mechanism

Limited Challenge / Appeal Mechanism - Background

Issue: In 2012, there was no mechanism specific to the New gTLD Program to challenge evaluation and objections outcomes; accountability mechanisms were used in their absence.

Deliberations: Accountability mechanisms were primarily about procedural issues, but from CCWG-Accountability work, substance of issues can be considered in Independent Review Process (IRP). SubPro was uncomfortable with leaving as sole form of challenge.

Preliminary Agreement: Narrow and limited appeals process to complement, not replace access to accountability mechanisms, and specific to the New gTLD Program. Focus would be determining if actions were consistent with the Applicant Guidebook.

Community Considerations: The NGPC, CCT-RT, and ICANN Program Implementation Review Report all envisioned consideration of challenge/appeals. Sentiment from public comment was understanding and supportive of the need and preliminary agreement.

Challenge of Evaluation Outcomes:

- **Background Screening**
- **String Similarity**
- **DNS Stability**
- **Geographic Names Technical / Operational Evaluation**
- **Financial Evaluation**
- **Registry Services Evaluation**
- **Community Priority Evaluation**
- **Applicant Support**
- **Registry Service Provider Pre-Evaluation**

Appeal of Formal Objections Decisions:

- **String Confusion Objection**
- **Legal Rights Objection**
- **Limited Public Interest Objection**
- **Community Objections**
- **Conflict of Interest of Panelists**

As opposed to the Challenges, the Appeals involve two parties to the objection.

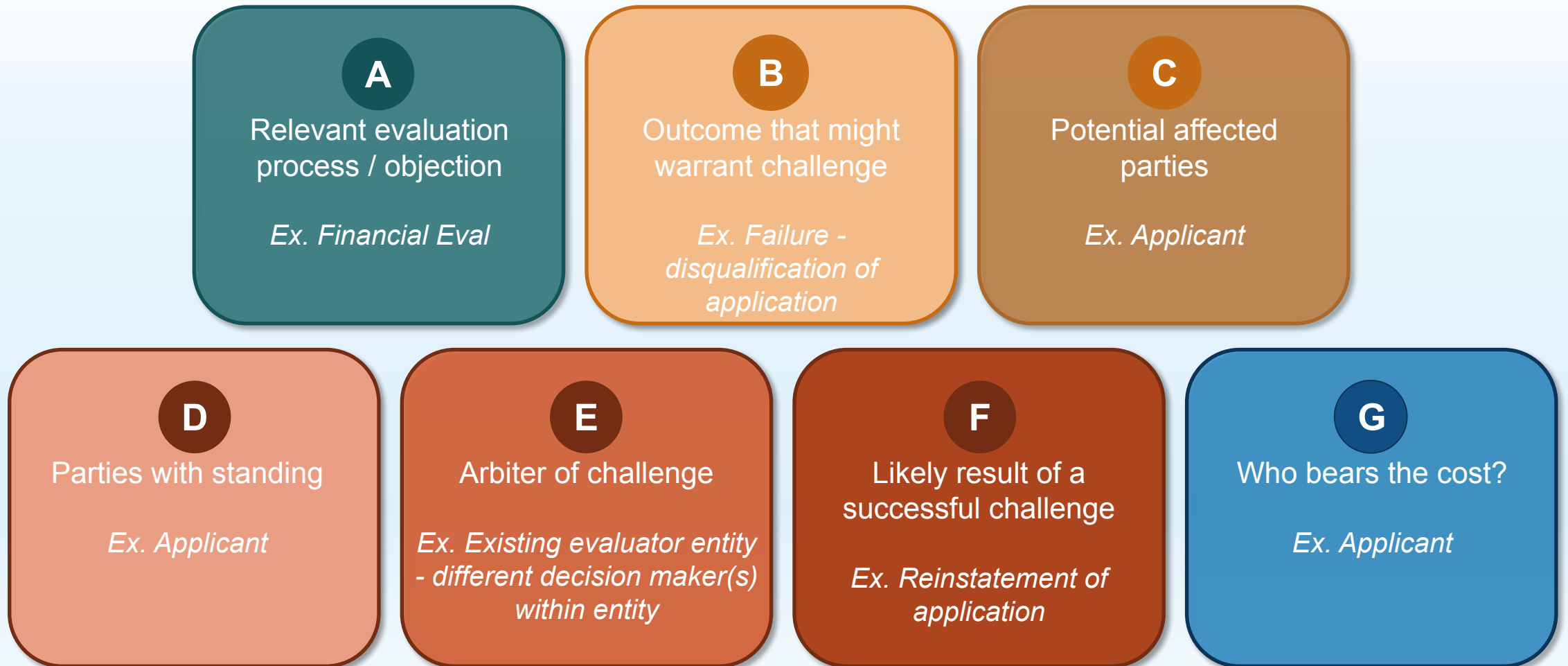
Limited Challenge / Appeal Mechanism - Principles

Narrow - subject to a standard of “clearly erroneous” (e.g., panel failed to follow procedure or failed to consider/solicit necessary information). Exception is Conflict of interest, which are “de novo”

Arbiter - Generally the same panel/entity, but different individuals from original outcome.

Costs - Generally the party that initiates the challenge process is responsible for the costs. For Appeals, it is the losing party.

Limited Challenge / Appeal Mechanism - Factors



EPDP Charter Language (emphasis added)

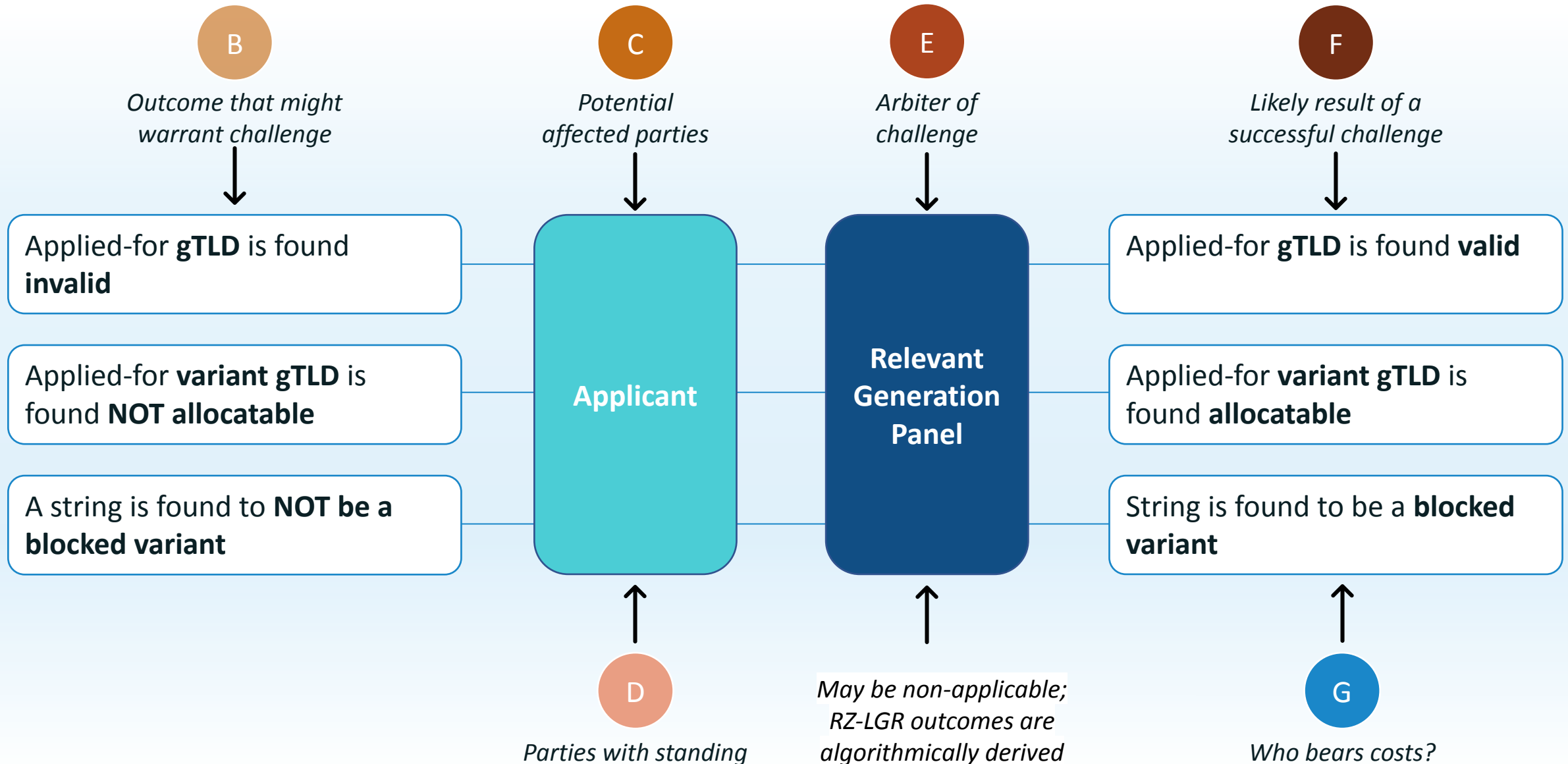
- a3) SubPro PDP recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook. SubPro PDP recommends that such a limited challenge/appeal mechanism applies to several types of evaluations and formal objections decisions, including the DNS Stability aspect of evaluation/challenge procedures. Previously, both the SSAC and TSG also recommended a challenge process for resolving disagreement with the RZ-LGR calculation on certain strings.

If an applied-for TLD label, whose script is supported by the RZ-LGR, is determined to be “invalid”, is there a reason NOT to use the evaluation challenge processes recommended by SubPro? If so, rationale must be clearly stated. If SubPro’s recommendation on the evaluation challenge process should be used, what are the criteria for filing such a challenge? Should any additional specific implementation guidance be provided, especially pertaining to the challenge to the LGR calculation as it can have a profound, decimating impact on the use of RZ-LGR?

Limited Challenge / Appeal Mechanism - RZ-LGR Thought Exercise



Limited Challenge / Appeal Mechanism - RZ-LGR Thought Exercise



Questions?