

Internationalized Domain Names Expedited Policy Development Process

B4, E2



IDN-EPDP Team Meeting #58 | 17 November 2022

Agenda

1. Roll Call and SOI Updates (2 mins)
2. Welcome and Chair Updates (10 min)
 - a. PCR approval by GNSO Council
 - b. Implementation input from ICANN org
3. Continued Discussion of B4 - Delegation of Variant gTLDs vis a vis Primary Strings (40 min)
4. Continued Discussion of E2 - Options for Legal Rights and Community Objections (35 min)
5. AOB (3 mins)

Continued Discussion of B4

B4 Additional Discussion Topic

What should an application process look like in terms of **timing and sequence** for an existing and future Registry Operator with respect to applying or **activating their allocatable variant TLD labels**?

Discussion Questions:

1. Should a variant gTLD be allowed for delegation prior to delegation of the primary string?
2. Should the primary string and allocatable variant labels that pass evaluation be delegated within the timeframe as affirmed by SubPro recommendations?

Question 1

Discussion Question 1: Should a variant gTLD be allowed for delegation prior to delegation of the primary string?

Example Provided by Michael Bauland

- Disposition of variant label may change depending on the primary label. Example of asymmetric relationship between variants – “ss” & “ß”:
 - If “.strasse” is the primary label, the variant label “.straße” is **blocked**
 - If “.straße” is the primary label, the variant label “.strasse” is **allocatable**
- An applicant may apply for “.straße” as the primary label and apply for “.strasse” as its **allocatable** variant
 - If the applicant applies for “.strasse” as the primary label, the variant label “.straße” cannot be applied for as it is **blocked**
- Once evaluation for the application is passed, the applicant may wish to:
 - First activate the variant label “.strasse” to cater to the international market
 - Wait to activate the primary label “.straße” till such a time when the condition for launching the IDN gTLD is appropriate

Factors for Consideration

1. **Technical Considerations:** There is no known technical concern (e.g., security/stability issues) for delegating a variant label prior to the primary label. In essence, all these labels are individual TLD strings
2. **Additional Use Cases:** Besides the **Latin** script, such asymmetric relationship between variants also exists in **Arabic, Greek, Latin, and Myanmar** scripts

Question 2

Discussion Question 2: Should the primary string and allocatable variant labels that pass evaluation be delegated within the timeframe as affirmed by SubPro recommendations?

Factors for Consideration

1. **SubPro Recommendations:** SubPro affirms the requirement that a TLD string **must be in use within fixed timeframes**, which are set forth in the 2012 AGB and the base Registry agreement:
 - a. Successful applicants have **nine (9) months to enter into a Registry Agreement**, following the date of being notified that it successfully completed the evaluation process
 - i. An applicant may request an extension for **up to an additional nine (9) months** for entry into the registry agreement
 - b. Registry operators must complete all testing procedures for **delegation of the TLD within twelve (12) months of the Effective Date of the Registry Agreement**
 - i. Registry Operator may request an extension for **up to additional twelve (12) months for delegation**
2. **Applicant's Intent:** Would someone applies for a label – either a primary string or a variant label – with the intent of NOT using it? In other words, would someone applies for a label with the intent of withholding it indefinitely for possible future delegation, noting that the allocatable variant labels already have the withheld-same-entity status?
3. **Operational Considerations:**
 - a. Each delegated variant will likely incur additional operational costs (e.g, IANA, compliance, etc.)
 - b. However, it is hard to predict the impact of variants on registry-level fee without considering SubPro outputs collectively

Continued Discussion of E2

Summary of Discussion

- The EPDP Team has discussed the same two options for Legal Rights Objection and Community Objection
 - **Option 1:** Objection can be filed against
 - 1) **primary** applied-for string;
 - 2) **requested allocatable** variant label(s)
 - **Option 2:** Objection can be filed against
 - 1) **primary** applied-for string;
 - 2) **ALL allocatable** variant label(s);
 - 3) **ALL blocked** variant label(s)
- The EPDP Team is currently **leaning toward Option 2** for both types of objection processes:
 - Rationale includes concerns that a variant label may potentially block the future application of a certain string due to the **hybrid model used for string similarity review**
 - An **exception process** has been suggested for the two types of objection processes
 - A suggestion to **remove the blocked variants that are not well formed** (e.g., mixed-script) from consideration
- **The EPDP Team has not discussed the consequence / outcomes of objection processes based on different use cases**

Legal Rights Objection: Background

Purpose: Prevent delegation of strings that infringe the existing legal rights of the rightsholder

Standing: Rightsholder (including eligible intergovernmental organization)

Considerations:

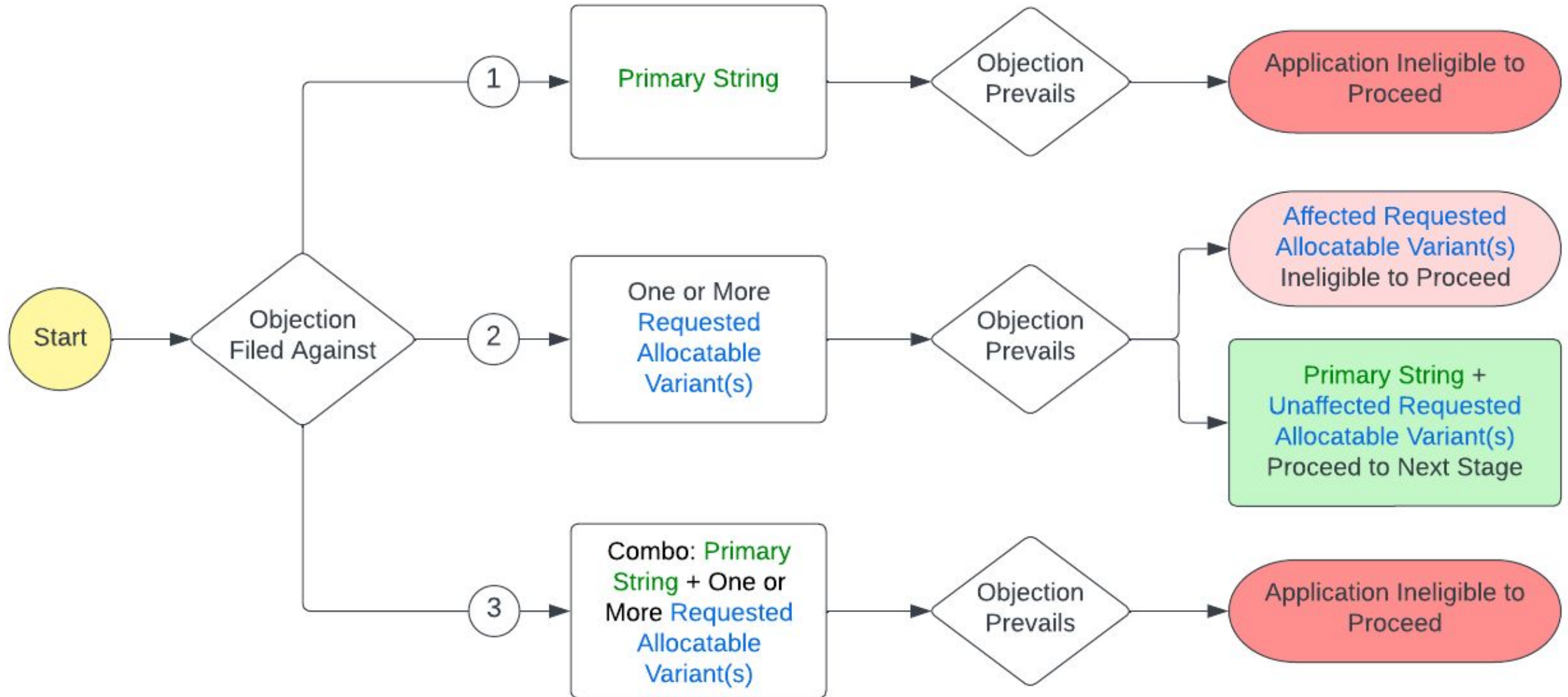
- A dispute resolution service provider (DRSP) panel will determine whether the potential use of the applied-for gTLD:
 - Takes unfair advantage of the distinctive character or the reputation of the objector's mark, or
 - Unjustifiably impairs the distinctive character or the reputation of the objector's mark, or
 - Creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark
- Possible non-exclusive factors include:
 - The applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark;
 - The applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD; etc.

Potential Outcome:

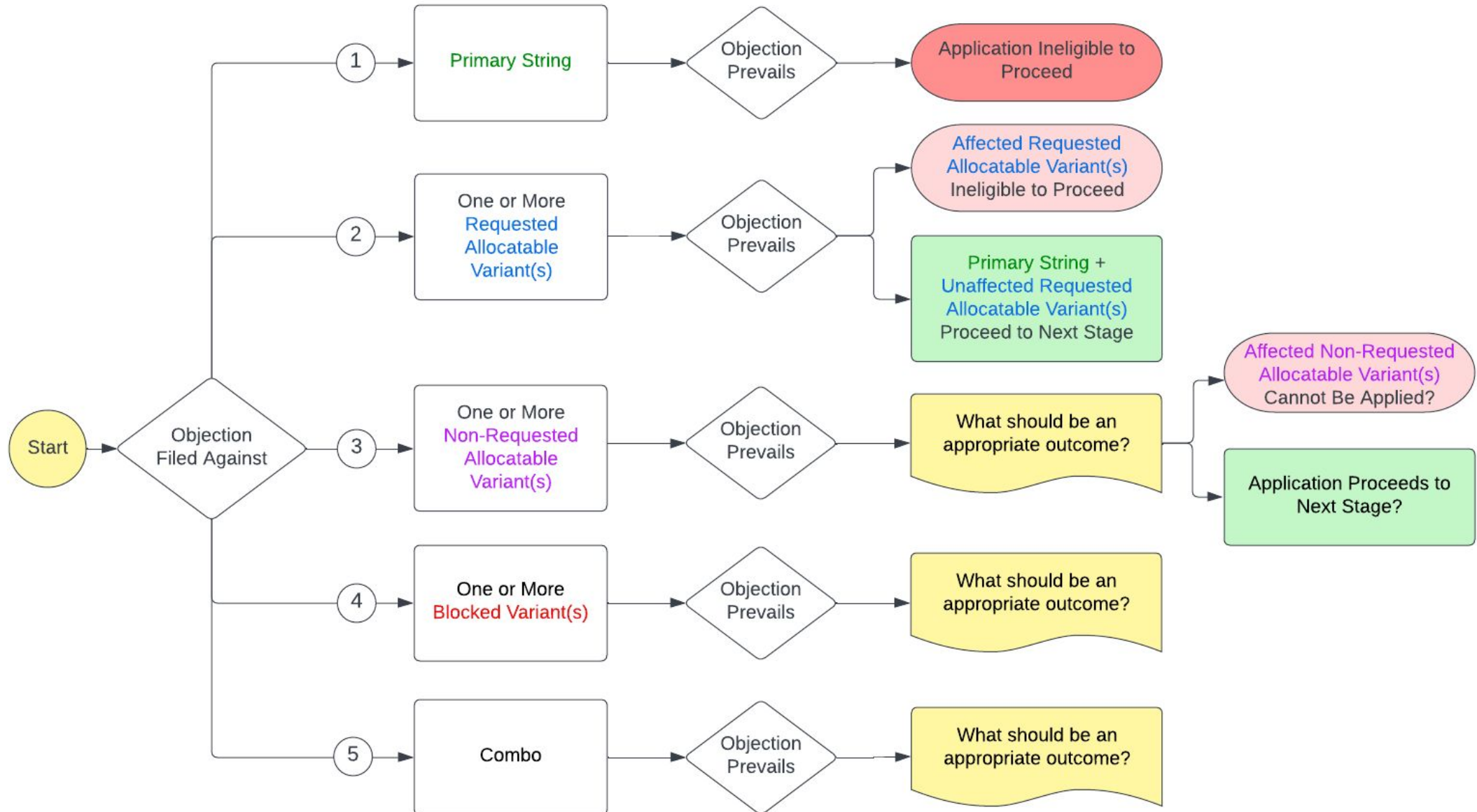
- If objection prevails, applicant withdraws
- If objection does NOT prevail, applicant proceeds to subsequent stage of new gTLD application process

Limited Appeal Mechanism (SubPro): If an appeal is filed against the panel's decision, the proceeding will be delayed until the appeal is settled

Option 1: Legal Rights Objection Prevails - Potential Outcomes



Option 2: Legal Rights Objection Prevails - Potential Outcomes



Community Objection: Background

Overview: Prevent delegation of strings that have substantial opposition from a significant portion of the community the gTLD targets

Standing: Established institutions associated with a clearly defined community; Independent Objector

Considerations: The objector must prove that:

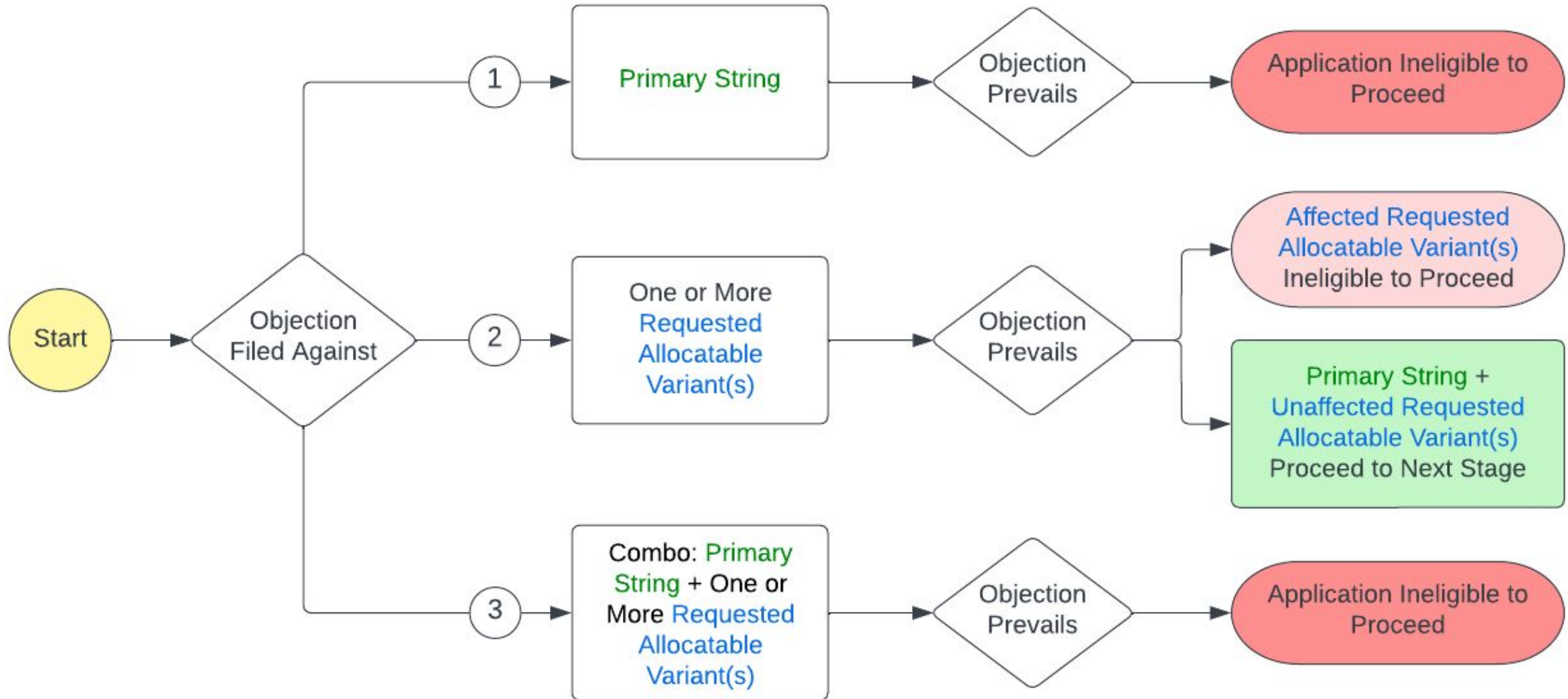
- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.

Potential Outcome:

- If objection prevails, applicant withdraws
- If objection does NOT prevail, application proceeds to subsequent stage of new gTLD application process

Limited Appeal Mechanism (SubPro): If an appeal is filed against the panel's decision, the outcome of the appeal will determine whether the application can proceed or not

Option 1: Community Objection Prevails - Potential Outcomes



Option 2: Community Objection Prevails - Potential Outcomes

