Internationalized Domain Names Expedited Policy Development Process

E2

IDN-EPDP Team Meeting #59 | 1 December 2022

ICANN

Agenda

1. Roll Call and SOI Updates (2 mins)

2. Welcome and Chair Updates (5 mins)

3. Recap of B4 - Delegation of Variant gTLDs vis a vis Primary Strings (5 mins)

4. Continued Discussion of E2 (75 mins)

   a. Potential Outcomes for Legal Rights and Community Objections

   b. Exception Process

5. AOB (3 mins)

Recap of B4 - Delegation of Variant gTLDs vis a vis Primary Strings

Recap: 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 & EPDP Team's Responses

1. **Should a variant gTLD be allowed for delegation prior to delegation of the primary string?**

   The EPDP Team agrees that the sequence for delegation of the applied-for primary string and the requested allocatable variant label(s) should not be mandated by policy. The scenario where a variant label is delegated prior to the primary string should be allowed.

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

   Yes, the EPDP Team agrees that the primary string and the allocatable variant label(s) that pass evaluation should be delegated within the timeframe as affirmed by SubPro recommendations. However, as noted in the response to Question 1, the sequence for delegating these labels does not matter as long as they are delegated within the required timeframe.

Continued Discussion of E2

Summary of Discussion

1. For **String Confusion Objection,** the EPDP Team agrees that such an objection can be filed based on the ground established by the **hybrid model used for string similarity review**

2. For **Limited Public Interest Objection**, the EPDP Team agrees that such an objection can only be filed against:

    - 1) **primary applied-for string**;

    - 2) **requested allocatable** variant label(s)

3. For **Legal Rights Objection** and **Community Objection,** the EPDP Team has discussed the same two options

    - **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)

Summary of Discussion (Cont.)

4. The EPDP Team is currently **leaning toward Option 2** for Legal Rights and Community Objections:

   ○ 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

5. <u>**The EPDP Team has not discussed the consequence / outcomes of objection processes based on different use cases**</u>

String Confusion Objection: Background

Purpose: Prevent delegation of a string that is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications that **may not be caught during String Similarity Review**

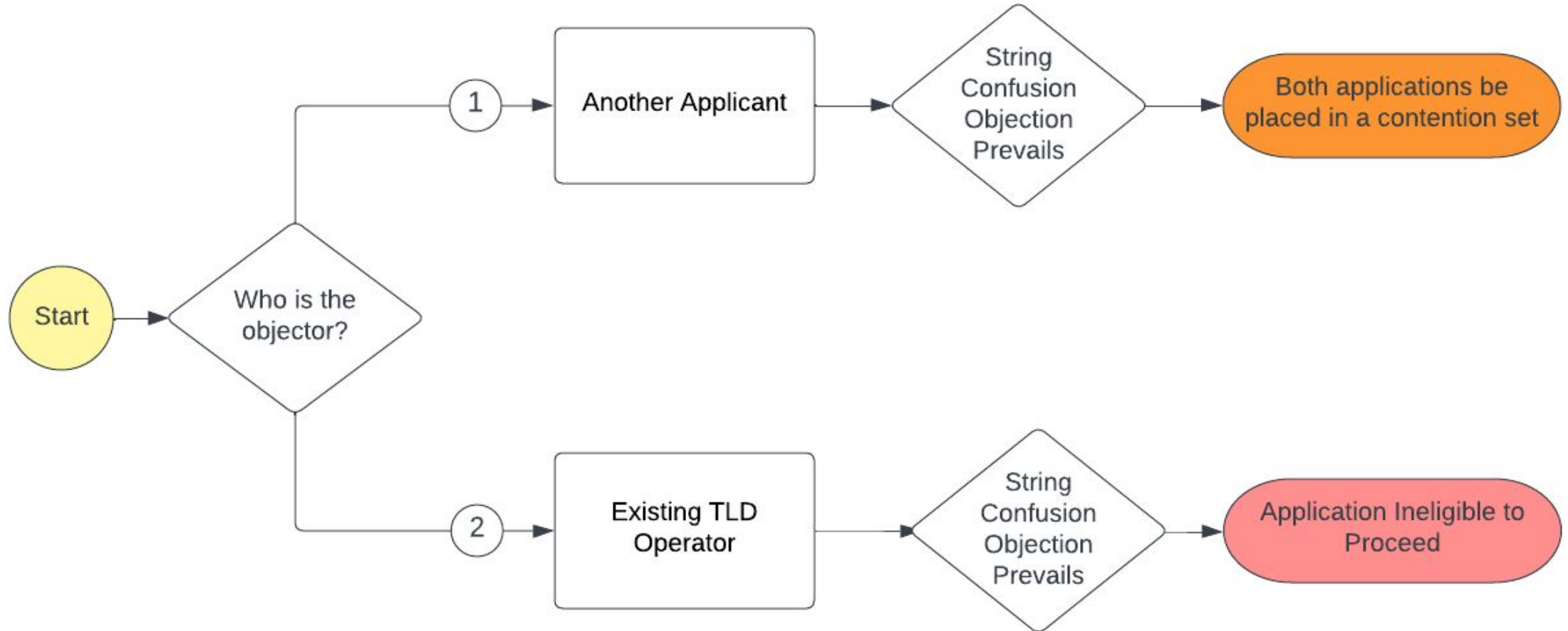**Standing**: Existing TLD operators or gTLD applicants in the same round

Considerations:

- A dispute resolution service provider (DRSP) panel will consider whether the applied-for gTLD string is likely to result in string confusion.

- An application that passes the String Similarity review is still subject to the String Confusion Objection.

- Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector.

Potential Outcome:
- Existing TLD (Objector) vs. Applied-for gTLD

  - If objection prevails, applicant withdraws

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

- Applied-for gTLD (Objector) vs. Applied-for gTLD

  - If objection prevails, both applications be placed in a contention set and referred to a contention resolution procedure

  - If objection does NOT prevail, both applications proceed 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

String Confusion Objection Prevails - Potential Outcomes

Limited Public Interest Objection: Background

Purpose: Prevent delegation of strings that contradict generally accepted legal norms of morality and public order recognized under principles of international law, such as:

- The Universal Declaration of Human Rights
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social and Cultural Rights

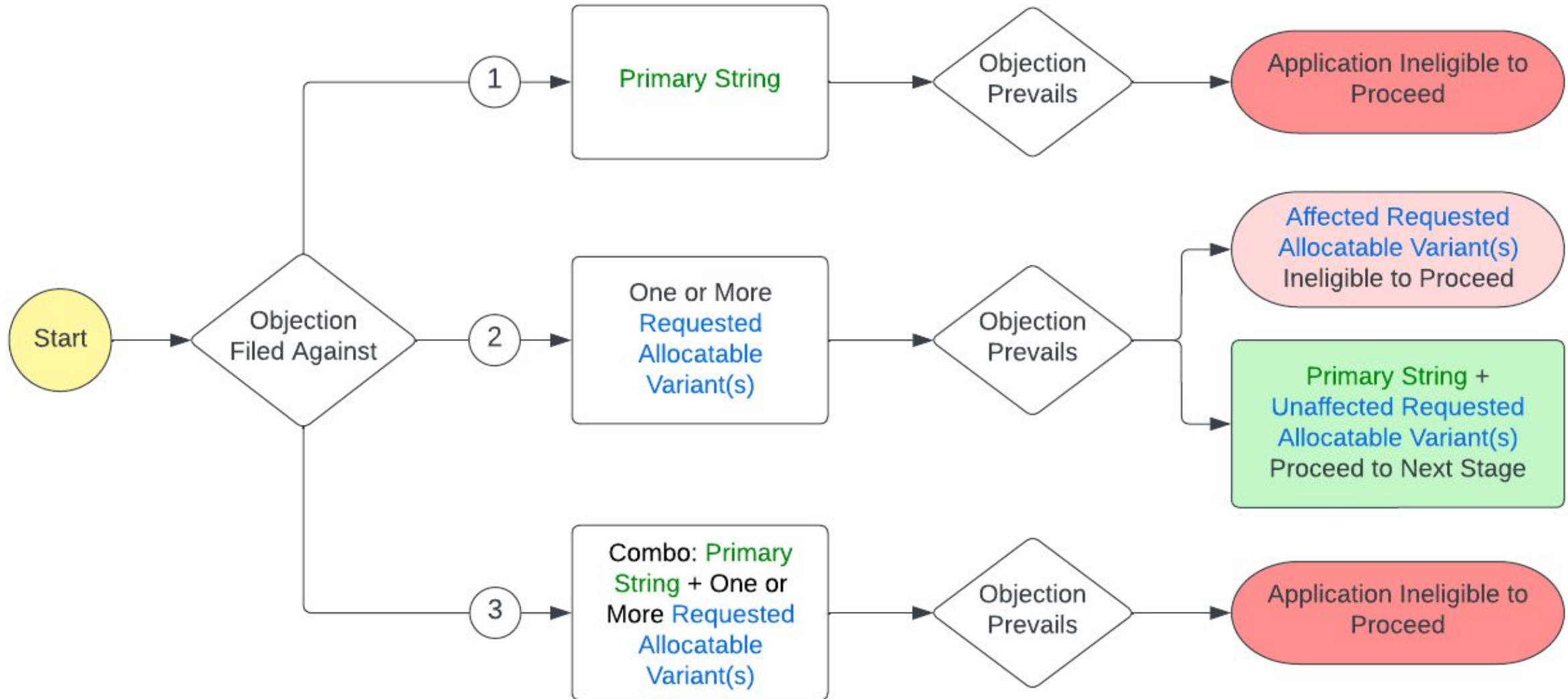**Standing**: Anyone; Independent Objector

Considerations: An expert panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application

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

Limited Public Interest Objection Prevails - Potential Outcomes

Legal Rights Objection: Background

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

Standing: Rightsholder (including eligible intergovernmental organization)
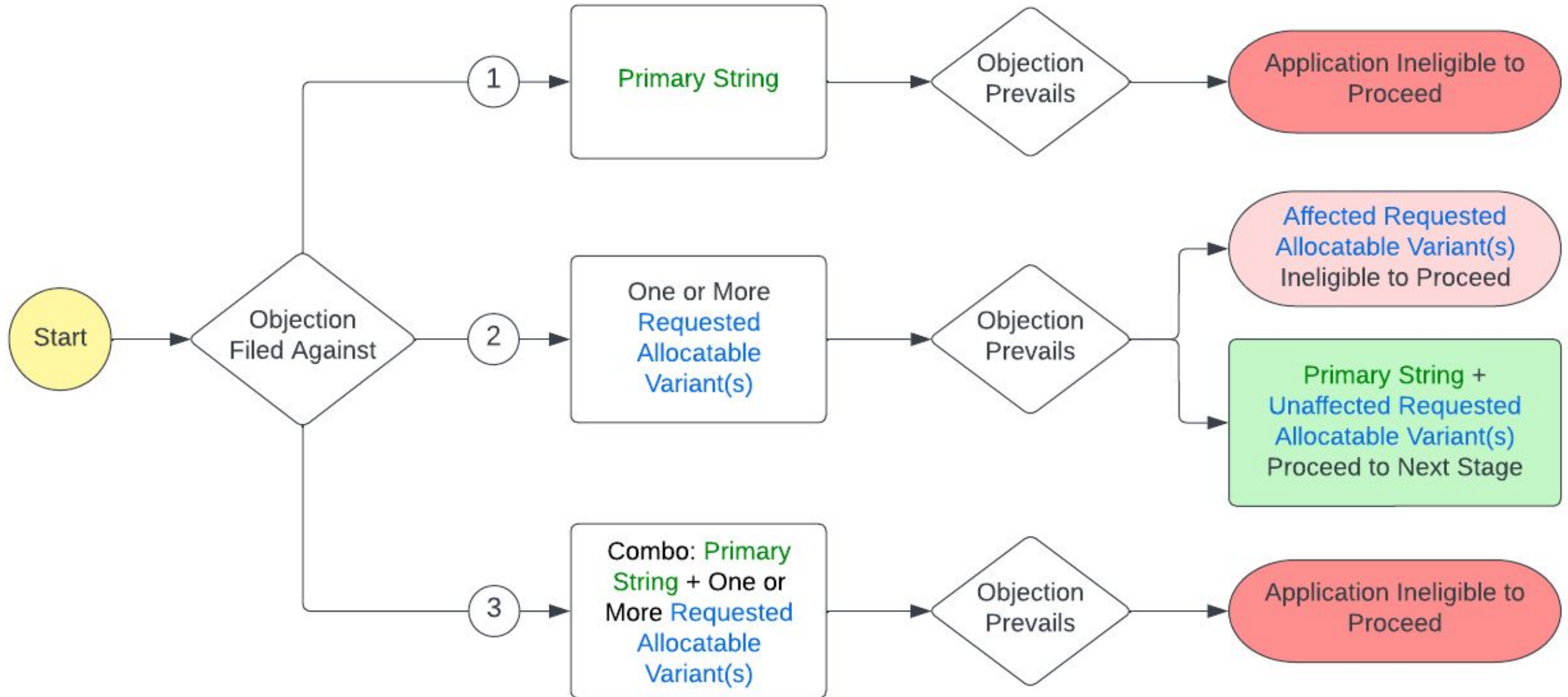
Considerations:

- 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.
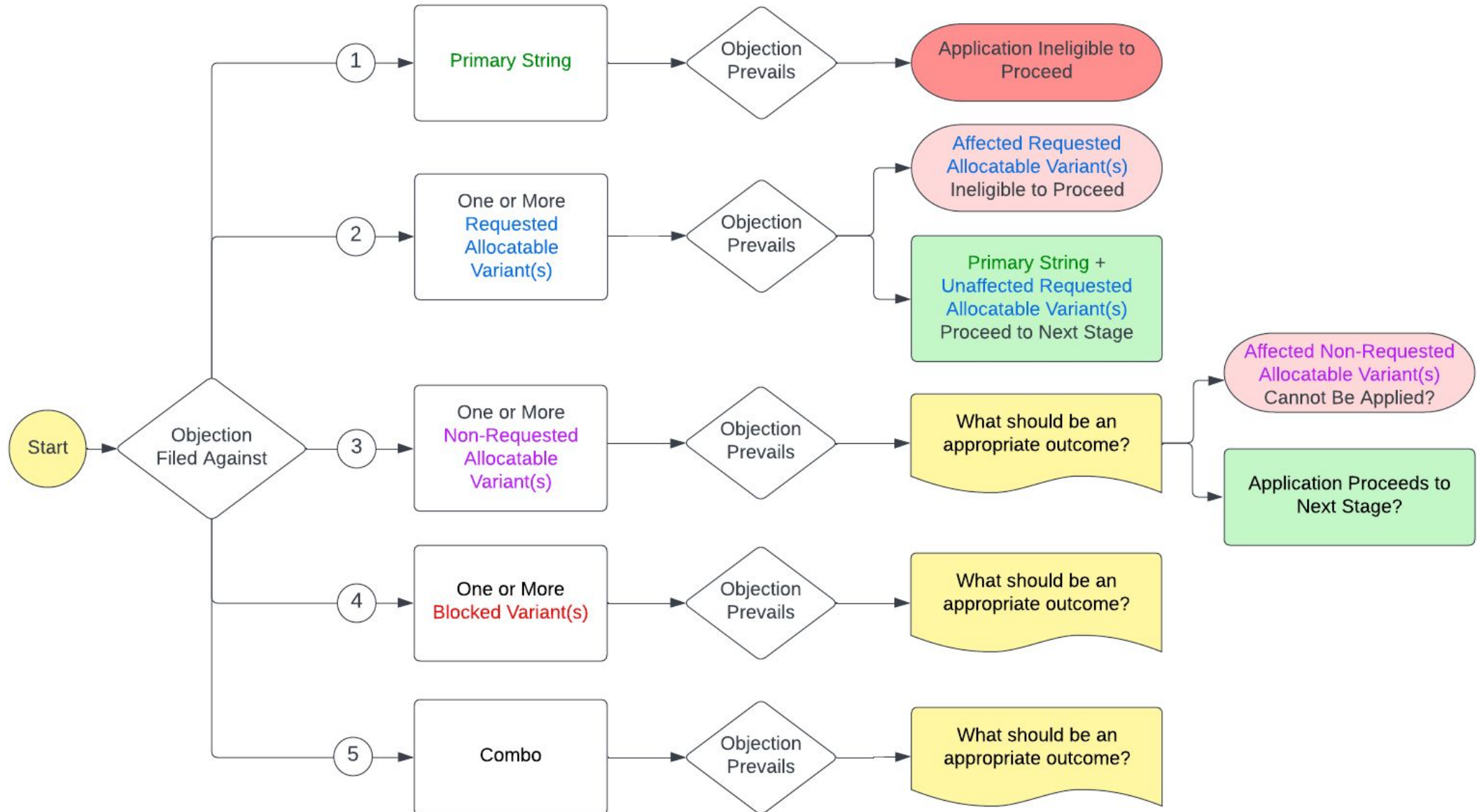
Potential Outcome:

- 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

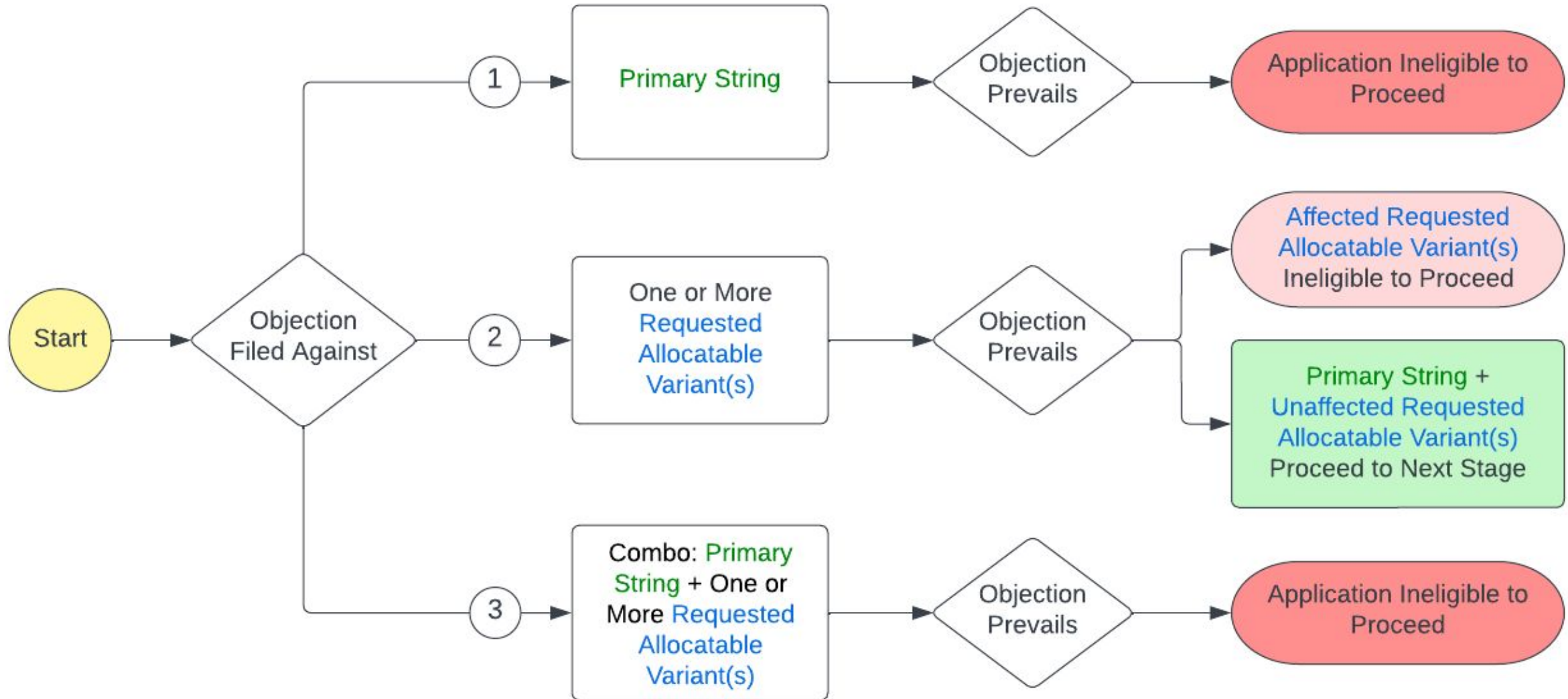**Considerations:** The objector must prove that:

- 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

- <u>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.</u>

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