AT-LARGE ADVISORY COMMITTEE
Review of the Draft Application Support Program (ASP) Handbook - New gTLD Program

ALAC Statement on the Applicant Support Program Fund (ASP Fund)

The ALAC and At-Large Community believe that if the ASP Fund should not be strictly limited, in that, where necessary, the ICANN Board should be amenable to enlarging the budgeted ASP Fund to the extent that all ASP applicants, no matter when they submitted their ASP applications during the ASP application period should be entitled to and receive the **same percentage** of application fee reduction and evaluation fee reduction. Allowing a different outcome is akin to institutionalizing some inequity that the ASP was established to remedy objectively.

We understand and support the call made in the (Draft) ASP Handbook to potential ASP applicants to submit their applications for Applicant Support as early as possible. However, we are also cognizant of the overall time remaining until the opening of the ASP application period (targeted for some time in Q4 of 2024) to not only create awareness of the ASP but to do so by way of outreach to parts of the world where potential candidates for ASP reside, and with sufficient details of the ASP in order for such candidates to consider participating and preparing their ASP applications for submission.

As it currently stands, placing a strict limit on the ASP Fund and proposing to suspend or close the ASP application period early on account of the ASP Fund being exhausted is giving early ASP applicants an advantage. For a support program, it seems inappropriate to give an advantage to some applicants over others. To address this inequity, we recommend that the ICANN Board commit to funding the ASP to the extent that it covers all qualified applicants to the same degree, no matter when they applied during the 12-month application window.

Please refer to the responses to Question 3, Point 2, Sections (a) and (b); Question 4; Question 5, Point 3; and Question 7, Point 3, Section (a) for additional context.

ALAC Response to ICANN org Questions

ICANN org is seeking input on several key topics in the Draft ASP Handbook, specifically on Section 5, which is about Applicant Eligibility and Evaluation Criteria:
- 5.5.3: Indigenous/tribal people's organizations (Question 5: Section 5, pp. 22-23)
- 5.5.5: Micro or small-sized business from a less-developed economy (Question 5: Section 5, pp. 25-27)

1. Do you believe that Section 1 ("Introduction") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, the ASP handbook does not accurately reflect policy recommendations

Answer: Yes ▾

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

2. Do you believe that Section 2 ("Overview") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, the ASP handbook does not accurately reflect policy recommendations

Answer: Yes, but with the following suggested clarification(s) ▾

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

1. In respect of subsection 2.2 of Phase 1 on page 8 of the Draft ASP Handbook, we understand that the Phase 1 General Business Due Diligence is an identical process for both

the application for ASP and the application for the gTLD string. We would like clarity on the following:

(a) whether in passing the ASP Phase 1 General Business Due Diligence check means that the ASP qualifier would not need to undergo the General Business Due Diligence check under the gTLD string application evaluation (whether in full or otherwise) and

(b) conversely, whether failing ASP Phase 1 General Business Due Diligence would in any way prevent an applicant from applying for a gTLD string without the support and undergoing the gTLD string General Business Due Diligence check (again).

2. Regarding subsection 2.2 Phase 2, also on page 8, we think there is a need to emphasize (as indicated by the Figure 2 Flowchart) that if an applicant fails at any evaluation category, then evaluation stops and does not proceed with the next evaluation category/categories.

So, in particular, we suggest that the relevant sentence be amended as follows:
"*All ASP applicants will be evaluated against the following evaluation categories (see: Figure 2. High Level Eligibility Flowchart), **where upon failure to pass one Phase 2 category will result in non-necessity to move to the next category of evaluation under Phase 2**.*"

3. Additionally, regarding subsection 2.2 Phase 2 Public Responsibility Due Diligence, also on page 8, we think it is equally important to include a reference to non-affiliation with an existing Registry Operator and/or another non-ASP gTLD application as a second criterion to be consistent with subsection 5.2.

3. Do you believe that Section 3 ("Applicant Support Program Timeline") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, the ASP handbook does not accurately reflect policy recommendations

Answer: Yes, but with the following suggested clarification(s) ⌄

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

1. Could the indicative 12-16 weeks evaluation period be broken down further to enable an applicant to expect a result within the first x week(s) if it failed the Phase 1 General Business Due Diligence check?

2. We think there is a need to:-

(a) Clarify that the US$2,500 deposit sought for the (impending) gTLD string application is required only once - i.e. tied to one gTLD string - since the ASP benefits are applicable to only one gTLD string application;

(b) Reconsider the 90-day limit on payment of the deposit, in light of the potential difficulties experienced by many countries (think Global South or Asia) in effecting US$ transfers within 90 days. Can the deposit not be payable by the end of the ASP application period instead, or alternatively, allow for either a reasonable extension of time (upon request by an applicant) or the ability to present a letter of credit or some other form of acceptable financial document.

(c) Clarify if the paid-up deposit is refundable if the ASP qualifier decides not to proceed with its gTLD string application and the timeframe contemplated by ICANN org for such refund.

3. The two disclaimers in paragraph 3, which begin with "*Though …*" should be properly highlighted as the factors alluded to will impact both potential applicants and applicants that have already submitted their ASP applications.

4. Related to point 2(c) above, the eligibility for a refund of any prepaid supported portion of gTLD string application fees ought to be accompanied by a timeframe for such refund. This should appear either in the ASP Handbook, the AGB, or both.

5. Under Table 1 (and correspondingly in section 8), the prohibition against re-applying must state applicability to just the current round (and not imply a permanent prohibition)

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4. Do you believe that Section 4 ("Reduction of New gTLD Program Application and Evaluation Fees") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, the ASP handbook does not accurately reflect policy recommendations

Answer: No, ASP handbook does not accurately reflect policy recommendations ▾

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

We acknowledge that a floor of 50% in the base application fee and other applicable evaluation fees (in addition to the Auction bid credit/multiplier) is important, but we also recommend, on equity grounds, that the ICANN Board should commit to an enlargement of

the ASP Fund to support the access by any applicant that qualifies for ASP to the minimums stated, regardless of when it applied during the 12-month ASP application window. In other words, the application window should not be shortened because a "fixed sum ASP Fund" is exhausted.

5. Do you believe that Section 5 ("Applicant Eligibility and Evaluation Criteria") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, ASP handbook does not accurately reflect policy recommendations

Answer: No, ASP handbook does not accurately reflect policy recommendations ⌄

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

1. In subsection 5.1, all references to internal or external information (e.g. OFAC, UDRP, ACPA, etc.) should be hyperlinked to their authoritative sources.

2. Consider setting a deadline for submission of missing required documentation but give reasonable ability to request for an extension of time, as lack of a deadline or unreasonable delay by an applicant will likely impact other applicants' opportunity to also secure ASP benefits (e.g. higher % of fee reduction) in respect of their submitted applications.

3. Regarding subsection 5.3 Financial Need versus subsection 5.4 Financial Stability (also see the corresponding bullets in subsection 2.2 Phase 2 on page 8), a better distinction between Financial Need and Financial Stability is needed.

A reference to "financial hardship" in both makes it confusing, if not contradictory. This is because, as it stands, to qualify for Applicant Support, an ASP applicant must simultaneously show that they need the support, i.e. Financial Need, on the grounds of "financial hardship" on the one hand, while also having to, on the other hand, make the case that it could not only raise the unsupported portion of the gTLD string application fee and that it has a solid enough financial existence to support the work that the application would require free of financial hardship, i.e. Financial Stability. If it were able to show that it had a solid financial existence, then why would it need support?

The deposit of US$ 2,500 is only payable upon the applicant receiving a positive result on its ASP application. How would something be evidence of "Financial Stability" for evaluation purposes when it is only payable after the ASP evaluation is completed?

As it stands, 'Financial Need' seemingly refers to a 'current' state while 'Financial Stability', to a 'future' state. It should be noted that an ASP qualifier still undergoes the same Financial Capability Check - which also considers financial stability - during its gTLD string application, just as with any non-ASP applicant. It would be unfair to subject an ASP applicant to (a) any duplicative financial stability check and (b) having to undergo such a check for ASP evaluation ahead of other non-ASP applicants during the gTLD string application process.

An application for Applicant Support should not require a complete plan for how to run the gTLD as the development of that plan is where a qualified ASP applicant can rely on the non-financial resources (such as the pro-bono service providers) to assist in completing. Hence, it should be enough to know what an ASP applicant might require assistance with and that it will be able to utilize the support to get such assistance, if it qualifies for Applicant Support.

It should be understood that getting some financial support may be a key piece to a fund-raising plan. While an applicant should be able to demonstrate that they have a base plan for fund-raising, it should not be expected to have done the fund-raising at the time it applies for Applicant Support. Rather, the more appropriate time to demonstrate that it has or is close to completing some fundraising is when it submits an application for its gTLD string.

If, as we assume, the ASP Fund is limited, the program gives a bias and distinct advantage to any early applicants. We believe this is wholly inappropriate for a 'support program' of this kind. To give an advantage to some, and foreseeably those with already more advanced resourcing and readiness to remit the required deposit to ICANN org, even if such applicants are among those in need, would open up the program to justifiable criticism regarding its fairness and 'level playing ground'. To address this inequity, we recommend that (a) the deposit be required to be paid only by the end of the ASP application period, equally for all ASP qualifiers, and (b) for the ICANN Board to fund the ASP to the extent that it covers all qualified applicants to the same degree no matter when they applied during the 12-month application window.

Our other recommendations are:
- For the inclusion of other conditional considerations to accommodate situational hardships due to ongoing political crisis/instability that perpetuates political and policy changes, forcing the relocation of businesses to other jurisdictions (e.g. in Myanmar, Afghanistan)
- For ICANN org to provide a template to guide better any "Narrative Statement" requested of an applicant
- Consider renaming "remaining discounted New gTLD Program base application fee" to "unsupported portion of the New gTLD Program base application fee" to improve readability and understanding
- Consider reworking 'Financial Stability' to say 'Establishing Financial Means'

6. Do you believe that Section 6 ("Applicant Support Program Application Process") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, the ASP handbook does not accurately reflect policy recommendations

Answer: Please select one ▾

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

7. Do you believe that Section 7 ("ASP Application Evaluation") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?

Options
Yes
Yes, but with the following suggested clarification(s)
No, the ASP handbook does not accurately reflect policy recommendations

Answer: No, ASP handbook does not accurately reflect policy recommendations ▾

Please provide the suggested language change or an explanation of any inconsistencies, and provide alternative language where possible.

1. In subsection 7.1, explicit information on ICANN's Code of Conduct and Conflicts of Interest Guidelines for Next Round must include how to address ASP applicants' concerns regarding SARP/Vendor's failure to comply. Currently, the draft Code of Conduct and Conflicts of Interest Guidelines are intended for the Next Round's Applicant Guidebook subsection 4. Code of Conduct Violations refers to subsection 1.4.2, which is still pending. A look at the same subsection in the 2012 Applicant Guidebook does not reveal an explicit mechanism for applicants to submit concerns (if any) to ICANN.org.

2. Regarding subsection 7.3, we would like to clarify whether applicants answering clarifying questions could do so in languages other than English.

3. In respect of subsection 7.5, particularly on the "*Minimum and Maximum Fee Reductions*":-

(a) If the ASP Fund is limited, the program gives early ASP applicants an advantage. For a support program, it seems inappropriate to give advantage to some, foreseeably those with

the deepest pockets and easy access to remit the required deposit to ICANN org, even if those with the deepest pockets are among those in need. There is also a liability in requiring a deposit to be payable within 90 days of receiving a positive result of an ASP application, as it again reinforces the advantage to those with the deepest pockets and easy access to remit the required deposit. To address this inequity, we recommend that (a) the deposit be required to be paid only by the end of the ASP application period, equally for all ASP qualifiers, and (b) for the ICANN Board to fund the ASP to the extent that it covers all qualified applicants to the same degree no matter when they applied during the 12-month application window.

(b) Does "*complete applications submitted before pause on new applications*" mean applications that are judged by ICANN.org as applications not having any missing information, or does it include any applications submitted with the chance of being completed through the additional request for missing information?

(c) We think further clarity is needed to explain the sentence, "*Should qualified supported applicants decide they no longer plan to submit a new gTLD, the supported applicant is required to communicate this to ICANN org prior to the gTLD application submission period. This may allow additional applications for support to be received and evaluated for eligibility.*" *on the following observations and queries:*

If such an applicant informs ICANN.org of its intention not to apply for a new gTLD string shortly before the gTLD application submission window opens, how would this allow for additional applications for support to be received when the ASP application period would have closed? Perhaps this has to do with ICANN's selection to extend the ASP application window beyond the 12-month period. Even so, the timing for such notification by an ASP qualifier and the allowance for additional applications for support has to be carefully considered.

Other Comments

Please refer to the appended ALAC Statement (ref: **AL-ALAC-ST-0224-02-01-EN)**

ALAC Acknowledgement

The At-Large Advisory Committee (ALAC) appreciates the opportunity to provide comments on the Draft Application Support Program (ASP) Handbook - New gTLD Program, which is a matter of significant interest to end-users.

Ratification Record

On {date}, the Public Comment proceeding opened for the Draft Application Support Program (ASP) Handbook - New gTLD Program. On [date], an At-Large workspace was created for their Public Comment submission. The At-Large Consolidated Policy Working Group (CPWG) decided it would be in the interest of end users to develop and submit an ALAC statement for this Public Comment proceeding. Justine Chew, Cheryl Langdon-Orr, and Avri Doria volunteered to draft the ALAC statement.

On 13 March 2024, Justine Chew and Cheryl Langdon-Orr discussed the comments for the ALAC statement during the CPWG call. On 14 March 2024, the draft statement was circulated with the At-Large community for review and input.

On [date], the At-Large Public Comment Statement was finalized by Justine Chew, Cheryl Langdon-Orr, and Avri Doria. The ALAC Chair, Jonathan Zuck, requested that the ALAC ratify the Public Comment Statement before submission to the ICANN Public Comment feature.

On [date], staff confirmed the online vote resulted in the ALAC [endorsing] the statement with [#] out of 15 votes in favor. [#] votes against, and [#] abstentions. Please note [# %] of ALAC members participated in the poll. The ALAC members who participated in the poll are (alphabetical order by first name): [Names of those who voted]. You may view the results here: [insert link to tally vote].