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# Background Screening

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## 1.2 Background Screening

### 1.2.1 Introduction

ICANN has designed the New gTLD Program to provide registrant protections. In addition to features of the gTLD Registry Agreement, data and financial escrow mechanisms, background screening is a key mechanism to facilitate registrant protection by ensuring only established corporations, organizations or institutions in good standing apply for a new gTLD.

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process.

### 1.2.2 Background Screening Procedures

#### 1.2.2.1 Application Form

The application form requires applicants to provide information on the legal establishment of the applying entity<sup>1</sup>, the identification of directors, officers, partners, and major shareholders<sup>2</sup> of that entity as well as the ultimate parent and/or individuals with control of the applicant. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.<sup>3</sup> Any information shared as part of the background screening process and related to the criteria listed in Section 1.2.3 below will not be made publicly available by ICANN.

#### 1.2.2.2 Publicly Traded Corporations

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) may undergo a more limited due diligence and criminal history screening (see Section 1.2.3 for screening criteria). The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.<sup>4</sup>

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges and these requirements are expected to meet or exceed the due diligence and criminal history screening performed (as described in Section 1.2.3).

<sup>1</sup> Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be- formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

<sup>2</sup> "Major shareholders" shall be those holding at least 15% of shares.

<sup>3</sup> All data will be handled according to the Data Protection/Privacy Statements found in Section [Data Protection] as well as [here].

<sup>4</sup> See <https://focus.world-exchanges.org/issue/may-2024/market-statistics>

**Commented [1]:** What constitutes a major shareholder? In a publicly traded company what % ?

**Commented [2]:** I believe in the past this was 15% ownership or more. I think that is a good percentage to keep.

**Commented [3]:** Would be nice to have an understanding or definition of "major shareholder" from an authoritative source, eg the US Securities Act.

**Commented [4]:** The SEC Requires filing from any legal person that holds or acquires 5% or more of a public company. See Section 13(d) of the Securities Exchange Act of 1934. <https://www.sec.gov/divisions/corpfin/guidance/reg13d-interp.htm>

**Commented [5]:** I've added a footnote with the 15%

**Commented [6]:** I'm pleased with the addition of 1.2.2.2, but would like "more limited... screening" to be defined - how will this be determined? By ICANN Org, an external entity such as the world exchange, the background screening org, etc?

**Commented [7]:** e.g. major shareholder also must go through screening if top 25 exchange company?

**Commented [8]:** Based on internal discussion, we don't want to limit ICANN's ability to conduct additional screening as necessary. The assumption for these entities, including any major shareholder (that may or may not be another top 25 exchange company itself), is that ICANN/BGS provider will have the option/discretion to run a full report if there are inconsistencies or if they can't find enough information.

### 1.2.2.3 Background Screening Inquiry

ICANN will submit identifying information for the applicant (i.e., entity, officers, directors, and major shareholders) to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.3 and return results that match these criteria. Only publicly available information will be used in this inquiry.

The inquiry is conducted on the basis of the applicant information provided during applicant onboarding (e.g., applicant information, primary and secondary contact information, proof of legal establishment). It is the responsibility of applicants to ensure that they have obtained personal data from individuals or data from entities shared in the application form in compliance with local laws and regulations. This may include, among other things, obtaining consent from individuals or entering into specific agreements with legal entities. If requested by ICANN, applicants will need to demonstrate to ICANN and/or ICANN's background screening vendor that the data of entities and/or individuals named in the Organizational Account Record, concerning background screening activities, is being shared in compliance with local laws and regulations, which may include providing consents from individuals.

### 1.2.2.4 Timing of Background Screening

Background screening will be conducted for all applications as part of Initial Evaluation during Applicant Reviews. If there is a change in the application that requires additional or repeat background screening (for example, a change in applying entity or change to major shareholders, officers, or directors of the applying entity) this additional background screening on any changes or new information will occur during the contracting process (see Module/Section Contracting).

## 1.2.3 Background Screening Criteria

Background screening will be conducted at both the organizational and individual levels to confirm eligibility and assess risk. Information may vary based on the accessibility of data and local data protection laws. ICANN may take into account information received from any source if it is relevant to the criteria listed below and in compliance with local data protection laws, e.g., comments received via the Application Comment Forum (see Module/Section Application Comments for more information).

ICANN will perform background screening in two areas, in compliance with local laws and regulations: (1) General business diligence and reputation checks; and (2) History of cybersquatting behavior. The eligibility criteria used for reputation checks, (listed below) are aligned with the "crimes of trust" standard sometimes used in the banking and finance industry. ICANN reserves the right to reject an application, even if the applicant is otherwise qualified, based on information uncovered during the due diligence process.

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Commented [9]: Maybe this should say - "ICANN will submit identifying information for the applicant (entity, officers...) to an international...

Commented [10]: I've updated

Commented [11]: Where is this defined? Is this an official "company record" document provided by the applicant, or the name for the list of directors, officers, partner, shareholders etc provided by the applicant?

Commented [12]: I think this is part of the string application system where an applicant's 'rep' enters the data of entities and/or individuals associated with the applicant but good to clarify.

Commented [13]: This is a reference to the application questions (that used to be "1-11" in the 2012 agb), which are a set of questions related to providing names/contact information

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Commented [14]: This additional check will be conducted for the Applicant itself (Organizational) or for the changes made among individuals involved within the entity? I believe deferring the additional check until the contracting process would be tricky.

Commented [15]: I personally don't see a problem with this, perhaps staff can point us to the 'Module/Section Contracting' text?

Commented [16]: I've updated to clarify that it's only on new information. Contracting section forthcoming

Commented [17]: "a history of registering domain names in violation of applicable law or ICANN policies"

Commented [19]: I'm unclear on what is the referenced criteria - is it the history of cybersquatting behaviour?

Commented [20]: It's a reference to the "reputation checks" and specifically the criteria listed in "Eligibility criteria"

Deleted: in compliance with local laws and regulations

Deleted: criminal history

Commented [21]: How will limited challenges to background screening results be addressed now that the Board has just adopted Supplemental Recommendations 32.1, 32.2 and 32.10?

Commented [22]: See placeholder section. Will be addressed when we get to that topic

In the absence of exceptional circumstances, applications from any entity with or including any individual not meeting the eligibility criteria listed below will be disqualified from the program.

## Eligibility Criteria

- Applicant and individuals named within the Organizational Account Record must be in good corporate standing under their applicable laws and regulations.
- Applicant and individuals named within the Organizational Account Record must confirm that they are free and absent of:
  - Convictions of any crime related to financial or corporate governance activities, or judgements by a court to have committed fraud or breach of fiduciary duty, or subject of a judicial determination that is the substantive equivalent of any of these within the last ten years.
  - Disciplinary actions by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others within the last ten years.
  - Convictions of any willful tax-related fraud or willful evasion of tax liabilities within the last ten years.
  - Convictions of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or Representative within the last ten years.
  - Convictions of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
  - Convictions of any crime involving the use of a weapon, force, or the threat of force;
  - Convictions of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;
  - Convictions **within the last ten years** of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.
  - *Note: A past conviction for an offense that is no longer a criminal offense in the jurisdiction at the time of application shall not be considered.*
  - Convictions or been successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);
  - Convictions of aiding, abetting, facilitating, enabling, conspiring to commit, any of the listed crimes above; and
  - Entrance of a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes.
  - Systematic or repetitive engagement in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a systematic or repetitive engagement in cybersquatting.
  - Involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name

**Commented [23]:** what laws and regulations? Laws from USA or from Applicant origin? I think this criteria should be balanced because there are different ways to apply laws and regulations in each country and what could be denominated good standing in one place would be opposite in other. It will require a certificate or similar to check this status? What trustable can be?

**Commented [24]:** I believe this applies to the jurisdiction in which the applicant is located since it uses the word "their".

**Commented [25]:** Yes, that's correct. I've left the language as is

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**Commented [26]:** I believe this should be time bound. A person convicted of a drug related offense more than 10 years ago seems excessive. And how will one establish that what they did at the time is no longer a criminal offense? More difficult than it sounds.

**Commented [27]:** To present the absurdity, if you were convicted of embezzlement of funds, or willful evasion of tax-related fraud in a corporation, but it was not within the past 10 years, then you are golden. But if you were caught in Texas using marijuana 15 years ago, you are out of luck (because it is still not legal there).

**Commented [28]:** i've updated to add "within the last ten years"

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have been made against the applicant or any of the individuals named in the Organizational Account Record respectively, within the last 10 years.

## Applicant Onboarding Questions

An applicant must also answer the following questions in relation to the eligibility criteria: Information provided below must be provided in compliance with applicable laws and regulations.

1. Confirm to have read and understood the eligibility criteria and declare that neither the applicant nor any of the individuals named within the Organizational Account Record are subject to any of the above criteria that could impede eligibility.
2. Confirm that neither the applicant nor any of the individuals **or entities** named within the Organizational Account Record have been subject to any decisions indicating that the applicant or individual named in the Organizational Account Record was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation within the last ten years. If you are unable to confirm, please provide an [explanation](#).

*Note related to question 2 above: Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.*

- a. Confirm that neither the applicant nor any of the individuals named in the Organizational Account Record has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made against the applicant or any of the individuals named in the Organizational Account Record respectively within the last ten years. If you are unable to confirm, please provide an explanation.

### 1.2.4 Background Screening Results

Based on the outcome of the background screening, ICANN reserves the right to approve or not approve an application to proceed in the application process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive **commercial practices** as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders<sup>5</sup> may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process [\(see more in section 1.2.4.1\)](#).

<sup>5</sup> See: [https://www.oecd-ilibrary.org/industry-and-services/oecd-guidelines-for-protecting-consumers-from-fraudulent-and-deceptive-commercial-practices-across-borders\\_9789264103573-en-fr](https://www.oecd-ilibrary.org/industry-and-services/oecd-guidelines-for-protecting-consumers-from-fraudulent-and-deceptive-commercial-practices-across-borders_9789264103573-en-fr).

**Commented [29]:** This was pretty loose in the last round. There were registrars that were names in UDRP actions, but they formed a new entity that become the "Applicant". And since UDRPs are against an entity, not the persons running the entity, they avoided this criteria. Which meant that it was meaningless. Therefore, we need to be clear as to what is and what is not acceptable for this.

**Commented [30]:** Ex. Afternic has been involved as a Respondent in at least 15 UDRP actions where it was a "respondent" and where it lost. Afternic is owned by GoDaddy. Does that mean GoDaddy cannot apply to run a new TLD in the next round? Technically, the answer would be no if Afternic is not the TLD Applicant. I am not saying that is wrong at all. What I am saying is that the loophole swallows the rule and that being the case, why have the rule?

**Commented [31]:** Good point. However, am unsure what a solution could be. As an eg, Is it possible to look into the list of individuals or entities named as shareholders in a UDRP respondent entity?

**Commented [32]:** The point is that this rule/restriction is meaningless. So we either delete it completely, fix the rule so it applies to the applicant and any affiliated entity (as defined in the registry agreement) or we just admit to the community that this rule has these large loopholes. There were approx. 1,500 comments submitted on this topic during the last round.

**Commented [33]:** Add something so that the applicant has an opportunity to respond to an initial "judgement" by ICANN before it is a "decision" that might require a formal challenge/appeal process?

**Commented [34]:** As noted on the call and above in response to Justine, we will come back to this when we get to the challenges/appeals topic. placeholder has been inserted below for now.

**Commented [35]:** I know here we are talking about the definitions, but regularly those apply for OECD organization members and could be higher for some applicants. What if the applicant is from a non state OECD. Will apply the same?

**Commented [36]:** I imagine so. This prescribes the standard to be met by all applicants regardless of where applicants are incorporated. Could you perhaps elaborate how that might be a problem?

**Deleted:** [http://www.oecd.org/document/56/0,3746,en\\_2649\\_34267\\_2515000\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html)

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[1.2.4.1 Addressing Issues Identified during Background Screening](#)  
[\[Placeholder pending discussions regarding Limited Challenge/Appeal and Extended Evaluation\]](#)

Commented [37]: "opportunity to address..."