
1.3 Application Comments

1.3.1 Introduction

The Application Comments Forum was provided as a mechanism for interested parties to comment on any applications and to bring relevant information to the attention of parties charged with handling specific aspects of application processing (e.g., evaluation panels, the Independent Objector, ICANN). This section of the Program Implementation Review discusses the following aspects of the application comments process:

- Application Comments Window
- Application Comments Forum
- Application Comment Submission and Review

1.3.2 Relevant Guidance

The following guidance is relevant to the topic of application comments and will be discussed in further detail in Sections 1.3.3 and 1.3.4 of this report:

- GNSO Implementation Guideline C: “ICANN will provide frequent communications with applicants and the public including comment forums.”³¹
- GNSO Implementation Guideline Q: “ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.”
- Applicant Guidebook, Section 1.1.2.3: Comment Period³²
- Applicant Guidebook, Section 1.2.2: Required Documents
- Applicant Guidebook, Section 2.4.3.2: Code of Conduct Violations
- Applicant Guidebook, Section 3.2.5: Independent Objector
- Applicant Guidebook, Section 4.2.3: Community Priority Evaluation Criteria

1.3.3 Background

Section 1.1.2.3 of the AGB stated that “ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN’s website [. . .] This period will allow time for the community to review and submit comments on posted application materials.”

Consistent with the AGB, ICANN opened the Application Comment Forum on 13 June 2012 when the applied-for strings were published.

³¹ ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

³² ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

The forum provided interested parties with the opportunity to submit a comment on any application in any language. Comments had to be associated with a specific application and directed to one of the evaluation panels or objection grounds. Comments not relevant to an evaluation panel or objection ground could be submitted under the “Other” category. As of 31 July 2015, 12,691 comments have been submitted. The Registry Services and String Similarity evaluation panels received the highest number of comments (23% and 17% of all comments submitted, respectively). In contrast, the String Confusion Objection Ground and DNS Stability evaluation panel each received only 1% of the total number of comments submitted. Table 1.3.i shows a breakdown of application comments submitted by category.

Table 1.3.i: Breakdown of Application Comments Submitted by Category

Evaluation Panel/Objection Ground	# Comments Submitted	% of Total Comments
Background Screening	1,492	12%
String Similarity	2,099	17%
DNS Stability	127	1%
Geographic Names	495	4%
Technical & Operational Capability	402	3%
Financial Capability	403	3%
Registry Services	2,967	23%
Community Priority Evaluation	1,556	12%
String Confusion Objection Ground	186	1%
Legal Rights Objection Ground	327	3%
Limited Public Interest Objection Ground	1,050	8%
Community Objection Ground	976	8%
Other	611	5%
Total	12,691	100%

1.3.4 Assessment

1.3.4.1 APPLICATION COMMENT WINDOW

Section 1.1.2.3 of the AGB stated: “Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews.” This section of the AGB further said that “This period is subject to extension, should the volume of applications or other circumstances require.” Due to the higher than expected number of applications received (1,930 instead of the 500 estimated in the AGB), and in response to requests from the community for additional time to analyze and provide thoughtful comments on the high volume of applications, ICANN extended the comment period by 45 days.³³ The Application

³³ ICANN. (10 August 2012) Announcement: New gTLD Application Comment Period Extended. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-10aug12-en>

Comment Forum opened on 13 June 2012 when ICANN published application materials (see Section 1.1: Application Submission of this report) and the deadline for submission of comments to be considered by evaluators was extended from 12 August 2012 to 26 September 2012. A total of 11,716 comments were submitted for evaluators' consideration by 26 September 2012. Between 27 September 2012 and 31 July 2015, 975 additional comments were submitted on applications for various reasons--for example, as comments on application changes that ICANN approved, support or objection to an application on any of the objection grounds, support or objection to an application in CPE, and comments on voluntary Public Interest Commitments submitted by applicants. The total number of comments submitted as of 31 July 2015 was 12,691.

1.3.4.2 APPLICATION COMMENTS FORUM

The design of the Application Comment Forum built in some limitations; for example, a limit of 3,500 characters for each comment was put in place, and no attachments were allowed. These limitations were put in place to control processing time and costs based on concerns raised by evaluators that an unknown volume of additional materials would require an unknown number of additional resources to perform the review in order to enable them to meet the evaluation timeline set by ICANN, and that the applicants would use the Application Comments Forum as a mechanism to submit additional application materials to circumvent the character limit that the application system imposed on application responses (see Section 1.1: Application Submission of this report).

ICANN observed that commenters circumvented these limitations in several ways. Some submitted comments that exceeded the character limit by dividing them into multiple parts and submitting each part as a separate comment. Others submitted comments via correspondence to ICANN, particularly comments relating to applications in Community Priority Evaluation (CPE). Comments received via correspondence were published to the Correspondence page of the microsite. Although submission of comments in multiple parts resulted in a higher count of comments that the evaluators had to review, these alternate methods of comment submission did not create additional cost to the Program or cause delays to Program timelines.

Although these limitations achieved the intended efficiency for ICANN and evaluation panels, they may not have provided commenters with a good user experience of the tool. In addition, they might have unintentionally directed commenters away from using the forum for its intended purpose, which was to bring forward any relevant information or issues regarding an application.

GNSO Implementation Guideline Q stated that ICANN would provide an automatic reply to all those who submitted public comments that would explain the objection procedure (which was separate from the application comments procedure). This implementation guideline assumed that comments would be provided via email and thus, an automatic reply would be possible. Since the Application Comments Forum implemented as a web-based tool, in lieu of an automatic reply, information about the objection process was provided on the home page of the Application Comment Forum and the login page for submitting a comment.

1.3.4.3 APPLICATION COMMENTS SUBMISSION AND REVIEW

Section 1.1.2.3 of the AGB stated: “In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant.” The evaluators followed this guidance and provided applicants with an opportunity to address any comments that would cause them to change the score of an application by issuing a Clarifying Question (see Section 2.1: Initial and Extended Evaluation of this report). Less than 1% of application comments submitted resulted in the evaluation panel issuing a Clarifying Question. Although the volume of comments resulting in Clarifying Questions was low, public comment mechanisms are a core part of ICANN’s policy development, implementation, and operational processes. Providing a public comment mechanism allows for issues and concerns relating to applications to be considered.

Also consistent with the AGB, comments directed to the Limited Public Interest and Community objection grounds were considered by the Independent Objector if they were submitted prior to the close of the formal objection window. See Section 3.1: GAC Advice of this report for more information regarding the role of the Independent Objector and the formal objection process. The Independent Objector filed 24 objections, 18 of which were filed on applications that received comment(s) directed to the Community or Limited Public Interest objection ground.

For comments directed to the CPE panel (see Section 4.1: Application Processing of this report), the AGB did not specify a specific timeline for the comment window. ICANN set the comment window as 13 June 2012 (Reveal Day) through 14 days after the CPE invitation date, which was posted on the New gTLD microsite. All comments submitted within this window were considered by the CPE panel. This comment window was communicated to applicants and the community in webinars and in FAQs that were posted on the microsite prior to the start of CPE. The CPE panel had the fourth highest number of comments out of the 13 possible categories for which comments could be submitted. Also, as mentioned in Section 1.1.4.2 above, the limitation of the Application Comment Forum of not allowing attachments resulted in commenters submitting comments for the CPE panel via correspondence. This correspondence included submission of additional letters of support and mock evaluations performed by applicants and competitors of the applicant undergoing CPE.

Outside of IE, Objections, and CPE, the Application Comment Forum was also used to solicit comments on approved application change requests (see Section 1.4: Application Change Requests of this report), on Public Interest Commitment (PIC) statements submitted by applicants, and on complaints of code of conduct violations of an evaluation panelist (as specified in Section 2.4.3.2 of the AGB). However, there were no application change request, PIC, or code of conduct violation options to choose from when submitting or viewing a comment, which did not provide clarity for viewing comments and might also have created confusion for commenters.

The AGB describes the use of comment windows for comments to be considered by the evaluation panels and Independent Objector. However, ongoing review of the comments, and whether and how comments should be responded to was not specified by the AGB. As such, ICANN reviewed comments during certain windows of time such as when approved change requests or PICs were posted for 30-day comment periods. ICANN did not perform ongoing review of comments submitted in the forum.

In cases where the comments submitted required follow-up with applicants, ICANN performed the follow-up directly with the applicant to address any concerns or issues brought up in the comments. ICANN provided responses to commenters only in cases where the commenter also submitted a Customer Service inquiry or correspondence related to the same issue brought up in the Application Comment Forum.

1.3.5 Conclusion

The goal of creating the Application Comment Forum for the New gTLD Program was to provide a publicly accessible input mechanism that would be manageable given the unknown volume of applications and application comments. The Application Comment Forum was implemented in alignment with the AGB, and in some respects, it satisfied its intended purpose of providing a means for interested parties to bring forward any relevant information or issues regarding an application for consideration by those charged with handling applications.

There are some important lessons learned from the implementation of the Application Comment Forum that would be useful input to the development of procedures for future rounds.

ICANN put in place a character limit for comments and did not allow attachments to be submitted in the Application Comment Forum in order to control application processing time and costs, to prevent applicants from using the forum to supplement application materials and circumvent the character limit that TAS put in place for application responses, and to provide evaluation panels with some predictability regarding volume of comments. In spite of this, ICANN observed that applicants bypassed these limitations by breaking comments into multiple parts and submitting each part as a separate comment or by submitting comments via correspondence to ICANN. As such, the initial intention of the limitations was not met, and instead, the limitations might have diverted commenters away from using the forum to submit comments. ICANN should explore implementing additional functionalities that will improve the usability of the forum.

Outside of the AGB-prescribed uses of the Application Comment Forum, the forum was also used in this application round to obtain comment on approved application change requests and Public Interest Commitment statements submitted by applicants. However, the Application Comment Forum did not provide these as categories for commenters to select when submitting comments. This created confusion for the commenters and inefficiencies for ICANN as it was not always clear which comments were submitted for what purpose. If the Application Comment Forum is to be used for additional purposes, those purposes should be taken into consideration during the design phase of the tool.

In summary:

1.3.a Explore implementing additional functionality that will improve the usability of the Application Comment Forum

1.3.b Provide additional clarity around the intended use of the Application Comment Forum, including timelines and ways to indicate the type of comment being submitted