1.4 Application Change Requests

1.4.1 Introduction

The application change request (ACR) process allowed applicants to notify ICANN of changes to application materials prior to the execution of the Registry Agreement. This section of the Program Implementation Review report discusses the following aspects of the application change request process:

- ACR Evaluation Criteria
- ACR Process
- Re-evaluation

1.4.2 Relevant Guidance

The following guidance is relevant to the topic of Contracting and will be discussed in further detail in Sections 1.4.3 and 1.4.4 of this report:

- GNSO Recommendation 1:

  ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.
  All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process. [34]

- Applicant Guidebook, Section 1.2.7: Notice of Changes to Information[35]

1.4.3 Background

Section 1.2.7 of the AGB required applicants to promptly notify ICANN if application information became untrue or inaccurate. The requirement was intended to maintain the integrity of application materials.

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[34] 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
[35] 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

As early as during the application window, ICANN processed change requests to application materials. Although applicants could make changes to the application anytime up to submission, the TLD Application System (see Section 1.1: Application Submission and Section 8.1: Processes, Systems, and Resources of this report) did not allow applicants to modify application information once the complete application had been submitted. The majority of the changes that ICANN processed during the application window were changes to Questions 1-11 of the questionnaire in Module 2 of the AGB, and all ACRs were accepted as applicants were allowed to make any changes to their applications prior to the close of the application window.

After the application window closed, ICANN received a large number of requests to change application materials. Thirty-three requests were submitted between the close of the application window and Reveal Day. An additional 69 requests were submitted between Reveal Day and 4 September 2012. ICANN approved 89 of these 102 requests during the period between the close of the application window and 4 September 2012.

For transparency purposes and to standardize processes, on 5 September 2012, ICANN published a process for requesting changes to application materials, as well as the criteria used to evaluate the requests.[36] The process consisted of four steps:

1. Verify and validate the request to ensure that only those authorized to make changes to the application were able to do so (i.e., the application's primary contact).
2. Review the change request against the seven criteria.
3. Notify the applicant of the determination.
4. If the request was approved, make the changes and post them for a 30-day comment period.

The Application Comment Forum (see Section 1.3: Application Comments of this report) was used as the mechanism to gather comments on approved change requests. Between the close of the application window and the publication of the ACR process, there were 102 change requests submitted to the Customer Service Center.

ICANN continued to process application change requests throughout application processing.

On 30 September 2014, ICANN published updates to the change request process.[37] One of the main updates to the process was no longer requiring a 30-day comment period for certain types of changes, such as changes to confidential portions of the application and updates to the application as a normal course of business (e.g., changes to the applicant's contact information, stock symbol, or business/ tax ID). The removal of the 30-day comment period for certain change requests was intended to allow applicants to move expeditiously forward in the Program and because less than 1% of approved change requests received comments during the 30-day comment window.

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[36] ICANN. (5 September 2012) Announcement: New gTLD Application Change Request Process and Criteria. Retrieved from http://newgtlds.icann.org/en/announcements-and-media/announcement-2-05sep12-en
[37] ICANN. (30 September 2014) Announcement: ICANN Updates Change Request Process. Retrieved from http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en

As of 31 July 2015, ICANN had processed 2,587 change requests. Change request statistics were available on the Change Request page of the New gTLD microsite and were updated monthly.[38]

1.4.4 Assessment

1.4.4.1 APPLICATION CHANGE REQUEST EVALUATION CRITERIA

To provide predictability and to allow for objective and consistent review of ACRs, ICANN published the seven criteria used to evaluate change requests.[39] These criteria were carefully developed to balance applicants' needs to update application information as a normal course of business and to provide fairness to all other applicants and third parties. The seven criteria were:

1. Explanation: Is a reasonable explanation provided?
2. Evidence that original submission was in error: Are there indicia to support an assertion that the change merely corrects an error?
3. Other third parties affected: Does the change affect other third parties materially?
4. Precedents: Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. Fairness to applicants: Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. Materiality: Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. Timing: Does the timing interfere with the evaluation process in some way?

These criteria were consistently applied to evaluate each change request.

1.4.4.2 APPLICATION CHANGE MANAGEMENT

The questionnaire in Module 2 of the AGB specified the 50 questions that made up the application for a new gTLD. Some of the 50 questions gathered information regarding the applying entity, points of contact for communications regarding the application, and the applicant's intended operation of the TLD.

As all questions were considered part of the application, changes to any information in any of the application question had to go through the defined ACR process. For example, a change to the technical portion of the application as a result of the applicant's decision to outsource its back-end registry services to a different service provider would have required the applicant to submit a change

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[38] ICANN. New gTLD Application Change Request Process and Criteria: Statistics. Retrieved from http://newgtlds.icann.org/en/applicants/customer-service/change-requests#statistics
[39] ICANN. New GTLD Application Change Request Process and Criteria: Change Request Determination Criteria. Retrieved from http://newgtlds.icann.org/en/applicants/customer-service/change-requests#determination

request form to ICANN, provide the required information for ICANN to verify and validate the request, and for ICANN to review the request against the seven criteria and provide the applicant with a determination. The application would then be subject to a 30-day comment period and a re-evaluation of the application if the change took place after IE results for the application had been released. A change to the applicant's business phone number, which happened as a normal course of business, would have required the applicant to go through the same process, with the exception that re-evaluation would not have been required.

1.4.4.3 IMPACT OF APPLICATION CHANGE REQUEST ON PROGRAM PROCESSES

The ACR process was an effective mechanism for applicants in some Program processes, but it also created inefficiency in other Program processes.

For applications that went through Extended Evaluation (see Section 2.1: Initial and Extended Evaluation of this report), the ACR process provided applicants with an opportunity to address the deficiencies preventing them from successfully passing IE.

The ACR process was also used as a mechanism for applicants to address GAC Early Warning and GAC Advice (see Section 3.1: GAC Advice of this report). Applicants that entered into dialogue with the government(s) that issued GAC Early Warning on their applications and arrived at a mutual understanding after such dialogue, could submit an ACR to update their applications to reflect the mutual understanding reached with the government(s). Applicants that were subject to GAC Category 2 Advice (see Section 3.1: GAC Advice of this report) could move forward to Contracting (see Section 5.1: Contracting of this report) by updating their applications so that they would be in compliance with Section 3.d of Specification 11 of the base Registry Agreement.[40]

However, the ACR process presented operational challenges for IE, contention resolution, and contracting.

During IE (see Section 2.1: Initial and Extended Evaluation of this report), ICANN received a number of change requests prior to the publication of the IE results. Aside from changes that arose as a normal course of business, reasons that applicants submitted changes to applications prior to the publication of IE results included:

- To address deficiencies in the application materials prior to receiving Clarifying Questions because they received Clarifying Questions on similar application materials that had gone through evaluation.
- To submit Continuing Operations Instruments (see Section 7.1: Continuing Operations Instrument of this report) because they could not meet the deadline to submit them during the window provided to respond to Clarifying Questions.
- Because they engaged a different vendor to perform the back-end registry services, resulting in changes to the technical plans for the TLD.

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[40] ICANN. Registry Agreement. Retrieved from
http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf

■ Because the intended operations of the TLD changed.

Although the ACR process allowed applicants to update application information and improve their chances of successfully passing IE, ACRs during IE in most cases delayed the release of IE results for the application because of processing and review time. Changes to application materials prior to IE results release also required the evaluation panel to re-perform evaluation of the application, creating inefficiency in the evaluation process.

During the contention resolution process, some applicants submitted ACRs for applications that were self-designated as community applications and were qualified for CPE (see Section 4.1: Community Priority Evaluation of this report) to modify the community definition or registration policies. For these cases, ICANN deferred or denied the requests because such changes could impact the outcome of CPE. Approval of a change request to update a community definition and registration policies would have allowed a CPE applicant to update its application based on information learned from previously posted CPE results. This could have caused issues of unfairness to the first applicants who went through CPE that did not have the benefit of learning from others. Allowing such a change request would also improve the CPE applicant's chances to prevail in CPE, negatively impacting the other applicants in the same contention set. Therefore, although viewed as necessary from the CPE applicant's perspective to maximize its ability to pass CPE, approval of a change request to update a community's definition and registration policies prior to the completion of CPE would cause issues of unfairness to other applicants in the same contention set.

During the Contracting process (see Section 5.1: Contracting of this report), a number of ACRs were submitted. The majority of the changes were due to changes as a normal course of business (e.g., officer/director changes). However, it was possible that some applicants delayed the process by not providing ICANN with the necessary information to process the change request. Other changes were material changes, including changes to the entire technical portion of the application. These change requests caused delays to the applications and in some cases caused the applicants to miss the RA signing deadline date.[41] Table 1.4.i provides a break-down of the various types of change requests submitted.

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[41] On 15 September 2014, ICANN implemented a Contracting extension process to allow applicants to request additional time to complete required activities such as change request in order to sign the Registry Agreement.

Table 1.4.i: Breakdown of Change Request Types
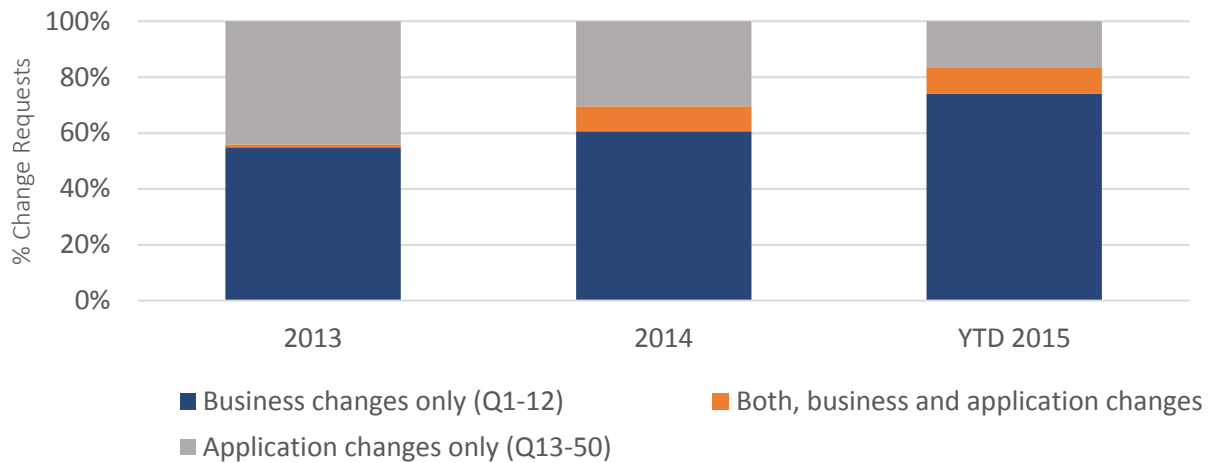
Another operational challenge that the ACR process presented was the significant amount of time and resources required to process the high volume of change requests for both ICANN and service providers. A total of 2,587 change requests were submitted as of 31 July 2015. Each change request required administrative processing, follow-up with applicants to obtain required information, significant time and breadth of resources to review the requests, and coordination with service providers to perform any additional application evaluations required.

1.4.5 Conclusion

The application change request process provided applicants with a standardized way to notify ICANN of changes to application materials. The criteria used to evaluate change requests allowed for consistent review of change requests and predictability into what factors were taken into consideration when reviewing change requests.

Because the overall timeline of the New gTLD Program spanned at least 15 months, the number of application change requests submitted was larger than anticipated. The lesson learned is that ICANN should take into account application change management and, therefore, design ACR processes and criteria prior to the start of application processing.

ICANN should also consider whether certain changes could be processed differently. For example, should primary contacts be able to update certain information, such as the applicant's phone number, without having to go through the ACR process?

In summary:

> **1.4.a** Design application change request processes and criteria prior to the start of application processing

1.4.b Consider whether all types of application changes should be processed the same way