
2.2 Background Screening

2.2.1 Introduction

Background screening was a review performed on all applying entities, and all individuals and organizations disclosed in Questions 9-11 of the application, which included officers and directors of the applying entities, in addition to shareholders owning a significant stake in the entity.

2.2.2 Relevant Guidance

The following guidance is relevant to the topic of Background Screening and will be discussed in further detail in Sections 2.2.3 and 2.2.4 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.⁶⁴

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Implementation Guideline L: “The use of personal data must be limited to the purpose for which it is collected.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process⁶⁵
- Applicant Guidebook, Section 2.1: Background Screening
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria

2.2.3 Background

Background screening was a review put in place to help protect the public interest during the allocation of critical Internet resources. It was performed on all applying entities and all individuals and organizations disclosed in Questions 9-11 of the application, which included officers and directors of the applying entities, in addition to shareholders owning a significant stake in the entity.

⁶⁴ 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>

⁶⁵ 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>

In support of GNSO Implementation Guideline L, and in recognition of the sensitive nature of the information, ICANN treated this information with care and only used it for the purpose of background screening and when required for application processing.

ICANN engaged an independent third-party service provider, PricewaterhouseCoopers (PwC), to perform background screening against criteria in Section 2.1.1 of the Applicant Guidebook in the following two areas:

1. General business diligence and criminal history
2. History of cybersquatting behavior

Background screening was performed as part of Initial Evaluation (IE). IE processes are described in detail in Section 2.1: Initial and Extended Evaluation of this report. Authorization for ICANN to perform background screening was provided by the applicant when it signed and agreed to the terms and conditions for participating in the New gTLD Program.^{66,67,68} In order to perform background screening, ICANN collected information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders. The names and positions of individuals included in the application were published as part of the application, but other information collected about the individuals was not published.

Results of background screening were included in the IE reports. Where there were issues identified during background screening, applicants were given the opportunity to address them during IE. The AGB described the background screening process as one required to determine eligibility in the New gTLD Program. As such, background screening was not an evaluation eligible for EE. The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application had to resolve (e.g., contention resolution, dispute resolution).

2.2.4 Assessment

Background screening was a mitigation measure intended to ensure that individuals and entities with criminal backgrounds, history of cybersquatting behavior, or other similar serious issues were not entrusted with TLDs.

Section 2.1.1 of the AGB defined specific criteria for background screening. The areas of background screening that were performed were general business diligence, criminal history, and history of

⁶⁶ ICANN. New gTLD Program Personal Data Privacy Statement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/program-privacy>

⁶⁷ ICANN. Top-Level Domain Application Terms and Conditions. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/terms>

⁶⁸ ICANN. TLD Application System: Terms of Use – Applicants. Retrieved from <http://newgtlds.icann.org/en/applicants/tas/terms>

cybersquatting behavior. ICANN worked with the background screening provider to develop a robust background screening process that would support the criteria in the AGB, including background screens of the applying entity, officers, directors, and major shareholders for general business diligence, criminal history, and history of cybersquatting behavior.

To address cybersquatting, the AGB required applicants to disclose whether the applying entity or any individuals named in the application were engaged in cybersquatting or reverse domain name hijacking as defined in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation. The background screening provider reviewed public records of UDRP proceedings.

If an initial background screen result did not clearly satisfy the AGB criteria for an application, ICANN and the background screening provider performed additional due diligence to ensure a more comprehensive review of the entity or individual. For some applications, ICANN staff performed several rounds of outreach to the applicant in order to acquire additional information that would better inform the background screening process and to ensure that the appropriate parties were being evaluated.

The same criteria were used to evaluate all applicants. However, the Section 2.4.4 of the AGB stated, “Applying entities that [were] publicly traded corporations listed and in good standing on any of the world’s largest 25 stock exchanges [. . .] [would] be deemed to have passed the general business diligence and criminal history screening.” This distinction was based on the idea that publicly listed corporations were regulated by their exchanges and subject to ongoing scrutiny, which met or exceeded ICANN’s criteria.

The AGB criteria relating to top-25 exchanges referred specifically to the applying entity, but the individuals (officers, directors) associated with these publicly traded entities were not considered as being exempt from the general business diligence and criminal history screening.

Within the application, ICANN collected specific information from applicants regarding individuals associated with the application. This was based on direct input from the background screening provider, regarding the minimum amount of information required to run a meaningful background screen. ICANN received feedback from applicants who did not want to provide personal information for officers and directors. In particular, some applicants indicated that performing a background screen on their officers and directors was not necessary, as they were required to meet a higher standard by the exchanges on which they were traded.

As background screening was performed at the entity level, although there were 1,930 applications, background screens were performed on approximately 1,150 entities.

In cases where additional information was required, the background screening panel issued Clarifying Questions (CQs) to the applicant. Once the panel had reviewed all application materials and CQ responses, the panel provided a report to ICANN. ICANN evaluated the report against the criteria in the AGB, and incorporated the results into the IE report. IE reports were released on a weekly basis, by application prioritization number (see Section 1.2: Prioritization of this report).

The AGB anticipated that IE would take five months. As the IE timeline was extended to 18 months due to the high volume of applications, the number of applications that required a rescreening was much higher than anticipated. Both during IE and beyond (during the Contracting process), many background screens had to be re-performed because of changes due to the normal course of business. Between August 2013 and July 2015, approximately 34 percent of over 1,200 change requests submitted resulted in background screening being re-performed. The high percentage could be attributed to the large gap in time between completion of IE and execution of the Registry Agreement (RA),⁶⁹ during which many changes occurred as part of the normal course of business. These changes created work for the applicant (to update the information in the application) and for ICANN (to re-perform the background screen). Additionally, the changes added to the cost of retaining the service provider, including the incremental cost of performing additional background screenings.

After IE results had been published, ICANN reserved the right to perform additional due diligence as required, such as before executing a Registry Agreement or after a change to certain application responses.

2.2.5 Conclusion

Background screening was performed in alignment with the AGB. While the process was successful in that it provided an opportunity for all applicants to be screened, observations from implementation suggest that there are opportunities for improvement to the background screening process to make it more effective.

Background screening was performed during IE. This timing was intended to prevent applicants that did not meet the eligibility criteria from progressing beyond IE and participating in downstream processes which could affect other applicants (e.g., objections, contention resolution). However, the time between the application submission deadline and the signing of Registry Agreements was longer than anticipated. This elongation of the time period required many applicants to submit application changes occurring during the normal course of business (e.g., officer and director changes) and thus require the background screening to be re-performed. Consideration should be given as to whether background screening should be performed as part of evaluation or at the time of Contracting in order to minimize the number of application updates and background screenings.

ICANN interpreted Section 2.1.1 of the AGB, which deemed that applicants that were traded on top-25 exchanges had passed the general business diligence and criminal history screening, to apply to the applying entity but not the individuals associated with the applying entity. Some applicants commented that they did not want to provide personal information on their officers and directors, and indicated that performing a background screen on their officers and directors was not necessary, as they were required to meet a higher standard by the exchanges on which they were traded. For future rounds, consideration should be given as to whether the procedures and criteria could be adjusted to account for a meaningful background screen in a variety of cases (e.g., newly formed

⁶⁹ As of 31 July 2015, 59% of applicants signed the Registry Agreement within the allotted 9-month window.

entities, publicly traded companies, companies in jurisdiction that do not provide readily available information).

In summary:

2.2.a Consider whether background screening should be performed during IE or at the time of contract execution

2.2.b Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information)