Community Comment 2

Public Comment Review Tool

1.3 Clarity of Application Process			
#	**Comment**	**Contributor**	**WG Response**
1.3.1 - The WG noted that there were a number of changes to the gTLD program after the release of the Applicant Guidebook, including the processes for change requests, customer support, application prioritization, Registry Agreement, etc. Many applicants have stated that the changes impacted their TLD applications throughout the application process both before submission and after the applications were submitted resulting in confusion, additional work and overall dissatisfaction. For instance, the final version of the Applicant Guidebook was released in June of 2012, which was nearly half a year after the application submission period started. Another example would be the difficulty in reaching a common understanding on the requirements for procuring a Continuing Operations Instrument (COI). How should changes to the Applicant Guidebook and/or the new gTLD Program be handled in subsequent application windows?			
1	Consistent with Recommendation 1 in the 2007 Final Report, INTA urges that improvements to the Applicant Guidebook (AGB) be made to ensure that "all applicants for a new gTLD registry…be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process" [emphasis added]. As applicants found in Round 1, changes to the gTLD program after the application submission period resulted in a lack of transparent and predictable criteria, raising claims of unfairness and gamesmanship. In order to ensure fairness, transparency and non-discrimination, INTA urges the Working Group to consider the following: 1. The AGB is the proper vehicle for implementation of the GNSO New gTLD policy recommendations; and 2. The AGB must be clear and unambiguous, not subject to change at Community whim.	INTA	
2	The GAC supports any reasonable measures that streamline application procedures (thereby reducing compliance costs) but that also enable due consideration of public policy issues raised by the GAC. As noted in the GAC's response to the first round of community consultation questions from the PDP WG, with regard to predictability: *Many gTLD policy issues require resolution at the global rather than the national level. For many purposes, in practice this means resolution within ICANN processes to ensure consistency, as application of national laws country-by-country may not be sufficient. The GAC – and others – need a degree of flexibility to respond to emerging issues in this global space which is operated by ICANN and the community according to contractual arrangements and communitydeveloped policies and procedures. The need for such flexibility continues after the conclusion of a GNSO PDP.*	GAC	

3	Our experience of round 1 confirms that the 'moving of the goal posts' during the application period was unhelpful and we agree with the WG statements noted above. Clearly with the benefit of all of the experiences of round 1 we hope (expect?) that the guidebook and all associated processes and policies are firmed up well ahead of the application period opening, and that no changes at all would be made after that point. To that end we strongly suggest that as few changes as possible are made to the current wording, even though much of it could no doubt be simplified and improved. Even as an industry insider and with a very substantial balance sheet we found it challenging both to interpret and implement the COI requirements. The cost and expense in policy terms was very hard to justify to prospective applicants.	Nominet	
4	As this PDP working group is discovering, there was much to learn about the application process –from the perspectives of both the applicant and ICANN staff. For the next round we should expect the applicant Guidebook to be finalized before the application period opens.	BC	
5	If changes are made to the guidebook after applications are submitted there needs to be some sort of mechanism that allows impacted applicants the chance to either receive a full refund, or be tracked into a parallel process that deals with their issues directly without impacting the rest of the program. In the last round, there were no prohibitions against so called "closed generics" in the applicant guidebook. Several entities applied in good faith and ICANN accepted their $185,000 in application fees. It wasn't until months (if not more than a year later) that a provision was added to the registry agreement by ICANN that prohibits closed generics. The appropriate response in my opinion. But those who did apply, should have been offered full refunds as there were no prohibitions at the time of application. The rules of the game changed after they applied and they should not be penalized as a result. Another example involves the applications for .MAIL, .CORP and .HOME. ICANN was first made aware of the issue of name collisions via SAC045 which was developed by the SSAC on November 15, 2010, https://www.icann.org/en/system/files/files/sac-045-en.pdf. ICANN's failure to address the issue prior to opening the application window has caused many issues, including sending these applications into a permanent state of limbo. ICANN collected millions in application fees from these parties yet has stated it does not intend to offer them a full refund. If ICANN had addressed this issue prior to the opening of the window, these applicants would have never been able to apply, saving them the time and resources spent developing these applications.	Jim Prendergast	

6	The 2012 round was the first of its kind and presented many challenges both prior to and after the application window was opened. There was a higher than anticipated demand for new gTLD applications, which included different models of registries (dotBrands, highly-restricted, closed-generics, etc). The impact of this was significant in terms of following the application process, due to areas of the Applicant Guidebook having insufficient detail resulting in many challenges that were not predicted or had not been resolved prior to the launch of the new gTLD program. It is important that ICANN and the community uses the experiences and the output of the many different reviews undertaken to adjust and refine the policies, application processes and, in turn, the Applicant Guidebook. This should help to remove or minimise any ambiguities, enhance predictability of the application process, and apply only relevant and reasoned restrictions and obligations on applicants. The Applicant Guidebook and associated policies should also be adapted to encourage new applicants and different operating models that were introduced in the 2012 round, to encourage innovation and user safeguards. Following this through will ensure that each future application window or process will face fewer exceptions and challenges.	BRG	
7	How should changes to the Applicant Guidebook and/or the new gTLD Program be handled in subsequent application windows? 1) Ideally there would be no more application windows since the last one was such a disaster. 2) If there is another "window" the Applicant Guidebook should be "trashed" — ICANN needs to start over and do it right this time.	John Poole	
8	It is imperative that ICANN finalize the Applicant Guidebook prior to starting this Program. With ample experience introducing over 1,000 new TLDs, and the help of the community, this document must be finalized to ensure fairness and predictability.	Afilias	

9	The Applicant Guidebook did not adequately anticipate many implementation challenges that arose during the 2012 round, which resulted in ICANN staff needing to develop processes and procedures after the Guidebook was published. This often resulted in processes that were different than what was anticipated in the Guidebook and, in nearly every instance, created delays to the timelines of each phase that followed the application submission period. The regular stream of new procedures and the delays they caused made it impossible for applicants to have any predictability about the process to eventually delegate their gTLDs and created the need to constantly monitor ICANN's activities for new developments that would materially impact their operations. For future gTLD application procedures, any implementation processes that will be carried over from the 2012 round should be consolidated, documented, and made available to applicants, either through an Applicant Guidebook-type mechanism or another medium that is easily accessible for applicants. This medium should be easily searchable in its digital format and easily printed. Where process and procedural changes are further required after the new Applicant Guidebook or its replacement is published, those changes should be clearly documented in a medium that is easily accessed by all applicants, and ICANN should make every effort to communicate these changes directly to applicants. Where possible, ICANN should note which portion of the Applicant Guidebook (or its replacement) is being altered, how, and on what basis (e.g. recommendation from the community, staff addressing procedural issues, etc.). Where necessary, ICANN should also make very clear the timeline on which the changes will take place, and if the changes will impact the time it takes for applications to proceed through evaluation to delegation. Additionally, an appeal process should be instituted that will allow an applicant to appeal a process or procedure decision made by ICANN that would adversely impact the viability of the applicant's application.	RySG	
10	See response to 1.1.1. Such operational issues are of little concern to the general public.	ALAC	
11	The need for major changes to the AGB/application processes once a given application window has opened should be minimised or ideally eradicated, since it causes severe disruption to business planning and budgeting. However, if there are exceptional circumstances in which the AGB/application processes need to be changed, prompt and clear communication to the applicant community is key. The transparency and credibility of application timelines should also be enhanced in future rounds. ICANN should ensure that no future new gTLD round begins without a detailed, realistic, publicly available review of expected timelines for application processes. Since applicants do not have the luxury of missing deadlines and extending timelines then neither should ICANN save in the most exceptional of circumstances. Where timelines are missed during future rounds, ICANN should ensure prompt reporting to the community of (1) why the timeline was missed and (2) what measures have been taken to avoid a repeat occurrence.	Valideus	

12	Application Change Request Process Issue: During the 2012 application round, and subsequent evaluation period, there was no clear process for applicants to follow if they wanted or needed to make changes to their new gTLD applications. Given how long the evaluation process took, a number of applicants found it necessary to submit changes to their applications in order to maintain the accuracy of those applications. Without a clear procedure in place from the outset, ICANN staff was forced to create procedures on the fly, creating a burden on applicants to keep up with changes. Recommendation: A formalized procedure for making changes to a new gTLD application, based on what worked well during the 2012 Round, should be developed and made widely available to applicants prior to future application procedures. Registry Agreement Issue: The 2012 Applicant Guidebook featured a baseline version of the new gTLD Registry Agreement, but the final text of the Agreement that new gTLD applicants eventually signed differed substantially from that published version. Recommendation: A final or near-final version of the baseline Registry Agreement should be published and made available to new gTLD applicants in advance of any future application procedures.	RySG letter **Note: this document was not submitted as part of CC2	