Actions/Discussion Notes -- New gTLD Subsequent Procedures PDP WG

Thursday, 03 November 2016

Note: These are informal notes and do not replace the recording and transcript.

Slides:
https://community.icann.org/download/attachments/63147381/ICANN57_F2F_28Oct2016.pdf?version=1&modificationDate=1478523488931&api=v2

1. *Current Status:*

Community Comment 1: Overarching Issues:

- Extensive PDP with 38 subjects or more. Divided in two parts: CC1 is 6 overarching issues.
- Got comments from some SOs and ACs and Stakeholder Groups. Going through the comments and trying to answer the questions, such as "Do we need more TLDs?" "Do we do rounds?" "Tradeoffs between flexibility and accountability?" – that is ongoing work and may affect the work of the Work Track Sub Teams. That will become the first part of the draft recommendations, which will come later.

Work Tracks:

- Established 4 Work Tracks to look at the detailed subjects.
- There is an existing policy, but it can be changed.
- There are existing application procedures, but those too can be changed.
- Look at the policies, were they defined well enough, etc.? We are starting from experience, policy, and the Application Guidebook.

Community Comment 2:

- Completed CC1 and now will do CC2.
- Built on questions that come out of the various Work Tracks.
- We intend to get to CC2 at the beginning of 2017.
- It will be sent to all the SOs, ACs, Stakeholder Groups, and Constituencies. These are really nitty gritty issues.
- Timeline: June 2017: Project finishing all of the Work Tracks. Beginning of August, bring all Work Track work to the full PDP WG. Either accepted as a draft recommendation or more work. October 2017, publish initial report for public comment. January 2018: Publish summary of Public Comment.

2. *Update from CCT-RT and RPMs PDP:*

Jonathan Zuck, CCT-RT Chair:
- Also looking at the application evaluation process, which is where we have overlap with this PDP WG.
- High level findings: There has not been a lot of time that has passed so hard to judge the competitive effects on the markets. Instead, finding reasonably positive trends with some pickups that deserve attention.
- Statistics:
    - Of the growth of new TLD registrations, half of them are new gTLDs. Also about a third of the growth in the TLD marketplace as a whole.
    - The overall impact on market share or concentration is going to be minimal. Some indicators suggest we are heading in the right direction.
    - Difficult to measure consumer trust, so we did surveys through Nielson to see if there was a significant delta between perceived trust and overall trust. There are some positive indicators. If we look at consumer preferences, they like to be able to predict where they are going based on the taxonomy. Also, having restrictions on who can buy. Most of this hasn't had an impact on their trust, but suggestion some innovations could enhance consumer trust. Looked also at the notion of trustworthiness of the DNS in the form of safeguards, public interest commitments, etc. Where they implemented effectively. There has been so little testing of these things, but appears that they were implemented as described. Those are positive indicators.
    - Overall issue: The paucity of data. Not enough made available to do the research we want to do. Number 1 recommendation is that ICANN collect more data up front and continuously. We don't know much about pricing. Did not get data from a survey of registrars. Didn't get information on wholesale pricing.
- Focus on the application and evaluation process. Looking for discriminatory aspects. Created two different types of surveys: 1) applications – 512 applicants. Try to get more applicants to fill out the survey. 2) Tried to ask everybody who didn't apply why they didn't apply.
- Hired AMGlobal – Andrew Mack. Had him look at the cohorts in the global south who did apply for new strings and looked at the types of entities. Then approached those as to why they didn't apply. Also an Economic Study (Analysis Group). All studies are available.
- AMGlobal Summary: Findings – real problem with awareness/misinformation. Didn't have enough information to know whether they should apply. Reach out at professional associations or conferences. Looking at different outreach tools. Building better instructions. Identifying lists of people who can help you. A lot of people didn't understand the potential business model. Cost and complexity – perception that the cost was too high. Building a consistent and ongoing model for outreach. So little understanding of the business model is a barrier.

Question: How many domains under new gTLDs are actually lit up?
Answer: We talked today about "parked" domains.
Questions: 1) Is there a better model for acceptance? 2) Any attempt to sample redirects, say on a smaller sample?

- Look at the Nielson surveys when they come out. Survey of people who applied, those who already made it through, and drop outs. (See slide 12.) Is there a higher level of abuse in new gTLDs? There is a public session and also a retail report coming out.
- Update on CWG-UCTN (use of country territory names): Have an outlet in this PDP, but some concerns that this isn't the right place. Independent from what the CWG. Concern that there is different work in the community that is related. Interest in finding a way to pull all of the threads together.

Kathy Kleinman RPM for New gTLD PDP WG:

- We will have a public meeting. Issues include Trademark Clearing House, UDRP, etc. Phase 1 to feed back into the work of this PDP WG.
- Paul McGrady: When you say that the RPM phase 1 will feed back into this project...?
- We do have periodic chairs' meetings. Trying for Sundays.

3. *Work Track-Based Discussions:*

Questions:

Work Track 1:

i.   What went wrong with the Applicant Support Program in the 2012 round? Were the issues related to the guidance in the Joint Applicant Support WG's Final Report, the implementation (and timing issues), the scope of the support, systemic issues, other, or a combination of multiple factors? How can these issues be improved or resolved? Is there a need for such a program in future rounds?
ii. From RSP Accreditation to Third-Party Certifier - what is the most effective method to meet the needs of RSPs, Registries, Registrars, Applicants, and possibly registrants/end/users? How will existing RSP's be treated differently from new RSP's? What are some ways to ensure the best practices are attained to ensure security and stability?

Work Track 2:

i.   Is a single Registry Agreement still suitable for the needs of all new gTLDs moving forward? Some have argued that different "categories" of new gTLDs warrant differential treatment in the Registry Agreements which are more suited to their TLDs' unique characteristics. Do we need to consider allowing for category based agreements and what is the justification

for such? If yes, how does this balance with ICANN's "non-discrimination" obligations as well as its ability to manage contracts for thousands of gTLDs? Or, if we agree on one single base agreement, how should the single base agreement address the various needs of different categories?

ii.   Reserved Names. In the 2012 round for new gTLDs strings were reserved at the top and second levels.

1.   The names that were reserved at the top-level were set forth in the Applicant Guidebook and were therefore not eligible to be applied for. The names reserved at the top level included all single and 2 character strings and certain ICANN/IANA names (e.g., ICANN, IETF, EXAMPLE, SSAC, TLD, etc.). Subsequent to the GNSO policy development process, IOC and Red Cross Names were added by the ICANN Board. Through the Names Collision debate, .home, .corp and .mail were also declared ineligible for delegation. Are any changes to the Applicant Guidebook required moving forward?

2.   Specification 5 to the Registry Agreement sets forth the strings that are to be reserved from registration at the second level. Some of the strings were removed from reservation (e.g., the majority of 2 characters), while others provided for the release subject to certain conditions being met. In addition to ICANN-mandated reserved names, the Registry Operator is permitted to reserve up to 100 names for promotional and/or operational use by the Registry Operator. The Registry Operator is also permitted to reserve an unlimited amount of strings at the second level for any purpose, including the designation of premium names, founders programs, auction, etc.. Do any changes need to be made to the reserved names policy, the names to be reserved, the process for the release of reserved names, and/or the interaction between the release of reserved names and the rights protection mechanisms (including Sunrise and Claims).

iii.   In the 2012 round a Continuing Operations Instrument was required to be submitted in the form of a Letter of Credit to fund an Emergency Back End Registry Operator. The very specific requirements for this COI proved to be difficult for a number of registries to meet.

1.   Do we still need the EBERO function?

2.   If so, what other options are there to fund the EBERO functions?

3.   Also, some registries, such as Brand TLDs, consider that a Continuing Operations Instrument is not required due to the nature of their TLD. This spans into the background of EBERO requirements, as well, but would the Continuing Operations Instrument be required for TLDs that would qualify for an exemption to the Code of Conduct for the RA?

Work Track 3:

i.   The SubPro Working Group has discussed at length whether the introduction of new gTLDs on a going forward basis should be in "rounds" like the 2012 round or on a first-come, first-served process. A number of proposals have emerged including (a) starting with one or two rounds to handle pent-up demand and then moving to a first-come, first-served

process, or (b) a hybrid approach whereby there is a predictable schedule of rounds per year giving more predictability for when public comments and objections procedures to be held.

1. Whether or not applications for future new gTLDs are accepted in rounds or other batch groupings vs. being accepted in an open & ongoing process ("first come, first served") will impact, among other things, the string contention process and objections. What are some of the foreseeable impacts to string contention and objection processes with either choice? How should those factors be weighed? Should the community decide first what application acceptance methodology will be used in subsequent procedures and then deal with the downstream issues? Or should the effects and resolution of these issues, such as string contention, be fully dealt with in order to drive the application methodology?

ii. In order to determine what the role of an Independent Objector (IO) will be, if any, in subsequent application procedures it is necessary to both review what happened during the 2012 round and what has happened in both the community and world at large since the 2012 round. For example: What was the community's impression of the role the IO played in the 2012 round? Did it live up to expectations? Did the IO act in the community's best interest? Has the level of awareness within the community and consumers risen to the level that an IO is no longer necessary? Would an ongoing application process necessitate that an IO be in place to ease the burden of constant vigilance on the part of the community & consumers?

Work Track 4:

i. Should technical competence be shown during the application process or only required to be shown prior to signing a gTLD agreement? Should financial capability be shown during the application process or only required to be shown prior to signing a gTLD agreement? If one or both of those capabilities are not met, would the string be offered to other contention set members or only be available in subsequent procedures?

ii. IDNs - Should single character IDNs be allowed in languages where a single character could denote a word or phrase? In the 2012 round, the ICANN Board made a decision to prioritize applications for IDN strings. Should IDNs continue to have higher priority in application processing? How should IDN variants be treated?

iii. What suggestions do you have for improving the application criteria and evaluation processes? Were the right questions asked? Was the way the questions were asked aligned with expectations of evaluators? Were the thresholds for passing appropriate? How can questions be made more clear to avoid the overwhelming number of clarifying questions that plagued the 2012 round? Were there issues with consistency for evaluation results?

iv. Name Collisions – During the 2012 round, it was determined that certain strings be prevented from moving forward (.home, .corp, .mail) for "name collision" reasons. Are there additional High Risk strings that can be identified prior to the launch of subsequent procedures? What is the methodology that should be used in determining "high risk strings"?

Discussion Notes:

Work Track 1 – Sara Bockey and Christa Taylor

- Background on Question #2 – certification. How do we get that? Does it matter how many TLDs/registries that they have? How will the costs be looked at? Will it be ICANN recovery or a third-party body that collects fees? How do we encourage best practices? Encouraging feedback.
- Question: On the RSP program – doesn't matter if we call it certification. Is it reasonable to consider having a contract? Do we create a new contracting party? Or are we standing back from it. What do you think we are looking at?
- Donna Austin, Neustar:
  - One concern we have on RSP certification is do we have another contacted party? We want to look at what are the other possible solutions. [See slides from Donna.]
  - Look at the problems we are trying to solve. Repetitive PDT testing. Repetition in the application program. What are the options to show technical competence? How do you measure competence? How do the RSP and ICANN cooperate on security and stability without a contract.
  - Challenges: swap out your back end or taking over another registry. Donna's presentation available on the WG's Wiki work space here: https://community.icann.org/x/KT2AAw.

Three ideas [slides 9-10]:

1) ICANN Proven Providers – How to grandparent in those who have already gone through the process? Propose that they have gone through the hoops already so no need to do it again.
2) Precertified Providers – Develop specifications so that you could pre-certify yourself. Then an application could pick a pre-certified provider.
3) ICANN Post Application Pre-Certified Providers – If they got through the application process they could do the PDT.

- If there are 10 applicants for a single string you could let them say they will use an accredited provider and show their contract (or proof of contract). Empowers the registry operator to pick its backend provider after having the contract. Can assess which back-end provider is right for you.
- Francisco Arias, Staff: There is a session on accreditation on Monday at 1515.
- There are a lot of ideas that can help us to move forward with this subject. Not sure why we need to separate a proven provider from a precertified provider. Avoid preference. On the issue of having the RSP serve as the technical point of contact – interesting from a liability perspective. Need to examine the dynamic.
- Donna Austin: Slight difference between proven providers and percertified providers.

- Michael Flemming: The notion of proven providers may provide an unfair advantage.
- Donna Austin: The post application one is to acknowledge that you may have a registry operator that wants to run its own TLD but it is not going to go through the process of getting the infrastructure in place until it has its own TLD. A proven provider doesn't have to do more PDT, but if you are going to be a new entrant you still have to provide that you can perform certain tasks. There are RSPs that have been through the process. New entrants will still have to prove that you can perform the job, but it isn't supposed to be an inhibitor to competition.
- Paul McGrady: This seems to be an area where you could introduce enormous efficiency. I don't know if we have ever asked staff if they agree that it would speed up the process and lower application fees.
- Donna Austin: Staff gave a report and accreditation was something they supported because of the efficiencies and could overcome some of the reality that there were only 12-13 RSPs that were doing the bulk of the operations. The New gTLD Program Reviews report mentioned by Donna is available here: https://www.icann.org/news/announcement-2016-01-29-en

Applicant Support:

- CCT-RT said the developing country applications lagged. AMGlobal Report just mentioned by Christa is available here: https://community.icann.org/download/attachments/56135378/New%20gTLDs%20and%20the%20Global%20South%20--%20Understanding%20Limited%20Demand%20and%20Options%20Going%20Forward%2010-14-16%20%28002%29.pdf?version=1&modificationDate=1476804586444&api=v2.
- Discussions have focused on why something didn't or did not work. Work Track Sub Team looked at that. Potential applicants found out too late or didn't have the right information. Two participants said that there were too many products on the market and several were not viable. In future: Improve communications, outreach, lower costs, etc. Seeking input.
- Comments in the chat will be retained, but they won't necessarily get read out.
- Latin America: Most of them would like to have a chance to enter into the new round. No information from the first round. There was no promotion in the region.
- You hear a lot about applicants not reaching their goals in serving their regions. But applicant support doesn't support ongoing costs. They could have just made a sound business decision not to apply.
- Is our goal to ensure diversity in the front end and in the back end? Is that something we should be considering?
- It will take time to get those regions to be completely balanced with the others. The first step is to go through the process. The front end is important now. They will allot some facility for back end in those regions. In order to start the process we need a facility for the front end.

- It is an economic problem because of the size of the economy. The cost was really high for the financial capacity.

Work Track 2: Michael Flemming

- Is a single base Registry Agreement still suitable for all new gTLDs moving forward. Open to discussion.
- Martin Sutton: Does get quite complex. I will focus more on the brands. The marketplace evolved and we saw more diversity, which is great. With the introduction of brands we saw a significant number. Where the existing base agreement doesn't reflect that model we should adapt for future agreements. The current base agreement was based on the traditional model, but that doesn't apply within the brand TLD registry. Also, distribution of domain names. Would prefer a base agreement the reflects that particular category.
- Alan Greenberg: We did have classes of agreements. We are not talking about having tailored registry agreements, but the stock agreement will be tailor – but it will have the same effect.
- Aside from being a different type of TLD, how does having separate agreements balance with the need for ICANN to do contract management?
- Susan Payne: It does make it cleaner. In the first round we had the base agreement and then carve out certain sections that were inapplicable. It would be cleaner to recognize that from the outset. It may be that there are other categories that have the same types of concerns. I don't think we are saying that we would have a whole new contract. There are some provisions that don't make sense. It makes sense to have tailored amendments.
- Stephanie Duschesneau: If we are looking at this in terms of registry models should we be broadening the scope from .brand to those that would otherwise be exempt.
- Anabeth Lange: The thing you have been talking about with respect to categories we think it is good. We have been trying to find a solution in the ccTLDs. There might be considerations in the applications and in the contract. Perhaps we could have more categories than we have today. One size doesn't fit all. If you want consensus, but consensus from whom? I know it would be from the GNSO, but last time it took several years with the views from the different stakeholders.
- ICANN already manages more than one kind of contract. Staff does a great job of keeping it all straight.
- Kristina Rosette: I come from a slightly different perspective. What I am not clear on is what do you get from separate different registry agreements that you don't get from a standard agreement with specifications?
- Martin Sutton: Brands that don't have a diversity of models still have to go through their internal process to accept the core contract when it doesn't reflect them. It will be harder for them to adopt an agreement that is closer to their model. The Brand Registry Group are trying to prepare a registry agreement that includes spec 13, but doesn't detract from the existing provisions.

- Alan Greenberg: It sounds like we need something in between: a standard contract where you can delete certain sections based on the category.
- Jeff Newman: The original policy was to have one, single base agreement so suggestions in this discussion would deviate from that. I know there was also a geographic TLD proposal.
- Michael Flemming: Continuing Operations Instrument – haven't touched on this. Do we still need EBERO? The COI isn't necessary to protect the public interest. Open for discussion.
- Kristina Rosette: In my experience the problem was that the requirements were extraordinarily challenging because of the way they were drafted. If you have a standard model that has been reviewed in consultation you will cut out a good part if the friction. Not convinced of the need to eliminate the COI function just yet, but the process has to be a lot less painful than last time.
- Rubens Kuhl: Not all brand TLDs are created equal. If an operator doesn't comply with name collision restrictions EBERO may also apply.
- Martin Sutton: Explore the brand situation and remove the irrelevant sections.
- Jeff Neuman: Yes, the role of the EBERO is expanded, but that is funded by ICANN. Why are we making the assumption that COI is the only model? There may be other models that can perform the function.
- Jon Nevitt: We are being very inefficient on the EBERO function. The funding of the COI has been ridiculous.
- Simon McCalla, Nominet: We need a technical function to underpin it. As to the money – we don't make any money. We do it because it is the right thing to do.
- Paul McGrady: We should look at the EBERO model and decide how to fix it.
- Michael Flemming: The model needs to change since it is adding costs on our customers.

Work Track 3 Question Discussion:

- Should there be rounds? One approach would be to start with one or two rounds to handle pent-up demand, then go to first-come, first-served. What is wrong with this model?
- It could leave behind too many people who may want to have a say.
- Council of Europe study: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14.
- Susan Payne: In relation to a fully open process we could have a problem with objections. Some form a window process would give a finite period when governments could be monitoring.
- Stephanie Duschesneau: There are some issues about pent-up demand. I don't understand the arguments around transitioning to a first-come, first-served process.
- Michael Flemming: On string contention for first-come, first-served: If one brand applies for a brand and another brand rejected it [...]

- Kathy Kleiman: The implication of going to first-come, first-served provides predictability.
- Robin Gross: Is this a gating issue?
- First come, first served would serve the purpose.
- Rubens Kuhl: Rounds is not mutually exclusive with first come, first served and contention sets.
- Alan Greenberg: What happens when someone applies for the same name? If you accept that there are categories, you may have different rules for different categories.

Independent Objector Questions:

- Kristina Rosette: We need to take a hard look at the numbers. The IO filed 19 objections and won 2. A million dollars per objection. What was this role intended to do? Was it successful? Were there conflicts of interest? Needs to be a process early on for addressing conflicts of interest.
- Kathy Kleinman: We have learned a lot in the first round on how we choose an independent objector and we may need an IO more in subsequent rounds.

Work Track 4 Question Discussion:

Financial/Technical evaluation:

- Michael Flemming: That is assuming that if the application was approved without showing financial capability and if there were multiple contenders – if the applicant doesn't have financial capability they would pass it on to the next contention set? [That is a question.] What would be the advantage of showing that after the application process?
- Martin Sutton: Like the idea that it could be further down the line after the application was approved. There could be a time limit to produce the financial/technical limits as well.
- Christa Taylor: One of the bigger components would be the financial review and I don't think we would want to delay it. We never really reviewed the business plans to see if they made sense or were legitimate.
- Rubens Kuhl: We need predictability and stability in the process.
- Michael Flemming: I see gaming of the application process in the future, which is one thing we need to have a very strong check on. Having financial capabilities is a very important check.

Should single-character IDNs be allowed and how should variants be treated?

- Michael Flemming: Japan and China share a lot of variants. You can't change the variant without delegating the second level.

- Chuck Gomes: IDN variants for gTLDs should be treated the same way as variants for ccTLDs. That did not happen. The GNSO should demand that they be treated the same.
- Allen Greenberg: Variants cause all sorts of problems. I like the analogy of treating upper and lower case the same. If we don't allow variants we are causing significant problems. We need to allow variants and we need rules.
- Michael Flemming: How does the WG address IDN label generation rules for each language. Could we leave that to the language generation panel?
- Allen Greenberg: Single characters were only allowed where it represented a single word.

Improving application criteria and evaluation processes and names collisions/high risk strings:

- Avri Doria: The ability of anyone to grab a name and use it and set a precedent we have a continuing possible issue because we have no control between IETF assigning a name and ICANN assigning a name. Nothing to prevent someone from squatting a name. How do we deal with the issue of simultaneous assignment by the IETF or someone squatting?
- Allen Greenberg: My recollection is that the names that we ended up discovering for collisions we had learned two years earlier. We could ask the SSAC.
- Rubens Kuhl: Could reach out to the IETF to reach some sort of consensus.
- Avri Doria: We would need some way to also deal with that and monitor it. It would be an ongoing issue.
- Michael Flemming: Does this Work Track also look at controlled interruption?

Reserved names:

1) Names at the top level and categories, such as ICANN/IANA names. That is the policy right now.
2) IOC/Red Cross
3) Other reserved names.

- Question: The question is whether there are any reasons to change those policies?
- Kristina Rosette: If there are folks who feel we need to revisit this policy we need to go back to the reserved names WG report and make sure we are familiar with it.
- Avri Doria: I very much agree on this issue, but I want to point out that there were a lot of recommendations that were deviated from. So, it is a good idea to go back to the old policy.
- Francisco Arias: There is a reference to the special use namespace – you may need to consider it.

Releases for second-level reserved names – changes to the policy?

Jeff Neuman: There has been a lot of work done on two characters. What we at least need to do is to document what has been done to date with two characters.