



Legal/Regulatory

Michael Flemming & Phil Buckingham | Work Track 2
02 February 2017

Agenda

1

Welcome &
Admin

2

SOIs

3

Registrant
Protections –
Background
Screening

4

CC2 Questions

6

AOB

Background Screening

Background Screening – Background Information

As a part of the application evaluation process, ICANN conducts Background Screening based on information provided in questions 1 – 11.

ICANN performed background screening in only two areas:

(1) General business diligence and criminal history; and

(2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.

Background Screening – Background Information

Questions 1 – 11 look at:

Applicant Information

1. Full legal name
2. Address of the principal place of business
3. Phone number
4. Fax number
5. If applicable, website or URL

Primary Contact

- 6(a). Name
- 6(b). Title
- 6(c). Address
- 6(d). Phone Number
- 6(e). Fax Number
- 6(f). Email Address

Background Screening – Background Information

Secondary Contact

- 7(a). Name
- 7(b). Title
- 7(c). Address
- 7(d). Phone Number
- 7(e). Fax Number
- 7(f). Email Address

Proof of Legal Establishment

- 8(a). Legal form of the Applicant
 - 8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).
 - 8(c). Attach evidence of the applicant's establishment.
-
- 9(a). If applying company is publicly traded, provide the exchange and symbol.
 - 9(b). If the applying entity is a subsidiary, provide the parent company.
 - 9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

- 11(a). Name(s) and position(s) of all directors
- 11(b). Name(s) and position(s) of all officers and partners
- 11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares
- 11(d). For an applying entity that does not have directors, officers, partners, or shareholders:
Name(s) and position(s) of all individuals having legal or executive responsibility

Background Screening – Background Information

ICANN performs background screenings in accordance with the following areas and disqualifies any applicant with convictions or decisions of the following:

- a.** within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b.** within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c.** within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d.** within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e.** has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f.** has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;

Background Screening – Background Information

- g.** has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;
- h.** has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19883;
- i.** has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)4,5;
- j.** has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) – (i) above);
- k.** has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) – (d) above, or ever for the crimes listed in (e) – (i) above);
- l.** is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;

Background Screening – Background Information

- m.** has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

- n.** fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;

- o.** fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background Screening - Question

Question.

Are the background checks a sufficient mechanism for protecting Registrants?

- A. Yes
- B. No
- C. Other _____

Background Screening - Question

Question.

Has ICANN ever come across an applicant with an individual found to be involved in any of the activities a – m? If so, were any of those applicants disqualified from the application process because of the background screening? If so, out of how many found, how many were disqualified?

- A. Yes
- B. No
- C. Other _____

Background Screening - Question

Question.

Do the requirements for background screening in regards to (1) General business diligence and criminal history and (2) History of cybersquatting behavior prove sufficient?

- A. Yes
- B. No
- C. Other _____

Background Screening - Question

Question.

Could it be considered that the background screening is unnecessary for TLDs where Registrant Protections may not be necessary, such as Brand TLDs or those operating with a Code of Conduct exemption?

- A. Yes
- B. No
- C. Other _____

Background Screening - Question

Question.

Could some of the items (a – m) checked for the in the background screening be considered unnecessary for all TLDs? Or, could some of those items be considered unnecessary for TLDs where Registrant Protections are not applicable, such as Brand TLDs and TLDs with an exemption to the code of conduct?

- A. Yes
- B. No
- C. Other _____

CC2 Questions

Come up with questions to ask the Community for Community Comment 2 that will assist us in drawing conclusions.

We should keep in mind:

- We have only covered 3 subject areas to this point. Questions in these areas should be built upon what we have already discussed to seek further comment.
- We need to use this opportunity to seek detailed feedback in regards to areas we have not covered as well.

CC2 Questions – Topics to Cover

Below are the topics of WT2 with the topics we have actually covered to some extent in green.

Base Registry Agreement
2nd Level RPM's
Reserved Names
Registrant Protections
IGO / NGO Procedures
Closed Generics
Applicant Terms and Conditions
Registrar Non Discrimination & Registry / Registrar Separation
Registry / Registrar Standardization
TLD Rollout
Contractual Compliance
Global Public Interest

CC2 Questions – Topics to Cover

Base agreement: Perform comprehensive review of the base agreement, including investigating how and why it was amended after program launch, whether a single base agreement is appropriate, whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest, etc. Should the Article 7.7 review process be amended to allow for customized reviews by different registry types.

Second-Level Rights Protection Mechanisms: Proposing recommendations directly related to RPMs is beyond the remit of this PDP. There is an anticipated PDP on the "current state of all rights protection mechanisms (RPMs) implemented for both existing and new gTLDs, including but not limited to the UDRP and the URS...". Duplication or conflicting work between the New gTLD Subsequent Procedures PDP and the PDP on RPMs must be avoided. If topics related to RPMs are uncovered and discussed in the deliberations of this PDP, those topics should be relayed to the PDP on RPMs for resolution. To assure effective coordination between the two groups, a community liaison, who is a member of both Groups, is to be appointed jointly by both Groups and confirmed by the GNSO Council. *The SubPro PDP WG, from discussions with the RPMs PDP WG, should be responsible for consideration of the PICDRP and the RRDRP, as these are DRPs that are NOT based on trademark rights.*

Reserved Names: Review the composition of the reserved names list to determine if additions, modifications, or subtractions are needed (e.g., single letter, two letters, special characters, etc.). Evaluate if the implementation matched expectations (e.g., recommendations of the Reserved Names Working Group). Review whether geographic names requirements are appropriate.

Registrant Protections. The original PDP assumed there would always be registrants and they would need protecting from the consequences of Registry failure, although it may not make sense to impose registrant protection obligations such as EBERO and the LOC when there are no registrants to protect, such as in a closed registry. Should more relevant rules be established for certain specific cases?

CC2 Questions – Topics to Cover

IGO/INGO Protections: The PDP for Protection of IGO and INGO Identifiers in All gTLDs and PDP for IGO-INGO Access to Curative Rights Protection Mechanisms are expected to address a number of issues. While no additional work is envisioned, if there are any remaining or new issues for discussion, they could be deliberated in the context of this PDP.

Closed Generics: Should there be restrictions around exclusive use of generics TLDs?

Registrar Non-Discrimination: Are registrar requirements for registries still appropriate?

Registry/Registrar Standardization: Consider whether the registry/registrar relationship should have additional standardization and regulation.

TLD Rollout: Was adequate time allowed for rollout of TLD? When should recurring fees due to ICANN begin?

Contractual Compliance: While no specific issues were identified, contractual compliance as it relates to New gTLDs may be considered in scope for discussion, though the role of contractual compliance (i.e., enforcing agreements) would not be considered within scope.

Global Public Interest: Existing policy advice does not define the application of “Public Interest” analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN’s limited technical coordination role, mission and core values and how it applies specifically to the New gTLD Program.

Terms and Conditions: An addition to the topic area for this WT is looking at the T&Cs of the Applicant Guidebook. When an applicant submitted an application to ICANN, they also signed off on T&Cs. Questions in regards to the validity of those T&Cs has been raised, as seen in several litigations involving ICANN and Applicants.