New gTLD Subsequent Procedures Policy Development Process Working Group (WG)
Face-to-Face Meeting Actions and Brief Discussion Notes
27 June 2017

Please see below the action items and discussion notes from the face-to-face meeting at ICANN59 on 27 June 2017. *These high-level notes are designed to help Working Group members navigate through the content of the call and are not a substitute for the chat room or the recording.* The meeting slides and chat room are posted to the following page, and the recording and transcripts will soon be available: https://community.icann.org/display/NGSPP/2017-06-27+ICANN59+Johannesburg+-+New+gTLD+Subsequent+Procedures+PDP.

Actions:
1. <u>Overarching Issues</u>: Batching Versus Continuous Process – Send a note for the Council to see if it will communicate with the Board concerning the WG's thinking on this issue.
2. <u>Work Track 1</u>: Applicant Support – Co-Chairs will follow up with GSE regarding outreach around Applicant Support.

Discussion Notes:

1. Introduction and Overview of the WG:

<u>Overarching Issues:</u>

- Question: has the WG looked at the issue pent up demand? Response – other groups looked.
- Batching vs. continuous process: this is a gating item. Regularity and predictability is important for making demand more smooth. Three-month window is a good idea.
- The length of windows discussed was a minimum of 6 months.
- Board will be looking at the CDAR report – we will need to see how the Board responds.
- The WG can ask the GNSO Council to tell the Board that the WG is considering this issue. We can let the Board know what we are thinking.
- **ACTION ITEM: Send note for the Council to see if it will communicate with the Board.**
- The 1000 limit per year is not only a technical issue but also an administrative issue, so it is also important to ask ICANN Org what they see as the limit.
- First Come First Serve eliminates problems of contention. Some feel that is disadvantages communities, but we already have first come, first serve by round.
- Some people believe that it is valuable to have a process for having strings go to organized communities. When a community forms with an idea, it takes time for the community to form necessary support. Communities have expressed that they have different needs and this should be reflected in the process.

- Broader question – how is the ICANN Organization designed to scale. In the 2012 round, demand exceeded expectations. Trying to assess demand would be a typical exercise in a commercial org. Some of that thinking should apply here.
- It is not clear that the market survey will be accurate
- It is still worth trying to get the market survey right
- Communities also need time to respond. A lot of awareness was raised in the 2012 round. Communities got involved. This was a success.
- Concern about first come first serve. The issue of equitable access must be considered. Capacity for processing must also be considered.

2. Discussion of Select Work Track 1 Topics (https://community.icann.org/x/7AObAw):

Applicant Support

- The criteria does not differ from the JAS criteria --
- There is interest in the community on this topic, so this approach is intended to get additional input from the community, proposals etc.
- Framing of issues is important. You need to be wary about support from the technical perspective. There need to be certain technical requirements that everyone meets.
- Suggestion – engage GSE – can they assist with capacity building issues.
- **ACTION ITEM: Co-Chairs will follow up with GSE regarding outreach around Applicant Support.**
- If it is the case that we are accommodating applicants with less technical capacity, we need to make that explicit.
- Outreach and communication are necessary.
- Application fee was only a small part of the costs. Waiving application fee does not do a true service to applicants.
- Applicants should understand long term costs and have a business model to support long term sustainability.
- Talk to evaluation panel from the 2012 round and those who applied to learn about their experience.
- Important to focus on sustainability and communication. Tap into expertise in community.

From the chat:
- Donna Austin, RySG: Did the CCT have any information regarding demand?
- Eleeza Agopian: @Donna, the CCT Review Team didn't really examine the question of demand in an explicit fashion. They do have a recommendation regarding greater outreach to underserved regions, given the paucity of applications from those parts of the world.

RSP Program:

- There is a distinction between the Registries Stakeholder Group (RySG) smaller working group working on related issues. The WG is looking for efficiencies in application process. RySG is looking at issues related to swapping out an RSP. There are challenges in the process for this at the moment.
- Recent DNS symposium – information of cases where Emergency Back-End Registry Operator (EBERO) threshold was met. The RySG is looking at the issue. They are working with Francisco Arias from ICANN staff.
- Outputs from the RySG effort may feed into this WG.
- There may not yet be universal agreement that there should be an RSP Program. The term pre-approval should be clarified. Does it include technical testing?
- Pre-approval – you are doing the same technical evaluation that you would do in a normal process (as in 2012), but you do it before the application process. The Work Track Sub Team is looking at the appropriate time for technical testing.
- Service Level Agreement (SLA) violations –RSP program could be one way to address this issue but there may be other options as well.
- One alternate proposal has been presented by Donna Austin from Neustar.
- Question – how do you know that an RSP can scale?
- RySG will hopefully tackle the question of monitoring and what that tells us about whether an RSP can scale. Hopefully this can feed into the SubPro working group.

3. Discussion of Select Work Track 2 Topics (https://community.icann.org/x/FwSbAw):

Closed Generics

Slide 23:
- Be very careful in allowing them without adding some safeguards.
- We don't have any experience with closed generics so we can't really say if they create harm or do good things.
- We have a lot of information on this. There were community objections filed over closed generics.
- Two points: The notion that a TLD somehow gives you a huge competitive advantage is absurd. You succeed in business by having a good product. The second point is that we don't really know. General point: To the extent that you want to ban these it doesn't seem to be working very well. There are always ways to work around restrictions. Let's let people use TLDs as they want.
- Business Constituency: Concerned with a competitor to get exclusive rights – to ensure that a TLD is open to all in the community. Our concern survives but we don't think in subsequent rounds we need to prohibit closed generics, but keep the objection procedures to allow an objection to exclusive control.
- The above proposal is a good suggestion for a way forward.

- Questions about why we are even addressing this – remind everyone that this was a Board determination on its own. It was not a GNSO policy. The Board specifically asked the GNSO to formally address this in policy.
- The notion that any is settled is difficult to define. Anything can be reviewed.
- Important to note that at the time the AGB was published closed generics were not prohibited. We heard a lot from ICANN that the new gTLD program was to encourage innovation. We haven't seen a lot of that. Once you register a domain name you can't later restrict. Let's look at the harm we are trying to address here. If the harm can be identified and it would be possible to put limitations on how a TLD could be used that would allow the registry operator to continue to operate, that's fine.
- Companies coming up with a generic term and operate on a closed basis, such as .food or .beauty.
- Need to examine this issue and need to look at harms. Hard to figure out what they are.
- If you look at what happened in the first round and those that were submitted as closed – such as .blog. Has a content expectation. You expect to find a blog.
- The term "generic" is troublesome. If we are talking about innovation you can't decide which types are good and which types are bad. It does relate to content and the business model. Good assumption that they are interested in creating content. Depends on if we view top-level domains as spectrum or like second-level domains. Look at different business models and see which ones shake out.

From the chat:
Anne Aikman-Scalese - IPC: QUESTION Standing GAC Advice is that closed generics should be operated in the public interest. Should we really be talking about the public interest rather than Closed Generics or no Closed Generics? QUESTION
Paul Foody: <Question> Could you please clarify, does"Generics" refer to every TLD or just TLDs using Generic terms? ie .Book etc vs .Microsoft, .Google <Question>

4. Discussion of Select Work Track 3 Topics (https://community.icann.org/x/GwSbAw):

GAC Early Warning – Impact on Predictability

- Developed to enable governments to warn that an applicant that its application was of concern to one or more governments in the GAC. Option of rescinding the application after the warning. Only two applicants in the last round decided to withdraw due to warning.
- Slide 30: 2012 Round GAC Impact -- only 38% were subject to GAC advice.
- Slide 31: Section 3.1 AGB describes 3 possible forms of GAC advice.
    o Consensus (6), Concerns Expressed (2), Remediation Suggested (0), other application specific advice (18)
- Slide 32: Distribution of 491 applications, distribution of 211 strings affected

Discussion:

- Presentation conflated the notion of early warnings with the more global advice. Let us separate an early warn from advice about a string.
- GAC advice on principle: is the GAC advice that we have received still in effect? Does it still reflect the GAC's view? Does the GAC want to review its advice?
- One of the GNSO principles was predictability for applicants – no one could have predicted the scope and the detail of GAC advice. Seriously consider have been through this big round where the GAC developed advice what else is there on which the GAC could provide advice? Why can't we ask the GAC to have its advice finalized before the start of a next round?
- Initially, when the concept of GAC advice came up it was not a given that it would create a rebuttable presumption that a TLD would not go forward. That resulted out of the 2011 Brussels consultation. Do we still believe GAC advice should be a rebuttable presumption that a TLD not go forward?
- The interest of the GAC over new gTLDs includes how the allocated TLDs are being used and what second-level names can be registered. That severely limits registries from allocating second-level names.
- If ICANN ignores GAC advice it might result in local regulations.
- The Board can accept or reject GAC advice. But in the AGB states that if GAC advice is accepted that creates an assumption that the TLD will not be allocated.
- Question: Regarding new rules isn't it true that the Board can only go against GAC advice with a 60 percent vote?
- Should we be looking to the GAC to identify what is a highly regulated string and a regulated string? So we can understand what the category is?
- No reason to assume that we have to either consider GAC advice is sacrosanct or there is local regulation.
- No way to predict what the GAC may or may not due. Does ICANN have the power to place GAC in a lane and to stay in that lane? The PDP WG can make recommendations and if the GNSO approves them then the Board has to consider them.
- The issue of "what is the harm" needs to be addressed with the GAC.

From the chat:
Jannik Skou Thomsen Trampedach: COMMENT: If GAC/ICANN decides to keep safeguards, these should NOT be allowed to be added AFTER the announcement of the opening of the application window – and the requirement to enter into agreements with sector industries should be deleted (this is hard to find /define in all cases – and gTLDs can be international). COMMENT

5. Discussion of Select Work Track 4 Topics (https://community.icann.org/x/HQSbAw):

<u>String Similarity:</u>

- Slide 34: IDN Variant TLDs (revised after ICANN Org and SSAC comments): "Strings must not be confusingly similar to an existing top-level domain"

- Three possible implementation solutions, but WT4 agreed to not prescribe a specific one at this point.
- "IDN gTLDs deemed to be variants of already existing or applied for TLDs will be allowed provided: 1) they have the same registry operator implementing, by force of agreement, a policy of cross-variants TLD bundling and 2) top-level LGRs and second-level LGRs are already established for the script/language at evaluation time."

Discussion:

- Clarifying questions: What do you mean by "a policy of cross-variant TLD bundling"? Depends on the implementation. Under this proposal would the registry operator have to do a RSTEP process? Whether up to a new RSTEP or not is an implementation issue. What is the downside to this proposal? If we don't adopt this then we have the status quo.

From the chat:
Jannik Skou Thomsen Trampedach: QUESTION: Any chance latin like characters such as German Umlaut/ French é, Danish Ä,Ö,Ü could be accepted as variants? QUESTION

Name collisions Framework for Subsequent Procedures (slides 35 & 36):

- Question: Can we start doing outreach on the proposals on slide 36, or do we need to discuss them more?
- Do we have findings from the controlled interruptions from the 2012 round? Answer: There are anecdotal reports. Usually people complain that their internal website isn't working. It was possibly exaggerated that it might kill someone.
- We've seen very little evidence to support the 90-day interruption period.
- Question: Is this framework intended to apply to the remaining TLDs from the 2012 round that are stuck in limbo? Answer: No because it is not in our charter or scope -- .home, .org, .mail. Don't think re-chartering this group to include these in scope makes any sense. Someone could recommend that the GNSO do something about it.
- Let's look at the statistics. ICANN received at least 30 reports of name collisions. That is just what was reported. Shouldn't make changes to name collisions without a new and informed decision on this topic.

From the chat:
Jeff Neuman: JAS Final Report: https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf