

I C A N N
POLICY FORUM

59

JOHANNESBURG

26–29 June 2017



New gTLD Subsequent Procedures PDP WG – Face- to-Face Session

ICANN59

27 June 2017



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Welcome

Agenda Item 1

Welcome

- ⦿ New gTLD Subsequent Procedures PDP WG Co-Chairs: Avri Doria and Jeff Neuman

- ⦿ Work Track Leads
 - WT1 – Sara Bockey and Christa Taylor
 - WT2 – Michael Flemming and Phil Buckingham
 - WT3 – Karen Day and Robin Gross
 - WT4 – Cheryl Langdon-Orr and Rubens Kuhl

Background to the Session

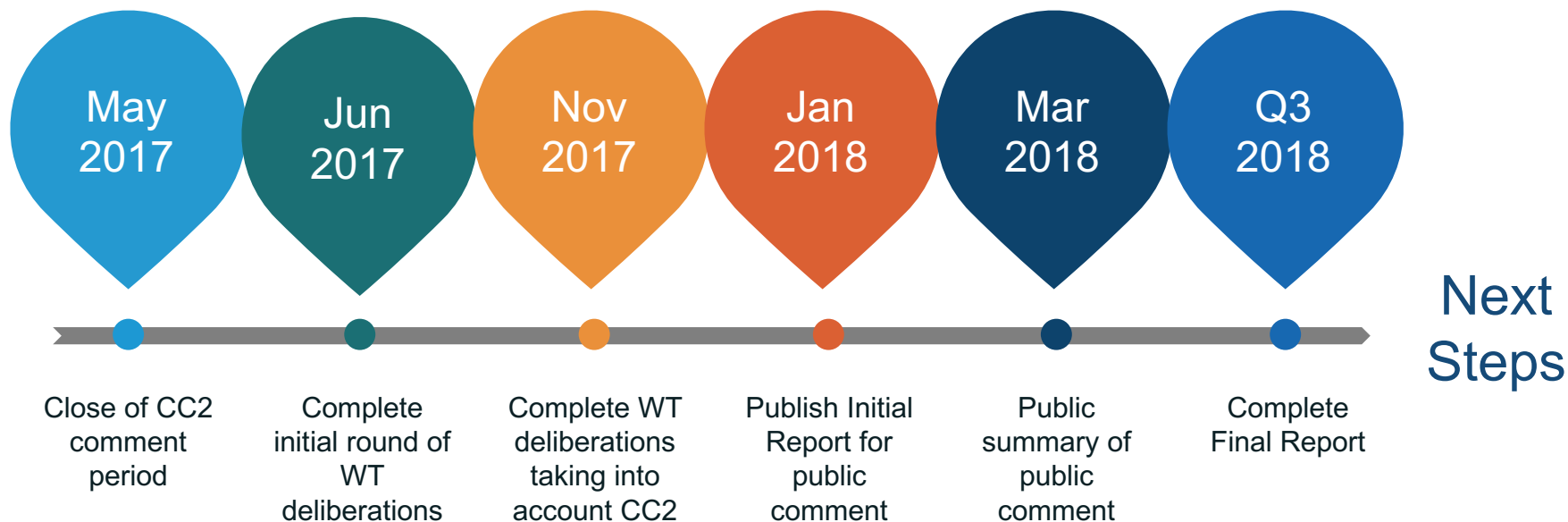
Agenda Item 2

Current Status

- ⦿ Overarching Issues/Community Comment 1 (CC1)
 - WG has preliminarily considered 6 overarching subjects within its charter
 - Sought input from the community (Community Comment 1, or CC1)

- ⦿ Work Tracks/Community Comment 2 (CC2)
 - Established 4 Work Tracks to consider remaining subjects in charter, which formed the basis of CC2
 - Completed initial pass of all subjects, will concentrate on integrating feedback and deliberating to formulate requirements and policy recommendations

Timeline



What This Project is About

This PDP was chartered by the GNSO Council in January 2016 to consider the experiences from the 2012 round of the New gTLD Program to determine what additions or modifications are needed for the existing new gTLD policy recommendations.

Overarching Issues

Agenda Item 3

Current

- ⦿ Six overarching issues that are considered high-level and/or foundational to the WG
- ⦿ Reached preliminary conclusions on two topics
 - Did not identify a reason to NOT have additional new gTLD subsequent procedures (i.e., existing policy essentially stands)
 - No limits on applications from an applicant or overall in a “round”
- ⦿ Established 3 drafting teams for 4 topics
 - 1. Different TLD Types
 - Identified a number of potential types (e.g., Brand, Community, Closed Generics, etc.) and attempted to identify attributes (e.g., applicant eligibility requirements, different evaluation requirements, unique contract, etc.).
 - Establishing TLD types and accounting for all of the differences is complicated – is there adequate justification?

Current, cont.

- ⊙ 2. Predictability/Community Engagement
 - Seeks to establish a framework for predictability and change control to mitigate destabilizing effect from unforeseen issues
- ⊙ Identifies the current methods for community engagement (e.g., Seeking input from the community, utilizing liaisons, GNSO PDPs are open to all interested parties, etc.) and encourages thinking of other engagement opportunities
- ⊙ Acknowledges that all circumstances cannot be accounted for in policy development
 - To mitigate this uncertainty, establish a framework by which unanticipated issues during implementation and program execution can be resolved in a predictable way

- ⊙ 3. Applications Assessed in Rounds
 - Seeks to define the ongoing process for accepting applications in the future

Solutions considered

- ⊙ Hybrid - a fixed number of “rounds” followed by some form of steady state
- ⊙ For the Steady State
 - First come first first served
 - Windows on a fixed time frame (e.g., once a year)

Considerations

- ⦿ How to ensure that stakeholders watching the program (e.g., those that might object or comment) do not have to constantly monitor?
- ⦿ How to avoid pent-up demand in moving to a steady state?
- ⦿ What are the impacts to other areas of the program (e.g., prioritization, string contention, etc.)?

Work Track Discussion

Agenda Item 4

Work Track Discussion Introduction

- ⦿ Each Work Track (WT) will be allocated an equal amount of time to discuss their selected topics
- ⦿ Each WT leadership team will introduce the topic for discussion
- ⦿ The WT leaders are there primarily to steward and moderate the discussion. This is a dialogue and exchange of ideas – participation from those in the room and online is essential!

Work Track Discussion

Work Track 1

Work Track 1

⦿ Applicant Support:

Need to understand failure before moving forward with anything further

- GAC has advised they are putting together work plan with new approach to understand challenges and enforce with data

WG suggestion was to develop a simple set of principles to guide applicant support implementation, e.g.

- a) Applicant support should be more about coaching and mentoring than financial support
- b) Financial support could be awarded for the application fee and early registry fees but be focused on making the registry self sufficient
- c) The support program should be publicized as broadly as the program itself
- d) The program should take into account that applicants may be unsophisticated and evaluations should be conducted with that understanding.

Work Track 1

- ◎ RSP - Proposed draft principles include:
 - Efficiency in evaluation and pre-delegation for ICANN, applicants, and RSPs must be improved.
 - Security and stability of gTLDs must not be negatively impacted, and preferably improved
 - An RSP Program should be designed in such a manner so it does not increase ICANN's liability
 - Applicants must have access to a list of Registry Service Providers and a list of the functional areas they have been pre-approved for through the RSP Program.
 - Pre-approval of RSPs could be done in such a way as to take into account the capacity of such RSPs, the type of TLDs they support and the services they provide.
 - Evaluation and pre-delegation testing must be consistent, predictable, and to the extent possible, objective
 - If a RSP program is the agreed upon solution, do we have different categories of providers?

Work Track Discussion

Work Track 2

Work Track 2

- ⊙ Closed Generics
- ⊙ Vertical Integration

Work Track 2 – Closed Generics

- Story thus far:
 - A *closed generic* is referred to in the community as a “TLD string that is a generic term and is proposed to be operated by a participant exclusively for its own benefit.”
 - Nothing in the AGB about Closed Generics, but exclusive use of a TLD is allowed in the case of an Exemption to the Code of Conduct or Specification 13 being granted.
 - We looked at pros and cons of Closed Generics. Discussion centered around the following points.
 - Key arguments supporting closed generics:
 - promotes business model innovation and competition (registries)
 - provides greater consumer choice (end user)
 - supports free expression (applicant/registries)
 - avoids problematic circumstances in which ICANN regulates business models, competition, and word classification

Work Track 2 – Closed Generics

- ⦿ Story thus far (continued):
 - Key arguments opposing closed generics:
 - harms competition
 - favors large industry players
 - confuses end users
 - hinders expression by giving some players exclusive use of generic terms at the top level

- ⦿ Where we are now:
 - WT members agreed that one of the challenges in this debate is that there is no clear agreed upon set of goals with respect to closed generics.
 - In pursuing the public interest, different participants in the debate seek to maximize benefits and minimize harms to different parties (for example, when discussing consumer choice, the “consumer” could be the applicant, the registrant, or the end user).
 - WT members agreed that it will be important to set goals that are explicit and specific when addressing policy on this subject.

Work Track 2 – Closed Generics

- ⦿ Points of discussion:
 - At this point, we have no consensus for a clear path forward for developing policy in regards to Closed Generics. As discussed in previous meetings, there is a mutual understanding that goals need to be established for how we move forward.
 - Potentially, we could look at several possible paths forward.
 - Not allowing Closed Generics.
 - Allowing Closed Generics with limitations in regards to use of the TLD and compliance requirements to adhere to.
 - Imposing criteria that an applicant/registry operator must fulfill in order to operate a Closed Generic TLD.

Work Track 2 – Vertical Integration

- Story thus far:
 - VI (Vertical Integration) is the cross-ownership of a registry and registrar. Prior to the 2012 round of new gTLDs, registries and registrars were required to be separated.
 - The leadership team has recognized that VI has been introduced in the registry/registrar relationship and it is here to stay. Returning to a separated environment is impractical and will not be a goal for this PDP.
 - We looked at the history of how, although, registry and registrar separation was originally established in order to encourage competition, in 2010 a GNSO PDP was undertaken to look at VI. The PDP at the time saw no consensus, but in Nov 2010 a board resolution resolved that cross-ownership would be allowed.
 - GNSO Policy in regards to new gTLDs does not address the key element of VI, however, Recommendation 19 states that registries must use ICANN accredited registrars without discrimination.

Work Track 2 – Vertical Integration

- ⦿ Story thus far (continued):
 - VI is addressed in the Registry Agreement and the 2013 Registrar Accreditation Agreement.
 - Registries are required to adhere to the Code of Conduct in Specification 9, which imposes limitations on the related entities of registry, and Section 2.9 of RA, which requires registries to provide non-discriminatory access to registrars and must inform ICANN about its Affiliates.
 - Registrars are required to follow Section 3.21 of the RAA, which imposes requirements related to registrars affiliated with registry operators.
 - Code of Conduct exempt registries and Specification 13 Brand TLD registries are exempt from the above requirements.

Work Track 2 – Vertical Integration

- ◎ Where we are now:
 - We looked at the potential harms and benefits of VI that were raised in the past. In order to find whether or not there has been evidence of harm since the introduction of VI, we reached out to ICANN Compliance for data.
 - Complaints received in regards to VI are limited to registry operators. Those complaints do have foundation and are sent onto the registry operator in order to demonstrate compliance with the RA.
 - Less than 10 complaints have been processed in relation to a registry's compliance with the Code of Conduct and Section 2.9.
 - Code of Conduct exempt registries and Specification 13 Brand TLD registries are required to submit annual self-certification adhering to compliance requirements. A few inquiries were made in regards to these certificates, but all matters are resolved.
 - There have been no registry operators unable to demonstrate compliance.
 - Furthermore, metrics in regards to complaints and audits is online for anyone to view.

Work Track 2 – Vertical Integration

- ⊙ Points of discussion:
 - Discussion has focused on the issue that at the current point we have little evidence supporting that there is any harm with VI.
 - The data provided by ICANN Compliance has not been able to demonstrate evidence of harm, yet many have felt that the data is incomplete. Further data from ICANN Compliance would be very helpful to develop policy.
 - Potentially, we are looking at whether further limitations needs to be established for cross-ownership, or if we should merely update policy to reflect what is in the contracts.

Work Track Discussion

Work Track 3

⦿ GAC Early Warning – Impact on Predictability

⦿ GAC Advice – Impact on Applicant Freedom of Expression

2012 ROUND GAC IMPACT

■ GAC Early Warning ■ GAC Early Warning and GAC Advice ■ GAC Advice Only

Only 38% of Applications that were subject of GAC Advice received an Early Warning

NO. OF APPLICATIONS



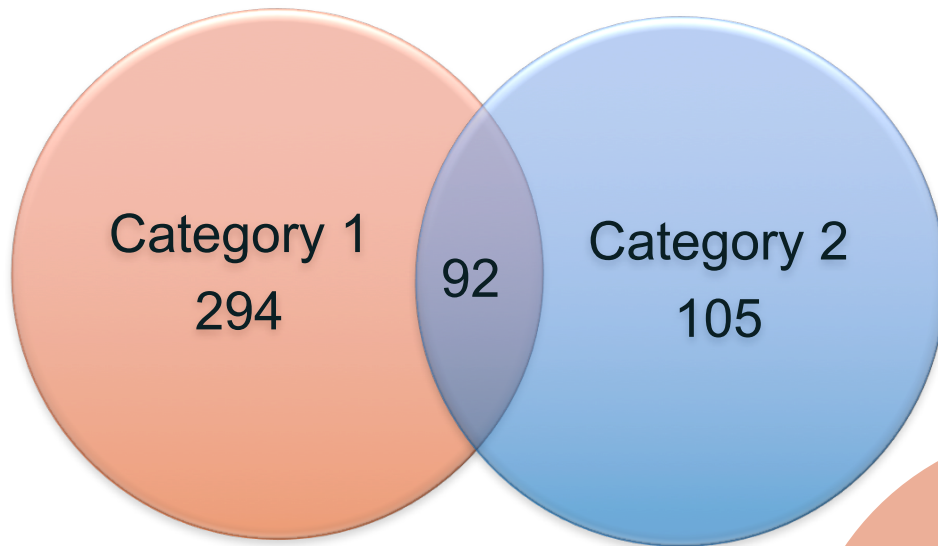
Section 3.1 AGB describes 3 possible forms of GAC Advice

The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

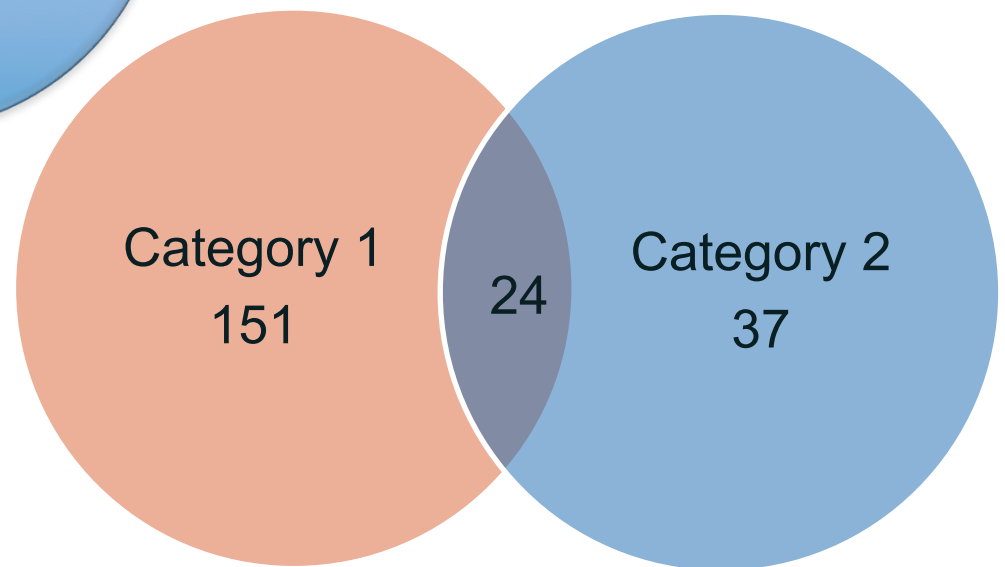
The evaluation and selection procedure for new gTLD registries should respect the - example.” The ICANN Board is expected to enter into a dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Type of GAC Advice Issued	Number of Applications
AGB 3.1i – Consensus	6
AGB 3.1ii – Concerns Expressed	2
AGB 3.1iii – Remediation Suggested	0
Other Application Specific Advice	18



Distribution of 491 Applications Affected



Distribution of 211 Strings Affected

Work Track Discussion

Work Track 4

IDN Variant TLDs (revised after ICANN Org and SSAC comments)

- ⦿ Previously seen as conflicting with Rec. 2:
- ⦿ “Strings must not be confusingly similar to an existing top-level domain.”
- ⦿ 3 possible implementation solutions identified; WT4 converged on not prescribing a specific one at this point. Leaving it to the implementation or to applicant also not defined.
- ⦿ Possible Language:
- ⦿ “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-Variant TLD bundling and (2) top-level LGRs and second-level LGRs are already established for the script/language at evaluation time.”

Name collisions framework for subsequent procedures (1/2)

- ⦿ Data-driven decision making using trusted research-accessible data (like DITL and ORDINAL)
- ⦿ Before the procedure, ICANN Org would provide a “do not apply” list and a list of “exercise care” strings where they already expect a more detailed study to be required
- ⦿ Every application, whether or not to those already identified as “exercise care” strings, would be allowed to file a collision mitigation framework
- ⦿ All applied-for strings would be evaluated as to their risk of collisions: low risk, aggravated risk, high risk
- ⦿ A high risk finding terminates the application(s)
- ⦿ An aggravated risk determination requires a non-standard mitigation framework to move forward

Name collisions framework for subsequent procedures (2/2)

- ⦿ All low risk strings would share a common framework, using controlled interruption and would start controlled interruption right after their findings are published
- ⦿ Minimum 90-day interruption period
- ⦿ Mitigation frameworks would be evaluated by RSTEP
- ⦿ No APD or other per-label lists, unless required by an specific collision mitigation (ex: [appname].TLD)
- ⦿ Possible label-specific non-wildcard NXDOMAIN responses, based on affected party and registry request, with ICANN Org approval
- ⦿ 2-year readiness issue discussed later
- ⦿ Outreach to IETF DNSOp, RIPE DNS-WG and DNS-OARC

Name collisions in legacy and current gTLDs (revised after JAS advice)

- ⦿ Situation: previously registered domain
 - Example: owner of acme.com let the domain expire, new user registers it

- ⦿ Possible additions to “Expired Domain Deletion and Expired Registration Recovery” policy:
 - Notification of previous domain owner
 - By whom ?
 - Disallowing contracted parties to disclose information that would stimulate collisions, like DNS query volumes in dropcatch lists

Name Collisions Framework: two year readiness

- ⊙ All 2012-round required to pass a controlled interruption period and be able to respond within two hours for life-threatening collision reports, for the first two years of delegation
- ⊙ Current number of collision reports is 37 occurrences reported to ICANN, of which 0 were life-threatening
- ⊙ WT4 seems to lean towards “ Occurrence experience does not warrant creation of policy to override what is in the 2012 agreements (keep as it is)”, but requested details on the 37 occurrences are yet to be provided
- ⊙ Same lack of details also preventing decision on whether to keep this mechanism for subsequent procedures

Road ahead for WT4

- ⊙ Technical evaluation questions
 - Waiting for ICANN Org response on content of CQs, but usually deemed OK (except for Q30 - Security Policy - and Q32 - Scalable and HA Architecture)
 - Waiting for ICANN Org response on SLA Failures (asked for suggestions that would later reduce them)
- ⊙ Financial evaluation questions
 - Although also waiting for ICANN Org response on CQs, generally already deemed as requiring strong improvements or full rewrite
 - Current idea is to have a strawperson to jumpstart WT4 discussion
- ⊙ Discussing of CQ report, ICANN Org's own summary, public comments and CC2
- ⊙ Hope to get RSSAC response on root zone scaling

Next Steps

Agenda Item 5

AOB

Agenda Item 6