Application Submission Periods

2008 GNSO policy recommendation:

Recommendation 13 states: Applications must be initially assessed in rounds until the scale of demand is clear.

Problem Statement

There is concern that introducing new gTLDs through a series of application rounds, separated by a series of reviews and revisions to policies and implementation, has negatively affected the community, such as impacting demand and decision-making, introducing substantial delays, and causing latency to market.

Requirements Considered

- There must be clarity and predictability about how and when applications can be applied for in the future
- There must not be undefined gaps between the processing of applications to the acceptance of additional applications
- The choice of application submission methodology must address the potential impact on other areas of the program (e.g., objections, string contention, etc.)
- The application submission mechanism(s) should not negatively impact the stability and quality of the program
- The application submission mechanism(s) should not negatively impact operational effectiveness and the fiscal feasibility of the program

Assumptions

Questions Raised

1. Are there methods or data to help estimate demand for new TLDs in subsequent rounds? For example, do we introduce an Expressions of Interest process.

To what exent is the ICANN organization designed to scale to accomodate application volume? To what extent will discussions about the CDAR report impact WG discussions on this topic? Is a different process needed if the number of applications exceeds a certain threshold in a given period of time?

Solutions Considered

1. Hybrid: A fixed set of rounds or a single additional round (or perhaps defined by certain criteria to determine the "scale of demand"), followed by some form of steady state.
   a. Settle into Steady State

Pros	Cons
Conservative approach that allows for course correction if necessary	Does not provide as much predictability to potential applicants about when they will be able to apply (e.g., takes longer to get to a steady state)
Familiar process that allows for a gradual change to a new process	May create artificial scarcity and artificial demand
Provides a structured method for managing potential pent up demand	Increases time to market for TLDs
Allows potential "outsider" applicants time to familiarize themselves with the program requirements and benefits and prepare application materials.	Time barriers are artificial
May provide simpler and potentially fairer structure for managing and resolving potential contention.	Rounds are not an optimal process for solving competing interests. Auctions resolve them, as do intellectual property rules.
Rounds "tee up" the applications for auctions better than a continuously open application window.	With rounds, when more than one applicant applies for a particular string, other interested parties may be uncertain of how to respond without knowing which applicant will prevail and may end up wasting resources objecting or tracking an application that was unlikely to prevail in the contention process. Rounds cause the need for auctions by artificially creating contentions.
Global rules and board actions can address all new applicants prior to a round. So rounds allow for consistency in rules	
Rounds allow for subsequent reviews and a cycle of improvement	

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2. Immediately settling into a steady state

Pros	Cons
Immediately provides certainty about when applicants can submit an application if they were to miss a window.	Would make it more difficult to course correct if there are major problems identified.
Could relieve pent up demand, in particular for brands that want to apply as soon as business needs arise.	Could initially have an operational and/or financial impact on ICANN by requiring the organization to scale in response to demand.

Steady State

Some options for a steady state include:
1. First come, first served

Pros	Cons
Offers the greatest degree of flexibility to first-mover applicants.	May advantage ICANN insiders and disadvantage applicants that are less aware of New gTLDs.
Responsive to applicants as their business needs to develop and change.	May disadvantage certain applicants that need time to prepare applications, such as community applicants seeking to build community support.
Does not create artificial pent-up demand some have associated with the rounds model.	Makes it more difficult to monitor applications and raise objections as applications may be submitted at any time. A string may sometimes be only one possible combination of meanings which may have significance to a certain people or community.
Potentially reduces complex and resource intensive contention resolution processes.	May cause a strain on ICANN systems.
Potentially reduces or eliminates "land rush" mentality and behavior among applicants applying for TLDs.	May result in hastily prepared applications.
Creates incentives to develop creative new ideas for applicants that may not be able to win at auction against "high rollers."	May reduce competition in the marketplace, as rounds allow multiple applicants to compete through contention resolution processes. TLDs are too valuable and unique to rely on FCFS allocation.

Comment [4]: Can this con be more fleshed out? Regardless if its a steady state or a round, there will be an operational and financial impact on ICANN.

Something along the lines of, "Lack of predictability in initial demand can have an indeterminable operational and financial impact on ICANN." I would like to argue, though, in the case of a steady state, once a year has passed, ICANN may have some idea of demand for future fiscal year budgeting.

Comment [5]: Just for clarity, I want to ask if this refers to the "land rush" mentality to delegate TLDs as quickly as possible?

	May encourage speculation in underdeveloped TLDs.
	May result in a form of TLD warehousing by certain parties.

2. Annual / Biannual windows, or something similar (e.g., three months of application acceptance, remaining 9 months to complete evaluation, repeat on a yearly basis or three months of application acceptance, three months for objections/comments, then repeating. Evaluations are conducted on a rolling basis).

Pros	Cons
Provides a regular, predictable opportunity for applicants to apply for new gTLDs.	Applicants that have a business case to apply for New gTLD immediately will need to wait for the next window.
Provides a regular, predictable opportunity to review applications and provide objections.	The concept of rounds is artificial and unresponsive to market demand.
Potentially puts less strain on ICANN systems compared to a first come, first served model.	Rounds/windows may face unanticipated delays, even if the intention is to have a regular cycle.
Batching encourages innovation by leveling the playing field.	Rounds/windows result in contention, which is bad for some applicants.
	Eliminates first mover advantage and makes developing a unique idea more expensive.

Questions

- How are the terms "round" and "first come, first served" defined precisely?

- Is it possible to separate the concept of accepting applications and the concept of processing applications in this analysis? For example, accept applications continuously and process periodically? Or accept periodically and process continuously?

- Should application submission time be factored into a contention set decision (in the case of rounds) or preclusive of future applications for the same string (in the case of FCFS)?

- In FCFS, after an application is published, does it allow new applications to be submitted to compete with that application?

Specific Proposals

Alexander Schubert

1. There won't be ANY application accepted before 2018 or 2019: Rounds or FCFS. The PDP (even if we adopted FCFS) will take that long.
2. Whenever it is (likely 2020): There will be pent up demand of probably around 10,000 applications.
3. There will be LOT's of contention: And that is good – it's competition; and competition drives innovation and is healthy.
4. ICANN will take AT MINIMUM 1 to 2 years to process all these 10,000 applications
5. I agree with Rob: We should NOT allow for ANYBODY to put in stops between "rounds" (like this time). So AFTER the "reveal" of the applied for strings ICANN shall open up to receive applications for the next round a few month thereafter (without any new PDP) at an ALREADY fixed date.
6. However: These "round 3" applications cannot be processed for at LEAST one year (probably TWO years) due to ICANN's workload – so "FCFS" at that stage would only mean "preventing competition" – nothing else.
7. So ICANN should simply accept new applications for a year or two – and allow contention to happen. It's fruitful. Once the round closes the strings will be made public. We COULD DISCUSS that those applying early in the 3rd round have an early evaluation (an incentive to apply early). But I see no justification or "public benefit" in eliminating innovation and competition through FCFS.
8. This mechanism can revolve: Immediately after the closing of the 3rd round the 4th starts: And closes say 6 month later (obviously depending on the workload of ICANN).
9. This goes on until no contention is observed anymore – upon which we phase into an ongoing process.

Anne Aikman-Scalese

1. We know GAC will advise Community Priority Round based on EC Report and Copenhagen Communique. It would take 60% of the Board to reject that public policy advice and 2/3 of the Board to reject GNSO Council Advice to the contrary. Will the Board act in this situation or just tell GAC and GNSO to "work it out"? Why not "cut to the chase" and work it out with the GAC now ? All Objection processes should apply. PICs have to be made in connection with Community applications and they can't be revoked or it voids the registry agreement. It's up to Track 3 to develop more policy on Community applications but watch out that we don't trample on certain rights by stating that a Community application has to meet a "social good" requirement. "Community" is also about freedom of association, or in this case, freedom of "virtual association".

2. Applications from Brands – Yes, I favor a window for brands. Why? Because it's all easier under Spec 13 and I want the investment that brands have made in the marketing of brand names that correspond with potential TLD strings to pay off. (Yes, I am a trademark lawyer.) Objection procedures still apply – e.g. string confusion, community objection, legal rights, limited public interest, etc. Applications for same brand passing

initial evaluation process would go into string contention. After the contract award, a brand may only transfer to a third party acquiring all or substantially all its stock or assets, the trademark, and the good will associated with the brand, and assuming all obligations of the registry, including PICs if any.

3. Open Window of Six Months – ICANN takes all comers and applications compete. String contention and all objection procedures apply.

4. Six months after # 3 – FCFS - No window – all types of applications welcome - First Come, First Served, (no window but we need a public notice process as to strings applied for to trigger notice for objections).

Rob Hall

Have an initial round of 3 months. Anyone can apply and they will be treated all equally. This will eliminate any land rush behaviour and remove any speedier technology from influencing the applications.

Then move to a permanent open application phase. Anyone can apply at any time. Technically this is referred to as First come, First served, but the reality is it is exactly how all domain names are awarded today.   The only time there is contention is when we artificially create scarcity, such as when a domain name deletes. The TLD applications will not have this phenomena, as the initial round will remove all race conditions.

In this open application phase, all applicants would be equal.   Any applicant could apply for the TLD they desired at any time.

The objection I hear most often about a perpetually open period is one of how can companies monitor it.   The reality is it takes many months for ICANN to move through the evaluation processes that already exist, that there is plenty of time for the community to become aware of the applications.

Additionally, ICANN could just publish the applications once a month to give some predictability to the process.   Similar to how trademark registries publish newly applied for marks on a schedule. The date of application gives an applicant priority should there be multiple applications for the same string during the month. Alternately, ICANN could simply reject a duplicate application. But I would suggest they accept it, as the earlier application may not pass evaluation.

 Jeff Neuman hypothetical?

1. ICANN conducts a "round 2" which deals with the pent up demand. We would have to work out contention resolution rules and whether priority is offered to any category, etc.

2. After some up-front stated time period (which we would need to provide advice on). ICANN opens up permanents to receive TLD applications and processes/evaluates and awards TLDs on a First-come, First-served basis. However, to ease the tracking problem that would come if applications were posted every day, ICANN would commit to posting all of its proposals Quarterly (for example) so that anyone that wanted to file objections, public comments, etc. would have to only check 4X per year (as an example). This would eliminate all contention resolution, unless of course the application is unsuccessful (in which case someone will develop a wait list service for TLDs ;)).

Greg Shatan
1. An application is received for a TLD.
2. The application is made public.
3. A holding period commences (e.g., 90 days), during which other applications for the same string can be filed and "batched" with the initial filing.
4. All the applications filed during the holding period will be treated as a contention set.
5. Contention sets can be resolved as they are today -- categories and priorities will be relevant here.
6. If the application is uncontended after the holding period ends, ICANN starts its evaluation process and starts running down the agreed upon path we have now (or will have for the next round).
7. Once the contention set is resolved, the winner proceeds as in (6) above.
8. If the application passes all the tests, objections etc, then the applicant enters into a contract with ICANN and the TLD is delegated.