1.5 Deliberations and Recommendations: Application Submission

Application Submission		
1.5.1	Application Fees	Work Track 1
1.5.2	Variable Fees	Work Track 1
1.5.3	Application Submission Period	Work Track 1
1.5.4	Applicant Support	Work Track 1
1.5.5	Terms & Conditions	Work Track 2

1.5.1 Application Fees

> **a. What is the relevant policy and/or implementation guidance (if any)?**

Implementation Guideline B: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."

> **b. How was it implemented in the 2012 round of the New gTLD Program?**

The application fee in the 2012 round was based on analysis and estimates, with the intention that the program would be fully self-funding (costs should be essentially equivalent to application fees collected and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the program).[1] There were three elements used to estimate the costs prior to the 2012 New gTLD round: (1) cost for developing the new gTLD process (historical costs, related to setup and development activities), (2) readily identifiable costs of evaluating and processing an application, and (3) the more uncertain/difficult to estimate elements of the application and delegation process.[2]

> **c. What are the preliminary recommendations and/or implementation guidelines?**

Deleted:

---

[1] https://archive.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf
[2] Ibid at p. 6.

1. The Work Track is considering proposing that the New gTLD Program continue to be self-funding where existing ICANN activities are not used to cross-subsidize the new gTLD application, evaluation, pre-delegation and delegation processes.

2. In addition, the Work Track generally believes that the application fee amount should continue to be based on the "revenue neutral" principal, though the accuracy should be improved to the greatest extent possible. Although the 2012 New gTLD Applicant Guidebook remained silent on what should happen with any excess fees obtained through the application process, the Work Track is leaning towards recommending that absent the use of an Application Fee Floor (described in 3 below) excess fees should be refunded back to applicants.[3] If a deficit arises, the Work Track considered several options (see deliberations below), but there seemed to be support for ICANN recovering an the majority of funds in future TLD application windows.

3. The Work Track also is considering proposing that if in the event that the estimated application fee, based on the "revenue neutral" principal, falls below a predetermined threshold amount (i.e., the Application Fee Floor), the actual application fee will be set at that higher Application Fee Floor instead. The purpose of an Application Fee Floor, as more fully discussed below, would be to deter speculation, warehousing of TLDs, and mitigating against the use of TLDs for abusive or malicious purposes[4], that could more easily proliferate with a low application fee amount.

4. The Application Fee Floor is a predetermined value that is the minimum Application Fee. By definition, a Application Fee Floor will not meet the revenue neutral principle as the floor amount will be greater than the application fees creating an excess. In the event that an Application Fee Floor is used to determine the Application Fee excess fees received by ICANN if the Application Fee Floor is invoked should be used to benefit the following categories:

   ● Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives)
   ● Support the gTLD long-term program needs such as system upgrades, fixed assets, etc.
   ● Application Support Program
   ● Top-up any shortfall in the segregated fund as described below.

5. To help alleviate the burden of an overall shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.

---

[3] A distinction needs to be made between excess fees generated by application fees ("Applicant Fees") and any fees received by ICANN as a result of string contention ("Auction Fees"). This section only deals with the former and not with any fees received by ICANN as a result of string contention.

[4] The behaviors listed are considered undesirable by some, as they signify applying for a TLD for reasons other than utilizing it.

d. **What are the options under consideration, along with the associated benefits / drawbacks?**

None being considered at this time.

e. **What specific questions are the PDP WG seeking feedback on?**

- To the extent that warehousing/squatting of TLDs has taken place and may occur in the future, what other restrictions/methodologies, beyond pricing, might prevent such behavior?
- What happens if the revenue-cost neutral amount results in a refund that is greater than the Application Fee Floor value? Should it be only the difference between the cost floor and the amount refunded? Should there be any minimum dollar value for this to come into effect? i.e. the amount of the refund is a small amount, and if so, should this excess be distributed differently, i.e. Universal Awareness, Applicant Support, other?
- What are the considerations/implications if we move to continuous rounds, in this case limited, to how it relates to ensuring the program is run in a revenue neutral manner?
- Are there policy, economic, or other principles or factors that might help guide the establishment of the floor amount?
- Under the circumstance where the application fee is set at the floor amount, do you have additional suggestions or strategy on the disbursement of excess funds?
- Are we acknowledging and accepting of ICANN being a so-called "registry of registries" (i.e., does the community envision ICANN approving a few thousand / hundreds of thousands / millions of gTLDs to be added to the root. Should there be a cap?)
- Is there a way in which the application fee can be structured such that it can encourage competition and innovation?
- How do we address the timely disbursement of excess funds? Can this happen prior to the "end" of the evaluation process for all applications? If yes, please explain. If not, what is the length of time applicants should expect a refund after the evaluation process is complete?

f. **Deliberations**

In considering the application fee from the 2012 round of the New gTLD Program and its level of accuracy, the Work Track noted that there is a sizable outstanding amount still unspent from the that round (nearly $100 million as of the writing of this report[5]). The Work Track noted that the round has yet to conclude, but believes that there will remain a sizable amount left, even after any contingency related expenses are incurred (e.g., a substantially higher amount of historical costs were recovered, since 1930 applications were received as opposed to the 500 applications used in costing analysis done to establish the fee amount). As such, the Work Track has concerns about what appears to be a substantial mismatch of funds collected versus actual expended, recognizing that the excess funds are at least in part driven by a much larger number of applications than anticipated - which has a distinct impact in the recouping of historical costs (i.e.,development costs).

---

[5] See Draft FY19 Operating Plan and Budget here: https://www.icann.org/en/system/files/files/proposed-opplan-budget-intro-highlights-fy19-19jan18-en.pdf

There is also some level of anxiousness about how any excess funds are utilized once the round concludes as there is no plan in place other than to collaborate with the community.

Revenue Neutral:

During the course of deliberations, there was mostly agreement that the program should continue to operate in a revenue neutral manner or in other words, to not run at a deficit or generate excess revenue. That said, there were some in the Work Track that advocated for a high application fee floor, in excess of cost recovery, in recognition that a TLD is a valuable and scarce resource. Though that position was not widely held, these Work Track members maintained that a high application fee floor (perhaps equalling the application fee amount in the 2012 round or higher, assuming those amounts are indeed higher than estimates base aon revenue neutrality) was the right approach as a matter of fairness to those that applied for TLDs in 2012. Those that disagreed with setting such a high artificial application fee floor countered that 2012 applicants were given a "first mover advantage" which included the ability to operate a TLD for a number of years before the next new gTLD application window. Community Comment 2 was largely supportive of continuing with the revenue neutral approach, which is to mean that there would be no policy change in this regard.

Although some in the Work Track wanted to discuss a specific application fee amount, there were a number of reasons why ultimately exact fees were not discussed. First, the Work Track recognizes that additional analysis would be needed to establish a new estimated cost. Second, there was a recognition that the costs could not reasonably be estimated until there are at a minimum final recommendation from this Working Group. Thirdly, documentation related to the process used in setting the 2012 Application Fee were unavailable. In this regard, the Work Track anticipates that the ICANN Organization will need to perform a new cost estimate once the full parameters of the program are known based on recommendations from the community.

One other challenge, and in some sense a dependency, in developing a cost estimate is understanding the mechanism by which applications will be accepted in the future (e.g., rounds, ongoing and regular application periods, first come first served, etc.). In particular, the Work Track noted that it may not be fair to have the one round of applicants pay all historical costs related to development costs when several rounds may benefit from their implementation and use.

A specific proposal was put forth that still adheres to the principle of revenue neutrality, but in a way that embraces the fact that costing estimates are going to be imprecise, especially given the fact that the number of applications will be an unknown. This proposal stated that the fee should continue to be the $185,000, in fairness to the 2012 applicants. However, any excess amount collected would be refunded to applicants, perhaps up to a certain limit (e.g., $50,000 or some other amount) and in the case of successful applicants, allowed to be put towards its annual fees. Funds collected in excess of that predetermined limit could be put towards Universal Acceptance, Universal Awareness, and/or efforts to support applications from underserved regions. There was a fair amount of support for a model like this, with the exception of maintaining the $185,000 application fee.

Application Fee Floor:

The Work Track noted that there might be a case where a revenue neutral approach results in a fee that is "too low," which could result in an excessive amount of applications (e.g., making warehousing, squatting, or otherwise potentially frivolous applications much easier to submit),

reduce the sense of responsibility and value in managing a distinct and unique piece of the Internet, and diminish the seriousness of the commitment to owning a TLD. As such, the Work Track suggested that an application fee floor amount (i.e., a minimum price that may in fact be higher than a cost recovery amount) may be needed, though it was concerned that keeping fees higher would result in a barrier to entry for certain demographics (e.g., underserved regions).

The Work Track is generally supportive of the principle of an application fee floor, but was unable to establish a specific amount or the parameters for establishing the amount. Some ideas considered were to choose an arbitrary amount, an arbitrary percentage of the prior round application fee, or request that economic analysis be done. The Work Track also discussed when the application fee floor amount should be revisited, with some support that it should take place after each round (such that future application windows occur in rounds).

The concept of a fee floor may be also connected to the long-term goals of the program, especially around preserving the importance and sense of commitment it expects of registry operators. However, if a more laissez-faire approach is expected, then the need for a floor is diminished. Again, the Work Track largely agreed that an application fee floor makes sense.

The Work Track also had concern and discussed extensively the excess funds that would result from a floor being higher than the actual costs. In this circumstance, where the program would not be operated in a revenue neutral manner, it was discussed that excess funds could be used in a different manner (e.g., less focused on refunding to applicants and distributed based on agreed upon uses as discussed in the Excess/Shortage of funds).

Excess/Shortage of Funds:

Unless there is a mechanism to determine how many applications there will be before the round begins, there is a distinct likelihood that there will be an excess (as it appears there will be for the 2012 round) or possibly a shortage of funds to support the program. Some considerations considered for excess funds include:

- Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives)
- Credit ongoing ICANN fees for successful applicants
- ICANN Compliance to ensure Registry and Registrar fees do not rise due to the increased volume of TLDs and related resources to ensure compliance to service agreements
- Support the gTLD program needs such as system upgrades, fixed assets, etc.
- Absorb the excess funds into ICANN's general operating budgets
- Refund excess fees to applicants
- Contribute to charitable cause

The Work Track discussed these options, though it did not expect that all excess funds would go to a single destination. It also did not assign a priority level to this non-exhaustive list. Some options for disbursement include:

- Disburse based on a priority sequence and maximum amounts i.e. P1: $X; P2: $Y; P3: $Z
- Percentage of excess: Excess distributed using a percentage assigned to the various options.

- Combination: Amount up to a maximum in some categories and other categories without a maximum.

Cost shortfalls were also discussed, with a short list of potential options identified:

- Increase in application fees in subsequent periods
- Pool of funds set aside for this type of scenario (this would be connected to the suggestion above for excess funds, where a reserve is established)
- Increase annual registry fees (or other generation of revenue external to the program)
- Obtain a "loan" from general ICANN Organization funds

Costing Methodology:

As noted, the Work Track believes that the outstanding amount of funds collected and still unspent from 2012 is evidence that the estimates were materially incorrect. It discussed ways in which the accuracy might be improved, although no agreements were reached. Some ideas and concepts that were discussed include:

- 75 steps were taken prior to the 2012 round to determine the estimated costs and likelihood of evaluation outcomes (e.g., percentage that pass or fail Initial Evaluation, percentage that require Extended Evaluation, etc.). While the Work Track was unable to attain the document that reflected these steps and any related insight, it still asked itself if there is better method to increase precision of estimates.
- Performing a Risk Analysis of the factors used in determining the fees.
- Considering the implications of the volume of applications and and in particular, how they may potentially impact variable costs

g. *Are there other activities in the community that may serve as a dependency or future input to this topic?*

There are a number of factors that may influence the costing analysis, including the finalization of the Applicant Guidebook, which will incorporate the final recommendation of this Working Group as well as potentially the final recommendation of the Rights Protection Mechanisms PDP, the IGO/INGO PDP, the final recommendations of Work Track 5, any additional recommendations stemming from new name collision studies, and implementation of the recommendations of the CCT-RT. At this stage, the Work Track does not believe that these elements would influence the more principle-based preliminary recommendations in section (c) above.

1.5.2 Variable Fees[6]

a. What is the relevant policy and/or implementation guidance (if any)?

<u>Implementation Guideline B</u>: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."
<u>Implementation Guideline N</u>: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed."

b. How was it implemented in the 2012 round of the New gTLD Program?

All applicants were responsible for the same $185,000 USD fee, with two exceptions: applicants eligible for the year 2000 proof of concept credit and applicants approved through the Applicant Support Program.

Beyond the base fee, there were additional costs only when applicable. These include objections, registry services extended evaluation, and Community Priority Evaluation (CPE).

c. What are the preliminary recommendations and/or implementation guidelines?

Though Work Track 1 discussed a number of different possible alternative approaches, there was no agreement on any alternatives to the 2012; namely that all applications should incur the same base application fee amount regardless of the type of application or the number of applications that the same applicant submits.[7] This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g., objections, Registry Service Evaluation Process, etc.).

d. What are the options under consideration, along with the associated benefits / drawbacks?

Different application fees for different types of applications is only warranted if the cost incurred for processing those different types is significant (for discussion purposes, 20% was used).

Fees imposed for changing the type of application should be higher than applying for the desired TLD type originally (for discussion purposes, the applicant must pay 125% of the difference between the different application types in terms of fees plus any other related processing fees.)

e. What specific questions are the PDP WG seeking feedback on?

---

[6] This section deals with the issue of whether the fees for certain classes of TLD applications should be more or less expensive than other categories of TLD applications. It also addresses whether there should be discounts on the filing of multiple applications by the same applicant.
[7] It should be noted that although some applicants may receive applicant support in the form of reductions of their application fees, those are not considered "Variable Fees" for the purpose of this Initial Report.

1. If the number of applications exceed capacity limits and projected processing costs (assuming these are limiting factors) should there be an option to increase capacity and costs to meet service expectations. If so, how should capacity vs. increased costs and/or limits be set? What is an acceptable increase and how would the actual percentage be determined?
2. Should there be any exception to the rule that all Applicants pay the same Application Fee regardless of the type of Application? What exceptions? Why or Why not?
3. If different types of applications results in different costs, what value (e.g., amount, percentage, other) would justify having different fees? How could we seek to prevent gaming of the different costs?
4. If fees are imposed for changing the type of application, again what is an acceptable percentage and how should the percentage be determined?

f. Deliberations

While variable fees is a separate topic from the application fee, much of the discussions took place during and in the context of discussions around the application fee more holistically. It was also identified and acknowledged early on that outcomes for this topic may depend on discussions related to the topic of TLD types. There is also a linkage to other topics, such as Applicant Support and the Registry Services Provider Program, which can create additional fee variability.

The Work Track made an assumption that certain applications were more intensive to evaluate than others. For instance, while each application was evaluated on its own merits, if there are dozens of applications that are essentially identical, there is very likely to be an opportunity for economies of scale. Or, in some cases, the applicant provided its own registry services while others contracted with a Registry Services Provider, with the RSP likely providing very similar services to other clients. This perceived variability in application processing and the implication that the cost incurred is therefore variable served as the basis for discussions on this topic. While the Work Track sought actual costs from the ICANN Organization, the Work Track understands that costs were not tracked at an application by application level, making it difficult to determine if there is substantial variance in costs incurred for different application types and/or evaluation paths.

As has been discussed in other topics (e.g., TLD types), creating different paths to application approval can lead to to unintended consequences as applicants try to fit their application into the criteria to gain some advantageous treatment. For this reason, as well as simplicity, many in the Work Track and comments in Community Comment 2 preferred that the fee be the same for all applicants. However, some noted that perhaps variable pricing might be warranted in the event the difference in costs exceeds a certain threshold (e.g., greater than 20%). Others noted a specific instance where variable fees might make sense, highlighting the case of exclusive use TLDs, where for instance, registrant protection mechanisms like data escrow and EBERO require less scrutiny and related costs.

The Work Track discussed whether or not it is it fair for applications that are less resource-intensive to evaluate to potentially subsidize costs to evaluate applications requiring more resources. As the Work Track grappled with this question, it contemplated the concept of variable fees occurring in certain circumstances. Assuming there continues to be different

categories of applications (e.g., community-based, other), a 'One Fee Fits All' system is justified if the difference in costs by type of application are minimal (e.g., less than 20%). However, if the difference is greater than a specific percentage or specific dollar amount, then perhaps allowing for a variable fee might be more equitable.

In considering a system where applicants pay the application fee relative to the costs incurred for their particular application, a number of factors would need to be considered in developing estimates. For instance, the evaluation elements, the cost and time to complete those elements, and the different risks associated with different TLDs types could all be factors in establishing variable fee amounts. The Work Track was unable to review the 75 steps used to establish the application fee amount as the related documents were unavailable, so any related insight was not discussed.

As noted, many comments from CC2 were not supportive of different types of application fees and believed it may be a path to 'game' the system. Some Work Track members noted that compliance costs associated with ensuring the activities match the type of application may increase. The Work Track considered some methods to mitigate potential 'gaming' and suggested that imposing fees for applying for a cheaper/faster application type and/or changing type after delegation might make sense.

Lastly, the Work Track discussed volume discounts for applicants who submit multiple applications and the sentiment from both the Work Track and CC2 was overwhelmingly against the concept.

> **g. Are there other activities in the community that may serve as a dependency or future input to this topic?**

None identified at this time.

1.5.3 Deliberations and Recommendations: Applications Submission Period

> **a. What is the relevant policy and/or implementation guidance (if any)?**

No relevant policy or implementation guidance for this topic.

> **b. How was it implemented in the 2012 round of the New gTLD Program?**

A three (3) month application period was specified in the AGB, as detailed in Section 1.1.1. The Application Period was interpreted to mean the point at which TLD applicants were able to enter the application system to the end of the time period in which applications would be accepted.[8]

---

[8] The Application Period for the 2012 Round commenced on 12 January 2012 and was set to end on 12 April 2012. A technical glitch caused the application system to be temporarily suspended on 12 April 2012. The system was subsequently reopened on 22 May 2012 and remained open until 30 May 2012.

Deleted: 1

Deleted: w

Deleted: ing group

Deleted: as such

Deleted: ne

Deleted: .

c. What are the preliminary recommendations and/or implementation guidelines?

- For the next round of new TLD applications, Applicants should have a minimum of three (3) months from the time in which the Application Systems open until the time in which Applications would become due ("Application Submission Period").

This recommendation would apply if the next application opportunity is structured as a round. Please see sub-sections (d) and (f) for discussion about potential subsequent application opportunities.

d. What are the options under consideration, along with the associated benefits / drawbacks?

- Under the topic "Communications" (see 1.4.2.), the Work Track has recommended that the Communications Period for the next round of new gTLDs should be at least six (6) months. One possible recommendation is that no more than two (2) months of the Communications Period for the next round of new gTLDs should overlap with the Application Submissions Period, leaving at least one (1) month after the closing of the Communications Period and before the closing of the Applications Submission Period.
- In the event that following the next round of new gTLDs, application opportunities are organized as a series of application windows:
    ○ Steps related to application processing and delegation should be able to occur in parallel with the opening of subsequent application windows.
    ○ The Applications Submission Period may be shortened to two (2) months.

e. What specific questions are the PDP WG seeking feedback on?

- For the next Round, is having the Applicant Submission Period set at three (3) months sufficient?
- Is the concept of a fixed period of time for accepting applications the right approach? Why or why not? Does this help facilitate a predictable schedule for submission and objections/comments?

f. Deliberations

The Work Track noted that this topic is closely connected to the overarching issue "Applications Assessed in Rounds," which addresses the structure of application windows and application processing periods for subsequent procedures, including whether there should be rounds, a continuous open application period, or a hybrid model of the two. The Work Track noted that the topic "Application Submission Period" is narrow in scope and specifically addresses the length of the application submission period itself. Therefore, it is difficult to come to conclusions on this topic until discussions on rounds are completed.

While there were different views expressed about how application windows should be structured in subsequent procedures, the Work Track agreed, and CC2 comments reinforced, that

predictability for applicants is essential. The Work Track discussed that applicants would have a greater amount of predictability if a steady state of application opportunities could be reached, for example an annual application window followed by a period to complete application evaluation. In such a scenario, the Work Track generally agreed that a three-month application window would give applicants sufficient time to submit application materials. If the remaining nine months were devoted to completing application evaluation, applicants would have plenty of time between windows to prepare for the following application opportunity.

The Work Track considered a proposal that following the initial round, subsequent application submission windows could be shorter, perhaps 60 days in length. The Work Track would like feedback on this proposal.

Several CC2 comments suggested that ICANN should provide a clear schedule, in advance, notifying potential applicants of future application windows. Commenters suggested that the structure of future applications windows should be determined and communicated as early as possible to ensure predictability for applicants.

   g. *Are there other activities in the community that may serve as a dependency or future input to this topic?*

None identified at this time.

1.5.4 Applicant Support

   a. *What is the relevant policy and/or implementation guidance (if any)?*

Implementation Guideline B: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."
Implementation Guideline N: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed."

   b. *How was it implemented in the 2012 round of the New gTLD Program?*

The Applicant Support Program (ASP) was a community-driven initiative developed to promote access to the New gTLD Program. It assisted potential new gTLD applicants seeking both financial and non-financial support via the following mechanisms:

   ● Financial assistance in the form of new gTLD evaluation fee reduction;
   ● Pro bono services;
   ● Establishment of a funding mechanism for the program.

The financial assistance component of the ASP allowed applicants that could meet the established criteria threshold to pay a reduced evaluation fee of USD $47,000 instead of the full evaluation fee of $185,000. ICANN agreed to set aside USD $2,000,000 to seed the initial ASP.[9]

In order to qualify for the fee reduction, applicants were required to demonstrate financial need, provide a public interest benefit, and possess the necessary management and financial capabilities.[10] In addition, in the event that an Applicant applied for assistance under the ASP but was found to not qualify for the program, it was required to withdraw the application from consideration. Thus, there was no opportunity if an Applicant failed to qualify for the program, to then attempt to raise the remainder of the funds to keep its application in current round of the Program. A five member Support Application Review Panel (SARP) was needed to perform evaluations. The panel was appointed by ICANN in 2011 and was intended to be representative of the ICANN Community.

c. What are the preliminary recommendations and/or implementation guidelines?

Work Track 1 members are generally of the view that:

1. In the 2012 round, although anyone could apply, Applicants that operated in a developing economy were given priority in the ASP[11]. The Work Track generally agreed that applicant support should continue to be open to applicants regardless of their location so long as they meet the other criteria.
2. Geographic outreach areas should not only target the Global South[12], but also consider the "middle applicant" which are struggling regions that are further along in their development compared to underserved or underdeveloped regions.
3. Applicants who do not meet the requirements of the ASP should be provided with a limited period of time (that does not unreasonably delay the program) to pay the additional application fee amount and transfer to the relevant application process associated with their application.
4. ICANN should improve the awareness of the ASP by engaging with other ICANN communities and other suitable partners that include, but not limited to, focus on technology and communication industries, especially in underserved regions, while improving awareness through extensive promotional activities.
5. ICANN should employ a multifaceted approach based on pre-application support, including longer lead times to create awareness, encouraging participation of insightful experts who understand relevant regional issues and potential ramifications on the related business plans, along with the tools and expertise on how to evaluate the business case, such as developing a market for a TLD.

---

[9] Cite ICANN Resolution.
[10] For more information see the New gTLD Applicant Support page at: https://newgtlds.icann.org/en/applicants/candidate-support.
[11] See https://archive.icann.org/en/topics/new-gtlds/draft-applicant-support-criteria-10dec11-en.pdf.
[12] While there does not seem to be an internationally agreed definition for the term Global South, see here: https://en.wikipedia.org/wiki/Global_South

Formatted: Font: (Default) Calibri, 13 pt, Not Bold, Not Italic, Font color: Custom Color(RGB(47,84,150))

Formatted: Font: Not Bold, Not Italic

Formatted: Font: (Default) Arial, 11 pt, Font color: Auto

Formatted: Normal, Space Before: 0 pt, Line spacing: single

Deleted: standard

Commented [25]: Edit driven by email from Kristina Rosette on 28 Apr.

6. Support should continue to extend beyond simply financial. ICANN's approach should include mentorship on the management, operational and technical aspects of running a registry such as existing registries/registrars within the region to develop in-house expertise to help ensure a viable business for the long-term.
7. Additionally, financial support should go beyond the application fee, such as including application writing fees, related attorney fees, and ICANN Registry-Level Fees.
8. ICANN should evaluate additional funding partners, including through multilateral and bilateral organizations, to help support the ASP.
9. ICANN should consider whether additional funding is required for the next round opening of the Applicant Support Program.

d. ***What are the options under consideration, along with the associated benefits / drawbacks?***

None being considered at this time.

e. ***What specific questions are the PDP WG seeking feedback on?***

- The Work Track generally agreed that that the ASP should be open to applicants regardless of their location (see recommendations 1 and 2 above). How will eligibility criteria need to be adjusted to accommodate that expansion of the program?
- Metrics: What does success look like? Is it the sheer number of applications and/or those approved? Or a comparison of the number that considered applying vs. the number that actually completed the application process (e.g., developed its business plan, established financial sustainability, secured its sources of funds, ensured accuracy of information?)
    - What are realistic expectations for the ASP, where there may be critical domain name industry infrastructure absent or where operating a registry may simply not be a priority for the potential applicants?
- If there are more applicants than funds, what evaluation criteria should be used to determine how to disperse the funds: by region, number of points earned in the evaluation process, type of application, communities represented, other?
- Other elements
    - Did the ASP provide the right tools to potential program participants? If not, what was missing?
    - How can we best ensure the availability of local consulting resources?
    - How can we improve the learning curve – what ideas are there beyond mentorship?
    - How do we penalize applicants who may try to game the system?
    - Are there any considerations related to string contention resolution and auctions to take into account?
    - Should there be a dedicated round for applicants from Developing Countries?
- What should the source of funding be for the ASP? Should those fund be considered an extra component of the Application Fee? Should ICANN use a portion of any excess fees it generates through this next round of new gTLDs to fund subsequent Application Support Periods?
- Are there any particular locales or groups that should be the focus of outreach for the ASP (e.g., indigenous tribes on various continents)?

f. Deliberations

The Work Track considered several sources, including the Final Issue Report,[13] the report by AM Global Consulting "New gTLDs and the Global South: Understanding Limited Global South Demand in the Most Recent new gTLD Round and Options Going Forward," CC2 responses, the Final Report of the Joint SO/AC New gTLD Applicant Support Working Group,[14] and the Competition, Consumer Trust, and Consumer Choice Review Team (CCT-RT) Draft Report.[15]

With respect to the CC2 responses, the Work Track noted that some said there was a need for additional support for IDNs, including more technical resources, if the applicants also met the other ASP criteria. Others suggested that the ASP always was intended to include IDN support. On the concept of the "middle applicant" (i.e., struggling regions that are further along in their development compared to underserved or underdeveloped regions), respondents noted the need to identify areas to target and that while it could afford greater access to the ASP, it could also increase costs, depending on how this expanded category was defined. Others disagreed that such an expansion was consistent with the original aims of the program.

Several CC2 respondents had suggestions for how to improve the program, which the Work Track considered in its deliberations and recommendations. These include bringing down applications costs and simplifying the process, providing more concise documentation, better publicity and education, offering support in other parts of the ecosystem via Registry Operator or registrar programs, and seeking partners with relevant global reach. Others suggested additional information should be collected via research and studies. In addition, some respondents said ICANN should be focused on adjusting eligibility criteria, making sure applicants can meet the criteria, and improving mentorship and capacity building. The Work Track noted that respondents pointed to the need to look at the lessons learned from the Joint Applicant Support (JAS) program in the last round. Several respondents noted that in addition to an applicant being able to demonstrate that there is a business case for the TLD, applicants should also demonstrate that there is an actual market that the TLD will serve and that the infrastructure and people with the knowledge and the skills to operate the TLD in perpetuity are accessible.

In addition to the CC2 responses, the Work Track discussed perceived shortcomings from the 2012 round, including a condensed timeline from ASP Program launch to New gTLD Program launch, limited outreach, limited scope of assistance offered (from both a financial and logistical perspective), limited groundwork laid in advance, and lack of clarity around application and evaluation criteria.

The Work Track discussed the need to obtain information and/or data to better understand why usage was limited, which can be used in the development of any future solutions.

---

[13]https://gnso.icann.org/sites/default/files/file/field-file-attach/2016-12/subsequent-procedures-final-issue-04dec15-en.pdf
[14]https://community.icann.org/download/attachments/22970578/Final_Report_JASWG+%28Sept+2011%29_Seth+created_Submitted.pdf
[15] https://www.icann.org/en/system/files/files/cct-rt-draft-report-07mar17-en.pdf

Concerning the dissemination of information regarding applicant support to end users, potential applicants felt they didn't have complete or the right kind of information. It has been noted that there was no outreach for the New gTLD Program in developing countries in general, not just for ASP. The Work Track discussion included identifying the following opportunities:

- The need for diversified outreach, such as through in-person events, webinars, and sector-specific conferences, possibly with the support of regional staff from the Global Stakeholder Engagement team;
- The use of traditional media and online press; and
- That communications must be frequent and simple to understand.

The Work Track considered what areas needed to be addressed first and that there is a lack of clarity concerning applicant support needs and priorities. For example, the Work Track noted the need for balance between the support requirements for communities or geographic areas to apply for a gTLD, and whether they have enough potential registrants who would be interested in a gTLD. Specifically, do communities or geographic areas need to develop demand from users before they consider applying for a gTLD? Or is the goal of applicant support to first develop the gTLD and then develop the user demand? Do potential applicants in underserved regions have a compelling enough business reason to run a TLD?

In addition, the Work Track noted that applicants may lack experience in seeking support and evaluations should be conducted with that understanding.

The Work Track suggested that a business case must be made to 1) internal management; 2) the public; 3) and gTLD potential applicants. This could include providing possible business models that may be emulated along with case studies.

In addition, the Work Track suggested that ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.[16]

The Work Track recommended that applicant support should be open to applicants regardless of their location. Disadvantaged communities exist within wealthy countries and should not be excluded due to their location. However, eligibility criteria will need to be adjusted to accommodate any change in scope of the program. The Work Track has not yet reached agreement on specific changes in that regard.

The Work Track notes that the penalty from the 2012 round, where failure in the evaluation meant exclusion for the relevant application, seemed overly harsh. Recognizing that some elements may be needed to prevent abuse of the program, there is some support for allowing applicants who do not qualify the opportunity to raise the additional funds and transfer to the standard application process.

---

[16] As of June 2017: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan Sudan ,Timor-Leste, Togo, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Yemen, and Zambia.

Deleted: purchasers

Formatted: Font: 10 pt

In 2012, the ASP fee was $47,000 which is ~ 25% of $185,000 application fee. The Work Track considered that if fee reduction applies in the future, whether there should be a minimum application fee to applicants who are awarded support.

The Work Track deliberated and reached agreement on recommendations relating to implementation guidance in the areas of promotion, outreach, reduced application fees, and assistance in general, as follows.

Improving Promotional Efforts

The Work Track agreed on the need to improve outreach for the New gTLD program in general and the ASP in Developing Countries. It suggested that such outreach could include engaging with ccNSO/GAC Members/ALAC on how to create awareness and education in relevant regions. Suggestions for outreach activities included:
- Expanding training and awareness opportunities; Encourage inclusion of the Applicant Support program in all promotional activities related to the new TLD Program.
- Being present in potential markets. This is still a new field in many countries and it takes time/presence to gain traction and build awareness.
- Finding suitable partners with the relevant global reach to improve outreach efforts to the appropriate audiences (Internet societies chapters, global university networks or aid organizations) who focus on technology and communications in underserved markets.
- Implementing training programs for developing locally situated registries/registrars.
- Leveraging regional Global Stakeholder Engagement staff to support outreach and education efforts.

In order to help determine the success of the ASP, the Work Track noted that it could be useful to develop success metrics that would go beyond simply collecting data on the number of TLDs. Specifically, the Work Track suggested:
- Collecting data on the number of registrants of domain names registered in "regional" TLDs (e.g., TLDs focusing mainly on a local, limited market), keeping in mind that there are other barriers for registrants in developing countries to access domain names, such as inability to access online payment services, and a lack of local registrars. Therefore, the Work Track noted that volume may not indicate interest or disinterest.
- Identifying the number of domain names registered in "regional" new gTLDs and comparing against the number of Internet users in such regions; and then comparing with same numbers for Internet users and "regional" new gTLDs in developed regions such Europe and North America.

Utilizing Partnerships to Maximize Outreach

The Work Track noted that while partnerships may have uses in promoting outreach, they should focus on companies from the region, rather than outsiders (such as from North American and Europe). In particular, the Work Track suggested that ICANN should
- Partner with organizations in potential regions before taking actions on its own.
- Leverage developmental entities, agencies and incubators.
- Leverage initiatives funded by multilateral agencies.
- Leverage work of USAG to promote Universal Acceptance.

Support Beyond Reduced Application Fees

The Work Track agreed that there should be support, beyond reduced application fees, for aspects of the program such as objections, string contention resolution, post-delegation operations, and other operational expenses (backend technology, data escrow, marketing and sales). This support could be offered to potential applicants, who are considering whether to apply and could include providing:

- Support during the entire application process; including facilitating introductions and engagement with Registry Service Providers willing to support discounted services for ASP participants.
- Mentorship opportunities, including knowledgeable technical mentors.
- Tools to evaluate the viability of business ideas with potential ASP applicants.

Understand Obstacles & Provide Assistance Accordingly

Applicants needing support may not have the technical ability to run a registry, and while the Work Track noted that competency rules should not be relaxed, support might include capacity building, similar to ICANN's training in DNSSEC deployment, to build competency in the region. In addition, the Work Track noted that support could include guidance concerning the aspects of running a registry service, including costs, such as:

- Application/processing and relevant consultants
- Attorney's fees
- Ongoing registry maintenance

In addition, the Work Track agreed that support could include advice on how to develop a TLD and how to develop a particular market for a TLD. For example, the Work Track suggested that TLDs linked to identity may have a higher chance of not competing with others and thus may have a higher likelihood of succeeding in a community or region. Questions the Work Track considered included what are the biggest issues in a region and how can a TLD help overcome the obstacles. For example, the Work Track noted that where basic infrastructure and reliable access continues to be a challenge, the ICANN community may have to accept that the existing availability of TLDs (ccTLDs and existing gTLDs) may be sufficient in certain regions. Instead, resources may be more effectively utilized in critical local Internet infrastructure. However, the Work Track noted that polling resources may help. For example, a shared backend operator at a regional level might be used by many applicants seeking support.

> *g. Are there other activities in the community that may serve as a dependency or future input to this topic?*

None identified at this time.

1.5.5 Terms & Conditions

> *a. What is the relevant policy and/or implementation guidance (if any)?*

No relevant policy or implementation guidance for this topic.

b. How was it implemented in the 2012 round of the New gTLD Program?

All applicants that submitted an application through the online interface were required to agree to a set of "clickwrap"[17] terms and conditions. Those terms and conditions in the online system mirrored what was made available in Module 6 of the Applicant Guidebook.

c. What are the preliminary recommendations and/or implementation guidelines?

Work Track 2 believes that there should continue to be a Terms and Conditions document separate and apart from the Registry Agreement. Although the majority of the Terms and Conditions contained in the 2012 round were generally acceptable, the Work Track is considering proposing the following changes.

- Section 3 of the 2012 Terms and Conditions states that ICANN may deny any new TLD application for any reason at its sole discretion. It also allows ICANN to reject any application based on applicable law. The Work Track believes:
  - Unless required under specific law or ICANN Bylaws, ICANN should only be permitted to reject an application if done so in accordance with the Terms and Conditions of the Applicant Guidebook.
  - In the event an application is rejected, the ICANN Organization should be required to cite the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaw for not allowing an application to proceed.

- Section 6 currently gives ICANN a broad disclaimer of representations and warranties, but also contains a covenant by the Applicant that it will not sue ICANN for any breach of the Terms and Conditions by ICANN. In general the Work Track was not comfortable with the breadth of this covenant to not sue and Work Track members disagreed with the covenant not to suee as a concept. However, if the covenant not to sue ICANN is maintained, there **must** be a challenge/appeal mechanism established above and beyond the general accountability provisions in the ICANN Bylaws, that allows for substantive review of the decision. This mechanism should look into whether ICANN (or its designees/contractors) acted inconsistently (or failed to act consistently) with the Applicant Guidebook (see section [1.8.2] for further detail).

- Section 14 allows ICANN to make reasonable updates to the Applicant Guidebook at its discretion. The Work Track generally agrees that to the extent that substantive changes are made to the Applicant Guidebook or program processes, applicants should be allowed some type of recourse, including if applicable, the right to withdraw its application from ICANN consideration in exchange for a refund. A framework for ICANN to make transparent changes to the Applicant Guidebook as well as available recourse to change applications or withdraw for applicants should be laid out.

---

[17] A clickwrap agreement is a type of contract that is widely used with software licenses and online transactions in which a user must agree to terms and conditions prior to using the product or service.

d. *What are the options under consideration, along with the associated benefits / drawbacks?*

None being considered at this time.

e. *What specific questions are the PDP WG seeking feedback on?*

1. Are there any other changes that should be made to the Applicant Terms and Conditions that balances ICANN's need to minimize its liability as a non-profit organization with an Applicant's right to a fair, equitable and transparent application process.
2. Under what circumstances (including those arising relative to the sections referenced above) should an applicant be entitled a full refund?
3. Some in the Work Track have noted that even if a limited challenge/appeals process is established (see preliminary recommendation 2 above), they believe the covenant to not sue ICANN Organization (i.e., Section 6 of the Terms and Conditions) should be removed. Others have noted the importance of the covenant not to sue, based on ICANN Organization's non-profit status. Do you believe that the covenant not to sue should should be removed whether or not an appeal process as proposed in 1.8.2 is instituted in the next round? Why or why not?

f. *Deliberations*

The topic of the Applicant Guidebook terms and conditions was not initially identified in the Final Issue Report. However, the topic was raised early on by Work Track members as needing review. The Work Track has reviewed the terms and conditions[18] in their entirety and identified areas where changes may be needed. The terms and conditions has a total of 14 sections, however, after discussion the Work Track believes that only sections 3, 6, and 14 may require changes. The deliberations below are focused individually on each of those 3 sections, though they should be considered collectively when determining what recommendations may be needed.

Section 3:

> *Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.*

The origins/affirmation of this language, at least in part, can be traced to a special meeting of the ICANN Board of Directors on 25 September 2010 in Trondheim, Norway. The Board

---

[18] Ibid.

resolved to provide guidance on the Role of the Board, stating that, "The Board approves the inclusion of a broad waiver and limitation of liability in the application terms and conditions."[19]

From discussions held in the Work Track and from Community Comment 2 comments, there appears to be general agreement that the language in the provision should be revised to make it clear that ICANN cannot unilaterally reject an application without an appropriate reason and in accordance with the Applicant Guidebook.

Some recommended referencing documents that should be read in conjunction with the section, such as applicable sections of the ICANN Bylaws and sections of the Applicant Guidebook on eligibility and evaluation criteria and processes. In the event an application is rejected, the ICANN Organization should be required to cite the reason, specific law, ICANN Bylaw, and/or policy for not allowing an application to proceed. In Community Comment 2, the Registries Stakeholder Group provided specific proposed adjustments, "ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law, policy, or eligibility and evaluation requirements outlined in sections 1.2, 2.1-2, and 3.2.1 in the Applicant Guidebook."

However, the Work Track has not agreed to specific wording to revise this section, though it notes that that level of specificity may not be needed at this phase of the PDP.

Section 6:

> Applicant releases ICANN from any claims by applicant related to ICANN's review, applicant's withdrawal, or ICANN's decision of application. Applicant agrees not to challenge ICANN in court in regards to any final decision made by ICANN in regards to the application.

Many in the Work Track recognized the challenges of allowing ICANN, a non-profit, to be subject to unlimited litigation. However, some felt that a covenant to exclude fraud or gross negligence may be appropriate. Channeling discussions from Work Track 3 on challenge mechanisms [see section 1.8.2], some felt that the presence of covenant not to sue ICANN would be much more palatable if challenge/appeals mechanisms were established for the program. Specific language considered by the group stated that, "ICANN must build into the new gTLD Program appeals mechanisms to include the ability for applicants to challenge the decisions of the ICANN staff, the ICANN Board, and/or any entities delegated decision making authority over the assignment, contracting and delegation of new gTLDs. Such appeals mechanism must include the ability to review those decisions on the merits and not only with respect to whether ICANN violated the Bylaws. Only with such an appeals process performed by an independent entity could ICANN then include a covenant not to sue in the Applicant Terms and Conditions. However, the covenant not to sue shall not apply to cases alleging fraud, negligence or wilful misconduct." Some members of the work track maintain their opposition to the covenant not to sue ICANN even if an appeals mechanism is adopted.

The majority of comments from Community Comments 2 also supported the creation of a challenge/appeal mechanism if the covenant not to sue ICANN is maintained. The specifics of the challenge/appeal mechanism will take place within the deliberations related to section [1.8.2] on Accountability Mechanisms.

---

[19] See Board minutes here: See Board minutes here: https://www.icann.org/resources/board-material/minutes-2010-09-25-en

Formatted: Highlight

Section 14:

Applicant understands ICANN reserves right to make updates/changes to applicant guidebook and application process and that applicant will be subject to such changes. If such changes are made after application has been submitted and present material hardship to applicant, ICANN will work to accommodate applicant.

The Work Track felt that the uncertainty introduced from allowing changes to the Applicant Guidebook and program processes put applicants in a poor position, where they have relied upon a certain set of rules only to have the distinct possibility that they may change after application submission. The Work Track emphasized the importance of predictability within the program, and some felt that ICANN's ability to make changes to the Applicant Guidebook and program processes should be limited as much as possible. The Work Track noted the connection to the broader Predictability topic (see section 1.2.2 on Predictability) and the likely applicability and usefulness of the Predictability Framework discussed there – any resulting changes from section 1.2.2 should be reflected in this section of the report. There was recognition in the Work Track that indeed, some change and uncertainty is inevitable, and but that perhaps setting thresholds for allowing change might make sense.

The Work Track also noted that, to the extent that substantive changes are needed, applicants should be allowed to some type of recourse. For instance, applicants could be allowed to make changes to their application in order to react to the changes made to the AGB, or if particularly impactful changes are made, then refunds may make sense.

g. **Are there other activities in the community that may serve as a dependency or future input to this topic?**

None identified at this time.

Deleted: .

Commented [29]: Edit driven by email from Kristina Rosette on 28 Apr.

Formatted: Highlight