

| <b>New gTLD Program</b>      |   |                    |
|------------------------------|---|--------------------|
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| 1.2.4                        | Different TLD Types                             | Overarching Issues |
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| 1.7.2                                  | Registrant Protections        | Work Track 2        |
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| 1.7.5                                  | IDNs                          | Work Track 4        |

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| 1.12.3 | Contractual Compliance | Work Track 2 |
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## 1.6 Deliberations and Recommendations: Application Processing

| Application Processing |                     |  |
|------------------------|---------------------|--|
| 1.6.1                  | Application Queuing |  |

### 1.6.1 Application Queuing

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

Implementation Guideline D: “A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.”

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

While the 2007 Final Report recommended processing applications on a first-come first-served basis, Section 1.1.2.5 of the Applicant Guidebook specified that if more than 500 applications were received, a secondary timestamp mechanism would be used to establish batches for evaluation and subsequent application processing steps. ICANN initially intended to use a system it called “digital archery” to provide the timestamp. It developed this unique “skills-based” mechanism<sup>1</sup> to avoid as best as possible a randomization process that could be classified as a lottery or sweepstakes.<sup>2</sup> After glitches in the system were discovered that produced inconsistent

<sup>1</sup> See <https://www.icann.org/resources/board-material/resolutions-2012-03-28-en> for a description of the “digital archery” system.

<sup>2</sup> In 2001, ICANN and NeuLevel were sued in Los Angeles, California by several applicants for .BIZ domain names claiming that the Defendants were running an illegal lottery. In that case, NeuLevel initially proposed randomizing applications for second level domain names within .BIZ to determine the ultimate registrants for those names. NeuLevel charged applicants for .BIZ domain names an application fee of \$2.00 per application. After an injunction was granted temporarily halting the launch of .BIZ, NeuLevel changed the application process to a first-come, first-served process and settled the case with the plaintiffs. See <https://www.icann.org/resources/pages/smiley-v-icann-2012-02-25-en>.

results, ICANN adopted a “Drawing” process that randomized the applications to determine the priority of evaluating the applications.<sup>3</sup>

For the Drawing process, ICANN obtained a license from the State of California so that the mechanism would be conducted in accordance with California law. Applicants had the option to pay \$100 per application to receive a ticket for inclusion in the prioritization draw, which determined the order in which applications received their Initial Evaluation results (although the order was used for other processing steps as well). IDN strings were prioritized before other applications and all applications associated with a ticket were prioritized before those without. The randomized draw took place in four parts:

- Drawing 1: IDN applications for which a ticket had been purchased
- Drawing 2: Non-IDN applications for which a ticket had been purchased
- Drawing 3: IDN applications for which a ticket had NOT been purchased
- Drawing 4: Non-IDN applications for which a ticket had NOT been purchased

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

The Work Track notes that the full Working Group must make recommendations about the structure of subsequent application windows before any recommendations can be finalized on this topic (see Applications Assessed in Rounds - section 1.2.3). The Work Track notes, however, that the first application window in subsequent procedures is likely to be structured in the form of a round. If this is the case, the following preliminary draft recommendations apply for the prioritization of applications.

- ICANN should not attempt to create a “skills-based” system like “digital archery” to determine the processing order of applications.
- ICANN should apply again for an appropriate license to conduct drawings to randomize the order of processing applications.
- If ICANN is able to secure such a license, applications should be prioritized for Initial Evaluation using a prioritization draw method similar to the method ultimately adopted in the 2012 round. Namely:
  - Applicants who wish to have their application prioritized may choose to buy a ticket to participate in the “draw”.
  - Applicants who choose not to buy a ticket will participate in a later draw to be held after the prioritized applicants.
  - Assignment of a priority number is for the processing of the application and does not necessarily reflect when the TLD will be delegated.
- Unlike the 2012 round, the Work Track is considering the following proposals:
  - If an applicant has more than one application, they may choose which of their applications to assign to each priority number received within their portfolio of applications.

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<sup>3</sup> See <http://newgtlds.icann.org/en/applicants/batching/drawing-prioritization-10oct12-en.pdf> for the Drawing Process.

- To the extent consistent with applicable law, ICANN should include in the application amount or a prioritization number otherwise assigned during the application process without the need for a distinctly separate event.
- All Applications submitted in the next round (regardless whether delegated or not) must have priority over applications submitted in any subsequent rounds/application windows even if the evaluation periods overlap.

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

None.

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

- If there is a first-come, first-served process used after the next application window, how would ICANN implement such a process?
- In subsequent procedures, should IDNs and/or other types of strings receive priority in processing? Is there evidence that prioritization of IDN applications met stated goals in the 2012 round (served the public interest and increased DNS diversity, accessibility and participation)?<sup>4</sup>
- If ICANN is unable to obtain a license to randomize the processing order of applications, what are some other mechanisms that ICANN could adopt to process applications (other than through a first-come, first-served process)?
- Some members have suggested that the processing of certain types of applications should be prioritized over others. Some have argued that .brands should be given priority, while others have claimed that community-based applications or those from the Global South should be prioritized. Do you believe that certain types of applications should be prioritized for processing? Please explain.

**f. Deliberations**

In early conversations on application queuing, the Work Track reviewed potential dependencies within the PDP that may impact deliberations on the topic. Key among these is the structure of application windows for subsequent procedures. If the full Working Group recommends, for example, that ICANN accept applications on a continuous basis, the needs regarding application queuing might be very different than a model of application rounds.

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<sup>4</sup> According to the paper produced by the ICANN Organization “Use of a Drawing for Prioritizing New gTLD Applications” “Advance release of IDNs promotes DNS diversity, makes the Internet more accessible, increases avenues of participation and serves the public interest.” See <https://www.icann.org/resources/pages/drawing-prioritization-2012-10-10-en>.

Keeping in mind that there are still open questions that may need to be revisited following publication of the Initial Report and review of public comments, the Work Track discussed several questions and concerns related to application queuing and developed some preliminary recommendations to revisit as other recommendations in the PDP are finalized.

The Work Track reviewed the challenges associated with implementation of application queuing in the 2012 round, including the unsuccessful deployment of digital archery, as well as the draw system subsequently adopted. The Work Track recalled concerns that the secondary time-stamp process outlined in the Applicant Guidebook was not created before the opening of the application window. One clear point of agreement is that if application queuing is implemented in subsequent procedures, the method should be developed and operationalized prior to the launch of the application window. Having the opportunity to do so was seen to afford the opportunity to explore improving the process by which prioritization draw numbers are assigned. Establishing the method in advance will also provide predictability and consistency for applicants and help to ensure that the necessary systems are implemented beforehand. CC2 comments supported these points.

Work Track members considered the pros and cons of the randomized draw presented in the Issue Report, agreeing that the benefits of fairness and predictability in the application process outweigh potential operational inefficiencies that accompany this method.

The Work Track largely agreed with potential drawbacks identified in the Issue Report associated with processing applications on a first-come, first-served basis:

- *Applicants rushing to complete applications, possibly forsaking quality*
- *Favoring applicants most familiar with the process and requirements*
- *Favoring applicants who are located close to ICANN's servers*
- *Creating the possibility of a self-inflicted distributed denial of service attack as applicants rush to click the submit button<sup>5</sup>*

Taking into account comments received through CC2, the Work Track determined that if a system of rounds or multiple application windows is used in the future, it generally supports continuing to use the draw method adopted in the 2012 round. The Work Track noted that this recommendation may require additional research by the ICANN Organization's Legal Department to ensure compliance with applicable laws. The Work Track made clear that given the problems experienced in the 2012 round, digital archery should not be used in the future.

The Work Track generally supported the practice adopted in 2012 of providing applicants the option of purchasing a ticket to receive priority in the prioritization draw. As was the case in the 2012 round, applications included in this draw would be processed before other applications. The Work Track believes that there may be an opportunity to streamline the process by which

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<sup>5</sup><https://gnso.icann.org/sites/default/files/file/field-file-attach/2016-12/subsequent-procedures-final-issue-04dec15-en.pdf>

prioritization draw numbers are assigned and suggests that ICANN Legal, in determining compliance, explore ways to do so.

The Work Track discussed a proposal by the RySG that applicants should be able to choose which of their applications to prioritize in the queuing process,<sup>6</sup> allowing them to assign particular applications to specific raffle numbers that they have received for their portfolio of applications. Work Track members felt that this was a reasonable proposal that allowed greater flexibility to applicants with multiple applications.

The Work Track discussed whether specific types of applications should be prioritized in subsequent procedures. There was no agreement about whether IDNs should continue to receive priority or how they would receive priority over all other types of applications. CC2 comments suggested additional categories for prioritization, for example the ALAC proposed that Community applications and applications seeking Applicant Support should receive priority.<sup>7</sup> Work Track members further considered whether priority should be given to applications from the Global South, but some members raised concerns about gaming. The Work Track reviewed a proposal from the Brand Registry Group to group applications by common characteristics while establishing priority numbers, in order to increase processing efficiency, using .Brands as an example. The Work Track did not come to a conclusion on these suggestions.

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

No.

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<sup>6</sup> See RySG response to CC2 question 1.7.1  
[https://docs.google.com/spreadsheets/d/1427pgTCkquOj2NZZzMnz\\_H\\_IPe54dtvUErSJd9uhkZw/edit#gid=273846720](https://docs.google.com/spreadsheets/d/1427pgTCkquOj2NZZzMnz_H_IPe54dtvUErSJd9uhkZw/edit#gid=273846720)

<sup>7</sup> See ALAC response to CC2 question 1.7.2  
[https://docs.google.com/spreadsheets/d/1427pgTCkquOj2NZZzMnz\\_H\\_IPe54dtvUErSJd9uhkZw/edit#gid=273846720](https://docs.google.com/spreadsheets/d/1427pgTCkquOj2NZZzMnz_H_IPe54dtvUErSJd9uhkZw/edit#gid=273846720)