

1.3 Role of Application Comment

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

Implementation Guideline C: ICANN will provide frequent communications with applicants and the public including comment forums.

Implementation Guideline Q: ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.

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

In section 1.1.2.3 of the Applicant Guidebook, it called for a comment period on all applications, called the Application Comment period. This period was to open when all applications were publicly posted on ICANN's website. Comments were to be specific to individual applications and where applicable, related to the relevant panel (e.g., evaluation element).

Comments received within the specified period (the Applicant Guidebook indicated 60 days), would be considered by the relevant evaluation panels. Panelists would perform due diligence on the comments and seek clarification from the applicant if necessary (e.g., where the comment could impact scoring). In those instances, applicants were given the opportunity to respond to the relevant application comments.

Application comments were not to be considered formal objections and any comments related to objections would not be considered by the Initial Evaluation panelists. However, objection based comments could play a role, albeit limited, during relevant objection proceeding. Application comments directed at the Limited Public Interest and Community objection grounds were forwarded to the Independent Objector.

Public comments designated to Community Priority Evaluation (CPE) could be taken into account by the evaluation panelist during CPE.

Governments could utilize the application comment tool, but was not a substitute for formal consensus GAC Advice.

The application comment system was also utilized for application change requests, Public Interest Commitment (PIC) statements, and complaints about code of conduct violations of an evaluation panelist.

In some circumstances, public comments needed to be submitted by certain deadlines in order to be considered by the relevant evaluation panel or process. The general public comment forum remained otherwise open throughout the entire process.

The Program Implementation Review Report (PIRR) contains statistics on the number of application comments received, as well as for which areas of evaluation.

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

- The Working Group supports continuing the guidance in Implementation Guideline C, particularly around the provision of comment forums. However, the Working Group believes that the mechanism and system could be further optimized.
 - Implementation Guidance: The system used to collect application comment should better ensure that the email and name used for an account are verified in some manner.
 - Implementation Guidance: The system used to collect application comment should support a filtering and/or sorting mechanism to better review a high volume of comments. The system should also allow for the inclusion of attachments.
- ICANN should be more explicit in the Applicant Guidebook on how public comments are to be utilized or taken into account by the relevant evaluators, panels, etc and to what extent different types of comments will or will not impact scoring. In addition, to the extent that public comments are to be taken into account by the evaluators, panels, etc., applicants must have an opportunity to respond to those comments.

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

None identified at this time.

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

- The Working Group has noted that while there was a cutoff for application comments to be considered by evaluators, the cutoff for Community Priority Evaluation was far later in the process, allowing for a much longer period of time for comments to be received for this evaluation element. Do you believe it makes sense to shorten this particular application comment period, or perhaps just have it run in parallel to the Initial Evaluation comment period?
- In the 2012 round, applicants were given the opportunity through Clarifying Questions to respond to comments that might impact scoring. From one perspective, this may have reduced the incentive for applicants to respond to all input received through the public forum, including comments that may be perceived as negative. Do you consider this a issue that needs to be addressed? If so, what measures do you propose in response to this problem?
- If there is a application comment period prior to evaluations, should applicants be given a certain amount of time to respond to the public comments prior to the consideration of those comments. For example, if there is a 60-day public comment period, should an

additional time period of 7-10 days be added solely for the purpose of providing an opportunity for applicants to respond to the comments if they so choose?

f. Deliberations

This topic was initially discussed on 25 June 2018 at ICANN62 during the Working Group's second face-to-face session and was later considered further in Working Group discussions.

The Working Group discussed whether the public comment mechanism and process served its intended purpose and whether there were potential areas for improvement in subsequent procedures. Working Group members generally agreed that the public comment period gave the broader ICANN community an opportunity to submit feedback about applications. Working Group members provided input on ways that the public comment mechanism could potentially be made more robust.

One of the issues discussed was the ability of applicants to respond to comments. One Working Group member stated that some of the comments received were frivolous complaints and that it was difficult for applicants to respond to these comments in an open manner and challenging to correct false assertions in real time. It was noted that applicants were able to respond to comments in the public comment fora, but were not required to do so. They were only required to address comments in cases where evaluators determined that the comments, after having conducted due diligence on them, may impact scoring of the application; in these cases, a Clarifying Question was issued to the applicant. Noting that the current implementation allows for optional applicant response and only requires response when comments may impact scoring, the Working Group did not come to agreement on whether changes were needed in this regard.

Working Group members raised that it was possible to submit comments in the public forum without revealing one's true identity. In the 2012 round, commenters supplied a name and email address, but the identity of the commenter was not verified through any additional measures. Some Working Group members pointed out that it was therefore possible to provide a name that did not match the identity of the person submitting the comment. One Working Group member raised the question of whether this process should be modified in subsequent procedures to ensure that commenters are who they claim to be.

Working Group members considered the functionality of the systems supporting application comment. One Working Group member stated that it would be helpful to allow the use of attachments in application comment submissions. Another shared that some applications received a large number of comments, and it was sometimes difficult in the 2012 round to review these systematically. It was suggested that some type of filtering mechanism could allow for more effective review of comments.

The Working Group discussed the length of the public comment period, at least in respect to Initial Evaluation, and considered whether 60 days from the posting date of the public portion of

applications was a sufficient period of time. Per the Applicant Guidebook, this time period is subject to extension, which was the case in 2012, where the period was extended 45 additional days. There were not concerns raised about this period.

One Working Group member raised concerns about the public comment period for community applications, and asked if it was fair that the public comment period for community applications remained open longer than the public comment period for standard applications. The Working Group member also stated that it was unclear if and how comments received late in the community application process were taken into account in the evaluation of applications. It was noted that this topic may belong in discussions related to community applications, as there are differences between community and standard application processes, notably that levels of support or opposition were taken into account in the evaluation of community applications which was not the case for standard applications. It was noted by staff that the length of the comment period was established to allow sufficient time for comments to be collated and considered by evaluators. The difference in length of the comment period was a byproduct of where Community Priority Evaluation was performed (i.e., after Initial and Extended Evaluation, objections, and near the end of the evaluation process).

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.

1.4 Change Requests

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

No relevant policy or implementation guidance.

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

There are many reasons applicants may wish to change aspects of their applications during the application and evaluation phases of the New gTLD Program. This is especially the case where the application and evaluation periods could last several years. These changes range from the substitution of personnel, corporate name changes, address changes, acquisitions/mergers, changes of officers/directors, etc. Some of these changes are more material than others and some were more substantive than others.

On 5 September 2012, ICANN published criteria for considering and evaluating change requests. Requests were considered against a set of seven criteria and if approved, were published for a 30-day comment period. After enough data was available and after careful consideration the 30-day comment period was removed for certain types of change requests (e.g., changes to confidential parts of the application, updates to the application as a normal course of business, like contact information, stock symbol, etc.). The seven criteria were:

1. Explanation: Is a reasonable explanation provided?
2. Evidence that original submission was in error: Are there indicia to support an assertion that the change merely corrects an error?
3. Other third parties affected: Does the change affect other third parties materially?
4. Precedents: Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. Fairness to applicants: Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. Materiality: Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority?
7. Timing: Does the timing interfere with the evaluation process in some way?

An Application Change Request Process and Criteria page was established¹ with a subsequent advisory²

¹ See here: <https://newgtlds.icann.org/en/applicants/global-support/change-requests>

² See the New gTLD Advisory on the Change Request Criteria here: <https://newgtlds.icann.org/en/applicants/advisorics/change-request-set-05sep14-en>

For statistics on the number of change requests submitted, during what aspect of the evaluation process, and approval rates, please consult section 1.4.3 of the Program Implementation Review Report and New gTLD micro site page³.

Depending on the nature of the requested change, some would require re-evaluation if received after the completion of Initial Evaluation. For instance, substantive changes to the technical or financial portions of the application would be more likely to require re-evaluation than changes to contact information.

While the change request was beneficial in some regards, by allowing applicants to cure deficiencies or concerns (e.g., from GAC Early Warning), the timing of change requests created operational challenges, sometimes requiring redundant reviews, delays in processing, and operational costs. There were also challenges around change requests for applications self identified as community-based, where certain changes that could impact community priority evaluation were not allowed.

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

- The Working Group believes that at a high-level, a criteria based change request process, as was employed in 2012, continues to make sense going forward. However, the Working believes that some operational improvements should be made.
 - Implementation Guidance: ICANN org could seek to provide guidance on both changes that will likely be approved and changes that will likely NOT be approved.
 - Implementation Guidance: ICANN org should also set forth the types of changes which are required to be posted for public comments and which are not.
 - Implementation Guidance: ICANN org should set forth in the Applicant Guidebook the types of changes that would require a re-evaluation of some or all of the application and which changes would not.
 - The Working Group believes that several types of change requests that were disallowed in 2012 should be allowed in subsequent procedures under certain circumstances. The types of change requests for which some members of the Working Group believe should be allowed under limited circumstances are set out for public comment below in section (d). Please see section (e) for specific questions about these options.

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

One of the types of changes that some members of the Working Group believe should be allowed are certain application changes intended to resolve string contention. For example, if there is string contention and each of the applicants in a contention set agree, then applicants

³ New gTLD Change Request page here: <https://newgtlds.icann.org/en/applicants/global-support/change-requests#statistics>

should be allowed to 1) create joint ventures or 2) have a limited ability to select a different string, which must be closely related to the original string.

- Implementation Guidance: ICANN org may determine that in the event of a joint venture, re-evaluation is needed to ensure that the new entity still meets the requirements of the program. The applicant may be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.
- Implementation Guidance: Some examples to consider in allowing for a new string to be selected include prepending/ appending a new element to the original string or selecting a string that is closely related to the class/sector of the original string. ICANN org must perform a re-evaluation of the new applied-for string in all string related evaluation elements (e.g., DNS Stability, String Contention, etc.). The applicant may be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delay.

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

- Section (d) above outlines possible application changes that could be allowed in subsequent procedures and corresponding implementation guidance that the Working Group is considering.
 - a) Do you agree with allowing these types of changes? Why or why not? Does the implementation guidance above seem reasonable if these changes are allowed?
 - b) If these changes are allowed, what are the potential risks or possibilities for gaming these types of changes? How can those risks be mitigated?
 - c) For the limited ability to change the applied-for string, what do you believe should be the criteria in considering such requests? Are there examples of where a change of an applied-for string should NOT be approved?
- What role should public comment play in determining if a change request should be granted?
- Reflecting on the seven criteria utilized for considering change requests in 2012 (see section (b) above for reference), do you have specific changes that you would suggest being made to those criteria for usage in the future?

f. *Deliberations*

This topic was initially discussed on 25 June 2018 at ICANN62 during the Working Group's second face-to-face session and was later considered further in Working Group discussions.

The Working Group reviewed the process ICANN used in the 2012 round to evaluate change requests and discussed whether this same system might be appropriate for subsequent procedures. Some Working Group members felt that going forward, it would be helpful to have a list of types of changes that an applicant could make to an application. Others added that it would also be useful to have a list of types of changes that are definitely not allowed. One Working Group member noted that a review of Clarifying Questions from the 2012 round could assist in identifying changes that were and were not permitted in the 2012 round.

One Working Group member noted that information is available about changes that were allowed but less information is available about change requests that were rejected, which might affect the Working Group's thinking. The Working Group member suggested that since we cannot anticipate all the types of change requests that might be submitted, it might make sense to use criteria (as ICANN did) rather than try to enumerate the different types of changes. From that perspective, it was suggested that it might make sense to review and amend the existing criteria used in 2012, though no specific issues or recommendations have yet to be identified.

The Working Group considered types of changes that should be permitted in subsequent procedures. Some members felt that it should be possible for applicants to form joint ventures after the initial applications have been submitted. This could be particularly useful in cases where two or more applications are in contention. Working Group members noted that allowing applicants to change the application to form a joint venture could be a way to find creative win-win solutions for those in contention. It could also result in fewer private auctions and auctions of last resort, which many Working Group members viewed as a benefit.

One Working Group member suggested that applicants should be permitted to change the proposed business model for the TLD during the application process. It is unclear if that was allowed during the 2012 New gTLD Round if those changes were allowed or whether there were restrictions on those types of changes. The member suggested that the evaluation process used for the Registry Services Evaluation Process (RSEP) could be used as a model in evaluating these requests.

The Working Group also discussed whether applicants should be able to submit a request to change the applied-for string. Some Working Group members felt that this would be beneficial, particularly in cases where two or more applications were in contention, and could reduce the need to for auctions of last resort. One Working Group member provided as an example that string contention, and the possibility of an auction of last resort, could have been prevented for .sas in the 2012 round if applicants had more flexibility to change their applications (e.g., one applicant would get .sas while the other could potentially choose .sasair).

Another Working Group member suggested that the WG should review why it was not permitted to change the applied-for TLD to avoid contention in the 2012 round, as this may inform the group's deliberations. A key reason raised included concerns about applicants essentially submitting a placeholder application, aware that they might be able to change their applied-for string after submission, which is viewed as a gaming concern. While there appeared to be support to allow a change of string in some limited circumstances, the Working Group noted that criteria would be needed to prevent gaming.

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 Registrar Support for New gTLDs

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

Recommendation 19: Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

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

The 2007 Final Report, the Registrar Constituency (RC, and now known as the Registrar Stakeholder Group, or RrSG), noted in relation to introducing new gTLDs that, "...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs if implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model."

The gTLD Registries Constituency (RyC, and now known as the gTLD Registries Stakeholder Group, or RySG) noted in relation to Recommendation 19 that, "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

Section 2.9 of the Registry Agreement implemented Recommendation 19 above. It states "All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that Registry Operator need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6.⁴" In addition, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD.

In addition, Specification 9 which requires Registries that are Affiliated with Registrars or vice versa, to adhere to a Code of Conduct, which among other things, requires Affiliated Registries and Registrars to maintain structural separation and separate books and records. Only so-called .Brand TLDs that execute Specification 13 or TLDs for which all registrations are registered to

⁴ Section 2.6, which refers to Specifications 5 and 9, allows the registration of up to 100 names without the use of an ICANN Accredited Registrar necessary for the operation or promotion of the TLD.

the Registry Operator and/or its Affiliates are exempt from that Code of Conduct. In all cases, whether exempt or not, only ICANN Accredited Registrars may be used to register names within the TLD.

Although there is a requirement for Registries to use Accredited Registrars, there is no requirement that all ICANN-Accredited registrars must carry any particular new gTLDs. It was, and continues to be, up to registrar discretion. As such, some new gTLD Registries have complained that this model of having to sell through ICANN Accredited Registrars has made it difficult for them to try new and innovative models because the distribution channel that they are required to use is unable or unwilling to implement the new gTLD Registry's requirements. ICANN Accredited Registrars on the other hand argue that they should not be forced to distribute TLDs for which they do not believe a commercial market exists or for TLDs that require extensive time, development and resources to implement which could easily outweigh the fees generated from registrations in that TLD. As a result, it is believed that in some instances (e.g., locale, type of TLD, etc.), it may be difficult to get a registrar to agree to sell certain TLDs.

ICANN-Accredited Registrars have also made the point that some TLDs are tough for them to distribute because certain gTLD Registries require that the Registrars establish deposit accounts for each TLD and maintain minimum balances in those accounts so that when a registration is made in a TLD, the Registry can immediately deduct the Registry fees from that account. This is the model that was traditionally in place for TLDs prior to the 2012 Introduction of new gTLDs and is often referred to as "Prepayment." There are some registries, particularly those participating in the 2012 new gTLD round that have allowed registrars to register names (on behalf of their registrants) without drawing down on a deposit account, but rather have relied on the payment of periodic invoices after names are registered. This is referred to as "Post Payment."

Section 2.10.2 of the Initial Report, on Registrar Non-Discrimination, discusses the topic of vertical integration in detail. This section deals with whether there should be any additional exceptions to the requirement that gTLD Registries use only ICANN-Accredited Registrars and whether there are any measures that can be taken to assist those new gTLD Registries that are unable to attract Registrars to carry their TLDs.

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

None at this time.

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

The following proposals have been discussed by the Working Group as options which can be pursued if there is support from the community to do so. Many of them require substantial

resources by ICANN. No cost benefit analysis on these options have been performed and the Working Group is seeking input from the community on these proposals.

- ICANN org could select a “last-resort” wholesale registrar that would provide resellers with the ability to sell TLDs that lacked market interest and/or have their target markets in regions or verticals lacking ICANN-Accredited registrars. In order to not burden ICANN org or the selected registrar with making initial deposits for TLDs, only registries allowing Post Payment terms would be eligible for this resource.
- ICANN org could provide a “clearinghouse” for payments between the registries and registrars that operate in different currencies.
- In order to assist smaller registries during their launch period, ICANN could allow an increase to the number of names that can be registered without the use of an ICANN-Accredited Registrar. Expanding the number of names while at the same time allowing these names to be registered for purposes other than the promotion or operation of the TLD could allow these smaller registries to “get off the ground” and gain the momentum needed to become attractive enough for ICANN Accredited Registrars to carry.
- The Applicant Guidebook could encourage potential applicants to communicate with ICANN accredited registrars before submitting an application, so that they fully understand potential market and technical integration issues that might be encountered.
- Some members of the Working Group also proposed that the Registry contract should bundle the capacity of becoming an Accredited Registrar.

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

- Please comment on each of the proposal set forth above. What are the pros and cons of those proposals? Should any or all of them be adopted? Why or why not?
- Are there any other proposals that could assist TLD Registries that have difficulty attracting ICANN Accredited Registrars?
- Should ICANN even get involved in assisting Registries or is this outside the scope of ICANN’s mission, bylaws, or mandate? Please explain.
- The Working Group has not yet found a way to identify whether a TLD with low market performance has low performance due to lack of demand or lack of sales channels. How could the underlying issues be identified?

f. *Deliberations*

This topic was initially discussed on 25 June 2018 at ICANN62 during the Working Group’s second face-to-face session and was later considered further in Working Group discussions.

As a foundational consideration, the Working Group discussed whether the issue should be treated as a policy issue or a subject that should be addressed by market forces. The Working Group generally agreed that it is difficult to establish whether an underperforming TLD is suffering from “product defect,” (the TLD would not attract many registrations even if it was readily available at an attractive price) or from “channel defect” (the TLD is not successful

because deficiencies in the market structure prevent registrations). Some support was expressed for treating this issue as a policy concern, although one Working Group member stated that it may not be ICANN's responsibility to address every aspect of this issue through policy, and that some problems faced by registries should be resolved through market forces.

The Working Group discussed the issue of market standardization. The Working Group noted that registrars are less likely to adopt niche TLDs or TLDs that are operated in a unique manner. Some Working Group members supported the idea that standardization (e.g., simple and straightforward pricing, the same renewal pricing, the same expiry process, etc.) could promote registrar adoption of TLDs and reduce concerns about TLDs that are unable to attract registrar resources. From another perspective, it is not realistic for there to be a standard pricing model across TLDs and indeed, placing restrictions on pricing is generally seen outside of ICANN's remit. One Working Group member suggested that the Applicant Guidebook should encourage potential applicants to interact with ICANN accredited registrars before submitting an application, so that they fully understand potential market and technical integration issues that might be encountered.

The Working Group discussed possible policy measures that could address the issue of registries with insufficient registrar resources. The Working Group discussed the possibility of a "must-carry" obligation, under which ICANN could require registries of a certain size to sell domains under these TLDs. Working Group members noted that they could only possibly support this option if there was clear evidence of a sales channel defect.

An additional proposal was put forward in which wholesale registrars carry all gTLDs that request it. ICANN would pay wholesale registrars to be the "last-resort" registrars who would develop and support integration of these gTLDs. One of the benefits identified for this proposal is that it would allow gTLDs to reach markets for jurisdictions or verticals that have few or no accredited registrars. One Working Group member stated that ICANN should not spend money subsidizing the development of gTLDs, some of which may be poorly conceived or poorly funded. From this perspective, if ICANN wanted to help potential registrants identify registrars that carry certain TLDs, it could create an online resource providing information about which registrars carry certain TLDs. Another member raised a concern that a registry might have unreasonable requirements, such as a very large and non-refundable initial deposit, and ICANN would be required to pay the bill.

A third proposal focused on the number of names that a registry can allocate directly. Currently, registries are permitted to allocate up to 100 names directly for purposes of operating or promoting the TLD. The limit could be raised to allow a TLD to grow enough to attract market interest from registrars. Working Group members suggested a new limit of 5,000 or 10,000. A variant on this proposal would be to include Registrar Accreditation as a benefit of all registry contracts.

Working Group members identified additional issues that might be addressed through policy measures. First, the fact that many TLDs require deposits result in registrars selecting a small

set of TLDs to carry, with a focus on those that have clear market demand. Second, currency issues can create challenges for registry-registrar business relationships in certain jurisdictions. To address these issues, a proposal was put forward for a payment clearinghouse sitting between willing registrars and registries, where a single deposit could vouch for a larger set of smaller TLDs, and where local currency could be used for both parties of a contract. One Working Group member pointed out that in the current environment, there is nothing stopping registries from switching from a pre-pay to post-pay model. From this perspective, some issues should be left for market forces to resolve.

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.