1.1 Auctions: Mechanism of Last Resort

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

Implementation Guideline F: If there is contention for strings, applicants may:

i) resolve contention between them within a pre-established timeframe

ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;

iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

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

Implementation Guideline F spoke more about the alternatives to auctions of last resort and did not reference auctions specifically. However, research was completed by the Implementation Team (a collection of staff members supporting the policy development process)[1] [2] and guidance was sought from auction experts about how auctions could be used to make clear and binding decisions. Auctions were anticipated to be used to resolve contention and further, expert advice was expected in implementing the mechanism.

Along with the first draft of the Applicant Guidebook, ICANN published an Explanatory Memorandum[3] that examined the different mechanisms of last resort that could be used to resolve a contention set. This included the use of comparative evaluations, chance and auctions. The paper concluded for a variety of reasons that auctions should be used as a last resort in resolving contention set. Although there were a large number of changes to the Applicant Guidebook between that first version and the final version, the use of auctions as a last resort to resolve contention sets did not change.

That said, it was hoped that parties involved in string contention would be able to come to a voluntary agreement to resolve the contention prior to being forced into an auction conducted by ICANN (or its designee). However, there were a number of obstacles that were put into place (some intentional, others unintentional) that prevented parties from reaching mutual agreement. The settlement between parties was expected to result in the withdrawal of all but one application for the string. In addition, applicants were precluded from making material changes

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[1] See Implementation Team working document from 5 December 2006 here:
https://gnso.icann.org/sites/default/files/filefield_6371/gnso-pdp-dec05-staffmemo-14nov06.pdf
[2] See Implementation Team working document from 19 June 2007 here:
https://gnso.icann.org/sites/default/files/filefield_6410/pdp-dec05-staffmemo-19-jun-07.pdf
[3] https://archive.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf

to their applications, which prevented many types of voluntary arrangements (such as the creation of a joint venture) which would have been the natural result of a mutual agreement. The ability to create a joint venture is explored in greater detail in section [1.4], Change Requests. In practice, settlement between parties was often completed through a mechanism called private auctions, as described in greater detail in section [1.2], Auctions: Use of Private Auctions. A more detailed description of the implementation and rules around Auctions: Mechanism of Last Resort can be found in section 4.3 of the Applicant Guidebook.

After an open procurement process, Power Auctions was selected as the vendor to perform auctions of last resort. Auction procedures were based on an ascending-clock auction methodology and New gTLD Auction Rules[4] were developed to supplement the guidance provided in the Application Guidebook.

The auction process was self-funded, with proceeds from completed auctions covering expenses due to the provider. Any proceeds in excess of expenses were set aside until the Cross-Community Working Group on New gTLD Auction Proceeds[5] determines how the funds should be utilized. As of the writing of this report, ten auctions of last resort have been completed with net proceeds of over $233 million USD[6].

This topic was not specifically identified for review in the Final Issue Report, but the Working Group believes it is important to give the topic some consideration.

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

- Many in the Working Group believes that auctions as a last resort should remain in place within the program.
- However, there should be additional options for applicants to voluntarily resolve contention sets by mutual agreement before being forced into an auction of last resort. The Working Group focused mainly on allowing applicants to change certain elements of their applications as a potential way to resolve contention sets earlier in the process (Please see recommendations in section [1.4] of this report on Change Requests, which discuss aspects like changes to the applied-for string and forming a joint venture).

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

None identified at this time.

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[4] See New gTLD Auction Rules here: https://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf and here for Indirect Contention: https://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf
[5] See the CCWG Wiki page here: https://community.icann.org/x/yJXDAw
[6] See the New gTLD Auction Proceeds page here: https://newgtlds.icann.org/en/applicants/auctions/proceeds

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

Some participants in the Working Group believe that auctions of last resort are unfair and reward only those with the most amount of money rather than those that may best operate the TLD in the public interest. In addition, they believe that auctions discriminate against applicants in the developing world who may not have the resources to complete in an auction. Is there any merit in the above arguments? Why or Why not?

- Should other aspects (e.g., non-financial) be introduced to make auctions of last resort more "fair"? One mechanism that has been mentioned is to consider auction bids from an entity in the Global South as double or triple that of the same bid from an entity not from the Global South. For example, a bid of $100 from an entity in the Global South could be comparable to a bid of $200 from a bidder on the same string that was not from the Global South. Why or why not?
- What, if any, other measures should the Working Group consider to enhance "fairness"?
- Some participants in the Working Group believe that auctions of last resort should be eliminated and replaced with a comparative evaluation process. For example, a request for proposals (RFP) process that advantages community-based applicants, minority-supported applicants, or other factors yet to be determined. Do you believe that a comparative evaluation process could replace auctions of last resort? Why or why not?

f. Deliberations

This topic was initially introduced on 25 June 2018 at ICANN62, during the Working Group's second face-to-face session, with further consideration during Working Group calls. The Working Group debated both the pros and cons, considered alternative options and brainstormed possible solutions/ideas to reduce the overall need for using methods of last resort.

The Working Group examined whether to continue the use of auctions or whether to eliminate their usage. Both sides drew upon the idea of fairness but each had a different approach to this concept. Those in support of keeping the auction processes argued that the mechanism is fair and provides an equal-opportunity method to resolve contention sets. Those opposed to auctions stated that auctions are not fair. From this perspective, auctions are too restrictive as they focus solely on financial means when they should be focused on principles of community and diversity in the TLD ecosystem.

Some Working Group members proposed alternatives to auctions of last resort. The Working Group discussed the possibility of having a request for proposals process that could be used to resolve contention sets. Such an approach could potentially involve third-party evaluators. One proposal was put forward to establish criteria around diversity that could be used as a basis for awarding the TLD. For example, priority could be given to applicants applying for their first TLD, applicants that are more community-focused rather than commercially-focused, and minority-supported applicants. Another possible alternative discussed was the use of a lottery mechanism to select a "winner" in the contention set. One Working Group member suggested

that a system of graduated fees could be established for each additional application submitted by an applicant, which could reduce the size of the pool of total applications and perhaps limit the number of applications that ultimately end in an auction of last resort.

Working Group members raised additional considerations regarding proposed alternative models. One Working Group member stated that techniques for evaluating and selecting a "winner" should not involve evaluation of content as this has implications on the Principle of Freedom of Expression. The Working Group member also raised the concern that making decisions based on criteria like diversity or community-focus may not be within the scope of ICANN's mission and impinges on the Principle of Applicant Freedom of Expression. Another Working Group member stated that the process developed from the 2012 round was carefully designed to avoid holding "beauty contests" to select winners and losers.

One Working Group member provided the opinion that it is important for any successful applicant to have the resources to fund the marketing of the gTLD or it may not gain enough registrations to survive as a stand-alone gTLD. Another noted that there is a distinct difference between having funds to market a TLD and having the funds to win a multi-million-dollar auction and also fund a marketing program for the TLD. From this perspective, it should not be presumed that a substantial marketing budget is an absolute requirement or measurement of success, noting specific examples like communities that have built awareness among constituents throughout the application development.

The Working Group discussed the idea that if auctions are ultimately retained as a method of last resort for resolving contention, there could be opportunities to mitigate differences in economic and social conditions of applicants. For example, ICANN could look at different ways to structure the bidding process to take these factors into account, such as introducing a multiplier (e.g., bids could be considered double the actual amount, where an applicant bid of $10,000 USD is treated as $20,000 USD against others in the contention set) for certain string or applicant attributes.

The Working Group thought it might be beneficial to look at private methods for resolving contention prior to reaching a mechanism of last resort. One example provided was that two applicants in contention could be permitted to form a joint venture to operate a TLD together. Another example provided was that an applicant could change the applied for string if it was found to be in contention.

One Working Group member raised that if additional types of application changes are permitted for standard applications in subsequent procedures, it is important to consider the potential impact on community applications.

This line of discussion is closely connected to topic Application Change Requests, discussed in Section [1.4] below.

In further considering methods of resolving contention, it was suggested that contention sets could be disclosed earlier in the process, allowing applicants to make informed decisions before they have spent large sums of money in the application process. It was also suggested that applicants in contention could be given additional time to work together to try to privately resolve the string contention.

The Working Group also discussed the issue of auction proceeds, noting that the New gTLD Auction Proceeds Cross Community Working Group (Auction Proceeds CCWG) is working to develop a set of recommendations for a mechanism to distribute auction proceeds from the 2012 application round. While the Auction Proceeds CCWG is focused on funds already collected, fund distribution for subsequent procedures could follow a different model. One Working Group member pointed out that for subsequent rounds, there would be no reason that ICANN could not redistribute proceeds to the "losers" of an auction rather than creating a designated fund to distribute elsewhere while another Working Group member stated that ICANN's non-profit status and related legal and fiduciary obligations could prevent ICANN from redistributing funds to auction participants.

The Working Group considered how outcomes of the Auction Proceeds CCWG may impact this Working Group's perspective on the role of auctions of last resort. One Working Group member raised that if the CCWG produced recommendations that Subsequent Procedures Working Group members opposed, this could impact further deliberations on whether there should be auctions of last resort in the future.

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.

1.2 Auctions: Use of Private Auctions

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

Implementation Guideline F: If there is contention for strings, applicants may:

> i) resolve contention between them within a pre-established timeframe

> ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;

> iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

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

Applicants resolving their contention sets via private auctions was not a formal part of the 2012 round of the New gTLD Program. Accordingly, there were no policy recommendations or policy guidance on the subject.

It was envisioned that the majority of contention sets would be resolved by the parties involved, rather than relying on Auctions of Last Resort. For the 2012 round, this was indeed the case, with over 90% of contention sets being self-resolved. The Applicant Guidebook did not specify how self-resolution should occur, though applicants were prevented from replacing the applicant with a joint venture or changing the applied-for TLD. Applicants were encouraged to resolve contention sets in a manner that did not result in material changes to the remaining applicant.

There are not public statistics on how many contention sets were resolved by way of private auction. However, it is understood that it was not an uncommon occurrence. In private auctions, the majority of the proceeds collected went to the losing parties in the auction. Some have asserted that applicants involved in numerous contention sets have purposely lost in certain private auctions, collected their portion of the proceeds, and then leveraged those funds for private auctions of higher priority. There is a fear amongst some that in future new gTLD procedures, applicants may submit applications for the purpose of collecting funds in private auctions.

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

- A number of Working Group members expressed concern about the use of private auctions in subsequent rounds of new gTLD applications. More specifically, they are concerned that there will be some applicants that apply for new gTLD strings for the sole purpose of being a "loser" in a contention set resolved via a private auction for which the applicant would receive compensation greater than the application fee. Thus, many

Working Group members are generally opposed to the usage of private auctions to resolve string contention in future new gTLD procedures. Therefore, the Working Group recommends that measures should be put into place to prevent their occurrence in the future.

- Implementation Guidance: The Applicant Guidebook and program Terms & Conditions should be amended to state that resolution of string contention via private auction is disallowed. Further, the future base Registry Agreement should include a provision that states that if a registry operator is shown to have taken part in a private auction for their given string, it may result in having that TLD taken away from them.

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?

- Do you believe private auctions should be continued in the future? If so, should the funds be distributed amongst the remaining applicants within the auction or in some other method i.e. charity, ICANN, etc? If so, what methods are most appropriate?
- The Working Group believes that prohibitions in the Applicant Guidebook, Terms & Conditions, and in the Registry Agreement are the best way to prevent private auctions in the future. In other words, participation in a private auction will result in a cancellation of your application (if discovered during the application process) or forfeiture of your TLD (if it is discovered after the TLD is awarded). Do you agree? Do you believe other suggested mechanisms (e.g., increasing application fees), may be more effective, or could be used in tandem?
- Some believe that if an application fee for a TLD were high enough, it would deter applicants from applying for TLDs with the intent of going to a private auction. Do you believe that increasing application fees will have that effect? Why or why not? If you agree, at what amount would application fees need to be set at to deter applicants from applying for TLDs with the intent of going to auction (e.g., rough estimate or instead, criteria by which an amount could be established)?

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 the purpose and impact of private auctions. One challenge to fully understanding how and why private auctions occured in the 2012 round, as well as the impact of these auctions, is that these mechanisms were, by nature, private. Some Working Group members considered private auctions to be a form of "gaming" the system, signalling that

they believed it was a defect in the program that does not serve the public interest. With the process of private auctions in the 2012 round not known ahead of time, there was less chance of "gaming." With the process and potential benefits now known, the Working Group anticipated that there could be a sizeable increase in applications for the sole purpose of participating in private auctions. Those who oppose restrictions on private auctions pointed out that there is currently no data supporting the idea that applicants submitted applications with the sole purpose of profiting from private auctions and believe outreach to the private auction providers may be warranted.

In terms of potential consequences of private auctions, it was noted that if an applicant is forced to spend a significant amount of money to win a private auction, it may weaken their financial position to operate a TLD, and therefore private auctions could have an impact on stability. Working Group members also raised concerns about reputational harm that private auctions could bring to ICANN and the New gTLD Program, noting that the existence of private auctions could give the impression that the program is an opportunity for speculators with no interest in running a TLD in the public interest to apply and make a significant profit.

Some Working Group members stated that they do not support restricting the use of private auctions on principle. From this perspective, it may not be appropriate to use policy to abridge the freedom of parties to privately resolve contention as they see fit, noting the all participants in a private auction enter the arrangement voluntarily. In addition, one Working Group member raised that the recommendations coming out of the Auction Proceeds CCWG may impact the Subsequent Procedures PDP Working Group's perspective on private auctions, and therefore the Working Group should not make any recommendations to prevent private auctions at this time.

From another perspective, even if it were desirable and possible to effectively restrict private auctions, this would not prevent one applicant in a contention set from paying another member of a contention set to withdraw an application, an outcome that is functionally similar to a private auction.

Working Group members considered whether there could be a means to require that all auctions occur in public. Some Working Group members suggested that it would be difficult to prevent auctions from going "underground." One member proposed that the Applicant Guidebook or Terms & Conditions could state that private auctions are not permitted. The Registry Agreement could state that a TLD could be taken away from a registry if it was found that the registry participated in private auction. This threat alone could deter the practice of private auctions.

The Working Group explored other possible means of discouraging private auctions in subsequent procedures. The Working Group discussed whether raising application fees could reduce the number of private auctions that take place. Some noted that while higher fees may discourage auctions, they would also have an impact on the ability of legitimate applicants to

apply for TLDs. Others pointed out that a higher fee may not even discourage auctions because the windfall from losing auctions is potentially significant relative to the cost of the increased fee.

Some indicated that the intent of an applicant could be inferred by reviewing the volume of TLDs applied for, with the idea that an applicant with a few TLDs are less likely to be applying with the intention of entering into private auctions versus applicants who may apply for a portfolio of TLDs.

One Working Group member suggested that the Working Group may want to do additional research on ways that private auctions are discouraged in other industries to extract lessons learned.

Members of the Working Group suggested that if the financial benefit of private auctions is eliminated by having the funds donated to a charity instead of another applicant it would eliminate the financial incentive and help ensure that applicants apply for TLDs for legitimate purposes. However, it was noted that enforcing this requirement would be challenging.

The Working Group discussed that another way to reduce the number of private auctions could be to encourage those in contention sets to resolve contention by other means. This idea of encouraging resolution of contention before it reaches auction, private or last resort, is similar to that noted in section [1.1] of this report on auctions of last resort. For example, one WG member suggested that allowing joint ventures in cases of contention could reduce the pressure to resolve contention through private auctions. This line of discussion is closely connected to the topic of Application Change Requests, discussed in Section [1.4] below.

> ### 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.

1.3 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 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. The longer period of time allowed was due to the timing of CPE (i.e., only after program elements like Initial Evaluation, Extended Evaluation, and objections conclude). Is this, or other factors, valid reasoning and/or fair to have the comment period for CPE extend longer than for Initial Evaluation? Do you believe it makes sense to shorten this particular application comment period, perhaps just having 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 commenter 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 established[7] with a subsequent advisory[8]

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[7] See here: https://newgtlds.icann.org/en/applicants/global-support/change-requests
[8] See the New gTLD Advisory on the Change Request Criteria here:
https://newgtlds.icann.org/en/applicants/advisories/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 page[9].

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

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[9] 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? The implementation guidance asks that ICANN provide better clarity on what types of changes will or will not be allowed and also what changes may require re-evaluation. Do you have suggestions on how to provide more precise guidance? Would this guidance replace or complement the seven criteria (see section (b) above for reference) above?
  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 had concerns about some of the details for allowing joint ventures. The Working Group member asked what factors would lead to re-evaluation, what happens during re-evaluation, and what happens if the joint venture were to dissolve prior to contract signing.

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 not clear if that type of change was disallowed during the 2012 New gTLD Round, 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.