

## Draft notes on 'fees' topic in Subsequent procedures draft report

(Bastiaan Goslings, 12 September 2018)

### Introduction

In general terms, I think that application fees should be cost recovery based and this should be specified with numbers. I therefore find it quite surprising to see the report refer to the fact that 'documentation related to the process used in setting the 2012 application fee were unavailable' (page 80) and 'while the Work Track was unable to attain the document that reflected these steps and any related insight, it still asked itself if there is better method to increase precision of (cost) estimates' (page 82).

At the same time application fees should not be set at a too low a level. Domain names represent value and should not be a commodity, should not be stockpiled. Whether that means an 'application floor fee' is required as discussed by Work Track 1, to 'deter speculation, warehousing of TLDs, and mitigating against the use of TLDs for abusive or malicious purposes' which 'could more easily proliferate with a low application fee amount' (2.5.1.c.3 page 77), remains to be seen.

### Application fees (2.5.1)

From the Implementation Guideline B:

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

(That makes sense - but what about differing fees for different applicants? I do not see any specific deliberations mentioned on this in 2.5.1 of the report.)

I agree therefore with 2.5.1.c.1, i.e. with the principle that the 'New gTLD Program continue to be self-funding where existing ICANN activities are not used to cross- subsidize the new gTLD application, evaluation, pre-delegation and delegation processes.'

In line with that, on page 76 of the report:

'The application fee in the 2012 round was based on analysis and estimates, with the intention that the program would be fully self-funding (costs should be essentially equivalent to application fees collected and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the program)'

However, if the application fee amount should continue to be based on the 'revenue neutral' principal (2.5.1.c.2), how does that relate to the following (2.5.1.c.3), which indicates fees should be (significantly?) higher than the associated costs:

'The purpose of an application fee floor, as more fully discussed below, would be to deter speculation, warehousing of TLDs, and mitigating against the use of TLDs for abusive or malicious purposes,71 that could more easily proliferate with a low application fee amount.'

Also in 2.5.1.c.3:

'In the event that the estimated application fee, based on the "revenue neutral" principal, falls below a predetermined threshold amount (i.e., the application fee floor), the actual application fee will be set at that higher application fee floor instead.'

What is this 'predetermined amount'? How is this determined, calculated? At what level ('floor') is the risk of speculation, warehousing of TLDs and abuse etc. sufficiently mitigated. If this is indeed something to consider when setting the fee level.

In the case an 'application fee floor' is used, 2.5.1.c.4 does make sense to me:

'Excess fees received by ICANN if the application fee floor is invoked should be used to benefit the following categories:

- Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives)
- Support the gTLD long-term program needs such as system upgrades, fixed assets, etc.
- Application Support Program'

### 2.5.1.c.5:

It is not clear to me where the (initial) funding for the proposed 'separate segregate fund' comes from, how it is paid for: 'To help alleviate the burden of an overall shortfall, a separate segregated fund should be set up that can be used to

absorb any shortfalls and topped-up in a later round.'

#### 2.5.1.e.1

I do not understand this - is this squatting / warehousing done by the applicant, as we are talking (how this relates to) application fees? Is this not something, as a 'restriction' or 'methodology', that could/should be covered by the resulting registry contract or in the application process itself?

#### 2.5.1.e.2

This question is unclear to me: 'What happens if the revenue-cost neutral amount results in a refund that is greater than the application fee floor value?' Is this about what is left after spending the excess fees received to 'benefit the categories' as described in 2.5.1.c.4 when using an 'application fee floor'? Applicant support is already mentioned in 2.5.1.c.4

2.5.1.e.5 with regard to 'disbursement of excess funds'— see the suggestions in 2.5.1.c.4, these make sense to me

2.5.1.e.6 Any cap set on the number of gTLDs in the root should IMO be based on what the root-zone can handle technically

2.5.1.e.7 ifn only looking at lower barriers for competition and to stimulate innovation I'd think application fees should be set at an as low as possible level, i.e. purely based on a cost recovery basis

Page 79 of the report says, as part of the 'deliberations', with regard to application fees received:

'The Work track (...) believes that there will remain a sizable amount left, even after any contingency related expenses are incurred (e.g., a substantially higher amount of historical costs were recovered, since 1930 applications were received as opposed to the 500 applications used in costing analysis done to establish the fee amount). As such, the Work Track has concerns about what appears to be a substantial mismatch of funds collected versus actual expended, recognizing that the excess funds are at least in part driven by a much larger number of applications than anticipated.'

That seems like a concern to me, and how does it relate to the, also on page 79:

'During the course of deliberations, there was mostly agreement that the program should continue to operate in a revenue neutral manner or in other words, to not run at a deficit or generate excess revenue.'

I do not see how these two statements can be combined.

*(Btw Something which is unclear to me - are most of the costs that the application fees are based on fixed, or variable? Which part is which? It sounds like they are mostly fixed, seeing that many more applications were received than expected and we now have such a large excess amount 'unspent')*

I obviously agree with the 'the Work Track recognizes that additional analysis would be needed to establish a new estimated cost' on page 79.

In that context, what does this mean, on page 80?

'Documentation related to the process used in setting the 2012 application fee were unavailable. In this regard, the Work Track anticipates that the ICANN organization will need to perform a new cost estimate once the full parameters of the program are known based on recommendations from the community.'

If documentation is indeed lost (?) then I think a new cost estimate is essential to set fee levels.

This makes sense to me though, on page 80:

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

With regard to, also on page 80:

'The Work Track is generally supportive of the principle of an application fee floor, but was unable to establish a specific amount or the parameters for establishing the amount. '

That does not surprise me - while I understand the rationale for a floor, one would need to quantify and argue for a specific level of this 'application fee floor', which seems impossible. At least I would not know how to do this.

How does the 'Again, the Work Track largely agreed that an application fee floor makes sense' (page 81) relate to the 'the Work Track generally believes that the application fee amount should continue to be based on the "revenue neutral" principal' (2.5.1.c.2)

## Variable Fees (2.5.2)

From the Implementation Guideline B:

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

(That makes sense to me – but what about differing fees for different applicants? I do not see any specific deliberations mentioned on this in 2.5.2 of the report.)

I do not have any comments when it comes to the solicitation for feedback on page (2.5.2.d.1 – 2.5.2.d.4 on page 84)

These points on variable fees from the report are however important to consider in my opinion:

- Page 84 'While the Work Track sought actual costs from the ICANN organization, the Work Track understands that costs were not tracked at an application by application level, making it difficult to determine if there is substantial variance in costs incurred for different application types and/or evaluation paths.'
- Page 85 'In considering a system where applicants pay the application fee relative to the costs incurred for their particular application, a number of factors would need to be considered in developing estimates. For instance, the evaluation elements, the cost and time to complete those elements, and the different risks associated with different TLDs types could all be factors in establishing variable fee amounts. The Work Track was unable to review the 75 steps used to establish the application fee amount as the related documents were unavailable, so any related insight was not discussed.'