

2020-02-25 New gTLD Subsequent Procedures PDP

The call for the New gTLD Subsequent Procedures Working Group will take place on **Tuesday, 25 February 2020 at 03:00 UTC for 90 minutes**.

For other places see: <https://tinyurl.com/sryzcn9>



PROPOSED AGENDA

1. Review Agenda/Statements of Interest
2. Review draft final recommendations – see attached Working Document and here: <https://docs.google.com/document/d/1kUlmZH8nxWTgfcRluA5FxLheMm4XhhOwkRt7om52aQU/edit?usp=sharing> [docs.google.com]:
 - a. 2.2.5 Applications Submission Limits (page 6)
 - b. 2.3 Role of Application Comment (page 38)
3. AOB

BACKGROUND DOCUMENTS



RECORDINGS

[Audio Recording](#)

[Zoom Recording](#)

[Chat Transcript](#)

GNSO transcripts are located on the [GNSO Calendar](#)



PARTICIPATION

[Attendance](#)

Apologies: Susan Payne, Katrin Ohlmer, Maxim Alzoba, Annebeth Lange, Martin Sutton, Vanda Scartezini, Alberto Soto, Heath Dixon



Notes/ Action Items

Actions:

1. 2.2.5 Applications Submission Limits

ACTION ITEM: Edit the rationale. The goal is not to put the rationale into the recommendation or affirmation language. We think we can soften the language of the rationale a bit to keep in mind the summation of the three different positions. But, at the end of the day, the affirmation is still the affirmation that no limits should be placed on the applications.

1. 2.3 Role of Application Comment

ACTION ITEM: Re: Affirmation xx (rationale 1): Ruben Kuhl will suggested revised language to the WG on the email distribution list.

ACTION ITEM: Add a second affirmation that says there will be an opportunity to comment on submitted applications via the public comment process. Also, expand rational #1 accordingly.

Implementation Guidance xx (rationale 4): The [Implementation Review Team] community should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the AGB. The AGB should also be clear to what extent different types of comments will or will not impact scoring.

ACTION ITEM: Change “community” to “Implementation Review Team” to be more specific.

Notes:

1. Review Agenda/Statements of Interest: No updates provided.

2. ICANN67 Status Update – See the FAQs at: <https://www.icann.org/resources/pages/icann67-faq-2020-02-24-en> [icann.org]

- SO and AC Chair met last week and also will meet today to discuss the schedule and are seeking feedback from the community.
- The PDP meetings will be held in the remote format. We are seeking 5.5 hours (as originally planned) of meetings.
- Encourage GAC participation to have fruitful community discussions and reduce impact of GAC advice on some of these topics.
- Need to be able to show in our Final Report that there has been full community dialogue on these issues.
- Helpful if your groups could put in a word of support for participation in these remote sessions.
- Virtual meeting hours are likely to be from 1400 to 2200 UTC.
- Since people will not be traveling we will put back on the schedule the WG meeting on 05 March as well as the meetings on 16 and 19 March.

3. Review draft final recommendations – see attached Working Document and here: <https://docs.google.com/document/d/1kUlmZH8nxWTgfcRluA5FxLheMm4XhhOwkRt7om52aQU/edit?usp=sharing>

a. 2.2.5 Applications Submission Limits

Affirmation xx: The Working Group believes that there should continue to be no limits placed on the overall number of applications or the number of applications a particular entity may submit. This affirms the existing implementation as no limits were placed on the number of applications in total or from any particular entity in the 2012 application round.

Discussion:

-- Comment from Kathy Kleiman: "This was the subject of huge discussion and disagreement; it seems entirely too simple a statement for our more complicated conclusion: some applicants want unlimited applications and other members of the Community are very concerned...pure invocation of the Neuman Rule??"

-- So when we say that there's a recommendation or an affirmation. We're not saying that everybody in the community agrees that or that there's unanimity certainly we've heard some members of the community state that they thought that there should be some submission limits. But if you go back to Work track 1 that discussed this issue as well as the comments to the initial report there was a minority view that there should be submission limits. I think there was one proposal for a particular number, though there was no evidence provided as to why that was the number selected overall in total due to both the enforceability aspect as well as the overwhelming comments in support of no limits. This is why we believe the affirmation comes out here.

-- What really belongs here was that there was severe disagreement on this and there was considerable discussion about how to put in some kind of reasonable limits of parents subsidiaries, etc.

-- Put this back into the deliberations: "The working group could not come up with a consensus on application limits or non-limits."

-- Cannot support the text as it stands. T text as it stands, as well as the case in 2012 facilitates concentration and the registry registrar businesses.

-- I think we are being inconsistent in how we are handling situations where we could not come to closure. This is an instance where the WG could not come to consensus.

-- When we had the initial discussions we felt that there should be limits but there was no practical way to do it – too difficult to verify. That doesn't get reflected here.

-- If you look at the comments from Subgroup A this is not an area where there was strong disagreement. Christopher Wilkinson was opposed and so was the Public Interest Registry. It was not just the Registries that supported it, but also the Registrars and the Business Constituency, as well as the Brand Registry and the IPC. This is pretty strong support with a minority view. We haven't had a consensus call so we are not using the word consent.

-- Shouldn't go back to just the comments as that doesn't reflect the discussion in the WG.

-- On the question of whether we need to reflect the minority opinions, those could be left to a minority report or minority statement.

-- If we reworded this paragraph to be more like what we stated in the initial report, namely that although some members of the community supported the notion of putting limits into place the working group concludes, however, that there are no effective fair and or feasible mechanisms to enforce such limits therefore no limit should be imposed on either the number of applications in total, or the number of applications from any particular entity.

-- Don't want to replicate the deliberations from the Initial Report because we are trying not to have a 400-500-page report.

-- Don't agree to change the wording except perhaps to tack on a clause that there was a minority of people who disagreed.

-- Seems like there are at least three schools of thought: 1) Those that favor having no limitations. 2) Those that might favor having limitations or would favor having limitations, but don't see a feasible equitable way to do it, and therefore, are unsatisfied with going with the status quo and then 3) those that oppose the status quo and believe that there are feasible equitable ways or at least a possibility and haven't gotten to the point where they want to give up on that idea and therefore, continue to support that.

-- So if you add up the two first two schools of thought together, you end up with the conclusion. So perhaps what needs to be said is that there were a number who did not support limitations and others who could not find a way to implement limitations and therefore supported the status quo and others that objected, and that taking the two first two groups together the recommendation is that to keep the status quo.

ACTION ITEM: Edit the rationale. The goal is not to put the rationale into the recommendation or affirmation language. We think we can soften the language of the rationale a bit to keep in mind the summation of the three different positions. But, at the end of the day, the affirmation is still the affirmation that no limits should be placed on the applications.

b. 2.3 Role of Application Comment

-- Comments from Kathy Kleiman: "Don't we have need affirmation here: As was the case in the 2012 round, Community members will continue to be given the opportunity to comment on submitted applications via a Public Comment process where their comments are visible to other members of the Community, Applicants, and those processing the Applications (including ICANN and third parties) can review and consider the comments."

-- Let's see if that comment is reflected in the recommendations and if not we'll come back to that.

-- But there's no affirmation that says that there will be an opportunity to comment on submitted applications via public comment process.

ACTION ITEM: Add a second affirmation that says there will be an opportunity to comment on submitted applications via the public comment process. Also, expand rational #1 accordingly.

Affirmation xx (rationale 1): As was the case in the 2012 round, applicants should continue to be given the opportunity through Clarifying Questions to respond to comments that might impact scoring

Discussion:

ACTION ITEM: Re: Affirmation xx (rationale 1): Ruben Kuhl will suggested revised language to the WG on the email distribution list.

Implementation Guidance xx (rationale 4): The [Implementation Review Team] community should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the AGB. The AGB should also be clear to what extent different types of comments will or will not impact scoring.

Discussion:

-- Comment from staff: "Does the WG want to provide any more specific guidance on what should those new rules and guidelines be? Also, suggest removing this sentence originally in the high-level agreement as it appears to repeat the second affirmation above: "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." If different from the affirmation above, we may want to rephrase to be more explicit."

ACTION ITEM: Change "community" to "Implementation Review Team" to be more specific.

Recommendation xx (rationale 5): Applicants should have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

Implementation Guidance xx (rationale 5): Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

Discussion:

- Comment from Kathy Kleiman: "Should applicants modify their applications in response to public comment, there should be a way to directly notify the Commenters of this change-to-the-application -- as they are all identified per earlier Recommendation. (Commenters may want to re-comments e.g., to support the change or to argue it does not fully address the concern.)"
- The applicant should have a clear, consistent fair opportunity to respond to the public comments on their application prior to the consideration of these comments in the evaluation process.
- Let's say the applicant modifies their application in response to the public comment. Then what what I'm suggesting is that there should be a way to directly notify the commenters of the change to the application.
- The recommendation is that should applicants modify their applications into response to public comment there should be a way to directly notify the commenters of the change to the application so that there's an opportunity to review it and further comment.
- Let's take that apart because there's a couple different components in there. So if an applicant changes their application the separate change process would kick in and that would automatically kick in the new comment period on the change. So I'm not sure we need to affirmatively state that the public comment period itself needs to have almost like a reply period but maybe an acknowledgement that if an applicant changes their application as a result of the public comments, then please see the change process section so we have a tie in between the two.
- Question: Is this a proposal for a reply period, or that a change to the application would initiate the change process? Answer: The proposal is that initial commenters should know that there's been a change and that there's a new comment period that's open so that they know where to go. It's not a reply, but it's a notice.
- Perhaps that could be as an overall comment when we talk about the usable system and being searchable perhaps include something there about notifications about specific applications as kind of a implementation guidance.

Rationale for Recommendation xx and Implementation Guidance xx (rationale 2): In the 2012 round, in order to submit a comment, a user first needed to create an account by providing name, email address, and optionally affiliation. The system sent an email to the email address provided and affirmative confirmation from the email address needed to be received by the system before an account was created. This functionality verified that there was a person attached to the email account. The Working Group raised concern, however, that this system did not verify that the person creating the account was who he or she claimed to be. The Working Group noted commenters could potentially misrepresent who they were or who they represented and "game" the system to disadvantage certain applicants. Recognizing that evaluation panelists perform due diligence in considering application comment, and the challenge of confirming the true identity of all contributors to public comment, the Working Group nevertheless encourages ICANN to seek opportunities to verify the identity of commenters in a meaningful way to reduce the risk of gaming and to require applicants to disclose any relationship with an applicant for the sake of transparency.

Discussion:

- Comment from Kathy Kleiman: "Note: if the commenter cannot be identified, evaluation panelists can always take this into account. It's possible someone might not want their comments to a .POLICE or .KGB gTLD to be identified back to them :-)"
- Re: this recommendation on identifying commenters: There were concerns expressed that competitors and those that may not have the best of intentions may have been filing comments in order to harm other applications. So, requiring someone to state their affiliations was deemed an important part of the recommendations for members of the working group when we had those discussions.
- Concerns about the feasibility of identifying commenters, but that is why we have this as Implementation Guidance, so that ICANN Org can determine the best way to do it. We say that they should seek opportunities to verify.
- Don't see any reason to change the direction on transparency.
- Nothing in hear prevents someone from submitting an anonymous comment.

Next Steps:

Review the Work Plan at: https://docs.google.com/spreadsheets/d/1SN8GX1nVER30p_VmX1fAEJUTRLByXhrl96kpdGw8VYk/edit#gid=839727774

- We will try to move up some topics for next Thursday and for the meetings in the week following ICANN67.
- For this Thursday, 27 February and next Monday, 02 March we'll cover Applicant Reviews.