

2020-03-16 New gTLD Subsequent Procedures PDP

The call for the New gTLD Subsequent Procedures Working Group will take place on **Monday, 16 March 2020 at 15:00 UTC for 90 minutes**.

For other places see: <https://tinyurl.com/w3gl9dw>



PROPOSED AGENDA

1. Review Agenda/Updates to Statements of Interest
2. Discussion of Final Report Topics – see the documents at: <https://docs.google.com/document/d/1xXu7gPKibIS3Vh4MCuK6NWfeRmMolXf9VF5sO7OG4VE/edit?usp=sharing> and attached as a PDF.
 - a. 2.9.1 Community Applications
 - b. Topics Previously Discussed: 2.7.3 Closed Generics (*discussed on 09 March*); Public Interest Commitments (aka Registry Commitments) (in 2.3.2. Global Public Interest) (*discussed on 10 March*); 2.8.1 Role of GAC Early Warnings/Advice (*discussed on 12 March*); 2.5.4 Applicant Support (*discussed on 12 March*)
3. AOB

BACKGROUND DOCUMENTS

[Working Document_SubPro ICANN67 Discussion Topics.pdf](#)



RECORDINGS

[Audio Recording](#)

[Zoom Recording](#)

[Chat Transcript](#)

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



PARTICIPATION

[Attendance](#)

Apologies: Justine Chew, Vanda Scartezini



Notes/ Action Items

Actions:

Recommendation xx (rationale 4):

ACTION ITEM: Move the Implementation Guidance into the recommendation. Paul McGrady and Anne Aikman-Scalese will work on developing language relating to “if deemed necessary” in the AGB, paragraph 2, 4.2.3, pages 4-9.

Re: Qualifications of Panelists:

ACTION ITEM: Note that we had not developed a recommendation relating to the qualifications of the panelists and need to consider the need for a quantitative and qualitative assessment by experts in communities.

Notes:

1. Updates to Statements of Interest: No updates provided.

2. Discussion of Final Report Topics – see the documents at: <https://docs.google.com/document/d/1xXu7gPKibIS3Vh4MCuK6NWfeRmMolXf9VF5sO7OG4VE/edit?usp=sharing> and attached as a PDF.

2.9.1 Community Applications

-- Does the WG want to affirm or otherwise address this PIRR recommendation? Recommendation 4.1.a: Consider all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round. Comment from Jeff: Comment from Jeff Neuman: Technically I am not sure we are affirming this whole Guideline F. For example, I am not sure yet whether we will allow mutual agreement resolution...and the last part about giving the ICANN Board discretion, etc. The only thing we are affirming is the priority of communities in a contention set. COMMENT IS ADDRESSED.

-- Comment from Staff: Does the WG want to provide any detail here? Request from ICANN org: "It would be helpful if the PDP Working Group could provide more detailed guidance on the specific areas of the CPE process that "must be more transparent and predictable." Additionally, it would be helpful if the PDP Working Group could provide more specific guidance on what should be changed or added that would enhance transparency and predictability for the CPE process."

-- Started a thread on changes to the CPE guidelines.

ACTION ITEM: Staff to send the updates to the CPE guidelines based on the WG discussions. DONE: See -- https://docs.google.com/document/d/1lh_1NARviJXNNNewDg-q87sQzQoC1dCtC/edit.

Recommendation xx (rationale 4): ICANN must consider ways to improve evaluators' ability to gather information about an application.

Implementation Guidance xx (rationale 4): Evaluators should continue to be able to send clarifying questions to CPE applicants but further, should be able to engage in written dialogue with them as well.

Implementation Guidance xx (rationale 4): Evaluators should be able to issue clarifying questions, or utilize similar methods to address potential issues, to those who submit letters of opposition to community-based applications.

Discussion:

-- Question: Did we get access to the actual research of the evaluators? Answer: We didn't, but they did refer to research in their decisions. This was not consistent.

-- There should be no basis for an independent evaluator to do his or her own research. Worried about how this recommendation was developed.

-- Not all of the facts may be in the application, which is different from the UDRP. There should be research that may need to be done.

-- Shouldn't that be on the complaining party to make their case?

-- We are saying that if there is independent research that is allowed then ICANN should improve evaluators ability to get information.

-- Perhaps it would be helpful to add to the recommendation "as described in the IG below" or "as set out in the Implementation Guidance below."

-- It's okay for evaluators to find independent info - but they should disclose sources when ruling on the CPE.

-- The application should be robust and supported. And the public gets a chance to comment, right?

-- If you have support from major organizations, how does an evaluator know that they are real? They aren't likely to be subject-matter experts.

-- If they are going to be doing research they could research who these organizations are to make sure they meet the requirements to support the application.

-- Anything that an evaluator is relying on should be disclosed to the applicant, particularly since we'll have an appeal process. The applicant has to have the ability to challenge any independently developed information.

-- Trying to choose between two models 1) that the applicant should put together a robust application, encourages a robust public comment period, and discourages the evaluator from being in the role of a biased researcher 2) evaluators being inadvertently advocating for third parties that didn't show up.

-- If we have all these criteria doesn't it make sense that due diligence is done provided they give the applicant the ability to do clarifying questions in response. For example, the requirement for the uniqueness of the string would seem to be something that would require independent research. Also, documented support from the recognized community institutions.

-- Shouldn't rely only on the information provided by the applicant.

-- The examiner should rely on a fulsome record, rather than create their own record. There is a requirement to gauge opposition from third parties. We should figure out a way to make them narrow, as with the Implementation Guidance -- maybe move those into the recommendation.

-- Don't agree that we ban a panelist from doing outside research. Seems too extreme.

-- We are lacking notice to competitors. Need to let the examiners look at opposition.

-- Say, "In the event panelist(s) rely on independent research, that will be disclosed to the applicant through a Clarifying Question and the applicant should be allowed to respond prior to ruling."

-- If we require the evaluator to notify the applicant, isn't the applicant just going to push back? The applicant should just have to provide a fulsome application.

- If the applicant provides links/sources then at a minimum the evaluator can look at those links.
- But how would an evaluator know that a term is commonly used in other industries without doing research. The Applicant is not going to put that into its own application.
- Needs to be very clear that there isn't just a request for a string with nothing to support it. It is one thing for the evaluator to confirm the information, but another for an evaluator to seek out opposition to it.
- Need to remember that this is an evaluation -- in other evaluations in ICANN, say financial, does the evaluator only rely on what is provided by the applicant.
- Add "except as needed for verification purposes and should be disclosed". To verify the information.
- Does the AGB currently allow evaluators to do research? Research is specifically noted. In paragraph 2 in 4.2.3. Bottom of the paragraph, pages 4-9. We are working on putting some guardrails around this.
- Need to figure out what "if deemed necessary" means.
- If we limit the ability of the evaluator to do research we should call that out in the public comment as it is a fairly significant change.
- Important to encourage dialog, but can't require it. If you have a community application that has overwhelming support, those who are in opposition should step up and encouraged to enter into a dialog.
- The amount of opposition should be compared to the amount of support. 5 letters of opposition might be irrelevant - if you have 500 letters of support. 1 or 2 letters shouldn't automatically cost a point. Opposition should be weighted against support.
- There should be a public and transparent verification of an organization stating opposition in a letter.

ACTION ITEM: Move the Implementation Guidance into the recommendation. Paul McGrady and Anne Aikman-Scalese will work on developing language relating to "if deemed necessary" in the AGB, paragraph 2, 4.2.3, pages 4-9. Jamie Baxter also should consider what should be added in order to encourage dialog, and public and transparent verification of statements of opposition.

Re: The Working Group notes that CCT-RT Recommendation 34 states: "A thorough review of the procedures and objectives for community based applications should be carried out and improvements made to address and correct the concerns raised before a new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the 2012 AGB."

- Staff Comment: From the CCT-RT recommendations tracking spreadsheet: As the WG refines recommendations on this topic, it may want to consider whether to make additional recommendations regarding objectives. Note that the CCT-RT recommendations consider "a higher rate of success for such applications" to be a measure of success.
- Are we trying to get a higher success rate and what can be done other than the recommendations we've already made?
- Need to have a requirement that the evaluators are knowledgeable about the community. Need to avoid the mistakes from the previous round.
- We do have a section on accountability and appeals -- in the section on Accountability Mechanisms.
- The qualifications of the panelists is not something we spent a lot of time on. Need to see if we can improve that.
- Need quantitative and qualitative assessment by experts in communities.

ACTION ITEM: Note that we had not developed a recommendation relating to the qualifications of the panelists and need to consider the need for a quantitative and qualitative assessment by experts in communities.
