

# ALAC comments on JAS WG's Second Milestone Report

The JAS WG submitted its Second Milestone Report to its chartering organizations, the ALAC and GNSO, on 7 May 2011.

**At-Large members are asked (i) to review this Report, below, and (ii) using the "Add Comment" function at the bottom of this page, to leave their comments. The deadline for comments from is Monday, 9 May, at 22:59 UTC.**

See final [ALAC's Statement on the JAS WG's Second Milestone Report \(sent to Board on 13 May 2011\)](#)

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## References

[JAS WG workspace](#)

[Proposed Revised ALAC JAS Charter](#)

[New gTLD Applicant Guidebook](#)

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## Draft Second Milestone Report

As a follow-up to its first Milestone Report and in response to requests from its charters as well as the Board and Government Advisory Committee, this Joint Application Support Wording Group is pleased to submit a Second Milestone Report to its chartering organizations, the ALAC and GNSO.

The work given to this community working group (WG) has presented enormous challenges to its membership, most of whom care deeply about reducing obstacles for proposed TLD applications by or supporting communities in developing economic environments.

The WG has determined that a detailed description of the process flow, metrics and procedures for determining whether an application meets the criteria and how this application will be dealt with is required. Given the eventual target audience of this document and our desire to have it presented and read unedited, the authors have attempted to adopt a simple format while maintaining accuracy and consistency with previous consensus.

**Part 1: WHY provide applicant support?**

**Part 2: WHEN should support be provided?**

**Part 3: WHO qualifies for support? and HOW do we evaluate the applications?**

**Part 4: WHAT do qualified applicants get?**

**Part 5: HOW will the process work and how does it relate to the gTLD Applicant Guidebook (AG)?**

### Part 1 - Why provide new applicant support?

During the International ICANN Meeting in Nairobi in March 2010, ICANN's Board recognized the importance of an inclusive New gTLD Program and the concern expressed by ICANN stakeholders regarding the financial and technical obstacles faced by applicants from developing economies seeking to offer new gTLDs. The Board issued a Resolution (#20) at requesting ICANN stakeholders...

*"...to develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs."*

In April 2010 the GNSO and ALAC co-chartered a Joint Working Group on Applicant Support, also known as the "**JAS WG**" (and referred hereafter as the **WG**), in direct response to this Board resolution. The main objective of this WG is to develop a sustainable approach to providing support to Applicants requiring assistance in applying for and operating new gTLD Registries.

In November 2010 the WG presented the Board with a Milestone Report which suggested several mechanisms for providing support to Applicants. These included cost reduction support, sponsorship and funding support, modifications to the financial continued operation instrument obligation, logistical support, technical support for applicant in operating or qualifying to operate a gTLD, and exception to the rules requiring separation of the Registry and Registrar function.

Since the release of the Milestone Report, both the ICANN Board and the Government Advisory Committee (GAC) have requested further clarification and details from the WG. And while the Board (at its Trondheim meeting) refused to approve differential pricing for applicants in need of assistance, the GAC (in its "Scorecard") has requested that the issue be reconsidered and the WG will continue to explore this option. At its Brussels meeting with the GAC in late 2010 held to discuss the Scorecard, the Board confirmed that ICANN could implement a differential fee schedule for applicants in need of assistance, but added that appropriate criteria and mechanisms would need to be proposed to enable it to happen.

This WG is comprised of members who support these aims and are committed to lowering the barriers to full participation in the gTLD program by a truly global and inclusive community. It is Chartered by both ICANN's At-Large Advisory Committee (ALAC) and its Generic Names Supporting Organization (GNSO); though the two charters are similar but not identical; a comparison between the two charters is available in [this downloadable document](#).

### Part 2: When should support be offered? In this round or wait until later?

This WG has determined that in order to be most effective, this program (of support for in-need applications) be implemented for the first and subsequent rounds. Several reasons are provided in support of this recommendation:

- Board Resolution 2010.03.12.46-47 clearly expressed the need to ensure that the New gTLD Program is inclusive. Much of the ICANN global community, particularly from developing regions, has welcomed this decision.
- With every new gTLD application round, the market competitive disadvantage of under-served communities increases. ICANN should not cause or allow the New gTLD Program to further the gap in gTLD Registry representation from other regions. The diversity, competition and innovation the New gTLD Program could bring should be an opportunity to all around the world since the Internet is a global resource that belongs to all. ICANN has the obligation to look closely into this issue and fulfill its responsibility to serve the global public interest by allowing accessibility and competition for all around the world.
- There is no indication whether, in subsequent rounds, fees will be reduced and, in case there is any reduction, by how much. Therefore there is no benefit in waiting.
- Informal market research by some of the WG members indicates there is built-up demand for new gTLDs, including IDN gTLDs. There is expectation for a considerable number of applications. One of the main concerns is that, without some sort of assistance program, the most obvious and valuable names (ASCII and IDNs), will be taken by wealthy investors. This may limit opportunities in developing regions, for local community institutions and developing country entrepreneurs. Of the current 21 New gTLD Registries, 18 are located in USA and three are in western Europe (with one having a sales/marketing presence in Asia). None are located anywhere else.
- While, per policy, ICANN plans for a second round, the timeline for this to happen is, at best, uncertain. Experiences from previous rounds add to the uncertainty. For example, ICANN communicated during the last round that this was to be followed soon by new rounds, nevertheless, it is taking almost a decade for a new round to materialise. Since ICANN cannot give guarantees and certainty of when future rounds will take place, those who cannot afford to participate in the program during this round, due to the current elevated fees, is perceived as an unfair and non-inclusive treatment.

## Part 3 - Who qualifies for support? and How are gTLD applications evaluated against the above criteria?

The WG has determined a number of criteria to be used in the determination of a gTLD application eligible for support and/or cost relief (in this document called the "*eligible application*"):

**To qualify for eligibility under this program,**

### **1. The Application must demonstrate service to the public interest, including one or more of the following characteristics**

1. Support by and/or for distinct cultural, linguistic and ethnic communities
2. Service in an under-served language, the presence of which on the Internet has been limited
3. Operation in an emerging market or nation in a manner that provides genuine local social benefit
4. Sponsored by non-profit, civil society and non-governmental organizations in a manner consistent with the organizations' social service mission(s)
5. Operated by local entrepreneur, providing demonstrable social benefit in those geographic areas where market constraints make normal business operations more difficult

**AND**

### **2. The Applicant must demonstrate financial capabilities and need**

1. (See notes below)

**AND**

### **3. The Application must NOT have any of the following characteristics:**

1. From a governmental or para-statal applicant (subject to review, see below)
2. A TLD string explicitly based, and related to, a trademark (ie. a "dot brand" TLD)
3. A string that is, or is based on, a geographic name
4. Sponsors or partners who are bankrupt or under bankruptcy protection
5. Sponsors or partners who are subject of litigation or criminal investigation
6. Otherwise incapable of meeting any of the Applicant Guidebook's due diligence procedures

**Applicants will be expected give a self-declaration that they are eligible to receive support under these criteria**

## **3.1 Notes on the application's public interest qualifications**

### **3.1.1 - Support by and/or for distinct cultural, linguistic and ethnic communities**

The ".cat" Catalanian TLD is seen by many linguistic, ethnic and cultural communities as a success story that has helped to preserve and indeed grow the language and culture. Many such groups -- especially those with geographically dispersed diasporas -- see a TLD as unifying icon that will facilitate Internet use while encouraging community growth. We would note especially, linguistic minorities protected by treaties such as the European Charter for Regional or Minority Languages and the Council of Europe Framework Convention for the Protection of National Minorities. The WG agreed that the applications by such communities, should they meet the requirements of need, should be eligible for relief/support.

### **3.1.2 Service in an under-served language, the presence of which on the Internet has been limited**

A number of WG members have advocated support for the build out of TLD strings in non-Latin scripts by communities that use these scripts and have to date been un-served or under-served on the web.

As a part of this, the group has identified two categories of groups that might receive support – communities that regularly use more than one script but might otherwise be unable to afford full-price build out of two scripts; and smaller script communities whose scripts are very limited on the web.

The WG did achieve consensus that as long as the Applicant is providing build-out of a language whose web-presence is limited and they meet the other criteria we should give support.

To address the needs of these groups, partial (but not consensus) support has been expressed for concept of “bundling” -- that is, reducing the price of a TLD string in an “under-served” language script that accompanies a conventional application for the similar string in a Latin script.

#### 3.1.3 - Operation in an emerging market or nation

The WG achieved full consensus in agreeing that the criteria offered to judge applications give preference to those originating within the world's poorer economies. Rather than having ICANN undertake the distracting task of determining where such economies are located, we would refer instead to the internationally agreed upon UN DESA list:

1. Least developed countries: category 199;
2. Landlocked Developing Countries: category 432; or
3. Small Island Developing States: category 722.
4. Indigenous Peoples, as described in Article 1 of Convention No. 169 of the International Labor Organization and the UN Declaration on the Rights of Indigenous Peoples

#### 3.1.5 Operated by local entrepreneur, in those geographic areas where market constraints make normal business operations more difficult

While for-profit companies, private-public partnerships and hybrid entities can be eligible, the WG agrees that this support program must not be used as a substitute for conventional business risk; and the applicants set out in 3.3 are not eligible for support. It should be used to enable new gTLDs that could -- without this program -- be unimaginable.

Note for 3.1.3 and 3.1.5 The WG agreed that other forms of social benefit (including but not limited to: increasing skills; investment in the skills base of a target community; fostering gender balance and presence of minorities; positive contribution to regional or national economies) must be considered.

### 3.2 Notes on Financial Need

The overriding consensus of the WG is that **financial need and capability is the primary criteria for determining eligible applications**. Such need and capability is to be demonstrated through the following criteria:

1. Applicants must be capable of contributing \$45,000 towards ICANN's application fee, unless ICANN waives, or lowers application fees.
2. Where applicants anticipate scheduled fees, such as for extended evaluation, the applicant must be capable of contributing a quarter of the scheduled fees.
3. Applicants must be capable of contributing \$45,000 towards registry operational costs, if the applicant proposes to operate its own registry platform. If the applicant proposes to share registry operational costs with other qualified applicants, the applicant must be capable of contributing the pro rated proportional share of this cost.
4. Applicants must be capable of contributing \$45,000 towards registry continuity operational costs, if the applicant proposes to fund its own continuity operation. If the applicant proposes to share registry continuity operational costs with other qualified applicants, the applicant must be capable of contributing the pro rated proportional share of this cost.

To demonstrate need, Applicants will be required to submit materials to the program administrators, detailing the various constraints which negatively affect the Applicant's ability to acquire and implement a gTLD without assistance under this program. Applicants should provide background on economic, technical, administrative, legal, and/or socio-cultural factors within their environment which are causing these constraints. As well, Applicants will be requested to detail any applicable constraints on management, human resources, IT infrastructure and the Applicant's technical capabilities.

### 3.3 Notes on ineligible criteria

#### Applications by governments or government-owned entities

By consensus of the WG, purely Governmental or para-statal applicants have been listed as not entitled to receive support. However, at the ICANN San Francisco meeting the WG received a request from the GAC to consider including Government applications from Developing Countries for support. The WG will work to obtain a mutually acceptable definition and criteria to fit Government applications with the GAC WG, but recognizes the difficulty in measuring a government's “need” and concern of the appropriateness of offering support for one government over another if resources are limited. The GAC WG has offered to review the JAS criteria and provide its recommendations on a formulation of a solution for possible support to Developing Country Government applications.

## Part 4 - What benefits do qualified applicants receive?

The WG recommends a number of different kinds of support to be made available for eligible applicants, which fall into the following categories:

### 4.1 Financial support/relief from ICANN

#### 4.1.1 - Cost Reductions

The WG recommends the following fee reductions to be made available to all applicants who are determined as meeting the criteria established for support:

- Waive (consensus for this in the Milestone report) the Program Development Costs (US\$26,000)
- Lower risk/contingency cost (US\$60,000)
- Review Base cost (US\$100,000) to see if reduction can be made

- Cost reductions to encourage the build out of IDNs in small or under-served languages.
- Lower registry Fixed Fees
- Exemption or deferment of IPv6 implementation requirements as possible

Further reductions recommended

- Reduction of the Financial Continued Operation Instrument Obligation to 6-12 months

#### 4.1.2 - Staggered Fees

Instead of paying the entire fee upon acceptance of the applications, applicants meeting the criteria established for support could pay the fees incrementally. Staggered fees payment enables an applicant to compete for strings that might otherwise have gone to the first and/or only group with enough money to apply.

#### 4.1.3 - Partial refund from any Auction proceeds

Qualified applicants receive a partial refund from any auction proceeds - for which they can repay any loans or invest into their registry. It could be used to refill the disadvantaged applicant's foundation fund for subsequent rounds.

**Note: Ongoing support will be limited to five years**

### 4.2 Non-financial support/relief from ICANN

- Logistical assistance
- Technical help
- legal and filing support
- Awareness/outreach efforts including efforts to ensure more people in under-served markets are aware of the new gTLD program and what they can do to participate in it
- Deferred requirement of DNSSEC
- Relaxed vertical integration regulations

### 4.3 Support from third parties facilitated by ICANN

#### 4.3.1 - Pool of collected resources and assistance

- Translation support
- Logistical help
- technical support
- Awareness and outreach
- Infrastructure for providing IPv6 compatibility
- DNSSEC consulting
- IDN implementation support
- Possible technical setups

#### 4.3.2 - Directory and referral service only for eligible applicants

- Facilitating contacts with granting agencies and foundations
- ICANN would facilitate but cannot commit to providing

#### 4.3.3 - IPv6 Support

- For registries located in areas where IPv6 connectivity is limited or unavailable, ICANN will facilitate support from IPv6 providers to provide IPv6 gateways into the registry IPv4 services.

### 4.4 Financial support distributed by an ICANN originated (Development) fund

For any funding provided through ICANN by a benefactor that does not wish to administer that funding itself, these funds would be allocated by a specially dedicated committee. The Working Group recommends the creation of a development fund directed at new gTLD applicants who were determined as meeting the criteria established for support.

#### 4.4.1 - Support Program Development function

The working group recommends that ICANN establishes a *Support Program Development* function with an initial goal of securing a targeted commitment for an ICANN based development fund.

### 4.5 Financial support Distributed by External Funding Agencies

There is consensus in the group that external funding agencies would make grants according to their own requirements and goals. ICANN would only provide those agencies with applicant information of those who met the criteria established for support.

## Part 5 - Evaluation process and relationship to the new gTLD Applicant Guidebook (AG)

The WG has determined, at this time, that best possible process to provide support for such applications is to be done through a process that is parallel to, and not a replacement of, the ICANN Applicant Guidebook. Thus, even after the Guidebook is formally approved, this WG can continue its work to refine those components of its mandate which remain unresolved. It is important that the AG make mention of this program and refer interested potential applicants to it, however it is not the WG's intention to otherwise affect the existing application process. To qualify for support applicants may be required to demonstrate that they meet this program's criteria on financial need and public interest; however such activity is intended to supplement, not replace, existing mechanisms in the AG.

The WG had full consensus that Applicants that receive support under this program should repay that support as possible, and that such repayments go into a sustainable revolving fund used to support the future applications. Repayment is dependent on the gTLD Operator's financial success and will take the form of either

- a capital contribution or lump sum; or
- an income contribution or annual instalment of until a lump sum is repaid; or
- repayment of the full or a percentage of the reduced base cost fee expended by the Support Development Program.

The following broad steps *did not obtain thorough evaluation or full consensus* by the WG, but have been suggested as a starting point to this process and will be further refined by the WG based on the Parts 1 to 4 above. Note the process is meant to be to be in parallel with the AG-

1. the Application is assessed using the criteria described in Part 3 and this Step takes place before the Application enters the AG process
2. the Application enters the AG process (that is, it is registered in the TAS and the Applicant pays the \$5,000 deposit; the Application is checked for completeness, posted; Objection period; Background Screening; IE results posted)
3. a Due Diligence Review is done on the Application, Applicant and its partners to ensure it is still eligible/needed during Step 1. and at points of the AG. This Review ensures the Applicant is *still* eligible for support. It is suggested that this Review occurs at three points: upon initial evaluation of the Application, in the AG process- after the IE results are posted and after there is no string contention.
4. the Application progresses in the AG through Objections phase to String Contention. If there is a string contention then the Application will go through normal ICANN channels with the Applicant funding this additional step of the AG
5. once there is no string contention then the Application progresses to Contract execution, Pre-delegation check and Delegation
6. there is a Sunset Period for support with a cut off of 5 years after which no further support will be offered
7. if the new gTLD is granted the Applicant will fall under the safeguards provided by ICANN for all gTLD operators; but we should ensure that needy Applicants are aware of these requirements and are able to fulfil them

NOTE the Applicant is only reviewed for the duration of our support. If at any stage during the Support Development Program Evaluation Process or the new gTLD process, in particular during the Due Diligence Review-

- the Applicant does not give information of the Application, itself and/or its partners when requested;
- the Application's, Applicant's and/or its partners' financial and other circumstances change so that they are no longer eligible;
- the Applicant withholds information about the Applicant, itself and/or its partners regarding its financial and other circumstances; or
- it is discovered that the Application, Applicant and/or its partners are no longer eligible

Then Support may stop in two ways

A. Discharged- Aid stops upon notification to the Applicant and the Applicant and/or its partners may have to repay some or all of the funds already spent on the application. The Applicant may proceed with the Application at this point at its own cost.

B. Revoked or cancelled- used in cases where the Applicant was wrongly granted support (for example granted support as a result of giving false information about finances), the Applicant and/or its partners will have to pay all the funds already spent on the application and the application will be revoked/discarded at that point