Afilias response to "GNSO Community Comment 2 on New gTLD Subsequent Procedures Policy Development Process"

22 May 2017

Afilias experience with ICANN TLD applications dates to 2000 with the inaugural expansion of gTLDs. In this time we have seen submission materials and reviews take several forms. While the process has benefitted from automation, there is still much room for improvement. Afilias appreciates the opportunity to share our thoughts based on multiple application rounds for hundreds of TLDs. Further, we offer comments that reflect our unique experience of running large, high-volume TLDs and understanding of the technical requirements to maintain security and stability of the Internet. Expansion should never be at the expense of trust and all TLDs must meet a high bar of technical competency.

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Work Track 1 - Overall Process, Support and Outreach

1.1 (Registry Service Provider) Accreditation Programs (Wiki page: https://community.icann.org/x/KT2AAw)

1.1.1 - Benefits and risks have been identified by the WG as provided above in the Context section. What additional benefits or risks do you see in implementing such a program? Are there other considerations that need to be considered?

Afilias agrees that there are process efficiencies to be gained in the technical component of the application process and agrees that this could provide additional options to an applicant. However, this is vastly different than providing an accreditation program. The primary benefits of process efficiencies would be reducing the duplication of work on the part of a registry service provider and the application review time perceived by the applicant. Neither of these align with the primary benefit of an accreditation program: establishing an appropriately high, minimum level of service. The risk inherent in a "minimum level of service" is the assumption that all registries, or TLDs, are the same, even at some baseline level. One goal of the new gTLD program was to promote innovation, new models and programs for domain names. Afilias does not believe that this first new, expanded round is sufficient to establish a foundation for a minimum level of service that should automatically apply to all new, subsequent TLDs. The vast variety of business models and proposals for new gTLDs makes this self-evident.

1.1.2 - If an RSP program is established for new gTLDs, do you have any suggestions for some of the details or requirements of the program? For instance, how would the scalability of the RSP be measured across a variable numbers of registries?

An RSP program - not a pre-accreditation program - that focused on requirements to improve process efficiencies could be appropriate. For example, rather than repeating a technical test the detailed results could be passed forward from one application review to the next application review. The review team could then evaluate whether or not the current application had essential differences that needed additional technical testing rather than blindly assuming it was required. There are details about when to "renew" a test that would need broad discussion, but the fundamental requirement of eliminating the duplication of work would be met.

With respect to measuring scalability, there is no single test for measuring the scalability of an RSP. On the one hand, all RSPs could be scaled since they are limited only by the amount of investment they make (or are willing to make) in actual infrastructure and experience they have in operating a large infrastructure. On the other hand, this past round of applications has empirically shown that not all registries require the same infrastructures to succeed. An application review team should consider the scalability needs of each application on its own merits, and apply testing accordingly. Similarly, the operational experience of existing RSPs through the mandatory reporting already provided to ICANN could be summarized and more conveniently made available to the Internet community, especially registry operators, to assist in the evaluation of potential registry service providers.

1.1.3 - Who should be responsible for evaluating whether an RSP meets the requirements of the program?

Afilias is satisfied with the current program using contracted third parties to conduct the technical reviews. Additional guidance in support of process efficiencies would be necessary. The ICANN Compliance team should also be involved to confirm that all existing RSPs are meeting existing contractual requirements.

1.1.4 - Should there be any continuing obligations for approved RSPs, such as high-level requirements for accreditation? Should the requirements be variable based on the types of TLDs the RSP intends to serve or other factors? Please explain.

Afilias does not support an accreditation program. We do support improved process efficiencies including allowing an application review team to consider whether or not a registry operator's selected registry service provider needs additional testing if the RSP has already been recently tested. In particular, variable testing requirements based on the specific needs of

a registry operator's application would be appropriate, provided this meets a threshold that considers minimum security and scalability capabilities.

1.1.5 - Should there be an Agreement between an RSP and ICANN? If so, what enforcement mechanisms should be made available to ICANN in the event that such an Agreement is breached?

Afilias concurs with the opinions of the RySG and defers to that response.

1.1.6 - What, if any, are the potential impacts (both positive and negative) of an RSP Program on ICANN- Accredited Registrars? If there are any negative impacts, what are ways in which those impacts can be mitigated?

Afilias does not foresee any negative impact to registrars with this program. There is the positive impact of the registrar onboarding process being reviewed for possible improvements, specifically providing for a more efficient onboarding of registrars to new TLDs.

1.1.7 - Should there be a process to reassess RSPs on a periodic basis? If so, how often should an assessment be conducted and what would the process be for a re-approval?

In general, ongoing reviews are and should remain under the purview of the ICANN Compliance team. As needed, consensus policies are developed by registries and this process should be employed to create any new or additional parameters for this program. Such a consensus policy should define both the term for a periodic review and the process in which ICANN Compliance identifies breaches and how those are treated in terms of this program.

1.1.8 - If there is an RSP Program, how far in advance should such a Program be launched prior to the opening of the next application window?

The launch of a Program is largely dependent on the completion of an Applicant Guidebook with all terms, process improvements and procedures finalized, not on any arbitrary range of dates. Insofar as drafts of an Applicant Guidebook have been shared and the community and relevant parties have an opportunity to opine, the Program would effectively begin on publication of the final Applicant Guidebook and run into perpetuity.

1.1.9 - Should there be an RSP application "cut-off" date to allow sufficient time for an RSP seeking approval to receive approval in order for their application to be approved before the opening of an application window?

As noted in the response to 1.1.8, the Program is largely about process improvements and will hinge on finalizing the Applicant Guidebook. As an RSP proceeds through testing, any duplicate testing is eliminated until a test must be renewed. Thus it is an ordinary part of the application process and there is no begin or end date except as may be present in the next "application window" unless the Program simply runs into perpetuity.

For the purposes of a registry operator that wants to seek an experienced RSP, as suggested in the response to question 1.1.2, ICANN could seek to summarize and make more conveniently available the mandatory reporting already provided by registry service providers. ICANN's Open Data Initiative is a candidate solution to this suggestion and it would inform the decision to be made by a registry operator.

1.1.10 - If there is a list of pre-approved RSPs in any RSP Program, should there be a provision granted to organizations that act as an RSP to an existing delegated TLD? If yes, how would such a provision work? If not, could ICANN use an RSP's existing performance to satisfy any of the technical requirements and/or tests used in the approval process?

Afilias does not support a pre-approved list. As an administrative task, ICANN could maintain detailed testing results and pass them along to review teams, whether reviewing new applications or registries to be transferred. This should be done as a part of managing this Program and in conjunction with the scope of ICANN Compliance staff.

Afilias does believe that an RSP's existing performance as documented in the mandated reports already provided to ICANN could be used to satisfy some of the technical requirements of an application review, but more discussion among registry services provider would be necessary to ensure that all potential issues are properly considered. Further, reports can not be looked at in isolation, but require context by ICANN Compliance staff.

1.1.11 - If an RSP program is established, how should it be funded? For instance, should registries pay into the program which will reduce related ICANN evaluation fees (and associated application fees)?

Afilias does believe that process improvements could result in reduced evaluation fees. This should be monitored and result in reduced application fees over time, only if deemed appropriate after all 2012 costs are identified. Yet, this does not dictate the fee structure should be greatly reduced as the responsibility of managing a TLD should not have too low a threshold for entry.

1.2 Applicant Support (Wiki page: https://community.icann.org/x/NT2AAw)

1.2.1 - Some have suggested it could be beneficial to expand the scope of the Applicant Support (AS) program by:

For each of the responses in 1.2, we offer the following general guidance:

Efforts to help underserved or underdeveloped regions will be better served at providing support in other parts of the ecosystem - the RO or registrar programs - rather than create conflicting technical or operational requirements. While these are commendable goals, any Program must prioritize rigorous technical standards that ensure trust through the Internet. The RSP Program must be focused on technical and operational bona fides to ensure security, stability, access, and reachability.

If ICANN wishes to expand the Applicant Support program, it must find suitable partners with the relevant global reach to deliver the message to the appropriate audience, e.g., Internet Society chapters, global university networks who have numerous international campuses and programs, or aid organizations that specialize in technology and communications in underserved markets.

1.   Broadening support to IDNs or other criteria

2.   Allowing the Applicant Support program to include the "middle applicant", defined as struggling regions that are further along in their development compared to underserved or underdeveloped regions. The "middle applicant" is intended to be an expansion and NOT intended to be at the exclusion from applicants in underserved or underdeveloped regions. The "middle applicant" provides a balance between opportunities while considering the economic and developmental realities and priorities for potential applicants. Do you believe there is value in the above suggestions? Do you feel there are other areas in which the Applicant Support program could be extended to benefit other regions?

1.2.2 - The Applicant Support Program for the 2012 round was mainly focused on financial support and application submission. Should funding be extended to other areas of the process or for ongoing operational costs? Are there other support mechanisms that should be explored?

This focus was sufficient and appropriate.

1.2.3 - Do you have any suggestions for improving publicity and outreach to potential applicants who would benefit from the Applicant Support program? Do you have any suggestions on how to improve the process to apply for support?

As noted in 1.2.1, it is incumbent on ICANN to identify appropriate partners to assist in this effort.

1.2.4 - The WG has noted that even if the Applicant Support program is well-funded, well-communicated and comprehensively implemented, potential applicants may still choose not to apply for a gTLD. What other metrics could be used to evaluate the success of Applicant Support initiatives beyond the volume of applications? A study conducted by AMGlobal Consulting, 'New gTLDs and the Global South' determined that there was limited awareness of the New gTLD Program and the benefits in applying amongst potential applicants; Would additional metrics on future Applicant Support program(s) and its ability to raise awareness be helpful? Do you have any other metrics that would be helpful measuring the success of the program?

As noted in 1.2.1, it is incumbent on ICANN to identify appropriate partners to assist in this effort.

1.2.5 - Do you have any other general recommendations for improving the Applicant Support program?

As noted in 1.2.1, it is incumbent on ICANN to identify appropriate partners to assist in this effort.

1.3 Clarity of Application Process (Wiki page: https://community.icann.org/x/JT2AAw)

1.3.1 - The WG noted that there were a number of changes to the gTLD program after the release of the Applicant Guidebook, including the processes for change requests, customer support, application prioritization, Registry Agreement, etc. Many applicants have stated that the changes impacted their TLD applications throughout the application process both before submission and after the applications were submitted resulting in confusion, additional work and overall dissatisfaction. For instance, the final version of the Applicant Guidebook was released in June of 2012, which was nearly half a year after the application submission period started. Another example would be the difficulty in reaching a common understanding on the requirements for procuring a Continuing Operations Instrument (COI). How should changes to the Applicant Guidebook and/or the new gTLD Program be handled in subsequent application windows?

It is imperative that ICANN finalize the Applicant Guidebook prior to starting this Program. With ample experience introducing over 1,000 new TLDs, and the help of the community, this document must be finalized to ensure fairness and predictability.

1.4 Application Fees (Wiki page: https://community.icann.org/x/LT2AAw)

1.4.1 - The application fee of $185,000 USD for the 2012 round of the New gTLD Program was established on the principle of breaking even whereby the program's total revenues are equal to all related expenses. In addition, the fee should ensure the program is fully funded and not subsidized by any other sources of revenue. Should another mechanism be considered? For example, cost plus reasonable return, fixed plus variable, volume discounts, or other?

A flat application fee is the safest way for ICANN to recover costs. Further, a variable fee model could be easily gamed by applicants if it is only looking at the initial projections of the TLD. Given the evaluation process is the same across RSP's, there is no reason to have a scale-based fee. Also, a variable model is already in place with the ongoing domain-based fee structure; adding that here would, in effect, be double taxation.

1.4.2 - Although the 2012 round is not complete, there is currently a surplus of fees collected relative to costs incurred. As such, do you believe that the principle of breaking even was implemented effectively? Do you believe $185,000 was a reasonable fee? Is it still a reasonable fee? Should the basic structure of the application fee (e.g., approximately one third of the fee was allocated for (i) the cost recovery of historical development costs, (ii) operations and (iii) legal and other contingencies) be reassessed or restructured? Is it too early to make this assessment? With the experience gained from the 2012 round, do you think that a break-even model can be more accurately implemented for future applications? Do you have suggestions on how to minimize any surpluses or shortfalls?

Streamlining could nominally reduce the cost of the application, but there must be a substantive minimum fee appropriate to take an applicant seriously and for the applicant to understand the perpetual commitment to this TLD.

1.4.3 - Should the concept of break-even be strictly adhered to or should other aspects be considered? Some WG members have noted concerns about the responsibility required to run a registry which could be negatively impacted by a fee that is "too low." Others have noted that the fee is potentially too high and could create barriers to entry in some underserved regions. As such, should there be a cost floor (minimum) or cost ceiling (maximum) threshold that the application fee should not go below/above despite costs estimates? If so, do you have suggestions in how the cost floor and ceiling amounts should be set?

The application fee should be substantial enough to reflect the applicant's ongoing commitment and responsibility of having a TLD and to discourage speculation. Also, it is necessary to provide ICANN funding to successfully manage and promote the Program through the future. A 'ceiling' concept introduces risk in forecasting future costs, contingencies and unexpected costs.

1.4.4 - If there is a price floor, how should the excess funds resulting from floor costs less the actual costs be justified? Conversely, how would shortages be recovered if the ceiling costs are below actual costs?

Excess fees should be used to support general outreach and the ICANN Compliance team and ensure the current variable and fixed pricing of Registry and Registrar fees do not rise.

1.4.5 - Should the WG seek to establish more clarity in how the excess or deficiency of funds are utilized/recovered? If so, do you have any suggestions for establishing that clarity?

On the surface, distributing excess funds is a laudable goal, but the design and execution of a plan could take years to ensure all parties impacted feel their interests are fairly met with the distribution of funds. Excess funds should be used by ICANN to ensure all other fees and costs do not increase.

1.5 Variable Fees (Wiki page: https://community.icann.org/x/Oz2AAw)

1.5.1 - Should the New gTLD application fee vary depending on the type of application? For instance, open versus closed registries, multiple identical applications or other factors? The 2012 round had "one fee fits all," and there seems to be support within the WG for continuing that approach provided that the variance between the different types of applications is not significantly different - do you agree? If not, how much of a variance would be required in order to change your support for a one fee for any type of application approach?

No. Application fees should be the same for all applications, regardless of "type" of TLD, projected volume or country of use or origin.

1.5.2 - The WG believes costing information on the different types of applications should be attained and evaluated once the different types of applications are defined. What are the implications of having different costs by type of application and how could they impact future budgeting efforts? How could they impact competition and choice?

See response to 1.5.1.

1.5.3 - Should the application fee be variable based on the volume of applications received from a single applicant? If so, how should the fee be adjusted and what are the potential impacts from doing so?

No, the application fee must be consistent across TLDs, not across applicants.

1.6 Application Submission Period (Wiki page: https://community.icann.org/x/Mz2AAw)

1.6.1 - One of the overarching questions in Community Comment 1 focused on whether applications should be accepted during defined windows of time (also known as "rounds"). If the WG determines that a system of rounds is the right approach, is three (3) months an appropriate length of time to accept applications? What considerations should be taken into account when determining the length of the application window?

While we do not agree with the concept of "rounds", if ICANN were to use this model, 3 months should be an adequate time to accept applications.

1.6.2 - If we have a few next 'rounds' followed by a continuous application process, how should the application submission period be handled in the lead-up rounds?

Any "lead-up" rounds should reflect the end-goal of the continuous application process as closely as possible. This will allow these rounds to be a means of refining the continuous application process.

1.6.3 - Do you think the length of the submission period will impact Applicant Support and what factors do you think should be considered in determining an appropriate length of time?

Applicant Support programs should be addressed separately and prior to any "rounds."

1.7 Application Queuing (Wiki page: https://community.icann.org/x/MT2AAw)

1.7.1 – The WG believes that the process for establishing the evaluation processing order for applications should be similar to the prioritization draw from the 2012 round. This is, in fact contrary to the first submitted first processed/evaluated guidance provided in the 2007 Final Report. Do you agree that a process similar to the prioritization draw should be used in the future? If rounds are not used, would this method still be appropriate? Would a prioritization draw, or similar method, work for a continuous application period or would it be better to base processing/evaluation on order of receipt?

1.7.2 - Should certain subgroups of applicants/application types be prioritized over others? For instance, from the 2012 prioritization draw, IDNs were moved to the front of the queue for application processing. If you think IDNs or some other category of applications (e.g., Brands, communities, etc.) should be prioritized, do you have suggestions on how to determine the prioritization?

The implementation of a continuous period obviates the need for queuing. Else, randomization with no prioritization of categories is clear and fair.

1.8 Systems (Wiki page: https://community.icann.org/x/Kz2AAw)

1.8.1 - The WG considers this subject to be mainly implementation focused, but nevertheless, has identified areas for improvement. For instance, security and stability should be improved, more robust user testing (e.g., potential applicants) should be incorporated, systems should be better integrated, adequate time for system development should be afforded, etc. Do you have suggestions on additional areas for improvement?

In addition to improvements noted within the question, the System could benefit from the following improvements:

-        Tracking capabilities to allow users to confirm any edits or information are accepted and in-place;
-        Stronger communications;
-        Grouping of applications to create fewer messages;
-        Standard return email addresses, and;
-        Secondary points of contact to also receive communications.

1.8.2 - The WG also noted that ICANN should expand its system capabilities to include the ability to send invoices to organizations who require documentation in order to process payments for any fees related to their application. Do you agree that this would be beneficial?

Yes, this will be beneficial.

1.9 Communications (Wiki page: https://community.icann.org/x/Lz2AAw)

1.9.1 - The WG considers this subject to be mainly implementation focused, but nevertheless, has identified areas for improvement. For instance, the knowledge base could be made more timely and searchable, applicant advisories could be better communicated (e.g., create some sort of subscription service), program information could be consolidated into a single site, ICANN's Global Stakeholder Engagement team could be leveraged to promote global awareness, etc. Do you have suggestions on additional areas for improvement?

Afilias concurs with the opinions of the RySG and defers to that response.

1.9.2 - Metrics to understand the level of success for communications were not established - do you have suggestions on what success looks like?

Afilias concurs with the opinions of the RySG and defers to that response.

1.10 Applicant Guidebook (Wiki page: https://community.icann.org/x/Iz2AAw)

1.10.1 - The Applicant Guidebook served as the roadmap for applicants, but also all other participants to the program. As such, there is a mixture of historical and practical information, some of which is relevant to only certain parties. Do you think it makes sense to partition the Applicant Guidebook into different audience-driven sections or by type of application?

The Applicant Guidebook must be a single, consistent set of procedures and rules applied uniformly across all applications. Creating multiple documents or repetitive sections will only introduce communications risk, specifically, keeping content identical across multiple sections, or how to address an application that changes from a community to a generic, etc. to name just a few. ICANN's goal should be a uniform process clearly articulated in a single document.

Work Track 2 - Legal, Regulatory, and Contractual Requirements

2.1 Base Registry Agreement (https://community.icann.org/x/Pz2AAw)

2.1.1 - The question of whether or not a single Registry Agreement is suitable is tied into the subject of different TLD categories. Throughout the working group's discussions, there has been support for a model similar to what is currently in place: a single Registry Agreement with exemptions that allow for TLDs with different operational models (e.g., Specification 13 for Brand TLDs or Specification 12 for Community TLDs). There is also support for different Registry Agreements for different TLD categories, centered around a common, core base set of contractual requirements. Which of these models do you think would be most effective for recognizing the different operational requirements of different TLDs? Which of these models do you think would be most efficient in terms of development, implementation, and operational execution (e.g., contracting, contractual compliance, etc.)? Do you think there are any alternative options that could effectively facilitate TLDs with different operational requirements?

> ICANN should have a single base registry agreement. This will ensure all registry operators are held to the requisite business and technical standards to maintain security and stability across the Internet.

2.1.2 - Should further restrictions pertaining to sunrise periods, landrush, or other registry activities be developed? If so, do you have suggestions on attributes of these restrictions? Should they be incorporated into the base agreement? Should there be any restrictions established on registry pricing?

> No.

2.1.3 - Should the entire application be incorporated into the signed Registry Agreement? Should portions of the application, explicitly identified, be incorporated into the signed Registry Agreement? If changes are made between applying and executing the Registry Agreement, how should this be handled? If changes are made after executing the Registry Agreement, how should this be handled? If changes like these are contemplated, how can the needs of the community to properly consider the contents of an application be weighed against an applicant's need to make either minor adjustments or fundamental changes to their registry?

> The application should not be incorporated into the Registry Agreement. ICANN should continue with the current model of utilizing a base Agreement.

2.2 Reserved Names (Wiki page: https://community.icann.org/x/PT2AAw)

2.2.1 - Do you believe any changes are needed to the String Requirements at the top level as defined in section 2.2.1.3.2 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf)? Please explain.

No

2.2.2 - Do you believe any changes are needed to the list of Reserved Names at the top level as defined in section 2.2.1.2.1 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf? Please explain.

Afilias supports the recommendations of SAC090 "SSAC Advisory on the Stability of the Domain Namespace".

2.2.3 - Special Use Domain Names

Context: Internet Engineering Task Force (IETF) RFC 6761 (https://tools.ietf.org/html/rfc6761) was issued after publication of the Applicant Guidebook. The RFC describes what it means to say that a domain name is reserved for special use by the IETF, when reserving such a name is appropriate, and the procedure for doing so. It establishes an IANA registry for such domain names, and seeds it with entries for some of the already established special domain names. As a result of the RFC, ICANN must not assign Special Use Domain Names to any third-party registry.

For example, the IETF recently approved .onion as a Special Use Domain Name and IANA added .onion to use Special-Use Domain Name registry (See http://www.iana.org/assignments/special-use-domain-names/special-use-domain-names.xhtml#special-use-domain), thereby ensuring that ICANN could not delegate .onion as a gTLD in the future.

Do you think Special Use Domain Names should be added to the Applicant Guidebook section on reserved names at the top level to prevent applicants applying for such labels?

Afilias supports the recommendations of SAC090 "SSAC Advisory on the Stability of the Domain Namespace".

2.2.4 - Specification 5 of the Registry Agreement allows the Registry Operator to reserve and use up to 100 names at the second level for the operation and/or promotion of the TLD. In addition, the Registry Operator is permitted to reserve an unlimited amount of other domain names which may only be released through an ICANN-Accredited Registrar for registration by third parties. Do you believe that any changes are needed to a Registry Operator's right to reserve domain name? If yes, what changes are needed and why? If not, why not?

Changes are not required.

2.3 Registrant Protections (Wiki page: https://community.icann.org/x/QT2AAw)

2.3.1 - ICANN has included the following programs to protect registrants: an Emergency Back-End Registry Operator (EBERO), Continued Operations Instrument (COI), Data Escrow requirements, and Registry Performance Specifications in Specification 10 of the base registry agreement? Such programs are required regardless of the type of TLD. Are there any types of registries that should be exempt from such programs? If so, why? Do the above programs still serve their intended purposes? What changes, if any, might be needed to these programs if an RSP pre-approval program, discussed in section 1.1.1., were to be developed?

Insofar as the EBERO is able to support the largest TLDs by registration and usage, e.g., WHOIS, DNS, SRS interactions, the EBERO model should be sufficient as defined. However, streamlining is possible when a Registry Operator is different from the Registry Service Provider. To ensure stability, limit any service interruption, and/or remove transition burden to registrars, ICANN should provide the current RSP the opportunity to continue managing the TLD and become the Registry Operator (e.g., sign the base registry agreement for the specific TLD[s].)

2.3.2 - In the working group discussions, it became clear that the EBERO funding model requires review and potential modification. The current COI model is one that has proven to be difficult to implement for many registries, ICANN and even financial institutions. Are there other mechanisms of funding EBERO providers other than through Letters of Credit and/or other Continuing Operations Instruments? 2.3.3 - ICANN staff, in its Program Implementation Review Report, identified a number of challenges in performing background screening, particularly because there were many different types of entities to screen (e.g., ranging from top twenty five exchanges to newly formed entities with no operating history) and because it is difficult to access information to conduct background screenings in some jurisdictions/countries. Do you think that the criteria, requirements, and/or the extent to which background screenings are carried out require any modifications? Should there be any additional criteria added to future background screenings? For example, should the previous breach by the Registry Operator, and/or any of its affiliates of a Registry Agreement or Registrar Accreditation Agreement be grounds for ICANN to reject a subsequent application for a TLD by that same entity and/or its affiliates? Why or why not? What other modifications would you suggest? Should background screening be performed at application time or just before contract-signing time? Or at both times? Please explain.

We support ICANN efforts that address the importance of business and technical continuity as they acknowledge the requisite long-term commitment to a TLD. This question raises two important methods ICANN can use to make a determination of this commitment: (1) performing background checks on applicants, and (2) extrapolating fitness from current performance.

Background screening provides important visibility into the entity applying for a TLD. Identifying actors and agents involved in an application should be the primary objective of ICANN. Legal entities should have cleared identified individuals in management positions, the very people with whom ICANN will interact and hold accountable. These are the parties ICANN should evaluate, both from a cursory legal screening as well as other criteria relevant to ICANN's mission of maintaining a secure and stable Internet and promoting competition. This explicitly demands that ICANN be made aware of any changes in management or ownership structure throughout the application review process; changes would be a trigger for additional screening. In short, the party ICANN enters into a Registry Agreement should be the original screened applicant or an entity subsequently screened after an official notification of change in management or ownership.

History also provides relevant fitness information for ICANN. With decades of experience, actors and agents are known to ICANN, as is documented performance history of registry operators. As noted in our response to 1.1.3 and 1.1.7, ICANN Compliance should be integrated into the application review process as they are acutely aware of past and current performance. Further, they provide a vital human check and context. While a breach is an important consideration, it can not be looked at in isolation; the Compliance team will help provide substantive understanding of the level of gravity of a breach and how it should factor into an evaluation. Relative to the application process, ICANN should consider looking at severity levels for breaches that strongly weigh performance of core functions of DNS, registration services, and RDDS as indicators of future performance.

2.4 Closed Generics (Wiki page: https://community.icann.org/x/UT2AAw)

2.4.1 - In the 2012 round, the operation of a TLD where the string was considered "generic" could not be closed to only the Registry Operator and/or its Affiliates. Originating from GAC Advice on the subject, this rule was promulgated by ICANN's New gTLD Program Committee of the ICANN Board, but was never adopted as a policy by the GNSO. This rule was subject to public comment and input from the community. Should this rule be enforced for subsequent application windows? Why or why not?

The prohibition on "closed generics" should be lifted. As a matter of course, the program should not be focused on content and use, only creating opportunity. ICANN should support as many broad ideas as possible; only this approach will create an environment that fosters innovation.

2.4.2 - Do you have suggestions on how to define "generic" in the context of new gTLDs? A "generic string" is currently defined in the Registry Agreement under Specification 11.3.d as meaning, "a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others." Are any modifications needed to the definition? If so, what changes? If the exclusion of closed generic TLDs is to be maintained, are there any circumstances in which an exemption to the rule should be granted?

The need to create a definition is obviated by eliminating the prohibition.

2.5 Applicant Terms and Conditions

2.5.1 - The following language appears in Section 3 of the Applicant Terms and Conditions:

"Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant."

Do you believe that this paragraph gives ICANN an absolute right to reject any application for any reason including a reason that contradicts the Applicant Guidebook, or any law or policy? If yes, should such an unrestricted right appear in any modifications to the Guidebook? If no, please list the other documents that you believe should be read in conjunction with this paragraph, e.g. GNSO Policy on new gTLDs, ICANN Bylaws, other portions of the Guidebook, California implied covenant of good faith and fair dealing, etc.

Afilias concurs with the opinions of the RySG and defers to that response.

2.5.2 - According to Section 6 of the Applicant Terms and Conditions, the "covenant not to sue ICANN", an applicant foregoes any right to sue ICANN once an application is submitted for any reason. Currently, an applicant can only appeal an ICANN decision through the accountability mechanisms, which have a limited ability to address the substance of the ICANN decision. If ICANN had an effective appeals process ((as asked about in Question 3.5.2 below) for an applicant to challenge the decisions of the ICANN staff , board and/or any entities delegated decision making authority over the assignment, contracting and delegation of new gTLDs, would a covenant not to sue be more acceptable? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

2.5.3 - According to Section 14 of the Applicant Terms and Conditions, ICANN has the ability to make changes to the Applicant Guidebook. One task of this Working Group is to address the issue of predictability in future rounds, including with respect to the AGB. Do you think that ICANN should be limited in its ability to make changes to the Applicant Guidebook after an application procedure has been initiated? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

2.5.4 - Do you believe that any changes are needed in the Terms & Conditions in Module 6 of the Applicant Guidebook? If so, what are those changes and what is the basis or rationale for needing to do so?

Afilias concurs with the opinions of the RySG and defers to that response.

2.6 Registrar Non Discrimination & Registry / Registrar Separation (Wiki page: https://community.icann.org/x/RT2AAw)

2.6.1 - The Working Group has not yet deliberated the issues of Registrar Non-discrimination or Registry/Registrar Separation (also known as Vertical Integration). However, now that we have several years of operations of vertically integrated registries and registrars, what issues, if any, have you noticed with vertically integrated Registries?

No comment.

2.6.2 - Specification 13 grants an exception to the Registry Code of Conduct (i.e., Specification 9 in the Registry Agreement) and specifically from the vertical integration restrictions. In addition, Registry Operators may seek an exemption from the Code of Conduct if the TLD string is not a generic term and if it meets three (3) other specified criteria set forth in Specification 9 of the Registry Agreement. Are there any other circumstances where exemptions to the Code of Conduct should be granted?

We see no other areas for Code of Conduct exemptions.

2.6.3 - Some have argued that although we allow Registries to serve as both as a registry and as a registrar, the rules contained within section 2.9 of the Registry Agreement and in the Code of Conduct prohibit the integrated registry/registrar from achieving the economic efficiencies of such integration by not allowing a registry to discriminate in favor of its own registrar. Do those arguments have merit? If yes, what can be done to address those claimed inefficiencies? If not, please explain. What safeguards might be required?

No comment.

2.7 TLD Rollout (Wiki page: https://community.icann.org/x/Rz2AAw)

2.7.1 The Applicant Guidebook specified timelines by which applicants had to complete the contracting (9 months) and delegation (12 months) steps of the process. However, this requirement only means that the contract needs to be executed and nic.TLD be delegated. Are these timeframes reasonable? Is there still a need for these requirements? Please explain.

These timeframes provide an adequate window for completing those tasks. However, the requirement to begin escrowing data for only a nic.TLD site seems premature.

2.8 Contractual Compliance (Wiki page: https://community.icann.org/x/Qz2AAw)

2.8.1 - Noting that the role of Contractual Compliance is to enforce the registry agreement and any changes to that role are beyond the scope of this PDP, the WG is not anticipating policy development related to this topic. The WG expects that any new contractual requirements would be made enforceable by inclusion in the base agreement. Do you agree with this approach?

Afilias concurs with the opinions of the RySG and defers to that response.

2.9 Global Public Interest (Wiki page: https://community.icann.org/x/TT2AAw)

2.9.1 - The Final Issue Report suggested that in considering the public interest the WG think about concerns raised in GAC Advice on safeguards, the integration of Public Interest Commitments (PICs), and other questions around contractual commitments. Have PICs served their intended purpose? If not, what other mechanisms should be employed to serve the public interest? Please explain and provide supporting documentation to the extent possible.

The PICs have served their intended purpose and no other mechanisms are required.

Work Track 3 - String Contention Objections and Disputes

3.1 Objections (Wiki page: https://community.icann.org/x/Vz2AAw)

3.1.1 - Do you think that the policy recommendations (Recommendations 2, 3, 6, and 20) require any modifications? If so, what would you suggest?

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.2 - Do you believe that those recommendations (which led to the establishment of the String Confusion, Legal Rights, Limited Public Interest, and Community Objections grounds) were implemented effectively and in the spirit of the original policy recommendations? If no, please provide examples.
3.1.3 - Do you believe there were any issues with standing requirements as defined in the Applicant Guidebook (AGB), or as carried out by the providers? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.4 - Do you believe there is evidence of decisions made by objection dispute panels that were inconsistent with other similar objections, the original policy recommendations, and/or the AGB? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.5 - Are you aware of any instances where any party or parties attempted to 'game' the Objection procedures in the 2012 round? If so, please provide examples and any evidence you may have available. 3.1.6 - Do you believe that the use of an Independent Objector (IO) is warranted in future application processes? If not, then why? If yes, then would you propose any restrictions or modifications be placed on the IO in future rounds?

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.7 - Do you believe that parties to disputes should be able to choose between 1 and 3 member panels and should the costs of objections reflect that choice?

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.8. - Is clearer guidance needed in regards to consolidation of objections? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.9 - Many community members have highlighted the high costs of objections. Do you believe that the costs of objections created a negative impact on their usage? If so, do you have suggestions for improving this issue? Are there issues beyond cost that might impact access, by various parties, to objections?

Afilias concurs with the opinions of the RySG and defers to that response.

3.1.10 - Do you feel that GAC Early Warnings were helpful in identifying potential concerns with applications? Do you have suggestions on how to mitigate concerns identified in GAC Early Warnings? 3.1.11 - What improvements and clarifications should be made to GAC Advice procedures? What mitigation mechanisms are needed to respond to GAC Advice? How can timelines be made more precise?

Afilias concurs with the opinions of the RySG and defers to that response.

3.2 New gTLD Applicant Freedom of Expression (Wiki page: https://community.icann.org/x/Uz2AAw)

3.2.1 Noting that the 2007 Final Report on new gTLDs tried to balance the rights of applicants (e.g., Principle G) and rights holders (Recommendation 3), do you believe that the program was successful in doing so? If not, do you have examples of where either an applicant's freedom of expression or a person or entity's legal rights were infringed?

Afilias concurs with the opinions of the RySG and defers to that response.

3.3 Community Applications and Community Priority Evaluations (Wiki page: https://community.icann.org/x/Wz2AAw)

3.3.1 - As indicated in the Implementation Guidance of the 2007 Final Report, the claim by an applicant to support a community was intended to be taken on trust unless the applied-for TLD is in contention with one or more TLDs or is the respondent in an objection. As a result, the claim to support a community was only evaluated in Community Priority Evaluation (CPE) and Community Objections. Do you believe that the implementation and delivery of CPE were consistent with the policy recommendations and implementation guidance provided by the GNSO? If no, do you have suggested improvements to either the policy/implementation guidance or implementation?

> Afilias concurs with the opinions of the RySG and defers to that response.

3.3.2 There is a general sentiment amongst many in the community that the CPE process did not provide consistency and predictability in the 2012 round. Do you believe this was the case and if so, do you have examples or evidence of these issues?

> Yes, we agree the CPE process lacked consistency and predictability. Some of the issues were a result of the evaluation inconsistencies, e.g., the strict or light adherence to the scoring; others because of the applications themselves and attempts to 'game' the process by applying as a community when there was no demonstrably clear community. The process must provide more clarity on the scoring criteria, stronger definition of the standard by which a community is defined, and more uniform application of this by all review panelists for all applications.

3.3.3 - CPE was the one instance in the New gTLD Program where there was an element of a comparative evaluation and as such, there were inherently winners and losers created. Do you believe there is a need for community priority, or a similar mechanism, in subsequent procedures? Do you believe that it can be designed in such a fashion as to produce results that are predictable, consistent, and acceptable to all parties to CPE? The GNSO policy recommendations left the issue of a method for resolving contention for community claimed names to Board and the implementation. Do you believe that a priority evaluation is the right way to handle name contention with community applicants? Should different options be explored? If so which options should be explored and why?

A possible way to address this is by solving for the case of how an application 'games' the system by applying as a Community. Specifically, ICANN should evaluate the process through this lens and note the areas where an applicant gets an advantage and then think through if the other applicants - including those not applying for a contention set as a community - were inherently disadvantaged. Another element to consider in this evaluation is who to provide other applicants in the contention set the chance to be considered a "community" and not automatically deemed not a community. This iterative process will help ICANN explore mechanisms that do not quickly create winners or losers via a community designation.

3.3.4 - Were the rights of communities (e.g., freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination) infringed by the New gTLD Program? Please provide specific examples.

Not to our knowledge.

3.3.5 - Besides CPE, are there other aspects of the New gTLD Program related to communities that should be considered in a more holistic fashion? For instance, in the 2012 round, the claim to support a community is largely only relevant when resolving string contention. Do you think community applications should be structured and/or evaluated differently than other applications?

This issue is largely obviated by continuous application periods and modification of CPE to not immediately create winners and losers.

3.4 String Similarity (Evaluations) (Wiki page: https://community.icann.org/x/VT2AAw)

3.4.1 - There was a perception that consistency and predictability of the string similarity evaluation needs to be improved. Do you have examples or evidence of issues? If so, do you have suggested changes to the policy recommendations or implementation that may lead to improvement? For instance, should the standard of string confusion that the evaluation panel used be updated or refined in any way?

Afilias concurs with the opinions of the RySG and defers to that response.

3.4.2 - Should the approach for string similarity in gTLDs be harmonized with the way in which they are handled in ccTLDs (ccNSO IDN ccTLD Fast Track Process is described here: https://www.icann.org/resources/pages/fast-track-2012-02-25-en)?

Afilias concurs with the opinions of the RySG and defers to that response.

3.4.3 - The WG and the wider community have raised concerns specifically related to singles and plurals of the same word. Do you have suggestions on how to develop guidance on singles and plurals that will lead to predictable outcomes? Would providing for more predictability of outcomes unfairly prejudice the rights of applicants or others?

Afilias concurs with the opinions of the RySG and defers to that response.

3.4.4 - Do you believe that there should be some sort of mechanism to allow for a change of applied-for TLD when it is determined to be in contention with one or more other strings? If so, do you have suggestions on a workable mechanism?

Afilias concurs with the opinions of the RySG and defers to that response.

3.4.5 - Do you feel that the contention resolution mechanisms from the 2012 round (i.e., CPE and last- resort auctions) met the needs of the community in a sufficient manner? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

3.4.6 – Do you believe that private auctions (i.e., NOT the auctions of last resort provided by ICANN) resulted in any harm? Could they lead to speculative applications seeking to participate in a private auction in future application processes? Should they be allowed or otherwise restricted in the future?

Afilias concurs with the opinions of the RySG and defers to that response.

3.5 Accountability Mechanisms (Wiki page: https://community.icann.org/x/WT2AAw)

3.5.1 – Do you believe that the existing accountability mechanisms (Request for Reconsideration, Independent Review Process, and the Ombudsman) are adequate avenues to address issues encountered in the New gTLD Program?

Afilias concurs with the opinions of the RySG and defers to that response.

3.5.2 – Should there be appeal mechanisms, specific to the New gTLD Program, introduced into the program? If yes, for what areas of the program (e.g., evaluations, objections, CPE)? Do you have suggestions for high-level requirements (e.g., if the appeal should be limited to procedural and/or substantive issues, who conducts the review, who is the final arbiter, safeguards against abuse, etc.).

Afilias concurs with the opinions of the RySG and defers to that response.

Work Track 4 - Internationalized Domains Names and Technical & Operations

4.1 Internationalized Domain Names (Wiki page: https://community.icann.org/x/XT2AAw)

4.1.1 - Do you agree or disagree with allowing 1-char IDN TLDs, in specific combinations of scripts and languages where a single character can mean a whole idea or a whole word (ideograms or ideographs)? 4.1.2 - Do you have any general guidance or would you like to flag an issue requiring policy work for subsequent procedures regarding IDNs?

Afilias supports the recommendations of SAC052 "SSAC Advisory on Single Character Internationalized Domain Name Top-Level Domains".

4.1.2 - Do you have any general guidance or would you like to flag an issue requiring policy work for subsequent procedures regarding IDNs?

Afilias supports the recommendations of SAC060 "SSAC Comment on Examining the User Experience Implications of Active Variant TLDs Report".

Afilias supports the application of the design principles described in SAC084 "SSAC Comments on Guidelines for the Extended Process Similarity Review Panel for the IDN ccTLD Fast Track process" in the consideration of all IDNs.

4.1.3 - How do you envision the policy and process to allow IDN Variant TLDs to be delegated and operated? Possible options include but are not limited to bundling (allowing but requiring procedures similar to .ngo/.ong where only the same registrant can register a name across TLDs), disallowing (as it was in the 2012-round) or allowing without restrictions. Must there be a solution established prior to launching subsequent procedures?

No comment.

4.1.4 - Should the process of allowing 1-char IDN TLDs and IDN Variant TLDs be coordinated and/or harmonized with ccTLDs? If so, to what extent?

The process for considering and introducing 10character IDNs should be consistent with and no more restrictive than the ccTLD fast track guidelines.

4.2 Universal Acceptance (UA) (Wiki page: https://community.icann.org/x/XT2AAw)

4.2.1 - Do you see any UA issue that would warrant policy development work, noting that there is extensive coordination work already being done by the Universal Acceptance Steering Group (https://uasg.tech/) ?

Afilias supports the work of the Universal Acceptance Steering Group.

4.3 Application Evaluation (Wiki page: https://community.icann.org/x/YT2AAw)

4.3.1 Technical Evaluation

4.3.1.1 - Do you believe that technical capability should be demonstrated at application time, or could be demonstrated at, or just before, contract-signing time? Or at both times? Please explain.

Afilias believes that technical capability should be known at application time or shown during the testing phase as was done in the 2012 application round. While Afilias does not support an accreditation program or a pre-approval process, if process efficiencies as described in the response to Questions 1.1.1-1.1.11 are developed, Afilias recognizes and supports that it may not be necessary to actively show technical capability as has been done during the testing phase.

4.3.1.2 - Do you believe that technical evaluation should be done per application, per cluster of similar technical infrastructure of a single applicant entity/group, or per cluster of similar infrastructure among all applicants in a procedure (e.g, consolidate as much as possible)?

Afilias supports the development of a process efficiencies, especially as they relate to the technical evaluation of registry service providers. Further to the response to Question 1.1.2, one dimension of process efficiencies to be considered is the elimination of duplicate technical evaluation of an RSP. Each application would need to be evaluated according to its unique needs, the known capabilities and prior testing results of the selected RSP, and then technical evaluation conducted accordingly.

4.3.1.2.1 - If consolidated, should the aggregate requirements of applied-for TLDs and currently operated TLDs be taken in consideration for evaluation?

Further to Afilias's response to Question 1.1.2, a scalability consideration of an application should consider the operational experience of an existing RSP, including especially experience operating a large infrastructure. Although this past round of applications has empirically shown that not all registries require the same infrastructures, an RSP may have technical infrastructure requirements to be considered that result from the aggregation of TLDs.

4.3.2 Financial Evaluation

It is generally agreed that financial stability of a gTLD operator is necessary to ensure the security, stability, and resiliency of the Internet.

4.3.2.1 - ICANN sought detailed financial information as it pertains to an applicant's proposed business model, projected revenue, and operating expenses. However, it required such information be provided through a static template rather than allowing applicants to provide their own financial models. Did this present any issues in the 2012 round? Please explain.

To our knowledge, this did not create a burden on applicants.

4.3.2.2 - Can financial capability be demonstrated with less detail, in a different manner, or via a different mechanism? Are there details or levels of detail that are unnecessary?

The format provided was not useful for all applicants, specifically the ".brand" TLDs which are not assigning revenue in a traditional sense. These business models could benefit from less detail,

4.3.2.3 - In the prior round, detailed business plans were provided, but not evaluated; they were however used to provide context to evaluators in scoring applicant responses. Do you believe that this information needs to be collected in order to evaluate an applicant's financial capabilities? Please explain? How should changes in business plans during the application process be handled?

Given the different uses and business models, a one-size-fits-all for a template and scoring is inappropriate. The primary focus of ICANN should be the financial stability of the applicant and their commitment to the on-going operation of the TLD, and the ability of their back-end registry service provider.

4.3.2.4 - Some have argued that for Brand TLDs that do not rely on the distribution of domains, an evaluation of the business model unnecessary. Do you agree with this assertion? Please explain. Are there any other types of TLDs for which the collection of business models may be unnecessary? Please explain.

Yes, we agree that ".brands" have a different business model and should have a more streamlined review process. As noted above in 4.3.2.2, ".brands" potentially have different business models and would not have a traditional revenue stream. With these, the primary focus of ICANN should be the financial stability of the applicant and their commitment to the on-going operation of the TLD, and the ability of their back-end registry service provider.

4.3.2.5 - Do you believe that financial capability should be demonstrated at application time, or could it be demonstrated at, or just before, contract-signing time? Or at both times? Please explain.

Afilias concurs with the opinions of the RySG and defers to that response.

4.3.2.6 - Do you believe that financial evaluation should be done per application or per possible registry family assuming all applied-for strings are won?

Financial evaluation should be done on an individual application basis.

4.3.2.7 - Given the international nature of ICANN and its outreach to less developed areas, is the one size fits all approach to financial evaluation appropriate?

The country of origin of an application is irrelevant for measuring financial capability. The only differences in financial evaluation to be considered is for a ".brand" that does not have a traditional revenue model.

4.3.3 General Questions

4.3.3.1 - What suggestions do you have for improving the application evaluation process that you would like the community to consider?

In general, we feel the review must continue to give emphasis on technical measures as noted throughout this response.

4.4 Name Collision (Wiki page: https://community.icann.org/x/Yz2AAw)

4.4.1 - What general guidance for namespace collisions would you like the community to consider for subsequent procedures, and why?

Afilias concurs with the opinions of the RySG and defers to that response.

4.4.2 - Were there non-applied for strings that would fall into a high risk category that you would suggest not be allowed in subsequent procedures? If yes, which ones and why? Should a Name Collision based evaluation be incorporated into the process for subsequent procedures? What data sources could/should be used for analyzing namespace collisions for subsequent procedures?

Afilias concurs with the opinions of the RySG and defers to that response.

4.4.3 - Based on data from the first round, can the controlled interruption period be reduced in future rounds?

Afilias concurs with the opinions of the RySG and defers to that response.

4.4.4 - Should any measures be suggested or requested from TLDs that already ended or will end their emergency readiness after two years of delegation? Are any measures needed for gTLDs delegated prior to the 2012 round?

Afilias concurs with the opinions of the RySG and defers to that response.

4.5 Security and Stability (Wiki page: https://community.icann.org/x/Xz2AAw)

4.5.1 Considering that, different from the 2012-round, we now have Top-Level Label Generation Rules available for most, if not all, scripts and languages, does the per-label security and stability review still makes sense?

Afilias supports the application of the design principles described in SAC084 "SSAC Comments on Guidelines for the Extended Process Similarity Review Panel for the IDN ccTLD Fast Track process" in the consideration of all IDNs.

4.5.2 Considering the already published CDAR study and comments to that study, do you have any comments regarding root zone scaling?

Afilias supports the recommendations of the "Continuous Data-driven Analysis of Root Stability Deliverable D2: Root Stability Report".