CC2 - Work Track 1

Application Fees

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?

<u>Nominet, GAC UK, BRG, RySG, Valideus, and BC supported a model based on the principle of cost recovery.</u>

Sample excerpts:

"The same **break even and cost neutral principle should be applied to any subsequent new gTLD process**, i.e. the process to expand further the domain name system should not be driven by the aim of generating additional revenues for the ICANN community." – GAC UK

"The **principle of cost recovery remains appropriate**. As improvements and efficiencies are made, or additional processes/burdens are introduced, this should be reflected in the fees paid by applicants (i.e. costs could go up as well as down), although adjustments to fees should be reviewed periodically (e.g. every two years)." – BRG (this comment was submitted in response to 1.4.3)

"The principle of **cost recovery was a reasonable approach for the 2012 round** and we don't see a need to change the mechanism in the future. With that said, some members of the RySG hold the position that the $185,000 fee shouldn't change and that the question of recurring fees in excess of a cost recovery principle should be considered holistically and should follow further cost analysis, including accounting for fees during the 2012 round and whether the fees charged achieved the goal of cost recovery." – RySG

"In our view **a "break even" fee is appropriate**. In the first new gTLD round, the application fee of $185,000 was set to "recover costs associated with the new gTLD program" – including all evaluation costs – to ensure that the program is "fully funded and revenue neutral". The new gTLD application fee should be reviewed ahead of the next round to align with the actual costs and revenues generated from this first application round in order to be informed to set the fee at the "break even" point." – Valideus

"The application fee should at the very least **cover all the costs incurred by ICANN** to allocate a new extension." – BC (this comment was submitted in response to 1.4.3)

<u>Afilias, CIRA, and Demys provided more detailed feedback on the future cost model.</u>

Excerpts:

"**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." – Afilias

We agree that the **program should be self-funding**. However, clearly given the existence of significant surplus, we expect that **ICANN will be able to substantially reduce this fee** in future processes. . . We would also add that **applicants need the certainty of a fixed cost** so that they can develop their business plans with a certain level of confidence. We would be opposed to any fees or components of fees that might be based on future variable costs or profitability of the applicant." -- CIRA

"**We suggest a TLD-type approach is considered**, where an open-generic, closed-generic, brand, community are all priced at their reasonable fee. There are significant differences in the evaluation of these different types of TLDs and therefore the costs incurred by ICANN are also significantly different." -- Demys

<u>John Poole suggested an alternate model in which applicants must post a deposit.</u>

Excerpt:

"Yes, each **applicant must post a deposit of $1,000,000** in order to qualify to bid to operate a new gTLD — bidding for each new gTLD per the recommendations of the U.S. Department of Justice Antitrust Division." – John Poole

<u>ALAC stated that such operational issues are of little concern to the general public.</u>

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?

<u>BRG, CIRA, ALAC, GAC UK, and Aflias anticipated that experience from the 2012 round should result in more accurate costing models and potentially lower fees in the future.</u>

Sample excerpts:

"Costs estimated for the 2012 round were based on limited experience. In view of the high volume of applicants in 2012, the subsequent implementation of processes and systems, this **experience should inform ICANN and provide a more accurate basis for estimating**

costs in the future. Given the current surplus in application fees, ICANN must justify any application fee above $185k." -- BRG

"There is no question the original $**185,000 USD fee was too high**. . .The principal of breaking even was implemented effectively BUT the **forecasting of the actual costs that would be incurred was totally incorrect. Yes, a better break-even model should be possible** given much of the development costs have already been spent, the evaluation process (outside of RSP certification) are well understood and can be contracted for more effectively, legal considerations were largely not a requirement and the need to evaluate every application on technical merit will no longer be a requirement under a program that includes RSP certification. It would be easy to justify an application fee well under the $100USD level. . ." – CIRA

"Hindsight is always 20-20. ICANN made its calculations based on what it believed would be break-even, with absolutely no precedent. Obviously a **new calculation needs to be derived that may be able to, for instance, eliminate the historical-cost component if that has been fully recovered by the last round**." – ALAC

"There was no clearly understood or predictable market expectation of the volume of take up for the current round with the result that the volume of fees received far exceeded the basis used for determining the US$185k fee level. This level was considered appropriate for recovering the historical costs of preparing for the round and secondly setting a bar to deter frivolous and wholly inadequately prepared and under-resourced applications. For a future process, the **historical costs will be lower in view of the experience and established and fully developed mechanisms from the first fully open round. The fee can as a consequence be considerably lower** - perhaps by 50% while still maintaining a bar sufficient to ensure that all applications received are coherent and worth dedicating resources fro evaluation and processing." – GAC UK

"**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." -- Aflias

<u>Demys advocated for lower fees for .brands in subsequent procedures.</u>

Excerpt:

"Considering a TLD-type model as suggested, and based on our own experience with a brand TLD, **there was far too much overhead with the application that did not apply to a brand**, all of which, if removed, would reduce the cost of a brand application substantially. In the case of using a pre-approved RSP the checks and tests required are also removed therefore removing another resource cost from ICANN, further justifying the reduction of application fees." -- Demys

<u>BC, RySG, and BRG provided input on use of surplus funds from the 2012 round.</u>

Excerpts:

"In the current application round, ICANN anticipated litigation expenses and set the application fees accordingly. Since we have not seen any litigation there is an argument for **refunding some 5 of the original application fee to the registry**. Another idea may be to **allocate part of the application fee to compliance**." – BC

"No. It was not implemented effectively. There is approximately $100M in excess application fees that were collected to implement the program, yet ICANN collected another $6M in fees from applicants to establish the TMCH. **To date, ICANN has refused to return any of the money to applicants; to use it to support the program; or to credit new registries in ongoing ICANN fees**. . . It is difficult to identify whether the $185K fee was reasonable absent cost analysis of whether fees collected during the 2012 round were consistent with the goal of cost recovery. We believe that these questions should be considered holistically, including **accounting for whether a return of fees to 2012 applicants is warranted**. . ." – RySG

"In terms of the excess fees from the 2012 round, **ICANN should provide to the applicants the details of the excess amount collected from the application fees and a proposal for reimbursement or utilisation of those funds**." – BRG (excerpted from response to 1.4.5)

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?

<u>Jannik Skou, RySG, and Afilias offered arguments in support of a cost floor.</u>

Excerpts:

"Application fees should be reduced (ICANN must have learned from 2012 round – across all Q1-Q50 questions) but **no lower than 100k USD to avoid for a new gTLD becoming a commodity and "no risk" type of investment**." – Jannik Skou (quoted from response to 1.4.2)

"Fees that are **too low could be detrimental to security and stability and competition between rounds**. . ." RySG

"A **floor may be appropriate**, as long as the use of any excess amounts should be clearly articulated in the terms and conditions of any subsequent procedures." – RySG (excerpted from response to 1.4.4)

"The **application fee should be substantial enough to reflect the applicant's ongoing commitment and responsibility of having a TLD and to discourage speculation**." – Aflias

ALAC and John Poole opposed the concept of a cost floor.

Excerpts:

"ICANN's responsibility is to price the program based on cost recovery. Any other **philosophical approach indicates needless bias towards either established players or wouldbe entrants** - any such stance would be seen as political and a potential source of public mistrust." – ALAC

"**No floor**, no subsidies, no assitance or support —require a one million cash deposit to bid per my answer above." – John Poole

Aflias and ALAC provided arguments against a cost ceiling.

Excerpts:

". . . 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**." – Aflias

"ICANN's responsibility is to price the program based on cost recovery. **Any other philosophical approach indicates needless bias towards either established players or wouldbe entrants** - any such stance would be seen as political and a potential source of public mistrust." – ALAC

CIRA, Nominet, and RySG noted that excessively high fees serve as a barrier to entry in the market.

Excerpts:

"**Break-even is a reasonable target but not at the expense of small applicants that would be deterred by a higher fee.** We have been advocating across Canada with local municipalities and communities about the value a dedicated top level domain can bring to the community in terms of brand, security and trust online. Without exception, the opportunity is understood. And, without exception, with a need to be sensitive to spending public funds, the financial model currently in place is definitely a barrier to entry (both in terms of application fee and ongoing transaction fee minimums)." – CIRA

"If as we suggest the **fee should be in the region of $50-80,000**, then that will still be a significant investment especially when considering the additional resource costs of making the application and contracting / building the RSP elements and ongoing ICANN fees. We don't see that a fee set at this sort of level will be 'too low' and **we do have some concerns about the principle of artificially increasing the application fee in order to discourage applications. Barriers to entry for underserved regions is a massive issue** for which it is hard to see an easy solution, but at least with a much reduced fee it should be less of a problem than with round 1." – Nominet

". . . **fees that are too high may be unfair barriers to entry**." – RySG

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?

<u>Jannik Skou, CIRA, Nominet, and RySG provided input on the recovery of shortages.</u>

Sample excerpts:
"Should ICANN get unforeseen costs beyond the 100k USD per application, ICANN should be allowed to **increase the SLA fees for all Legacy/round 2012/subsequent round TLDs to recover**." -- Jannik Skou

". . . If ICANN operates the program with a shortfall then **the program simply runs at a deficit and will need to be funded from contingency**." – CIRA

"In the unlikely event of a shortfall, **luckily ICANN is sitting on a considerable surplus** from round 1." – Nominet

"There **should not be a ceiling if ICANN expects the cost to exceed application fees**." – RySG

<u>Aflias, CIRA, and RySG provided input on the management of excess funds.</u>

Excerpts:

"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**." – Afilias

"If ICANN operates with a surplus, then the financial plan should include a "degree of discrepancy" that is acceptable after which **excesses must be returned to the community** in some fashion to be determined." – CIRA

"Excess funds could be used to **support the program; used to credit ongoing ICANN fees for applicable registries in phases; or returned to applicants in phases**. ICANN should not wait to the end of the entire program to use the excess fees. They can be used responsibly over time." -- RySG

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?

Nominet, Aflias, and RySG suggested means for establishing clarity in the way ICANN handles excess or deficient funds.

Excerpts:

"Within a certain limit then any excess/ shortfall should be **absorbed into ICANN's general operating budgets**. If there is a very significant excess then perhaps a rebate to applicants or charitable donation should be considered. It seems highly unlikely that a deficiency which could not be absorbed into ICANN business as usual operating budgets will occur; **ICANN would appear to have sufficient reserves to manage this risk**." – Nominet

"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**." -- Aflias

"The use of any excess amounts should be clearly articulated in the terms and conditions of any subsequent procedures. **Excess funds could be used to support the program; used to credit ongoing ICANN fees for applicable registries in phases; or returned to applicants in phases.** ICANN should not wait to the end of the entire program to use the excess fees. They can be used responsibly over time." -- RySG

BRG and John Poole suggested this may not be an issue that the WG should address.

Excerpts:

"It is not clear why this would be a matter for the WG, rather than something that ICANN should provide as a matter of course, as part of their financial reporting to the applicants and the wider ICANN community. ICANN should use the experience of the last round to improve their estimation of application costs. . ." – BRG

"Yes, do NOT waste more time on this subject, go with bidding per the US Department of Justice Antitrust Division (see above)." – John Poole

Variable Fees

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?

John Poole, CIRA, Nominet, BC, Aflias, RySG generally support a model with a single fee.

Sample excerpts:

“We do not believe there need be variation in the “application” fee since the costs associated with the application review should be the same regardless of application type. Variation in costing should occur at a performance level (i.e. quarterly transaction fees, both fixed and variable) and be modelled specifically based on domains under management.” – CIRA

“No. **The application fee should not vary by type of application.** While ICANN should consider an applicant support program, it should not be determined based on type of application, but rather on the merits of the applicant seeking support.” – RySG

“ **“One fee fits all” is a reasonable standard**, else applicants will work to game the system to achieve best advantage. There may be cause to reduce the fees for eligible community applications, and the Applicant Support program addresses those potentially unable to pay for identifiable reasons.” -- ALAC

<u>BRG, Nominet, and Valideus pointed out that there may be circumstances in which variable fees are appropriate to consider.</u>

Excerpts:

“The application fee should be the same for all applicants unless **there is a significant variance of cost to process different types of applicants**. This can only be determined if ICANN provides analysis of the costs per applicant (or average per type), including any fees set aside for potential legal fees. A variance of up to 10% ($18.5k) between costs of different types of applicant is tolerable but anything higher should trigger further discussion to explore tiered fees tied to applicant type. . .” -- BRG

“In general we would urge simplicity where possible, and a continuation of the flat fee approach used in round 1 does make sense. **In the event that closed .BRAND new gTLDs have a streamlined application route and simpler/ lower ongoing compliance requirements and obligations** it may be fair however that their fee is set at a lower value based on reasonable estimates of the actual costs to ICANN.” – Nominet

“We support a primary approach of setting the application fee to “break even”. And we do not view this approach as being in conflict with the application fee reflecting any material variance in the costs of different types of applications. We would support further analysis into this area, looking at, e.g., **does a Specification 13 TLD, intended for the use of a single registrant, carry the same risk and therefore require the same scope of application and corresponding evaluation as an open TLD**?” -- Valideus

<u>GAC and Demys supported a model with variable fees.</u>

“. . .the following advice from the GAC Nairobi Communique remains relevant:

Finally, the GAC reiterates the importance of fully exploring the potential benefits of further categories (or track differentiation) that could simplify rather than add complexity to the management of the new TLD program and in that way help to accelerate the new gTLD program. In particular, the GAC believes that: *. . .iii. Instead of the currently proposed singlefee requirement**, a cost-based structure of fees appropriate to each category of TLD would a) prevent cross subsidisation and b) better reflect the project scale, logistical requirements and financial position of local community and developing country**"* -- GAC

"Yes, the **fee should depend on the expected workload to process that application**. Community evaluations or contention set resolutions require more resource from ICANN than a non-contested dot brand application. If our other suggestions in 2.3.1, 1.1.1, 4.3.2.4 are also considered, then a dot brand application would amount to a small fraction of work required to validate a comparable generic application. . ."-- Demys

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?

<u>Nominet, Afilias, RySG, ALAC do not generally support different costs for different types of applications (some exceptions noted in the excerpts).</u>

Sample excerpts:

"We do not agree that this is a fair characterization of the WG's belief. We **do not support different application fees** based on type of application regardless of how such types of applications are defined." -- RySG

"Other than the basic difference between new gTLDs which are closed and for the exclusive use of the applicant (e.g. the **.BRAND** scenario) and new gTLDs which are to be marketed on a retail basis and will therefore need a higher level of scrutiny and failsafe mechanisms such as escrow and EBERO, **we don't see any reason for differential costing**." -- Nominet

". . . **We do not believe that there should be differential pricing**, except perhaps for **community applications** for which evaluation criteria already exists (and maybe worthy of revisiting)." -- ALAC

<u>Demys identified possible benefits of cost differentiation, while CIRA identified possible negative impacts.</u>

Excerpts:

"Formalizing this categorization would provide the much needed **clarity** that plagued the previous round. Additionally, beneficial effects would be gained, namely **reduced evaluation complexity, costs and time**." – Demys

"Offering a varied costing model will **promote gaming** among applicants seeking to minimize initial costs. If a varied costing model were to be employed, ICANN would need to then **implement a compliance adherence process** that would ensure a registry maintained the operating model of their original application. This will incur **ongoing additional costs** at ICANN that could not possibly be recovered as part of an applicant fee." -- CIRA

BRG suggested that additional research should be conducted, particularly with respect to costing for dotBrands.

Excerpt:

As per response to 1.5.1, **analysis of the costs is needed before developing any proposals for fee differentiation**. The fact that a substantial number of applicants are defined as **dotBrands under Specification 13**, it should be possible to extract the costing information for this model, rather than wait for other types to be defined. Fee differentiation would be a **fair approach where substantial variations between types is identified** but could encourage some applicants to apply for a type of registry that attracts the lowest fee only to change that model at a future date. However, as stated in 1.5.1, such changes should then incur fees to cover the difference and additional administrative fees to cover ICANN costs." -- BRG

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?

CIRA, Nominet, BC, BRG, John Poole, Afilias, RySG, and ALAC opposed variable fees based on volume of applications from a single applicant.

Sample excerpts:

"No, each application should stand alone both in the context of evaluation as well as costing. Otherwise, it could **encourage the use of single entities to 'front' for the individual applicants**. ICANN cannot prevent any change in ownership of gTLDs after the application has been approved." – CIRA

"On balance, we would not favour discounts based on volume applications. **Each applied for string will still need to undergo the same initial evaluation procedures** and to the extent that there was a lot of duplication in the technical evaluation in round 1 for applicants with identical technical solutions, we would hope that a solution around pre-approval/ accreditation of RSPs would address this." – Nominet

"We do not support a fee variable based on the volume of applications, as this would **disadvantage smaller businesses** seeking to compete with larger business applicants." -- BC

"No. **Each application will need to be assessed on an individual basis** and whilst some efficiencies in the process could be realised in such a situation, there are other risks that this may introduce on an aggregate basis, particularly for the financial assessment, that ICANN will need to assess." – BRG

“No, the application fee must be consistent across TLDs, not across applicants.” – Aflias

“No -- there should not be volume discounts. To do so would **hinder competition** by adversely affecting single (or small) portfolio applicants.” – RySG

“No. The fee should not be changed based on the volume. There should be a **level playing field for all**. There should especially be no consideration for applicants for whom projections are not matched by market realities.” -- ALAC

<u>Jannik Skou supported a model of volume discounts.</u>

Excerpt:

“**Volume discount (10-20%) should be offered to applicants with multiple applications** (easier to evaluate Q23-Q44). Finance Q45-50 – should be evaluated on the basis that all applications pass. This can be complicated, so no discount offered here. . .” – Jannik Skou (excerpt from response to question 1.5.1)