# Track 1

Sara Bockey & Christa Taylor  |  August 8, 2017

# Agenda 1 Slide

**1** Welcome & Agenda Overview

**2** SOIs

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*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?*

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

✓ "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

✓ "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

✓ "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

**Afilias, CIRA, and Demys provided more detailed feedback on the future cost model.**

✓ "**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

**John Poole suggested an alternate model in which applicants must post a deposit.**

✓ "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

✓ ALAC stated that such operational issues are of little concern to the general public  - ALAC

# Application Fees - Overview



Application Fees

Cost-Recovery

TLD Type

Deposit of $1m
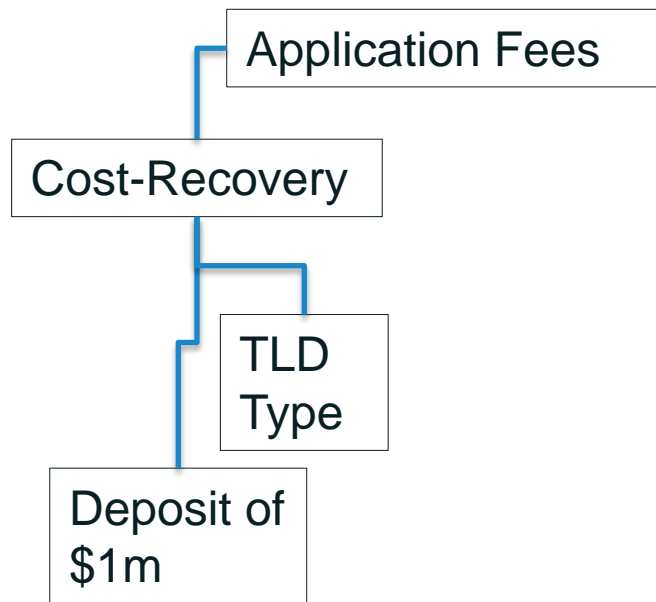
*1.4.2 - Although the 2012 round is not complete, there is currently a surplus of fees collected relative to costs incurred. As such, do you believe that the principle of breaking even was implemented effectively? Do you believe $185,000 was a reasonable fee? Is it still a reasonable fee? Should the 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?*

**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.**

✓ "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

✓ "**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

✓ "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 for evaluation and processing." – GAC UK
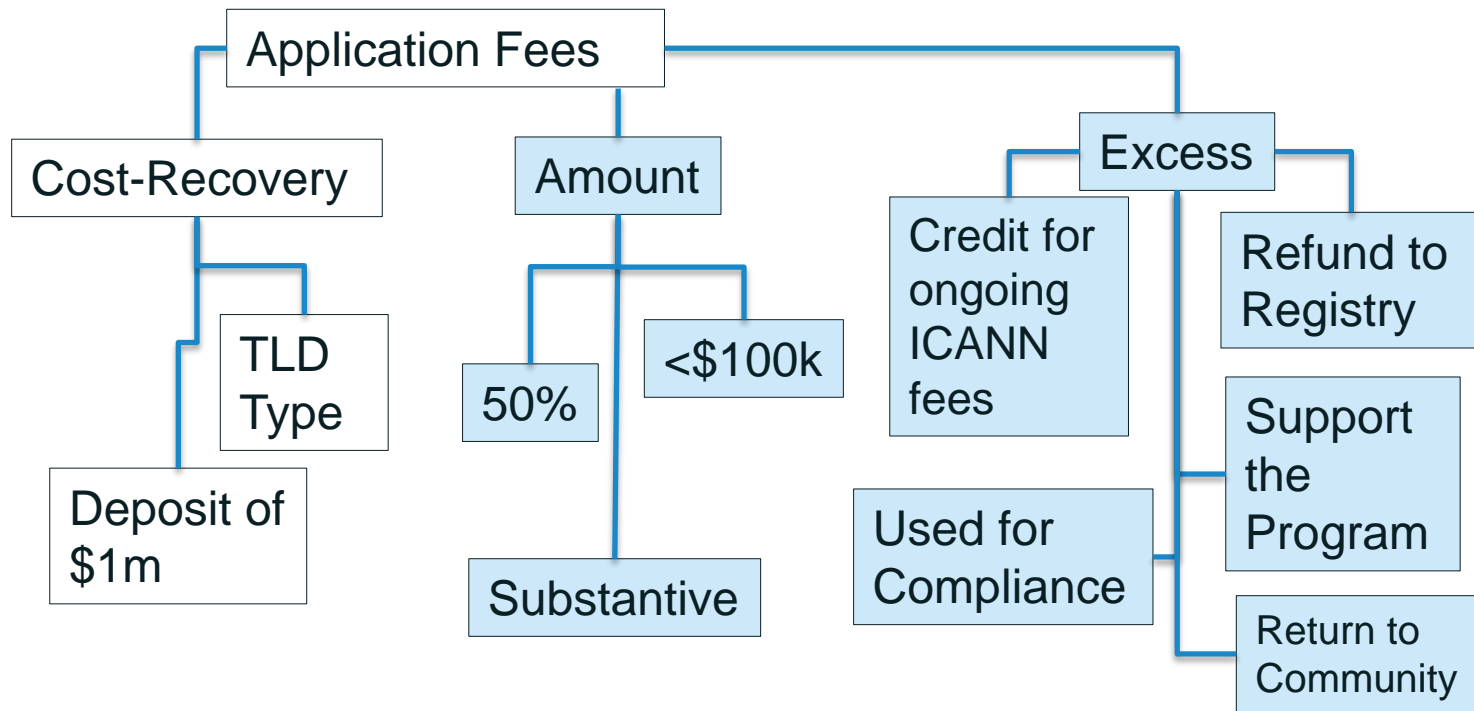
**Demys advocated for lower fees for .brands in subsequent procedures**

✓ "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

**BC, RySG, and BRG provided input on use of surplus funds from the 2012 round**

- ✓ "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

# Application Fees - Overview

Application Fees

Cost-Recovery

TLD Type

Deposit of $1m

Amount

50%

<$100k

Substantive

Excess

Credit for ongoing ICANN fees

Used for Compliance

Refund to Registry

Support the Program

Return to Community

*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?*

**Jannik Skou, RySG, and Afilias offered arguments in support of a cost floor.**

✓ "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

✓ "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

✓ "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.**

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

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

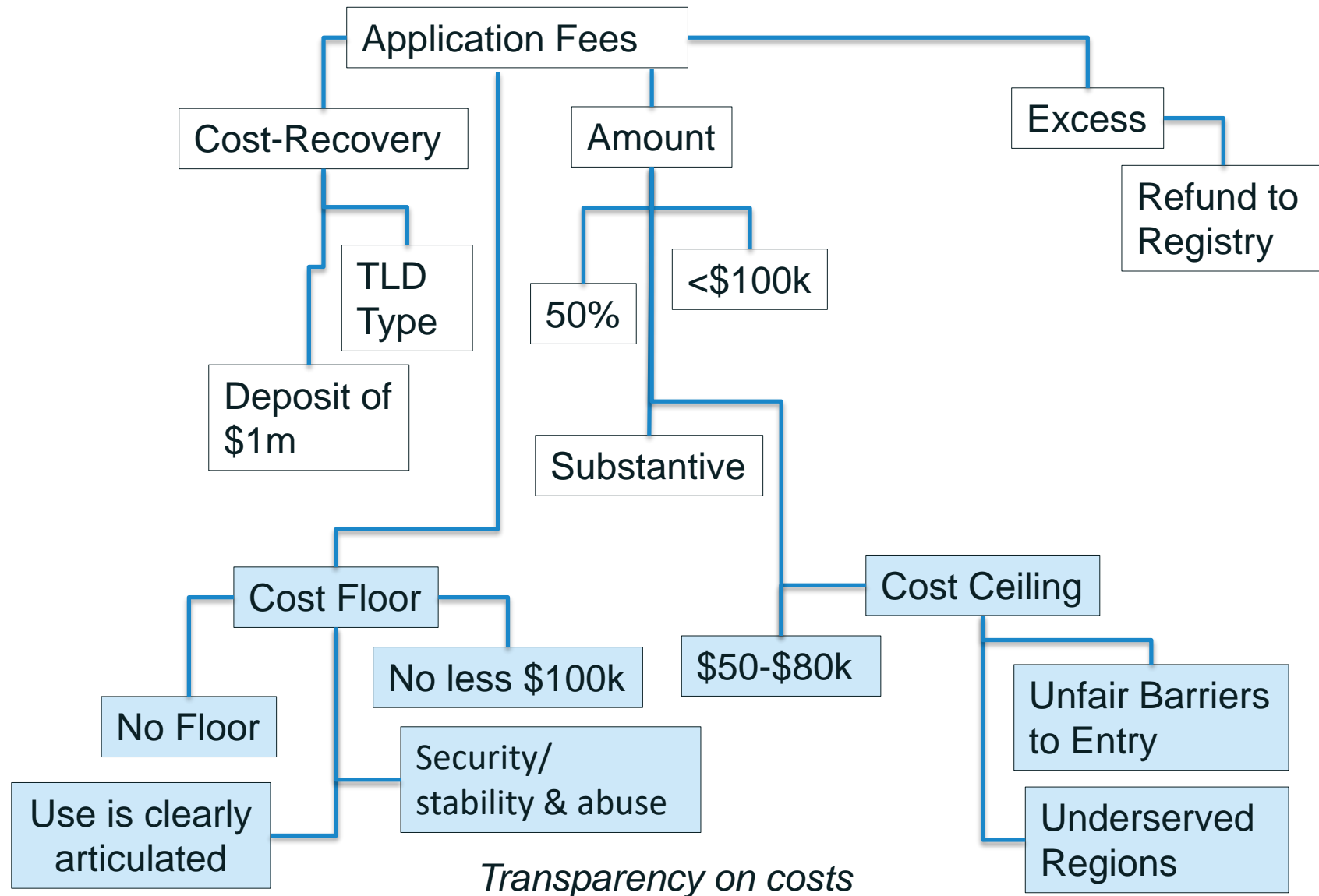**Aflias and ALAC provided arguments against a cost ceiling**

✓ ". . . 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 would be entrants** - any such stance would be seen as political and a potential source of public mistrust." – ALAC

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

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

✓ **"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

# Application Fees - Overview



Application Fees

- Cost-Recovery
  - TLD Type
  - Deposit of $1m
- Amount
  - 50%
  - <$100k
  - Substantive
- Excess
  - Refund to Registry

Cost Floor
- No Floor
- No less $100k
- Use is clearly articulated
- Security/ stability & abuse

Cost Ceiling
- $50-$80k
- Unfair Barriers to Entry
- Underserved Regions

*Transparency on 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?*
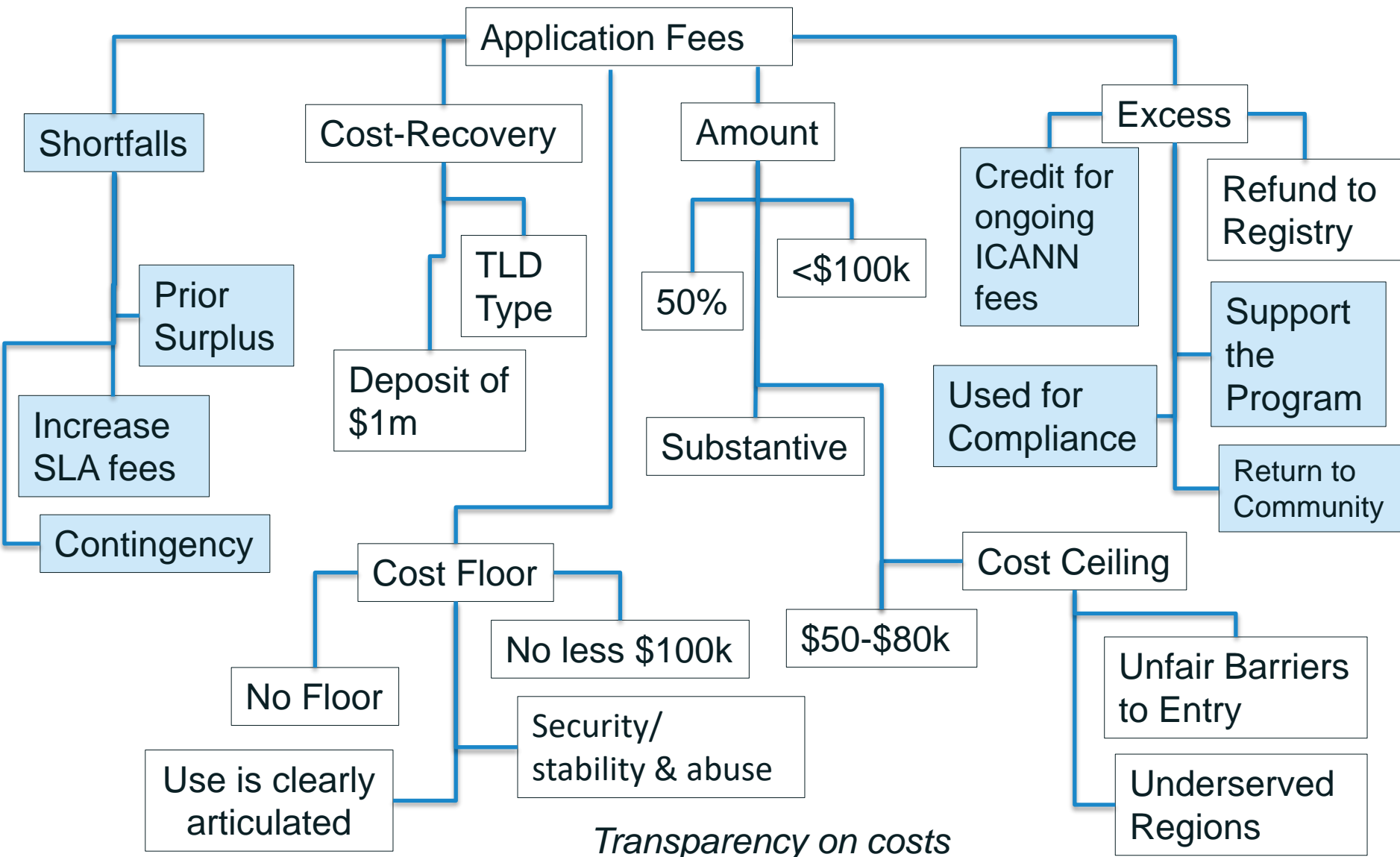
**Jannik Skou, CIRA, Nominet, and RySG provided input on the recovery of shortages.**

✓ "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

**Aflias, CIRA, and RySG provided input on the management of excess funds.**

- ✓ "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

Application Fees

- Shortfalls
  - Prior Surplus
  - Increase SLA fees
  - Contingency
- Cost-Recovery
  - TLD Type
  - Deposit of $1m
  - Cost Floor
    - No Floor
    - No less $100k
    - Use is clearly articulated
    - Security/ stability & abuse
- Amount
  - 50%
  - <$100k
  - Substantive
  - Cost Ceiling
    - $50-$80k
    - Unfair Barriers to Entry
    - Underserved Regions
- Excess
  - Credit for ongoing ICANN fees
  - Refund to Registry
  - Support the Program
  - Used for Compliance
  - Return to Community

*Transparency on costs*

*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.**
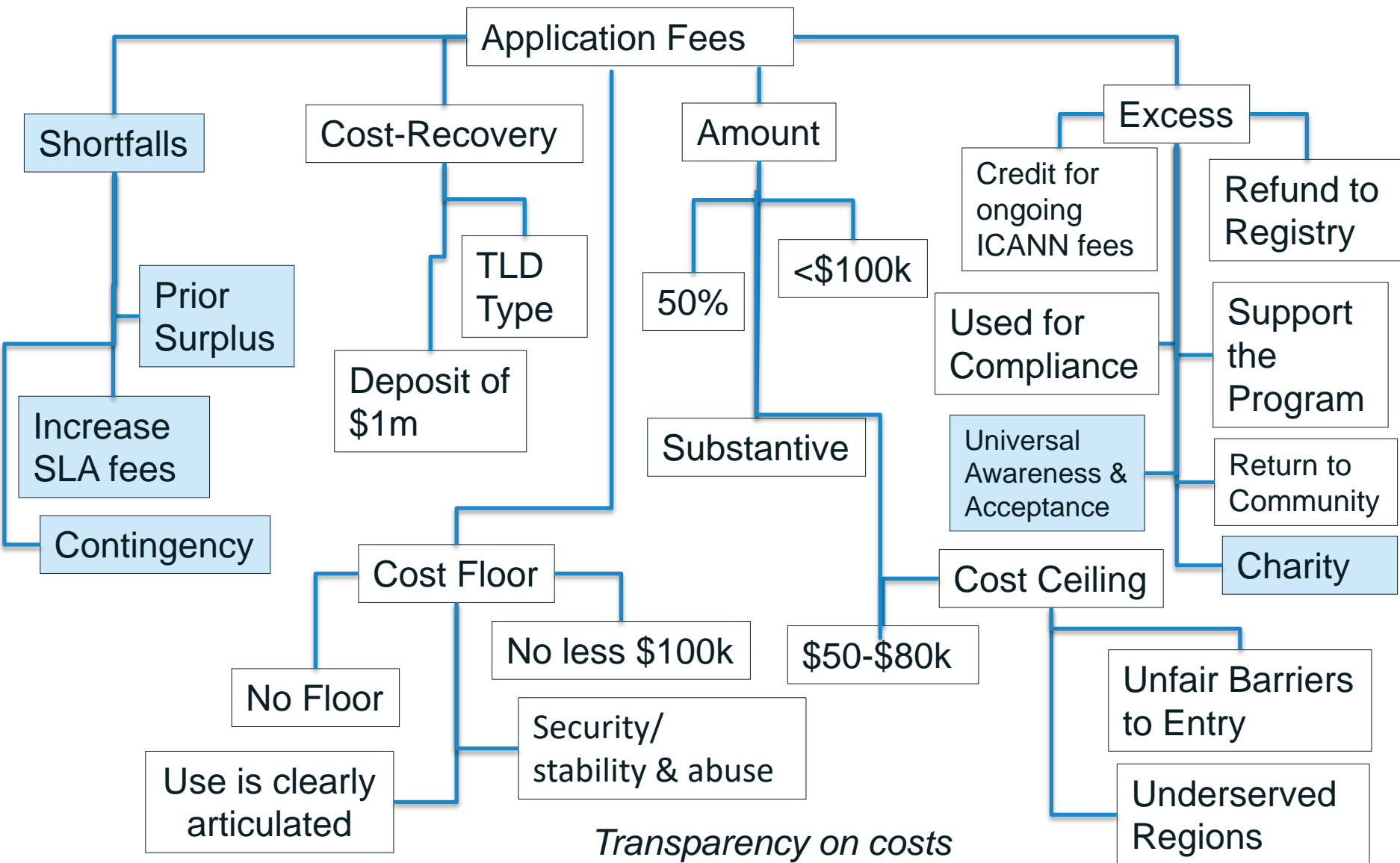
- ✓ "Within a certain limit then any excess/ shortfall should be **absorbed into ICANN's general operating budgets**. If there is a very significant excess then perhaps a rebate to applicants or charitable donation should be considered. It seems highly unlikely that a deficiency which could not be absorbed 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.**

✓ "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." – John Poole

✓ Achieve cost recovery working in reverse by refunding a portion of the application fee equal of the excess funds – Donna Austin

**Application Fees**

- Shortfalls
  - Prior Surplus
  - Increase SLA fees
  - Contingency
- Cost-Recovery
  - TLD Type
  - Deposit of $1m
- Amount
  - 50%
  - <$100k
  - Substantive
- Excess
  - Credit for ongoing ICANN fees
  - Refund to Registry
  - Used for Compliance
  - Support the Program
  - Universal Awareness & Acceptance
  - Return to Community
  - Charity

Cost Floor
- No Floor
- No less $100k
- Use is clearly articulated
- Security/ stability & abuse

Cost Ceiling
- $50-$80k
- Unfair Barriers to Entry
- Underserved Regions

*Transparency on costs*

# CC2 Review – Systems

**Current Recommendations/Anticipated Impact based on previous reviews/discussions to date:**

- 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.
- Ability to use non-ASCII.
- Systems should be capable of sending automated invoices to organizations who require an invoice to pay any fees related to their application

How can the systems used to support the New gTLD Program, such as TAS, Centralized Zone Data Service, Portal, etc., be made more robust, user friendly, and better integrated?

Answer:
- Lobbying for multiple issues or logins; integrated to one.
- Different levels of access.

# CC2 Review – Systems

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?**

**Suggestions for Improving Systems:**

"We strongly support the recommendation for **increased security of the systems** as this was a very concerning area last time. We also suggest that it should be **possible to upload application documents and associated information** rather than having to cut and paste it into a form." -- Nominet

"The failures of the last application system are well noted. The new system should **undergo a sustained period of testing** before being put into use." – Jim Prendergast

"Agree, this is implementation focused and there should be a **continual improvement program** in place, based on the reviews and feedback from applicants." – BRG

# CC2 Review – Systems

"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." – Afilias

". . . consideration should be given to policy or implementation regulations requiring **transparency to the user (within the security confines of permitted access) of the data that has been entered** with regard the user's application and/or registry. . . ICANN could **consider live support** for use during applications (perhaps even 24/7 for the duration of a limited window) to address problems and cures. . . Also, it would be particularly helpful to **make available a test environment** as soon as feasible, prior to the opening of the system for live use." – RySG

# CC2 Review – Systems

**Support for SSAC's recommendation that the Board request a review of the Extended Process Similarity Review Panel (EPSRP):**

"While the ALAC cannot comment specifically on systems, particularly in relation to security and stability we can however refer to the recommendations made in the tables attached to the **SSAC Report #94**, responding to questions in this CC2 questionnaire. With particular attention to their **responses to 3.4.2 (String similarity)** where they recommend that the Board should request a review of the Extended Process Similarity Review Panel (EPSRP) to determine why its proposed guidelines do not respect the principles of conservatism, inclusion and stability. There is some contention between the SSAC view and that of the ccNSO over this issue which has been discussed by the ALAC and we believe it needs to be resolved." -- ALAC

**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?**

**Support for ICANN having the ability to send invoices:**

"Yes, it is a standard business process to have a purchase order and invoice before processing payment. ICANN requires this themselves so ICANN should be able to facilitate this." -- Nominet

"YES – this was an issue for many .brand applicants and should be easy to fix." – Jim Prendergast

"In the next round, ICANN **should provide applicants with the option to receive an invoice for the purposes of application fee payment**. Without the provision of invoices, it can be a painstaking process for many organisations – large and small – to gain the internal approvals for the submission of large sums of money to an unrelated entity. Indeed, the larger the company the more difficult it tends to be to obtain an exception to the required financial accounting procedures put in place to safeguard against fraud. This process could be automated through ICANN's application system." -- Valideus

# Next Meeting

Thank-you for your Time and Thoughts!

Next Meeting:

**Tuesday, August 22, 2017 at 15:00 UTC**