



New gTLD Subsequent Procedures PDP

Legal/Regulatory Work Track 2 | 16 February 2017

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Terms and Conditions

Terms and Conditions – Background Information

As a part of submitting an application to ICANN, applicant agrees to the terms and conditions to be binding on applicant and are a material part of the new gTLD application.

The Terms and Conditions can be viewed in its entirety in Module 6 of the Applicant Guidebook.

This can be found at the following link:

<https://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf>

Terms and Conditions – Background Information

Terms and Conditions are split into 14 sections. A table summarizing these sections is below.

#	What is it about?
1.	Applicant warrants that information in application and supporting documents are true and accurate. In the event of any change, applicant will notify ICANN.
2.	Applicant has the authority to make the application on behalf of the applicant.
3.	Applicant agrees ICANN has the right to determine not to proceed with any and all applications for new gTLDs. The decision to review and delegate new gTLDs after approval is at ICANN's discretion
4.	Applicant agrees to pay all fees that are associated with the application.
5.	Applicant shall indemnify ICANN from any third-party claims rising out of ICANN's consideration of the application or ICANN's reliance on information provided by applicant.
6.	Applicant releases ICANN from any claims by applicant related to ICANN's review, applicant's withdrawal, or ICANN's decision of application. Applicant agrees not to challenge ICANN in court in regards to any final decision made by ICANN in regards to the application.
7.	Applicant agrees to ICANN publishing application information and materials submitted to ICANN while observing that certain information will be kept confidential.

Terms and Conditions – Background Information

#	What is it about?
8.	Applicant has obtained permission for posting of personal information and to allow ICANN to conduct background screening investigation.
9.	Applicant gives ICANN permission to use applicant's name in ICANN's public announcements.
10.	Applicant understands rights in connection with a gTLD are only acquired in the event of executing a registry agreement with ICANN. Applicant may not assign applicant rights in connection with the application.
11.	Applicant authorizes ICANN to contact and consult individuals/entities to discuss or obtain further information in regards to the application .
12.	Applicant understands translations are made of applications but English is the official binding language.
13.	Applicant understands that ICANN works with Jones Day and to allow Jones Day to represent ICANN.
14.	Applicant understands ICANN reserves right to make updates/changes to applicant guidebook and application process and that applicant will be subject to such changes. If such changes are made after application has been submitted and present material hardship to ICANN, ICANN will work to accommodate applicant.

Terms and Conditions - Discussion

Discussion Point 1

In regards to section 3 on ICANN reserving the right to determining not to proceed with any and all applications for new gTLDs:

Will refer to section 3 for this discussion.

Terms and Conditions - Discussion

Discussion Point 2

In regards to the “covenant not to sue ICANN”, as stated in section 6 of the Terms and Conditions:

Will refer to section 6 for this discussion.

Terms and Conditions - Discussion

Discussion Point 3

In regards to section 14 that ICANN reserves the right to make reasonable updates and changes to the applicant guidebook and the application process:

Will refer to section 14 for this discussion.

CC2 Questions

Come up with questions to ask the Community for Community Comment 2 that will assist us in drawing conclusions.

Link to current questions:

https://docs.google.com/document/d/1iZBCVEAJPBVEDg7jLsMHKkNczR_b6-jH2WI5eVH-WWM/edit

Will use clean version for displaying questions.

CC2 Questions – Topics to Cover

Below are the topics of WT2 with the topics we have actually covered to some extent in green.

Base Registry Agreement
2nd Level RPM's
Reserved Names
Registrant Protections
IGO / NGO Procedures
Closed Generics
Applicant Terms and Conditions
Registrar Non Discrimination & Registry / Registrar Separation
Registry / Registrar Standardization
TLD Rollout
Contractual Compliance
Global Public Interest

CC2 Questions – Topics to Cover

Base agreement: Perform comprehensive review of the base agreement, including investigating how and why it was amended after program launch, whether a single base agreement is appropriate, whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest, etc. Should the Article 7.7 review process be amended to allow for customized reviews by different registry types.

Second-Level Rights Protection Mechanisms: Proposing recommendations directly related to RPMs is beyond the remit of this PDP. There is an anticipated PDP on the "current state of all rights protection mechanisms (RPMs) implemented for both existing and new gTLDs, including but not limited to the UDRP and the URS...". Duplication or conflicting work between the New gTLD Subsequent Procedures PDP and the PDP on RPMs must be avoided. If topics related to RPMs are uncovered and discussed in the deliberations of this PDP, those topics should be relayed to the PDP on RPMs for resolution. To assure effective coordination between the two groups, a community liaison, who is a member of both Groups, is to be appointed jointly by both Groups and confirmed by the GNSO Council. *The SubPro PDP WG, from discussions with the RPMs PDP WG, should be responsible for consideration of the PICDRP and the RRDRP, as these are DRPs that are NOT based on trademark rights.*

Reserved Names: Review the composition of the reserved names list to determine if additions, modifications, or subtractions are needed (e.g., single letter, two letters, special characters, etc.). Evaluate if the implementation matched expectations (e.g., recommendations of the Reserved Names Working Group). Review whether geographic names requirements are appropriate.

Registrant Protections. The original PDP assumed there would always be registrants and they would need protecting from the consequences of Registry failure, although it may not make sense to impose registrant protection obligations such as EBERO and the LOC when there are no registrants to protect, such as in a closed registry. Should more relevant rules be established for certain specific cases?

CC2 Questions – Topics to Cover

IGO/INGO Protections: The PDP for Protection of IGO and INGO Identifiers in All gTLDs and PDP for IGO-INGO Access to Curative Rights Protection Mechanisms are expected to address a number of issues. While no additional work is envisioned, if there are any remaining or new issues for discussion, they could be deliberated in the context of this PDP.

Closed Generics: Should there be restrictions around exclusive use of generics TLDs?

Registrar Non-Discrimination: Are registrar requirements for registries still appropriate?

Registry/Registrar Standardization: Consider whether the registry/registrar relationship should have additional standardization and regulation.

TLD Rollout: Was adequate time allowed for rollout of TLD? When should recurring fees due to ICANN begin?

Contractual Compliance: While no specific issues were identified, contractual compliance as it relates to New gTLDs may be considered in scope for discussion, though the role of contractual compliance (i.e., enforcing agreements) would not be considered within scope.

Global Public Interest: Existing policy advice does not define the application of “Public Interest” analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN’s limited technical coordination role, mission and core values and how it applies specifically to the New gTLD Program.

Terms and Conditions: An addition to the topic area for this WT is looking at the T&Cs of the Applicant Guidebook. When an applicant submitted an application to ICANN, they also signed off on T&Cs. Questions in regards to the validity of those T&Cs has been raised, as seen in several litigations involving ICANN and Applicants.