

5 August 2016

To: gns0-secs@icann.org

Attn:

Avri Doria , GNSO (Co-Chair)
Jeff Neuman, GNSO (Co-Chair)
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Dear Co-Chairs of the GNSO's New gTLD Subsequent Procedures Working Group

On behalf of the Registry Stakeholder Group (RySG) I would like to thank you for the work of the PDP Working Group on the New gTLD Subsequent Procedures ("Working Group"). We appreciate the opportunity to provide our feedback on the list of questions specified for the first Community Comment Request based on the Working Group's activities.

One of the positive realities of the 2012 new gTLD process is that it has significantly enhanced the diversity of the RySG as our membership has grown from 14 in 2011 to 99 at the current time.

In order to provide input that we consider helpful to the Working Group we have achieved agreement on a set of principles that address each of the six subjects identified by the Working Group and also identified an additional principle related to the prioritization of work for the Working Group.

We have also provided responses to each of the individual questions; however, we note that due to the diversity of the RySG we did encounter some differences of opinion. As such, some answers will reflect the different opinions.

Regards

Paul Diaz
Chair
Registry Stakeholder Group

RySG Principles:

1. Additional new gTLDs in the future.

The RySG supports the introduction of new gTLDs in the future.

2. Categorization or differentiation of gTLDs (for example brand, geographical, or supported/community) in ongoing new gTLD mechanisms.

The RySG supports the continuation of the categorization of gTLDs as outlined in the New gTLD Applicant Guidebook and the inclusion of brands in any ongoing mechanisms.

3. Future new gTLDs assessed in “rounds.”

The strategic goal for future applications should be the implementation of a continuous process on a first-come, first-served basis. However, the RySG appreciates that there may be one or two further ‘application rounds’ imposed before this goal can be realistically achieved. In this respect, the RySG recommends that a clear commitment is given to a schedule of further application rounds, with shorter timespans between each round, in line with the original target of one year (AGB section 1.1.6)..

4. Predictability should be maintained or enhanced without sacrificing flexibility. In the event changes must be introduced into the new gTLD Application process, the disruptive effect to all parties should be minimized.

The 2012 round suffered from too many unforeseen post-application rule changes and delays as ICANN struggled to implement the process. These changes and delays took their toll on a number of applicants, and as a result many suffered financial or other losses while some had to eventually withdraw from the process. Predictability for applicants of any future mechanisms should be a high priority.

5. Community engagement in new gTLD application processes.

The role of the GAC, the Board and the GNSO in resolving issues that arise during any ongoing mechanisms should be well-understood and documented.

6. Limiting applications in total and/or per entity during an application window.

Notwithstanding the ultimate goal of a continuous process, the RySG does not support the notion of placing unnecessary limitations on future applicants. This would be anti-competitive, has the potential to inhibit innovation: and, as such, is antithetical to the purpose of introducing new gTLDs.

7. Narrow work by the Subsequent procedures PDP to focus on issues that must be identified prior to a future round.

The subsequent procedures PDP should focus on issues where a change in policy (as set forth in the 2007 Final Report and operationalized in the Applicant Guidebook) is required or where most of the community believes the issue is of such significance that its resolution should gate the initiation of a future application process.

ICANN staff should work with implementation teams to address non-policy or less significant implementation issues without delaying the work of the overall PDP. Similarly, issues that may warrant policy revision but need not impede a subsequent application process should be addressed on an ongoing basis through more targeted PDPs.

RySG response to Questions:

1.a: The 2007 consensus policy above expressed the commitment to an ongoing mechanism [1] for the introduction of new gTLDs. Are there any facts and/or circumstances that have changed such that you believe this should no longer be the policy? Please explain.

[“Ongoing mechanism” will be a phrase that will be used throughout this document and should be considered to mean the subsequent procedures by which new gTLD applications will be received by ICANN in the future, without making any predetermination to the precise nature of those procedures. The use of the term “ongoing mechanism” stems from the following text in the GNSO’s 2007 Final Report on the Introduction of New gTLDs: “This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains.”]

No. The process was rocky as both applicants and ICANN struggled to implement it but, overall, it was a success.

In addition to support for an ongoing mechanism, the 2007 GNSO recommendations urged expediency in the introduction of additional gTLD application opportunities; stating that “The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year.” This, coupled with ICANN’s announcement in the 2012 Applicant process that a second round would begin “within one year” following the close of the application period for the 2012 round (See, Applicant Guidebook at Section 1.1.6), gave potential applicants the impression that they could skip the 2012 round and still have an opportunity to apply for a new gTLD within a reasonable amount of time. The announcement of an additional round has already been delayed well beyond the 1-year period contemplated by the GNSO and ICANN. We believe that it would be unfair to applicants that may have deferred their applications until processes and costs to apply for and operate a gTLD were more certain or until their business plans for a gTLD were more final to introduce further delay.

1.b: Would the absence of an ongoing mechanism have an anti-competitive effect for potential applicants?

Yes. The current uncertainty regarding whether and when a future application process will be opened creates a closed market for the operation of gTLDs. Unpredictability regarding application processes, or long gaps between application windows, may have similar stifling impacts on competition by limiting the number of new entrants to the market. New entrants could improve competition by increasing market dispersion or by introducing new and innovative product offerings.

1.c: Are ongoing mechanisms for the introduction of additional new gTLDs necessary to achieving sufficient diversity (e.g., choice and trust) in terms of domain extensions? Please explain.

Yes. We believe that the widespread participation in the 2012 round made a broader, more diverse set of prospective applicants aware of the potential benefits to launching a new gTLD. By preserving an ongoing mechanism, these parties, including communities, brands and geographic TLD operators, could more readily participate increasing overall choice for registrants and, potentially, inviting new and innovative uses of the DNS.

We note that in the recently published ICANN gTLD Marketplace Health Index (Beta), ICANN uses the

distribution of ICANN-accredited registries by region and the number of jurisdictions with at least one registry operator as indicators of competition and industry diversity. However, given low participation in the 2012 round of applicant in certain regions, very limited improvements can be made to current statistics without an ongoing mechanism.

We are also aware that as a result of the 2012 round, there are potential applicants that are anxious to implement their own TLDs. This is especially true for brandTLDs, which could suffer greatly if their competitors have TLDs and they do not—including for brands that did not exist at the time of the 2012 round. This is also true for geoTLDs and genericTLDs where demand exists that is not met by the current choices.

1.d: Is it too early in the review cycle of the previous round to determine the full range of benefits of the 2012 round of new gTLDs? Should that impact the decision to introduce additional new gTLDs and/or the timing of ongoing mechanisms for new gTLDs?

It is early to determine the full range of benefits of the current round, but that doesn't mean that studies of their impact should not be commenced, nor that the introduction of additional new gTLDs should be delayed further. The CCT-RT has already begun to assess the impact of new gTLDs on competition, choice, and consumer trust and ICANN's proposed marketplace health indicators will also track progress on indicators related to the impact of new gTLDs. However, based upon prior commitments to an ongoing process it is clear that these studies were not intended to gate the commencement of a future application process. Further, we believe that initial indicators, particularly the widespread participation in the 2012 round and the growth in second level registrations in new gTLDs, suggests that there is no reason to change course from the original intention of introducing an ongoing application process.

We would also note that multiple TLDs have gone through the application, objection, GAC advice, evaluation, re-evaluation, IRP, private auction, ICANN-auction, pre-delegation testing, delegation, TMCH sunrise, landrush/premium auctions, specialty periods, general availability, renewal cycles, and EBERO. Each anticipated phase of a TLD lifecycle has been experienced by one or more applicants. As a result, ICANN and the community has considerable information available to make operational and process improvements in the implementation of ongoing mechanisms.

1.e: What additional considerations should be taken into account before deciding on ongoing mechanisms for new gTLDs (e.g., to cancel ongoing mechanisms for new gTLDs via policy changes)?

We do not believe that there are any outstanding factors that need to be considered in determining whether an ongoing mechanism is warranted.

1.f: Any other issues related to this overarching subject:

No

2.a: Should subsequent procedures be structured to account for different categories of gTLDs?

Note, several possible categories have been suggested by PDP WG members, including:

- Open Registries
- Geographic
- Brand (Specification 13[1])
- Intergovernmental Organization
- Community
- Validated - Restricted Registries with qualification criteria that must be verified
- Not-for-profit or non-profit gTLDs, NGOs
- Highly Regulated or 'Sensitive' TLDs
- Exclusive Use Registries (Keyword Registry limited to one registrant & affiliates) or

Closed Generics

- TLD with applicant self-validated restrictions and enforcement via Charter Eligibility Dispute Resolution Policy, e.g. .name and .biz

There are different views within the RySG about whether additional categories of TLDs should be defined therefore this response provides the responses for and against new categories. Despite the differences of opinion, we do reiterate that the RySG does support the continuation of the categorization of gTLDs as outlined in the New gTLD Applicant Guidebook and the inclusion of brands in any ongoing mechanisms.

AGAINST

No--future application processes should be as open as possible to preserve the benefits brought by the 2012 round. Limiting applications and types could have a negative effect on future application processes' potential to foster innovation and broaden consumer choice. Likewise, excessive segmentation of the application pool will stymie the progress of the working group by encouraging separate policy analysis for each class of registry operator or applicant.

In the event that the next round does result in 10,000 applications, or 15,000 as some have suggested, categories will result in added burdens for evaluators to decide what goes where. Contention resolution becomes even more complicated if a single string can fit into a number of categories. The administration of the registry agreement also becomes challenging. It is not clear that any claimed benefits of new categories will outweigh the potential costs.

IN FAVOUR

It is possible that other categories, beyond .brands, could be strongly defined and lessons learnt applied to the extent that certain tailoring would be meaningful and worthwhile prior to the next application window. A one-size-fits-all approach did not work well in the latest round, consequently restrictions and obligations were imposed that were not appropriate or relevant to certain types of applicants. It would be careless of ICANN to disregard this, given the lessons learnt during this round, only to repeat again. Any ongoing mechanism should be able to cater for categories that can be well-defined based on the range of application types seen in the last round, where there is significant volume and where there is reasonable argument to amend/remove certain provisions, obligations or processes that are not relevant to that category.

The following questions refer to this list of possible categories:

2.b: Are additional categories missing from the list? If so, what categories should be added?

No.

2.c: Do all categories identified by the PDP WG members belong in the list?

No, the list has few mistakes, different forms of legal bodies have not and should not be treated as a distinct category of TLDs. Similarly, ICANN did not distinguish in the 2012 round between “not-for-profit” TLDs. It is also possible that a TLD may fall into more than one of the proposed classifications; for example at least one of the current GEO TLDs also is not-for-profit. We do not believe that regulated and highly-regulated TLDs should be treated as a separate category of TLDs from the application process as these categories were solely derived from GAC Advice and not self-designation by the applicant.

2.d: If categories are recognized, in what areas of the application, evaluation, contention resolution and/or contracting processes would the introduction of categories have a likely impact?

The impact of a category depends on the nature of the category, how it is identified, and any benefits or special procedures made available to those applicants. By way of example, contention resolution was relevant for community applicants that successfully completed CPE, but is less relevant for other TLD-types. We don't believe that it is useful to link TLD types to application phases in this manner, nor to excessively fixate on application categories in general.

2.e: If different categories of gTLD are defined, should all types be offered in each application window? Is it acceptable for an application window to open for only one or a limited subset of categories of gTLDs (e.g. a .Brands only application window)

This is another area where there were differences of opinion within the RySG:

In case of the ‘window/rounds’ model:

All kinds of approved categories should be offered at the same time to avoid unnecessary gaming when companies try to manipulate their applications in another format only because the window is open, and to grant equal access to the possibility of application processing. Though this should not lead to longer time between the application windows in case where ‘window’ model is going to be used.

In case of the continuous application process:

The “application windows” should not exist, as the subsequent procedures should allow a rolling application period (as is the case for second-level domain names). We also discourage the introduction of restrictions on which applicants can participate in future application processes in general. We would discourage windows that gave priority to one category of applicants over another.

Alternative view

It could prove more flexible and possibly more practical to manage operationally, if ‘windows’ opened up for specific categories. For instance, using the three main categories identified in the last round (commercial, brands and GEOS), there could be an application window assigned to each category during a year. This could simplify the post application processes, particularly the objection process, GAC early warning, contention sets and the contracting process, as well as spread the demand on resources, both within GDD and the community. This approach could also work as an interim measure prior to establishing a continuous application process

2.f: Any other issues related to this overarching subject:

No

3.a: Should we continue to assess applications for new gTLDs in “rounds.” If not, how could you structure an alternative application window for accepting and assessing applications while at the same time taking into consideration public comments, objections, evaluation, contention resolution, etc.?

No. Allowing for subsequent procedures that contemplate a “rolling” first-come, first-served open period allows all applicants—now and future—the opportunity to apply when they want to. A continuous process will prevent bottlenecks in application processing and allow applicants to apply for a gTLD when it is right for their business, rather than when a short window allows. While we support a “rolling period,” we understand that there has to be a way to deal with contention for the same string if there is pent-up demand since the 2012 round. A hybrid approach might be considered by the Working Group (e.g. a short window followed by an immediate rolling period).

3.b: How would the assessment of applications in a method other than in “rounds” impact rights holders, if at all?

We believe that a continuous process would have a slight positive impact on brands. Even in a rolling process, a defined period would be applied to each application during which rights holders could object to a string that they believed infringed on their legal rights (e.g. via the Legal Rights Objection). Brand protection costs associated with participation in applicable sunrise periods would be steadier and more predictable where the number of new gTLDs grew steadily with demand rather than mushrooming suddenly due to a short application window.

3.c: Does restricting applications to “rounds” or other cyclical application models lead to more consistent treatment of applicants?

We do not believe that there is a relationship between the type of process (continuous vs. discrete) and consistent treatment. Having standard rules that are applied across the board by evaluators will lead to consistent treatment. One requirement of transitioning to a continuous process will be ensuring that panels and other bodies engaged in evaluation, objection, and other procedures can execute against objective policies and procedures over time.

3.d: Should “rounds” or other cyclical application models be used to facilitate reviews and process improvement?

No. If things are not working, it is possible to fix them during a continuous process through the GNSO policy development process, while allowing other applications to proceed without delay.

3.e Do “rounds” lead to greater predictability for applicants and other interested parties?

We believe that rounds have a serious negative impact on business predictability for applicants. In particular, because a round-based model requires a fairly elaborate process to resolve contention, both the timing and probability of a given application is unknown at the time of submission. Similarly, when more than one applicant applies for a particular string, other interested parties may be uncertain of how to respond without knowing which applicant will prevail and may end up wasting resources objecting to or tracking an application that was unlikely to prevail in the contention process.

In contrast, a continuous process allows businesses to make business-driven decision about whether it makes sense to apply for a gTLD, without the pressure to apply preemptively for fear of being locked out of the market. Consequently, it allows businesses to develop their applications more organically and robustly prior to submission, as applications can be linked to developed business plans.

3.f: Do “rounds” add latency to the evaluation and approval of an application, leading to longer times to market?

Yes, moving to a continuous process would dramatically lessen the vast time and resources spent on contention during the 2012 round. More than four years from the closure of the 2012 round, several strings remain in contention and their timeline for launch is unclear.

3.g: Do “rounds” create artificial demand and/or artificial scarcity?

Yes. Having a “window” leads to a scramble to apply for any-and-all potentially lucrative string or to secure your brand name for fear of being indefinitely locked out of the market. A continuous application procedure is fairer because it allows businesses to make the determination of whether to apply once they have fleshed out their use cases and business plans for the TLD.

3.h: Does time between “rounds” lead to pent up demand?

Yes, the unexpectedly high demand seen in the 2012 round evidences the pent up demand generated by opening up otherwise closed processes for short, discrete periods.

3.i: What is an ideal interval between “rounds?” Please explain.

We reiterate that the strategic goal for future applications should be the implementation of a continuous process on a first-come, first-served basis. However, the RySG appreciates that there may

be one or two further ‘application rounds’ imposed before this goal can be realistically achieved. In this respect, the RySG recommends that a clear commitment is given to a schedule of further application rounds, with shorter timespans between each round, in line with the original target of one year (AGB section 1.1.6). .

3.j: Any other issues related to this overarching subject:

No

4.a: Was the round of 2012 sufficiently predictable given external factors, while balancing the need to be flexible? Please explain.

No. The timeline was highly unpredictable, and the process saw several last moment changes, which did not follow from the GNSO policy recommendations and were not reflected in the applicant guidebook (e.g. Strawman, Spec 11, Name Collisions, and the unilateral amendment provisions in the ICANN Registry Agreement). Apparent inconsistencies in objection and community priority determinations further contributed to applicant uncertainty. Now that the 2012 round is over and we can glean lessons from it, we will know how to fix it in a future, always open subsequent procedure.

4.b: Do the changes implemented as a result of the establishment of Cross Community Working Groups and the adoption of the principles and processes from the Policy and Implementation Working Group suffice to maintain predictability of the application process while at the same time provide for the needed flexibility to address changes of circumstances?

Yes, we believe that these frameworks should allow for gradual improvements to be made to new gTLD application processes without having to gate the initiation of a subsequent application process.

4.c: What are the impacts on applicants, users and related parties from a process that lacks predictability?

We restate Principle 4: The 2012 round suffered from too many unforeseen post-application rule changes and delays as ICANN struggled to implement the process. These changes and delays took their toll on a number of applicants, and as a result many suffered financial or other losses while some had to eventually withdraw from the process.

For example, .green, a community applicant with a clearly defined mission was forced to abandon its application as resources were exhausted due to significant delays and complications with the application process. Predictability for applicants of any future mechanisms should be a high priority.

4.d: Any other issues related to this overarching subject:

No

5.a: Are there circumstances in which the application window should be frozen while unforeseen policy issues are considered and resolved? If so, should there be a threshold or standard that must be reached before considering freezing an application window?

Unlikely. It would be better to continue to evaluate and accept applications to keep from disenfranchising potential applicants. This would also throw more unpredictability into the mix.

5.b: If the Board is faced with questions that cannot be addressed by the policy recommendations they were sent, must the Board bring the issue back to the GNSO and PDP process (e.g., the GNSO Expedited PDP or GNSO Guidance Process)?

Generally yes, particularly if the matters at hand could contradict established policy. We also reiterate that the role of the GAC, the Board and the GNSO in resolving issues that arise during any ongoing mechanisms should be well-understood and documented.

5.c: Should a standard be established to discriminate between issues that must be solved during an open application window and those that can be postponed until a subsequent application window? Please give an example.

We believe that the subsequent procedures PDP should narrow it's work to focus on issues where a change in policy (as set forth in the 2007 Final Report and operationalized in the Applicant Guidebook) is required and where most of the community believes the issue is of such significance that it should block the initiation of a future application process. As examples, we believe that last-hour policy changes to the program (e.g. Name Collision, closed generic restrictions, Specification 13) may merit revisiting so that they can be properly reflected in the applicable policy. Issues that are not matters of policy but warrant improvement should not be the focus of the group; ICANN staff should work with narrow implementation teams to address these issues without delaying the work of the overall PDP. Similarly, issues that may warrant policy revision but need not impede a subsequent application process should be addressed on an ongoing basis through the policy development process, without unjustifiably blocking future applicants that are willing to proceed within the current framework.

5.d: Any other issues related to this overarching subject.

No

6.a: Should a limit for the total number of applications for an application window and/or from a single entity be established? If so, what should be the limiting factor (e.g., total application, total number of strings, etc.) and why?

We reiterate that the RySG does not support the notion of placing unnecessary limitations on future applicants. This would be anti-competitive and has the potential to inhibit innovation: and as such is antithetical to the purpose of introducing new gTLDs.

6.b: If a limit for the total number of applications for an application window and/or from a single entity is established, how would the appropriate amount of applications be set to establish this limit?

There is no rational basis for such a limit. And it creates the reason for attempts of unfair play (multiple companies indirectly controlled by the same entity).

6.c: If a limit for the total number of applications for an application window and/or from a single entity is established, what mechanism(s) could be used to enforce limit(s)?

There is no rational basis for such a limit.

6.d: How would a limit on the total number of applications for an application window and/or from a single entity impact fees?

Regardless of the number of applications, ICANN's standard is to look at the financial stability of the company, including all applied-for and currently-owned TLDs. There is no rational basis to change this.

6.e: Would limits to the total number of applications for an application window and/or from a single entity be considered anti-competitive? Please explain.

Potentially. We believe that limitations of this nature could prevent registries from succeeding through diverse business models.

6.f: Do limits to the total number of applications for an application window and/or from a single entity favor "insiders?"

It is unclear whether application limits would favor insiders. We believe that an open, unrestricted, and continuous process would be the generally beneficial to "insiders" and new applicants alike.

6.g: Any other issues related to this overarching subject:

No

Open Questions

1. Are there further overarching issues or considerations that should be discussed in the New gTLDs Subsequent Procedures PDP WG?

Based upon the depth of work outlined during the Helsinki meeting, we believe that the working group should tailor its efforts to only the most significant policy issues that must be addressed before a future application process can open and defer other issues to staff to develop implementation guidance or to other policy efforts that need not gate the PDP. Otherwise, we believe that the process will be stymied, both in terms of time and the ability to reach community consensus.

2. Are there additional steps the PDP WG should take during the PDP process to better enable community engagement?

No comments at this moment of time.

