

New gTLD Subsequent Procedures PDP Working Group Meeting
11 March 2017
At ICANN58 in Copenhagen

Agenda:

1. Review Agenda
2. Welcome and Introductions
3. PDP WG Current Status
4. Community Comment 2 Introductions
5. Community Comment 2 Discussion:
<https://community.icann.org/pages/viewpage.action?pageId=63155738>
6. AOB
7. Time permitting and if applicable: parking lot

Action Items and Discussion Notes:

1. Review Agenda (Slide 3)

2. Welcome and Introductions (slide 4)

3. PDP WG Current Status (Slide 6)

- Community Comment 1 -- Got some good input; still have some subjects we are considering
- Some issues (addressed by 3 drafting teams) -- 1) different TLD Types, 2) framework on predictability, 3) application rounds.
- Established 4 work track.

Timeline (slide 7)

- Send CC2 to SO/AC/SGs/Cs March 2017
- Complete preliminary deliberations June 2017

Work Track Timeline (slide 8)

- Work Track efforts through late summer
- Compile for comment
- Compile comments in final report

WG Subjects (slide 9)

- Work Track leader will introduce topics
- Poll to select 2-3 issues
- Run through each Work Track

4. Community Comment 2 Introductions

- A lot of discussion re: application fees and the accreditation program
- Fees for different application types and should there be a floor or ceiling; current methodology is break even.
- CC2 specific questions are at:
<https://community.icann.org/pages/viewpage.action?pageId=63155738> (pages 4-9)
- For fees -- how they should be set -- such as cost recovery (not actual dollar amount).
- Questions: Looking at this holistically, rather than describe rounds? -- Some of the funding for the 2012. round was historical costs.

Poll Results:

WT1:

1. Registry Service Provider
2. clarity of application process
3. application fees and variable fees

WT2:

1. Closed Generics
2. Reserved Names
3. Base Registry Agreement

WT3:

1. Community Applications and Community Priority Applications
2. String Similarity (Objections)
3. Objections

WT4:

1. Name Collisions
2. Applicant Reviews
3. IDNs

Work Track 1 Discussion

1. Registry Service Provider

- Risk of anti-competitive measures by raising the level of constraints. The right balance must be struck. Don't add new requirements unless there is a security and stability reason.
- Backend Provider: Concerned that this would homogenize services -- need to reward innovation. Doesn't solve the issue of portability. Issue of DNSSEC.
- Backend Provider: Mix of issues -- how to solve for future round issues and how do we operate? Overarching concern that not all registries are equal. Requirements might be

- different. Think about what is the issue we are trying to solve. Might meet a minimum standard but still not give a satisfactory performance.
- Some problems were: changing from one service provider to another. Another was the multiple testing. Repeat testing might not be the fault of the rules, but the application of the rules.
 - DNSSEC transitions when moving between providers is not a roadblock, but needs to be done carefully.
 - Have to be very mindful of the optics of current market participants being too restrictive. If we can have a base registry agreement that applies to all registry operators. RE: SLA -- do we need to make the standards more stringent. Could be hard to devise a solution that would solve all portability issues, but think creatively about how to use concepts already in place.
 - Question: Do we already have an accreditation program? Answer: ICANN is looking at something, but not yet.
 - Question: What liability would ICANN be taking on if they did do an accreditation program?
 - This PDP is not looking at portability of changing one provider to another.
 - Asked for data about SLAs (anonymized). Exceeded 27 times but EBERO not invoked.
 - Benefit of having a program -- in the last round you had the front-end registries subsidizing the evaluation of the backend provider.
 - DNSSEC is possible but it is difficult and there is a lot of risk.
 - Could be economies of scale in testing.
 - Just focus on evaluation and testing.

From the chat:

Rubens Kuhl: We already have an accreditation program. It's bundled in the MSA change rules, and currently specifies that 2012-evaluated back-ends do not have to go thru evaluation again.

Michael Flemming: We have the SLA data and whether or not those are being met.

Rubens Kuhl: ICANN not being liable is actually a good thing in this context.

Michael Flemming: But then to trump the same thing Jeff is saying, are there other SLAs we need to be looking at?

Steve Chan: "Section 6 of Specification 10 of the Registry Agreement for new gTLDs provides emergency thresholds for the 5 critical registry functions. Per the Registry Agreement, reaching any one of these thresholds could trigger an EBERO event. ICANN monitors registries' performance of these critical registry functions, and regularly engages with Registry Operators and Registry Service Providers when service outages occur. Not all services outages reach emergency thresholds. If emergency thresholds are reached, ICANN evaluates each individual case and make decisions regarding whether to trigger an EBERO event based on the unique circumstances. Since the launch of the New gTLD program, an SLA has reached or exceeded the emergency threshold 27 times. However, no EBERO events have been declared to date. In each of these 27 cases, ICANN technical teams were already working with the registry before the threshold was reached. In many of the cases, the TLD had no registrations. In the cases in which there were registrations

Steve Chan: That is the response from GDD in regards to the SLA monitoring and EBERO questions.

2. Clarity of Application Process

- Number of changes made after release, change requests, customer support, etc.
- Changes affected TLD applications throughout the process.
- Has there been any discussion of how to capture information after the last round to help use it as guidance for the next round? Also, did anything come out of clarifying questions? Not sure if there is a plan.
- Our PDP mandate is not to rewrite the AGB but we can make suggestions. Recommendation: More efficient collection and better knowledge base. Collect information and have it in one place. Focus on the practical in the AGB (the how and not the why).
- Need to look at higher level -- details can come out of the implementation team.
- Hope to reduce an implementation team after this next round. Working on some implementation issues.
- Question: What is the group's tendency on this issue? Answer: Depends on the methodology. A lot of applicants have expressed concerns with the number of changes that occurred.
- Comment: Also looking at predictability and making it as clear as possible. This ties into the applicant terms and conditions -- ICANN reserves the right to make changes to the AGB.
- Question: If the AGB were to go as it is today does ICANN foresee changes or clarifying questions to go the same as the previous round (still as unpredictable)?

From the chat:

Rubens Kuhl: We sometimes need to check whether implementations would be blocked or allowed by the policy guidelines.

Edmon: don't disagree with Jeff, but that was before the policy/implementation wg recommendations and their implementation

Edmon: so we (community) should have a bit better "control" of that process:-P but sure we should cover as much as we can.

Jamie Baxter | dotgay: <comment>For areas of the AGB where there is an expectation of future engagement by third parties, such as Community Priority Evaluation, it is perhaps imperative to have those third parties in place and include any necessary guidelines that will be used in their processes in the AGB and not have them generated after applications have been received. </comment>

Work Track 2 Discussion

1. Closed Generics

- Issue of whether an entity could apply for a string and then restrict registrations for that string to itself and its affiliates. Example: .grocery. Comment received suggested that this should be allowed only for a brand gTLD. Board said that for 2012 prohibit closed generics. Deciding what should be done for future rounds. Discussion in favor and against.
- Question: If the Board made its decision based on GAC advice, is there still potential for conflict? Answer: GAC advice in input into our PDP. There is a risk of having GAC advice at a later point. There are participants in the PDP WG from the GAC.

- Question: In terms of whether we remove this prohibition will it retroactively affect the existing round? Also relating to changes after applications in the AGB. Answer: Have not had the discussion of retroactive effects. On legal issues we would have to determine if the policy would unfairly advantage one applicant over another. We are looking to future rounds. Not within scope to consider past applications.
- This question of retroactivity is something we will hit on a lot of different issues. It may be reasonable to have that discussion and to make a recommendation to the Council. Once we have the recommendations then look at that issue.
- Not sure there is a way to go back. Could be accusations of unfairness.
- Don't evaluate if we make a recommendation based on impacts to previous applicants, but we may need to flag it.
- Applicable to current registries, but they will have the opportunity to update their registry agreements.
- 2.4.2 Looks at what is a generic -- definition. Have to be very careful about the difference between generic and not.

2. Reserved Names

- For reservation of second levels -- the group went through each type of reservation. Tendency to keep the policy.
- The IETF has special use domains -- RFC. Approved .onion reserved at the top level and working on others. What happens in the future? Do we just keep adding these to the top-level reserve?
- Banned numbers, but not confusingly similar use of letters. Example: 000 versus ooo. Had not thought about that too much. Add to Work Track 3.
- There are questions in CC2 that ask about the registries ability to register 100 names for its operational use and also an unlimited number of names as long as they are distributed through ICANN- affiliated registrars.
- Requirements in Spec 5 – registries have asked for a definitive list. Good point for Work Track 2. Could the community develop a list, even if it isn't definitive? But then how would compliance work? Would have to be a definitive list. Or, compliance based on the jurisdiction? There is a community list, but it has the same problem. Original policy said there should not be a list. If there is no list how can it be in a contract?

Work Track 3 Discussion

ACTION ITEM: Go back to the archives to review the comments on the proposal concerning expressions of interest.

1. Community Applications

Report submitted to the group from the Council of Europe on the human rights aspects of the community application evaluation process.-- Only used to evaluate those application that applied for community and there was contention. If no contention then there was no

evaluation on whether they met the community requirements.-- If you are the only applicant and you made these commitments there is a risk. It isn't like being a community applicant gave you any advantage if you were the only applicant.

-- Example: community access television -- costs for community for applying and applicant support is important. Benefits of structure that would allow an easier route to community applications. Current barrier to entry.

-- Question: Proposal from COE: Applicants should express their interest in a string as a community applicant and allow others to come forward to challenge as a community application. What do we think? Answer: Previously considered expressions of interest and this was rejected. Should go back to look at that.

-- Recollection was that the expression of interest was going to be secret -- this proposal says it will be public. Will this help community applicants or hurt them?

-- Should consider it from the point of view of a common good.

-- May be difficult to set a timeframe for a community to respond. Worth exploring.

-- Address the question of priority of rounds for community applications. Expect discussion in the GAC on a priority round. There is a CC2 question on whether there should be a priority round.

From the chat:

Jamie Baxter | dotgay: <comment>The reality with your question Jeff is that each community may take its own pace to establish community consensus. Our experience, given that our community is global, is that ample time was required to engage, have dialogue and build consensus towards a community application model. Not sure how anyone could draw a line around the time that would be given to a potential community applicant if faced with the reality that a standard applicant had expressed interest<comment>

2. String Similarity Objections

-- There was a small group of registries came up with a couple of recommendations on plurals and singulars (not a policy decision in the 2012 round). Recommendation that plurals and singulars of the same type of string be evaluated for confusingly similar. Much more complicated for IDNs. For example, some languages don't have a plural version.

-- TLDs are a public access so private auctions don't seem to be in the public interest.

-- Confusion was the hot issue for the ALAC. Plural and singular is one example.

-- If we are looking to protect uses -- plurals and singulars can be too similar in some languages. Need to pay much more attention.

-- Need to have a limit and have a way to resolve the issue.

-- Alternatively, it could take forever to resolve these issues. Too complicated.

-- Don't allow unless there is a semantic argument that it is completely different.

-- Can't leave it to the technical side.

-- Not just fraud; confusion is an issue in its own right.

-- There have been arguments on both sides.

From the chat:

Rubens Kuhl: Actually that confusion was among two plural forms: hotels and hoteis , the English plural and the Portuguese plural.

Donna Austin, Neustar: On what basis did ICANN allow plurals?\

Kristina Rosette (Amazon Registry): @Donna: Not visually confusingly similar (keeping in mind that scope of analysis in evaluation was visual similarity)

Rubens Kuhl: String Confusion Objections had more latitude than just visual similarity. That was the restriction of string similarity evaluations, but not objections.

Work Track 4 Discussion

1. Name Collisions

-- Frustrating procedure: the name collisions freeze (such as for .mail) came very late, despite the fact that the SSAC raised the issue earlier. Can we go to the SSAC and then determine if we need to go to other experts?

-- That point is more about the predictability discussion. Acting on security and stability is one of ICANN's core values. On .mail that question needs to be assessed further. .mail has a different profile from .home and .corp.

-- Question: Did the JAS report identify any other strings that could fall into that category.

Answer: The JAS report only looked at applied-for strings.

-- Question: On 4.4.3 -- any possibility to reduce the taming of the controlled interruption period? Helpful to be able to look at the data. There is a general request to get those statistics.

-- Question: Possibility of obtaining a waiver to conduct a dotless domain? Affects the analysis of name collision risk.

-- Question: Is it possible just before delegation to drop the TLD in the zone and do the controlled interruption before it is delegated to the registry. Answer: That was considered, but it still has to be delegated to someone.

From the chat:

Rubens Kuhl: Dotless domains are currently banned by IAB, so ICANN would have a hard time approving one of such requests.

Jim Prendergast: @rubens - and it won't stop some from trying to get them either.

Rubens Kuhl: @Jim, they can ask, pay the RSTEP fee just to have the request denied, but yes they can try.

2. Internationalized Domain Names

-- There is an SSAC report (with ccNSO and GNSO)

-- Also an SSAC report on single character names

3. Applicant Evaluation

-- Talked about the background checks. Don't believe any applicant failed due to these.

- To what extent should a breach of another ICANN agreement be held against an applicant in a background check?
- It is in Work Track 2 -- but this is referring to technical and financial.
- ICANN did ask for a lot of information on a business plan, on projections, estimated costs, business models -- but the answers weren't evaluated or scored. Should that be changed and if it is scored how do you deal with changes in business models?
- On 4.3.2.5 -- Against waiting until contract signing to evaluate financial capability. Could be an aspect for gaming. Demonstrate before the string is evaluated.
- On 4.3.2.3 re: business plans. Don't think they should be evaluated. Restricts the possibility for innovation. Outcome is that you would get such general statements that they won't be meaningful. Ask what questions is trying to be solved? Make it optional.
- Some say the information (question 18) is helpful to determine the intent for the use of the string.
- In favor of keeping a required response to question 18. Ties very closely to the closed generic issue. Need to be able to understand the intent of the application. Is it going to be a brand? Community?
- The financial evaluation did not evaluate business models -- but what needed to be in place to launch and operate a TLD.

From the chat:

Edmon: business plans are related to the PICDRP too though... as well as objections (as jeff just said)

Donna Austin, Neustar: Wasn't Q18 a result of GAC advice.

Kristina Rosette (Amazon Registry): @Donna: Good point.