

<b>2.5.1 Application Fees</b>	<b>3</b>
Background documentation	3
Policy Goals / What the WG is Seeking to Accomplish	3
Public comment summary	3
Follow-up / Referrals to other sections / parking lot / suggested next steps	3
Follow-up (with stakeholder groups)	3
Referrals to other sections	3
Parking lot	3
Suggested next steps	3
<b>2.5.2 Variable Fees</b>	<b>4</b>
Background documentation	4
Policy Goals / What the WG is Seeking to Accomplish	4
Public comment summary	4
Follow-up / Referrals to other sections / parking lot / suggested next steps	4
Follow-up (with stakeholder groups)	4
Referrals to other sections	4
Parking lot	4
Suggested next steps	4
<b>2.5.3 Application Submission Period</b>	<b>5</b>
Background documentation	5
Policy Goals / What the WG is Seeking to Accomplish	5
Public comment summary	5
Follow-up / Referrals to other sections / parking lot / suggested next steps	5
Follow-up (with stakeholder groups)	5
Referrals to other sections	5
Parking lot	5
Suggested next steps	5
<b>2.5.4 Applicant Support</b>	<b>6</b>
Background documentation	6
Policy Goals / What the WG is Seeking to Accomplish	6
Public comment summary	6
Follow-up / Referrals to other sections / parking lot / suggested next steps	6
Follow-up (with stakeholder groups)	6
Referrals to other sections	6
Parking lot	6

Suggested next steps	6
<b>2.5.5 Terms &amp; Conditions</b>	<b>7</b>
Background documentation	7
Policy Goals / What the WG is Seeking to Accomplish	7
Public comment summary	7
Follow-up / Referrals to other sections / parking lot / suggested next steps	7
Follow-up (with stakeholder groups)	7
Referrals to other sections	7
Parking lot	7
Suggested next steps	7

## 2.5.1 Application Fees

### Background documentation

- Community Comment 2 - Section 1.4  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/cc2-subsequent-procedures-22mar17-en.pdf>)
- Initial Report - Section 2.5.1  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group B public comment analysis:  
<https://docs.google.com/spreadsheets/d/133WbhWYB4M4kT6DqSfiCR2-ij7jxNkLj5EWZL-NA95M/edit?usp=sharing>

### Policy Goals / What the WG is Seeking to Accomplish

- *The WG reaffirms this language from the Applicant Guidebook [emphasis added]:*

*The gTLD evaluation fee is set to **recover costs** associated with the new gTLD program. The fee is set to ensure that the program is **fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.***

### Public comment summary

#### High-level Agreements

- Excess fees collected should, at least in part, be returned to applicants. The disbursement mechanism should be communicated prior to applications/fees being submitted to ICANN.
- In the event that the estimated application fee, based on the “revenue neutral” principal, falls below a predetermined threshold amount (i.e., the application fee floor), the actual application fee will be set at that higher application fee floor instead. The purpose of an application fee floor, as more fully discussed below, would be to deter speculation, potential warehousing of TLDs, and mitigating against the use of TLDs for abusive or malicious purposes, that could more easily proliferate with a low application fee amount.
- In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN if the application fee floor is invoked should be used to benefit the following categories: Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives); Support the gTLD long-term program needs such as system upgrades, fixed assets, etc.; Application Support Program; Top-up any shortfall in the segregated fund as described below.

- To help alleviate the burden of an overall shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.

## **Outstanding Items - New Ideas/Concerns/Divergence**

### Alternatives to self-funding

- New Idea: Neustar - If cost-recovery cannot be accurately determined, “the most pragmatic approach for deciding the nominal application fee is to maintain the USD 185,000 fee used in 2012.”
- Divergence: INTA - INTA believes the application fee amount should be relatively high to dissuade frivolous applications.
- Divergence: RrSG - Some registrars have indicated a preference for keeping the fees high or at its current level to maintain value in the process.

### Comments on the scope of what should be included for cost-recovery

- New Idea: ALAC - Self-funding should include contingent programs such as the expansion of contract compliance capability.
- New Idea: RySG - ...but should also include other efforts around Universal Acceptance, Applicant Support and security and stability.
- New Idea: XYZ - Importantly, ICANN must take into consideration the future revenue that ICANN will take in from auctions and increased registration volumes when setting initial application pricing.

### Disbursement of excess fees

- New Idea: XYZ - All excess fees should be returned to applicants.
- New Idea: Neustar - Should be returned to applicants up to a maximum of 50% of the application fee. Where excess application fees remain after refunds have been issued to applicants, we support the identification of items/programs that ICANN could allocate spending to from excess fees as described in Preliminary Recommendation 2.5.1.c.4.
- New Idea: RySG - If excess fees do NOT go to applicants: Identify programs and initiatives that support the overall health of the new gTLD program, such as Universal Acceptance, Applicant Support or sustaining ICANN compliance efforts; evaluate ICANN's own needs and determine if excess fees could be used to further their work. ICANN should have a preemptive declaration on the funds prior to determining that the funds are in fact "excess".
- Divergence/New Idea: ALAC - Should be spent on endeavors that promote the public interest and should not be used to refund applicants. Some suggestions include: Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives; Support the gTLD long-term program needs such as system upgrades, fixed assets, etc.; Application Support Program.

- Divergence: Vanda Scartezini - I believe keep the excess in a fund for destinations as described in item c.4, will cost less to ICANN's administration, otherwise the administration cost may generate more fee cost to all.

Circumstances where revenue-cost neutral amount results in a refund that is greater than the application fee floor value

- New Idea: - INTA's position is that the refund should be anything above the cost floor.
- Concerns: ALAC - From question 2.5.1.e.2 it is not clear to the ALAC whether this is about what is left after spending the excess fees received to 'benefit the categories' as described in 2.5.1.c.4 when using an 'application fee floor'.
- New Idea: IPC - The IPC believes that excess funds ought to be used to advance the public interest.

Application fee floor

- Support from some commenters (MARQUES, BRG, RySG, ALAC, INTA, Valideus)
- Guidance to establish the floor:
  - New Idea: ALAC - Based on experience from the first round, it is clear that the price used then was not a deterrent to a large number of often speculative applications. If an application fee floor is used for a.o. this reason, it would need to be determined at what level the floor sufficiently mitigates the risk of speculation, warehousing, abuse etc., while still making it attractive to invest in the introduction of New gTLDs.
  - New Idea: Valideus - An analysis should be done on whether there is a floor which would mitigate the probability of applicants speculating on applying for TLDs or for TLD warehousing. ICANN has had 3 rounds of new gTLD applications. In both 2000 and 2005, where the fee for an application was approximately \$50,000, there was no evidence brought forward that there was any form of speculation or TLD warehousing. Therefore, taking that into consideration, there is no reason that a floor set for future rounds would need to be even that high, much less anything over \$50,000. We oppose completely the use of the 2012 new gTLD application fee as the basis for a floor in setting the fee in subsequent processes.
  - Concerns: ICANN org - With regard to the preliminary recommendation on application fee floor, ICANN org looks forward to receiving guidance from the community as to what the fee floor amount should be, or criteria by which it is established, as well as any thoughts on ongoing reviews of that fee floor amount.
- New Idea: INTA - If an applicant is seeking to obtain a branded gTLD that will be closed then the cost floor should be lowered; Valideus - There is no reason that a new Brand TLD registry applicant should have to pay any more than \$50,000.
- Concerns: ICANN org - ICANN org is not aware of any "75 steps" document and is unclear about what "documentation related to the process used in setting fee in the 2012 round is being referenced in this section. It would be helpful if the PDP Working Group could clarify.

- Divergence: XYZ - XYZ strongly believes that it against the mission and purpose of ICANN for ICANN to charge anything more than its anticipated total cost to administer the application process for the new rounds.

#### Disbursement of excess fees (from an application fee floor)

- New Idea: Valideus - Whether they are refunded to the applicants themselves, or whether they are distributed to gTLD-related programs such as the Applicant Support Program, this needs to be made clear prior to applications being submitted to ICANN, and preferably in the AGB itself.
- New Idea: INTA - INTA would suggest that excess fees should be applied to initiatives which would improve trust in the DNS, particularly around security threats, malware, fraud and intellectual property infringement. Funds should be allocated to ensure that there is robust monitoring and enforcement of the contractual commitments made by applicants and by registrars selling those names.
- New Idea: ALAC - The ALAC believes excess funds should be spent on the categories mentioned in 2.5.1.c.4. Also the separate fund in 2.5.1.c.5 could be funded by -planned for- excess funds; Vanda Scartezini - I believe the best alternative will be in Fund to be disbursed as defined in isection1.5 c.4.
- New Idea: Rysg - If an excess remains after taking into account the minimum fee floor, then ICANN should (a) add that excess amount to the segregated fund described in 2.5.1.c.5 (if approved, and if so, up to the approved amount for the segregated fund) or to a segregated fund for the purposes described in 2.5.1.e.2 (if approved, and if so, up to the approved amount for the segregated fund), and (b) adjust fees in future TLD application rounds to account for any remaining excess amount.
- Divergence: INTA - INTA believes any excess funds should be refunded to the applicants.

#### Timing of disbursement of excess funds

- New Idea: INTA - INTA believes the disbursements should occur at the end of each round, subject perhaps to withholding some contingency funds.
- New Idea: RySG - These rules should not be discretionary. To the extent that ICANN has an interest in retaining a certain portion of fees for specific projects to support the program then those goals should be articulated and agreed before the next round opens, for transparency. The AG should permit fees to be refunded in phases, over time and should not require that all applications from a particular round, window, or other application period be fully resolved prior to refunding.

#### Revenue shortfall

- New Idea: ALAC - If an application fee floor is simultaneously introduced the levels of both would need to be considered in combination with each other, the amount set aside for contingency could be funded from the excess fees received because of the application fee floor.

- Concerns/New Idea: RySG - ICANN should take all courses necessary to ensure there is no shortfall of funds as the result of this program. And when in doubt, ICANN should err towards excess funds as opposed to any shortfall.

#### Warehousing/squatting and potential deterrents

- New Idea: RrSG - Consider having applicants commit to make use of their TLDs within a given period. Potentially have lack of use be a valid reason for revocation of the TLD upon challenge by a 3<sup>rd</sup> party. Providing this obligation would not apply to brand TLDs.
- Lack of evidence of warehousing/squatting
  - Concerns: BRG - It is not clear that there is evidence of warehousing/squatting, so more data and/or definitions are required. However, please note that ICANN's application process is more likely a deterrent to most applicants, rather than the application fee
  - Concerns/Divergence: RySG - The RySG is not aware of sufficient data to demonstrate that there is a material concern with warehousing/squatting of TLDs. Therefore no other restrictions or methodologies are necessary.
  - Concerns: INTA - INTA is not aware of warehousing/squatting to date and cautions against any assumption that all applicants for TLDs have the same drivers in applying and intend to utilize the same business models.

#### Considerations/implications of revenue neutral in continuous rounds

- New Idea: INTA - INTA believes as the transition to more continuous rounds occurs there should be enough data to allow ICANN to determine the revenue neutral amount for applications. INTA also expects that ICANN would become more efficient in processing new applications that the cost will become lower.
- New Idea: RySG - The RySG suggests there should be a periodic (no less than annual) true-up of cost and revenue, which should be used to provide a periodic (not more frequently than annual) adjustment to application fees. The Implementation Review Team will need to assess practical issues such as when the first true-up should occur (i.e., prior to the "end" of the evaluation process for all applications, but not before the "end" of the evaluation process for a substantial number of applications), how to account for costs and revenues for applications where the evaluation process is longer than a year, and how to time changes to future application fees.
- New Idea: Vanda Scartezini - Adjustment of the applicant fee will be a continuous task and shall be monitoring annually reporting to the community.

ICANN being a so-called "registry of registries" (i.e., does the community envision ICANN approving a few thousand / hundreds of thousands / millions of gTLDs to be added to the root? Should there be a cap?) [[Connection to 2.2.5 Application Submission Limits](#)]

- New Idea: ALAC - Any cap set on the number of (new) gTLDs in the root should initially be determined by what the root-zone system can handle technically.
- New Idea/Concerns: SSAC - How many more TLDs will be introduced? And can ICANN scale its operations to handle that many TLDs? This poses several security and stability

issues. One issue is not so much whether the root zone can accommodate additional entries (see 2.7.6.c.2), but whether the ICANN organization's operations can scale. The following is excerpted from SAC100.

Recommendation (4): ICANN should investigate and catalog the long term obligations of maintaining a larger root zone.

A larger root zone may increase the complexity and cost of activities that operate on the entirety of the root zone. ICANN should investigate how increasing the size of the root zone will impact activities such as the DNSSEC Key Signing Key (KSK) rollover, IANA root zone change requests, TLD transfers, contract negotiations, the operations of the root zone maintainer, and any other administrative overhead. The ongoing management of these activities should be investigated prior to increasing the number of delegations in the root zone.

The SSAC is pleased to see a preliminary recommendation from the working group calling for the ICANN organization to further develop root zone monitoring functionality and early warning systems, as it previously recommended. The SSAC also previously stated that the working group recommendations should include an acceptable rate of change to the root zone instead of a yearly delegation limit, and that obligations to new gTLD registries should be structured so that their addition to the root zone can be delayed in case of DNS service instabilities.

- Concerns: INTA - INTA is opposed to a cap on the number of new TLDs unless it can be proven that the root cannot operate correctly with a high number of TLDs.; RySG - The RySG believes that there should not be an arbitrary cap. Market forces and other natural incentives will restrict the number of new TLDs.

#### Structuring fee to encourage competition and innovation

- New Idea: ALAC - Numbers and statistics are necessary, clear estimates and contingency planning, in order to determine a level of application fees to be set. Therefore the ALAC agrees with the statement on page 79 of the Initial Report that 'the Work Track recognizes that additional analysis would be needed to establish a new estimated cost'.
- New Idea: INTA - INTA supports a pricing system that reflects actual costs to ICANN. Competition and Innovation will follow with predictable fees and delegation outcomes. Innovation and competition are enhanced by reliable systems with realistic cost allocations. An unpredictable system makes planning very difficult for entrepreneurs and innovators.
- New Idea: RySG - The RySG believes that the best way to encourage competition and innovation by means of the application fee is to keep it as low as possible consistent with the "revenue neutral" principle, and that the application fee should be structured such that all applications should continue to incur the same base application fee amount.

Requests to determine actual costs of 2012 round to help in determining future costs

- Valideus: New Idea - In doing so, ICANN should be able to compute an average cost per application and therefore estimate what it would cost in the future to evaluate an application.

#### Follow-up / Referrals to other sections / parking lot / suggested next steps

##### Follow-up (with stakeholder groups)

- RySG: (2.5.c.2) With that said, some members of the RySG hold the position that the \$185,000 fee shouldn't change to reflect the public interest responsibility associated with operations of TLDs 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.

##### Referrals to other sections

- MarkMonitor: (2.5.1.c.1) We note that application cost serves a purpose beyond compensating ICANN for its required evaluation and delegation costs, akin to the applicant's financial capability analysis, in ensuring the security and stability of the DNS. Accordingly, we suggest that the flexibility to employ a combination of these two factors might be appropriate for some applicants, especially those whose unique corporate governance, financial reporting, or intellectual property ownership structures may hinder clear evaluation of the applicant's true financial capability. [May relate to 2.7.7 Applicant Reviews.]
- INTA: (2.5.1.e.1) INTA does not object to applicants applying for open TLDs which contain common words. If an applicant applies for a TLD that matches a trademark there must be an opportunity for the trademark owner to object to the application. INTA would propose that if an objection to a proposed TLD is successful then the costs of the objection would be borne by the applicant. [May relate to 2.8.1 Objections]
- 

##### Parking lot

- None

##### Suggested next steps

## 2.5.2 Variable Fees

### Background documentation

- Community Comment 2 - Section 1.5  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/cc2-subsequent-procedures-22mar17-en.pdf>)
- Initial Report - Section 2.5.2  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group B public comment analysis:  
<https://docs.google.com/spreadsheets/d/133WbhWYB4M4kT6DqSfiCR2-ij7jxNkLj5EWZL-NA95M/edit?usp=sharing>

### Policy Goals / What the WG is Seeking to Accomplish

- *The WG reaffirms this language from the Applicant Guidebook [emphasis added]:*

*The gTLD evaluation fee is set to **recover costs** associated with the new gTLD program. The fee is set to ensure that the program is **fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.***

### Public comment summary

#### High-level Agreements

- None

#### Outstanding Items - New Ideas/Concerns/Divergence

- Comments supporting single base fee: BC/Neustar/Marques/ALAC/RySG
  - Additional points from ALAC: The ALAC supports the fee reduction model based on financial need under the Applicant Support Program as the only exception.\*\*
- Concern: ICANN Org - Clarify if the suggestion that “all applications should incur the same base application fee amount” extends to scenarios beyond “type of application or number of applications.” For example, would an applicant proposing to use a pre-approved RSP pay the same application fee as one who proposes to operate its own back-end registry functions and thus requiring technical evaluation?

Different fees for different categories/types:

- Comments supporting differential fees if there are significant differences in costs per type (for example <20%): BRG/INTA.
- New Idea: MARQUES/INTA/Valideus/LEMARIT - Closed Brand gTLDs should ultimately have lower fees because they can have a more streamlined evaluation (Valideus suggests \$50K).
- Lower fees for communities:
  - New Idea: ALAC/Council of Europe - Discounted application fees for community applications (ALAC specifies community applications with non-profit intentions\*\*).
  - Divergence: Government of India - Develop a cost-based fee structure suitable to each TLD category to allow for better representation for local communities and developing countries.
- New Idea: NCSG - supports lower fees for applicants using pre-approved RSPs, if applicable.
- New Idea: Government of India - Lower fees for a string in multiple IDN scripts, particularly where multiple IDNs are required in countries of great linguistic diversity.
- New Idea: ming.Ltd Group - Lower fees for IDN applications. Adjust application procedures to make it easier for local brand owners to apply for IDNs.
- Public Interest Community supports consistent fee “at least within a given category of New gTLDs.”

#### Changing application type mid-process:

- Divergence: RySG - applicants should not be charged a higher fee for making any changes to their applications that are permitted in the AGB.
- New Idea: INTA - An 15% administrative fee should apply if the applicant changes type plus the difference in cost of the application type.
- New Idea: LEMARIT - If application begins as a Brand application and has a lower fee, there should be rules against changing the type.

#### Use of excess fees:

- Divergence: BRG - If excess fees are returned to applicants, they should be refunded proportionately based on costs per type.
- New Idea: RySG - Any fee excess should be put into a segregated fund. Adjust fees in future TLD application rounds to account for any remaining excess amount.

#### Changes in Fees:

- Concern: NCSG - Fees should not be changed midway through the evaluation process.
- Concern: RySG - Once the application is submitted, the cost of processing it is determined by ICANN, therefore the applicant should not be required to pay for costs under ICANN's control. ICANN should properly estimate costs of evaluating different types of applications, so there will be no need to retroactively charge more for certain applications.
- Change fees in response to volume of applications:

- New Idea: INTA - As ICANN becomes more efficient in processing new TLDs applications, costs should become relatively stable or decrease.
- New Idea: Higher volume and resulting increased costs should be accounted for by the increased revenue from higher volume of applications. There is no clear reason that the per-application processing cost should be higher as the number of applications increases.

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

\*\* Point of clarification from ALAC: Note ALAC clarification: The suggestion of “discounted application fees for community applications with non-profit intentions” stems from the ALAC’s support for the prioritization of community-based applications for the next application window(s). While the ALAC believes that Community Priority Evaluation (CPE) criteria should be utilized to establish qualified community-based applications – this, assuming CPE implementation undergoes adjustments in respect of its evaluation panel constitution having sufficient community expertise – we note that CPE does not at present overtly address the aspect of “non-profit intentions”. This is an aspect which merits consideration were the WG to take up the question of which non-profit community-based applications might be eligible for a discount on application fees. It could be established simply by identifying the applicant as an entity with not-for-profit status in the jurisdiction in which it is incorporated. This suggestion is notwithstanding ALAC’s position that in a fixed application fees regime, the only exception to such a regime should be the fee reduction model currently applied in the Applicant Support Program (ASP).

Referrals to other sections

- **NCSG: Supports lowering of fees for applicants using pre-approved RSPs:** On the note of the fees imposed for changing the type of application (point 2.5.2.d.2), we note one exception to the fixed-fee rule that is warranted. If pre-approved (and re-approved) back-end RSPs are used it is likely that would actually be a clear cost savings to ICANN for all applications using pre-approved back-end RSPs, and that savings should be passed on upfront and in a standardized way to all applicants using pre-approved RSPs. There should be a fixed new gTLD application fee for applicants falling into this category - and such clarity and savings will help non-commercial organizations to apply for new gTLDs. Further, this application fee discount, applied to all new gTLD applicants using pre-approved RSPs, seems both fair and equitable.

(<https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000066.html>)

Parking lot

- None

Suggested next steps

- Factual Correction to Initial Report: RySG- In the 2012 round, there was no additional fee to Registry Service Evaluation Process, since it was part of the application fee; there was a possible fee of Registry Services Technical Evaluation Panel (RSTEP).

## 2.5.3 Application Submission Period

### Background documentation

- Community Comment 2 - Section 1.6  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/cc2-subsequent-procedures-22mar17-en.pdf>)
- Initial Report - Section 2.5.3  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group B public comment analysis:  
<https://docs.google.com/spreadsheets/d/133WbhWYB4M4kT6DqSfiCR2-ij7jxNkLj5EWZL-NA95M/edit?usp=sharing>

### Policy Goals / What the WG is Seeking to Accomplish

- Application period should be long enough to provide a fair opportunity for all prospective applicants to submit an application.

### Public comment summary

#### High-level Agreements

- If the next application opportunity is structured as a round, commenters generally support a fixed application window of at least three months. Some believe that three months is sufficient while others believe a longer period may be necessary or beneficial in some or all circumstances.
- Commenters support the proposal that in the event that following the next round of new gTLDs, application opportunities are organized as a series of application windows, steps related to application processing and delegation should be able to occur in parallel with the opening of subsequent application windows.

#### Outstanding Items - New Ideas/Concerns/Divergence

Proposed initial application submission period of at least three months:

- New Idea: RySG - A six month period may be beneficial in allowing latecomers to the program to participate.
- Concerns/New Idea: BC - A period of more than three months may be needed for applicants from “some parts of the world.” Consider providing “a way to keep non-contentious applications open if they need more time to complete.” [staff note: see follow-up section]
- New Idea: ALAC - Supports conditions that increase the number of community-based applications, especially community-supported applicants and those benefiting

underserved regions and/or underserved communities. Appropriate period depends on the needs of these applicants and complexity of the application requirements.

- New Idea: RrSG - Appropriate period depends on the length of the notice period and complexity of the application process.
- Divergence/New Idea: LEMARIT - Suggests five month period with notice of the application window eight months prior.

Proposed subsequent application period of two months:

- Divergence: INTA/Neustar - Support a three month period.
- Divergence: ALAC - First-time applicants should not be discouraged or disadvantaged.

Proposed overlap between Communications Period and application submission period:

- Divergence: INTA/RySG - Does not support overlap between these periods as it may disadvantage newcomers and those from less-represented regions. RySG states that if there is an overlap, it should be no longer than 30 days.
- New Idea: Neustar - Proposes a series of phased application windows by application type, noting that a side benefit would be that the communication period could be targeted and built on over a longer period.
- Concerns: Jaime Baxter - If data suggests newcomers started and submitted applications as a result of efforts during the Communications Period, then there should be no overlap as it would work against newcomers.

Rounds following the next round: application processing/delegation occurring in parallel with new window:

- Concerns: INTA - windows must be clearly identified with controls are in place to ensure that a later application for a TLD (or one confusingly similar thereto) is not given priority to an earlier one.

Proposed fixed application window:

- New Idea: ALAC - Batching applications is more important than a fixed application window.
- New Idea: RySG - Supports continuous, rolling first-come first served application period.

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

- Ask BC for clarification on comment in response to 2.5.3.c.1: “Agree. However, 3 months is likely not long enough in some parts of the world. Consider revisiting this or finding a way to keep non-contentious applications open if they need more time to complete.”

#### Referrals to other sections

- May also want to consider ALAC comment on 2.5.3.e.1 under Applicant Support: “The ALAC favours conditions that will improve the number of community-based applications, in particular, ones made by community-supported applicants or ones which are conceived to benefit underserved regions and/or underserved communities, hence we see an appropriate application submission period as a function of how well such applicants can be expected to comprehend the requirements needed to prepare their applications and time needed to actually prepare the same.”

#### Parking lot

- None

#### Suggested next steps

## 2.5.4 Applicant Support

### Background documentation

- Community Comment 2 - Section 1.2  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/cc2-subsequent-procedures-22mar17-en.pdf>)
- Initial Report - Section 2.5.4  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group B public comment analysis:  
<https://docs.google.com/spreadsheets/d/133WbhWYB4M4kT6DqSfiCR2-ij7jxNkLj5EWZL-NA95M/edit?usp=sharing>

### Policy Goals / What the WG is Seeking to Accomplish

- Increase the [number of total applicants?] [number of successful applicants?] that meet all standard program requirements and [serve specific populations?] [applicant/application has specific characteristics?] by [x amount?][x percentage?][other goal?]
- Provide financial support and services to certain qualified applicants in order to serve the above goals.
- Ensure that information about the program and participation in the program is accessible to the target audience.

### Public comment summary

#### High-level Agreements

- Commenters generally supported or did not oppose that the Applicant Support Program should:
  - continue to be open to applicants regardless of their location as long as they meet other program criteria.
  - not only target the Global South, but also consider the “middle applicant” which are struggling regions that are further along in their development compared to underserved or underdeveloped regions.
  - employ longer lead times to create awareness, draw on regional experts, and leverage tools and expertise to evaluate applicant business cases.
  - include financial support beyond the application fee, such as including application writing fees, related attorney fees, and ICANN registry-level fees.

- Consider as a measure of success the number of successful applicants to the program. Some responses also supported looking at the total number of applications to the ASP.
- Some commenters supported or did not oppose the following:
  - applicants who do not meet the requirements of the ASP should be provided with a limited period of time (that does not unreasonably delay the program) to pay the additional application fee amount and transfer to the relevant application process associated with their application.
  - ICANN should seek funding partners to help support the ASP.
  - ICANN should evaluate whether additional funding is needed for ASP in subsequent procedures.

### **Outstanding Items - New Ideas/Concerns/Divergence**

#### Policy goals:

- New Idea: ICANN Org - To ensure that the program is designed, implemented, and operated to meet its intended purpose, PDP should define the goals and key success factors for the program.

#### Eligibility:

- Concern: ALAC - More realistic eligibility criteria should be adopted.
- Populations/regions served:
  - New Idea/Concerns: BC/RySG - “middle applicant” and related eligibility criteria should be defined more clearly and potential implications on program costs and implementation should be examined. RySG believes that the focus should remain on underserved and underdeveloped regions; IDNs should be eligible if they meet other requirements, but should not receive a different category of support.
  - New Idea/Concern: ICANN Org - Preliminary recommendation 2.5.4.c.1 suggests that “Applicant Support should continue to be open to applicants regardless of their location so long as they meet the other criteria.” However, preliminary recommendation 2.5.4.c.2 suggests that geographic outreach should target not only the Global South but also the “middle applicant” and defines “middle applicant” as “struggling regions that are further along in their development compared to underserved or underdeveloped regions.” If location is no longer a criteria for qualifying to the Applicant Support program, then it is unclear how preliminary recommendation 2.5.4.c.2 aligns with preliminary recommendation 2.5.4.c.1.
  - New Idea: ALAC - Favors supporting applications serving underserved populations regardless of location. It is the community proposed to be served by an application rather than the location of the applicant that matters. Applicant must demonstrate how they serve an underserved region or community.
  - New Idea: BC - application criteria should take into account intended benefits to the community/region, irrespective of the region.

- Methods for selecting ASP recipients if there are more applicants than funds:
  - New Idea: ALAC/BC/RySG - Supports looking at the number of points scored in the evaluation process. Where viability of applications is equivalent, RySG supports increasing the number of applicants from the global south.

Forms of support:

- Financial support for application fees:
  - Divergence: XYZ - ICANN should not provide financial support for application fees. If an applicant can't afford the fee, they likely can't afford to operate a registry.
  - New Idea: Government of India - Give "middle applicants" a reduced fee that is between the ASP fee and the standard application fee.
- Additional forms of financial support:
  - Divergence: RySG - Opposes support beyond assistance with the application fee.
  - Concerns: Neustar - Ongoing financial support is required to maintain the infrastructure (or pay third party vendors), implement promotional and marketing services, engage with Registrar services and pay ongoing ICANN fees.
- Non-financial forms of support, such as mentorship to ensure long-term viability:
  - New Idea: BC - Offer technical and business plan support, which would include helping potential applicants decide how to structure their TLD for local impact and growth, and take advantage of best practices. There needs to be a more clear and visible process for activating community volunteer mentors and other resources.
  - Divergence: RySG - ICANN's support should be limited to financial support for the application fee. ICANN should not be further involved in the operational, technical and business aspects of a registry/registrar which will serve as a de facto endorsement of certain registries/registrars.
  - New Idea/Agreement: Government of India - Prospective applicants should be able to get an estimate of the costs associated with applying for and running a TLD. Also supports resources to assist with the application process, mentorship, aid in filing objections, support in post-delegation operations, and capacity building on running a registry.
- Local consulting resources:
  - New Idea: ALAC - leverage ccTLD operators.
  - New Idea: BC - Regional ICANN managers should involve community members and partners in different parts of the world.
  - Concern/New Idea: RySG - We can't ensure local consulting resources offer opportunities for consulting resources in the community to offer free or reduced price services.
- General:
  - New Idea: ALAC - Resources should be applied to systematically identify and address barriers to applications.

Ability to transfer to standard application if application does not meet ASP criteria (see also related topic: Prevention of “gaming the system”)

- New Idea: ALAC/RySG - Applicant must be given a reasonable amount of time to pay the additional fee.

Prevention of “gaming the system”:

- Concern/New Idea: ICANN Org - 2012 rules preventing transfer from an ASP to standard application were put in place after extensive community discussion in order to prevent gaming. If there are no penalties or other mechanisms to prevent gaming and no geographic location criteria, there will likely be many ASP applications. The WG should consider the impact on costs to process applications and to fund applicants who do qualify, as well as the impact on program timelines.
- New Idea: ALAC - Transfer from ASP to standard application should generally be allowed, unless the panel determines that there has been wilful gaming.
- Concerns/New Idea: RySG - Setting up a system to try to prevent gaming will cause accountability problems and increase costs. Parties found to be gaming, should i) have the application rejected without any refund, ii) withdraw all applications affiliated with named individuals who are party to the ASP gaming application, iii) and should ban all named individuals who are party that application from applying in any round for at least a reasonable period of time, up to forever.

Evaluation of applicant’s business plan:

- New Idea: Neustar - Application needs to demonstrate business case. Applicants should submit and Expression of Interest. If deemed to have promise, they receive seed funding to develop an application. If application passes Initial Evaluation, application fee is waived. A limited, capped number of applications should be supported in this way.
- Concern: RySG - Cautions against ICANN evaluating business plans to make a determination on the value of a business plan. Participation in ASP should not empower ICANN to determine the viability of a plan.

Outreach and learning strategy:

- New Idea/Divergence: RySG - Primary hurdles to use of the ASP were awareness, timing, and education; Program was rushed and not well publicized. There should be improved outreach and publication of the ASP and the resources it provides. However, extensive promotional activities are not needed. ICANN should build relationships and share information about future new gTLD releases in a timely manner with business associations, such as national and regional Chambers of Commerce, so they can disseminate this to their members to raise awareness. ICANN should not target outreach to any specific population without data.
- New Idea: ICANN Org - The Initial Report states “It has been noted that there was no outreach for the New gTLD Program in developing countries in general, not just for ASP.” However, the Program Implementation Review Report provides data on outreach

activities in the 5 ICANN regions. WG should provide goals and key success factors to support effective implementation.

- New Idea: BC - Increase effort to connect actors who can speak the language of a given region. Create discussion hubs composed by regional players to gather concerns and establish strategies.
- Concern/Agreement: ALAC/NCSG - There was insufficient outreach related to ASP in the 2012 round. ALAC proposes that outreach should focus on communities based in developing countries/regions or “middle applicants”, with priority on Native Peoples (indigenous tribes on various continents).
- New Idea: LEMARIT/NCSG - Create webinars and mailing lists/open calls for those who would like tutoring on the application process.
- New Idea: Jaimie Baxter (dotgay LLC) - extend outreach to places and groups that might not have considered applying due to costs and other barriers and include case studies that can help inspire innovation and creativity within populations, initiatives, communities and sectors that may not see a common or productive link to new gTLDs.
- New Idea: Government of India - Special outreach efforts to “middle applicants” should focus on how applying for a gTLD may practically benefit them.

#### Program funding:

- Source of Funding:
  - New Idea/Support: ALAC - ASP for the upcoming round could be funded from excess application/evaluation fees or auction proceeds from the 2012 round. Some support for an extra component of the application fee funding the program. Some support for using excess fees from the next round for ASP in subsequent application periods.
  - New Idea/Divergence: RySG - ASP costs should be incorporated into the revenue neutral model for each round. Surplus from one round should not pay for ASP in a subsequent round.
- Evaluate potential funding partners for ASP:
  - New Idea: RySG - Disagrees with any attempt to earmark or limit the use of funds for specific applications or regions, or exert any undue influence, as a condition of any additional funding provided. The following should not be funding partners: existing contracted parties, new gTLD applicants, or other entities under contract with ICANN.
  - Divergence: Neustar - This is not ICANN’s responsibility.
- Evaluate whether additional funding is needed for ASP in subsequent procedures:
  - New Ideas: RySG - ICANN should quantify any additional financial commitments to the ASP, and the corresponding benefits of those additional commitments before increase can be supported.

#### Metrics:

- New Idea: ALAC - Suggests looking at “application versus approval numbers from outside the US/Europe region, geographic spread and for IDNs.”

- New Idea: BC - Suggests looking at the success of the TLD once launched. Where there may not be critical domain name industry infrastructure or where operating a registry may simply not be a priority for the potential applicants, generating awareness about new domains may be more important than volume of applications. Suggests collecting metrics ex ante and ex post - tracking users and other sustainability measures, as well as the number of new TLDs that are returned/not activated.

Additional considerations related to ASP, string contention resolution, and auctions:

- New Idea: ALAC - An applicant who qualifies for ASP should be given priority in any string contention set and not be subjected to further string contention resolution process.
- New Idea: Neustar - Allow ASP applicants to change their string to avoid the contention set; the new string would need to be similar in meaning to the original applied-for string.
- New Idea: RySG - ICANN should cultivate a list of resources, organizations, or agencies that would be willing to assist the applicant, including in relation to string contention objections.
- GAC: Concerns - Auctions of last resort should not be used to resolve contention between commercial and non-commercial applications.

Dedicated round for applicants from developing countries:

- This concept is supported by NCSG and there is also some support within At-Large.
- New Idea: LEMARIT - Only supports a dedicated round if limited to geographic TLDs.
- Divergence: RySG/BC - Do not support a dedicated round.

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

- None

Referrals to other sections

NCSG: Refer to Applications Assessed in Rounds (2.2.3), Communications (2.4.2), and Applicant Guidebook (2.4.1): “Regarding the period of application and evaluation, it would be clearer if there were rounds of applications followed by evaluation periods, instead of a single continuous process. . . Also, the effort of having a more extensively publicized Applicant Guidebook directed to developing countries and also translating it to as many languages as possible would help in outreaching to as many prospective applicants as possible, acknowledging that Applicant Guidebook was translated to the UN languages. The applicants should be given ample time and prior notification as to when a call for new gTLDs is going to be issued.”

(<https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/00066.html>)

GAC: Refer to Auctions of Last Resort: “Auctions of last resort should not be used to resolve contention between commercial and non-commercial applications. As to private auctions, incentives should be created to strongly disincentivise that instrument.”

(<https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q4/00070.html>)

#### Parking lot

- Under 2.5.4.c.8, RrSG requested information about how ASP is funded. Is any follow up needed on this item?
- CCT-RT Recommendations that the Board did not approve, but instead passed through to the GNSO for further consideration: Recommendation 32: Revisit the Applicant Financial Support Program. Recommendation 29: Set objectives/metrics for applications from the Global South (Board passed this recommendation through to the GNSO). Comments from the GAC point to these recommendations.

#### Suggested next steps

-

## 2.5.5 Terms & Conditions

### Background documentation

- Community Comment 2 - Section 2.5  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/cc2-subsequent-procedures-22mar17-en.pdf>)
- Initial Report - Section 2.5.5  
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group B public comment analysis:  
<https://docs.google.com/spreadsheets/d/133WbhWYB4M4kT6DqSfiCR2-ij7jxNkLj5EWZL-NA95M/edit?usp=sharing>

### Policy Goals / What the WG is Seeking to Accomplish

- Principles of transparency and accountability must be observed.

### Public comment summary

#### **High-level Agreements**

- Responses generally supported the idea that unless required under specific laws or the ICANN Bylaws, ICANN should only be permitted to reject an application if done so in accordance with the Terms and Conditions of the Applicant Guidebook.
- Responses generally supported the idea that in the event an application is rejected, the ICANN organization should be required to cite the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaw for not allowing an application to proceed.
- Responses generally supported the idea that if the covenant not to sue remains in place, there should be an appeals mechanism in place that can look into whether ICANN (or its designees/contractors) acted inconsistently (or failed to act consistently) with the Applicant Guidebook (see section 2.8.2 on Accountability Mechanisms for further detail).
- Responses generally supported the idea that if substantive changes are made to the Applicant Guidebook or program processes, applicants should be allowed some type of recourse, including if applicable, the right to withdraw an application from ICANN's consideration in exchange for a full refund. A framework for ICANN to make transparent changes to the Applicant Guidebook as well as available recourse to change applications or withdraw for applicants should be laid out.
- Responses generally supported providing a full refund to applicants in cases where a new gTLD is applied for but later is disqualified because of risk of Name Collision.

#### **Outstanding Items - New Ideas/Concerns/Divergence**

Rejection of applications only under law, Bylaws, or in accordance with Terms and Conditions:

- RySG: New Idea - Suggested language: "ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law, policy, or eligibility and evaluation requirements outlined in sections 1.2, 2.1-2, and 3.2.1 in the Applicant Guidebook."
- ICANN Org: Concern - ICANN org understands the intention of this preliminary recommendation to be that ICANN org should only be permitted to reject an application in accordance with the Terms and Conditions of the Applicant Guidebook, which is within the law and ICANN Bylaws. If correct, ICANN Org suggests revising language for clarity.

Proposed requirement that ICANN Org must disclose reason for rejecting an application:

- RySG/Fairwinds Partners/Valideus: New Idea - Disclosure should be confidential (RySG/Fairwinds Partners). Disclosure should be to the applicant exclusively if confidential information of the applicant might otherwise be revealed (Valideus).

Covenant not to sue:

- BC/Neustar/Jaime Baxter (dotgay LLC)/at least one RySG member: Support removing the covenant not to sue.
- IPC/ALAC/at least one RySG member: Recognize that unmitigated removal of the covenant not to sue may cause problems for ICANN/recognize that ICANN has good reasons to keep the covenant not to sue.
- Valideus/INTA/ALAC: Suggest that ICANN could limit liability to a reasonable level (ALAC: this could be done if the covenant not to sue is removed).
- INTA: New Idea - If the covenant not to sue remains, it should be made clear that this does not cover cases of fraud, negligence or willful misconduct (which cannot be excluded at law).
- New Idea: At least one RySG member suggests that if the covenant not to sue is eliminated or modified, parties could be required to use the IRP prior to the initiation of any judicial dispute.
- Appeals mechanism if covenant not to sue remains in place:
  - At least one RySG member opposes creating broader appeal mechanism that would look into whether ICANN (staff or Board) violated the Bylaws by making (or not making) a certain decision and instead believes that the revised accountability mechanisms already in place should be given a chance to succeed.
  - IPC: New Idea - If the appeals mechanism does not address concerns, add reservation to sue in cases of ICANN acting outside of its determination requirements.

Recourse if substantive changes are made to the Applicant Guidebook or program processes:

- RySG/INTA: Concern/New Idea - It is important to determine if changes have a material impact on the application. If there is material impact, recourse should be available and clearly specified.
- RySG: New Idea - Any changes should have good cause. ICANN should offer a time period in which applicants may prepare for, or object to, any updates to the Applicant Guidebook. If changes have material impact, applicants should have the opportunity to amend a pending application.

Refund for applicant if there are substantive changes to AGB or other circumstances:

- INTA: Concern - Important to specify details of refund.
- ICANN Org: Concern - Is the refund referenced in the preliminary recommendation in accordance with a refund schedule of the program, or if this is in reference to a full refund?
- RySG/Neustar: New Idea - Beyond circumstances outlined in the general agreements, limit additional opportunities for refunds, which may result in gaming.

Additional suggestions to change Terms and Conditions:

- ALAC: New Idea - Terms and Conditions should specify all applicable routes, procedures, costs and timelines for any challenge/appeal mechanism.
- BC: New Idea - Applicants should transparently declare whether they intend to operate the registry, or whether they anticipate selling pending applications to others.
- RySG: New Idea - Specify the procedures and timeframes for handling excess application fees.

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

- None

Referrals to other sections

Parking lot

- None

Suggested next steps