Your name: Anne Aikman-Scalese­­

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| **Issue** | **Applicable text (please quote directly)** | **Number and name of applicable report section** | **Cannot live with rationale** | **Proposed changes (taking into account whether others would be able to live with them)** |
|  | Allow autofill in applications for all questions but Questions 16, 18(a), 18(b), 19, 20, 21, 22, and 23 (but only if additional services are specified) | 2.4.3. – p. 7 – 5th bullet point | Agree with Questions designated as not eligible for “autofill” but not the limiting text re Question 23 “(but only if additional services are specified)” Applicants should not automatically autofill all pre-approved services at the time of application and wait until after application to specify additional services. This circumvents initial public comment periods and relies on later procedures available at ICANN for approving additional new services that do not receive as much public scrutiny.  | Delete “(but only if additional services are specified)”.As stated in Footnote 14 on page 7, Question 23 “asks the applicant to provide the name and full description of all the Registry Services to be provided.” Thus, registry services have to be disclosed at the time of application and this section should not be subject in any way to autofill.Deliberations under c. state that WG determined that auto-fill could be allowed in a “limited number of fields”. The current approach is the opposite – autofill permitted everywhere except for a limited number of questions. |
|  | The Working Group believes that for subsequent procedures the only historical costs that should be part of the cost structure in determining application fees are those actual costs directly related to the implementation of the New gTLD Program | 2.5.1 a. p.10 | The 2012 round demonstrates that significant costs can arise subsequent to applications being delegated. For the 2012 round, this included funding procedures for further policy development, interacting with regulatory authorities, launching an EPDP, and running the Sub Pro PDP. It’s not realistic to believe that ICANN can adequately determine and budget application fees without considering the ongoing indirect costs of the nature described above. | Delete “those actual costs directly related to the implementation of the New gTLD Program” and replace with “those actual and anticipated costs of implementation and subsequent administration of the New gTLD Program, including but not limited to costs arising from new legal compliance and/or policy development processes that may be required”. |
|  | “Unless required under specific laws or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook.” | 2.5.5. – p 14 first paragraph | The language does not account for the fact that the Board is required to act in a fiduciary capacity. For example, you cannot say that the Board has to approve an application made in accordance with the AGB if the Board determines it has a fiduciary duty to reject the application or if it would be permitted by the ByLaws, in the exercise of its fiduciary duty, to reject it. (This is different from saying that the ByLaws require them to reject it.)  | Revise as shown in ALL CAPS below”“Unless required under specific laws, OR AS THE BOARD DETERMINES IN THE EXERCISE OF ITS FIDUCIARY DUTIES AS CONTEMPLATED BY THE ICANN BYLAWS” , ICANN must only reject an application if such rejection is done in accordance with the provisions of the Applicant guidebook.” |
|  | …some type of recourse if substantive changes are made to the Applicant Guidebook or progam processes if such changes have or are reasonably likely to have a material impact on Applicants | P. 15 – Recommendation xx (rationale 3) | The recommendation does not specify:1. What “some type of recourse” means.
2. The timing at which changes are made that result in the “material impact”.
3. The standard of proof for determining “material impact”

This language is very confusing and indefinite in many respects. Did we establish a separate appeals mechanism for decisions by ICANN that fit under this recommendation? And how do the Applicant’s rights in this regard fit into the application of the Predictability Framework? | Revise the Recommendation as follows:“Applicants must be allowed to challenge substantive changes made to the Applicant Guidebook after applications are submitted through an appeals mechanism or Request for Reconsideration or both, at Applicant’s discretion. In such cases, the Applicant will have the burden of proof to demonstrate that the change has, or is likely to have, a material impact on the Applicant.” |
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