**New gTLD Subsequent Procedures Recommendations – Consensus Call**

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| **Recommendation** | **Text/Summary** | **Opposition Type** | **Reason for Opposition** |
| 3.6 | Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice & Consumer  Trust (CCT) Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy development processes must not stop or delay subsequent new gTLD rounds. | Full | Future rounds of new gTLDs should not proceed until relevant review processes have been completed – these reviews may identify problems that need to be corrected or addressed before the further expansion of the DNS. |
| 4.1 | The Working Group recommends differential treatment for certain applications based on either the application type, the string type, or the applicant type.  Such differential treatment may apply in one or more of the following elements of the new gTLD Program: Applicant eligibility; Application evaluation  process/requirements; Order of processing; String contention; Objections; Contractual provisions.  Different application types:  - Standard  - Community-Based (for different application questions, Community Priority Evaluation, and contractual requirements)  - Geographic Names (for different application questions)  - Specification 13 (.Brand TLDs) (for different application questions and contractual requirements)  Different string types:  - Geographic Names (for different application questions)  - IDN TLDs (priority in order of processing)  - Variant TLDs  - Strings subject to Category 1 Safeguards  Different Applicant Types:  - Intergovernmental organizations or governmental entities (for different contractual requirements)  - Applicants eligible for Applicant Support | Partial | I support different treatment for certain applications based on either the application type, the string type, or the applicant type. However, I do not support different treatment of Community-based applications as there is no demonstrated need or benefit from this. First, I don’t see why a community-based application should have priority over any other type of application. But regardless, the first round demonstrated the immense challenges involved in determining whether an application met the CPE requirements, resulting in numerous and needless disputes, and the WG has not made any meaningful progress in in this regard which would prevent similar disputes in the next round(s) other than to lower the threshold for CPE |
| 15.1 | Subject to Implementation Guidance 15.2 below, the Working Group affirms that as was the case in the 2012 round, all applications in subsequent procedures should pay the same base application fee regardless of the type of application or the number of applications that the same applicant submits. This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g., Community Priority Evaluation, Registry Service Evaluation Process, etc.). The Working Group notes that as was the case in the 2012 round, successful candidates for the Applicant Support Program will be eligible for a reduced application fee. | Full | In a cost recovery model .Brand applicants should have deduced fees given the lighter-touch evaluation process for such TLDs compared to open TLDs. |
| 15.7 | In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN must be used to benefit the New gTLD  Program and not any other ICANN program or purpose; that includes one or more of the following elements of the New gTLD Program:  (a) a global communication and awareness campaign about the introduction and availability of new gTLDs;  (b) long-term program needs such as system upgrades, fixed assets, etc.;  (c) Applicant Support Program;  (d) top-up of any shortfall in the segregated fund as described below; or  (e) other purpose(s) that benefits the New gTLD Program. | Full | Excess fees should be refunded back to applicants or applied to initiatives which would improve **trust** in the DNS, particularly around security threats, malware, fraud and intellectual property infringement rather than promoting new gTLDs generally, and not just used to perpetuate the new gTLD program forever. For example, I would support the use of any excess funds to ensure that there is robust monitoring and enforcement of the contractual commitments made by applicants, registry operators, and registrars, including in particular RVCs, PICs, and anti-abuse requirements. |
| 17.1 | Fee reduction must be available for select applicants who meet evaluation criteria through the Applicant Support Program. The Working Group further recommends new types of financial support for subsequent procedures that were not part of the Program in 2012, specifically, coverage of additional application fees (see Recommendation 17.2) and a bid credit, multiplier, or other similar mechanism that applies to a bid submitted by an applicant qualified for Applicant Support who  participates in an ICANN Auction of Last Resort (see Recommendation 17.15 and Implementation Guidance 17.16 and 17.17). In addition, the Working Group recommends that ICANN facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need. Further, ICANN must conduct outreach and awareness-raising activities during the Communications Period to both potential applicants and prospective pro-bono service providers. | Partial | While I have no opinion on the need for the Applicant Support Program, determining an appropriate bid credit or multiplier is unworkable, expensive and time consuming. In addition, the application of bid credits is likely to wind up in  Reconsideration Requests, IRPs and litigation. |
| 17.15 -17.17 | If an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an ICANN Auction of Last Resort, a bid credit,  multiplier, or other similar mechanism must apply to the bid submitted by that applicant. Research should be conducted in the implementation phase to determine the exact nature and amount of the bid credit, multiplier, or other mechanism. Research should also be completed to determine a maximum value associated with the bid credit, multiplier, or other mechanism. If the applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three (3) years. This restriction seeks to prevent gaming of the Applicant Support Program whereby an applicant transfers its ownership of a  registry to a third party in exchange for any form of financial gain. However, assignments that become necessary for the following reasons shall be permitted:  ● Assignments due to the TLD being unable to meet its financial obligations and unable to secure financing or restructure operations to carry out  operations in the short-term  ● Assignments due to death or retirement of a majority shareholder  ● Assignments due to EBERO  ● Assignments to affiliates or subsidiaries  ● Assignments required by competition authorities | Partial | I oppose bid credis because determining an appropriate bid credit or multiplier is unworkable, expensive and time consuming. In addition, the application of bid credits is likely to wind up in  Reconsideration Requests, IRPs and litigation. However, if bid credits will be provided then I support mechanisms to prevent gaming that are appropriately limited so as to permit assignment of the TLD when approrpiate |
| 17.18 | Unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether “Qualified” or “Disqualified”) must have the option to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be given a limited period of time to provide any additional information that would be necessary to convert the application into one that would meet the standard criteria (e.g., showing how the applicant for financial and other support could acquire the requisite financial backing and other support services to pass the applicable evaluation criteria). That said, this limited period of time should not cause unreasonable delay to the other elements of the New gTLD Program or to any other applicants for a string in which its application may be in a contention set. | Partial | The SARP should not determine whether there was gaming because there is not an objective manner for the SARP to determine if gaming was intended. The result of this Recommendation will be a subjective test that is likely to result in Reconsideration Requests, IRPs and litigation. |
| 18.3 | In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under  Topic 32 of this report are introduced into the program (in addition to the accountability  mechanisms set forth in the current ICANN Bylaws). | Partial | Applicants should not be prohibited from utilizing the courts to protect their rights. However, I still support the introduction of the appeals/challenge mechanisms set forth under  Topic 32 |
| 21.4 | The Working Group recommends reserving as unavailable for delegation at the top level the acronym associated with Public Technical Identifiers, “PTI”. | Full | There has been no signal that the Public Technical Identifiers entity would need to use or prevent any third party from using .PTI as a potential new gTLD. There are other entities who legitimately may wish to apply for this string, such as owners of brands corresponding to PTI; they should not be unduly prejudiced or prevented from such application/possible operation of such a TLD simply because their brand corresponds to the PTI acronym for Public Technical Identifiers. There does not seem to be any other technical or legal rationale for reserving .PTI, nor would Internet users generally associate a .PTI TLD with Public Technical Identifiers. |
| 24.3 – 24.4 | The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .EXAMPLE and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.  ● An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted.  ● If there is an application for the singular version of a word and an application for a plural version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because  they are confusingly similar.  ● Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if  one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified.  The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be  the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.  All applicants should be required to respond to an  application question asking the applicant to explain the scope of intended use of the TLD, including any ways the applicant does not intend to use the TLD. If two or more applicants in the same round apply for strings that appear visually to be a single and plural of one another, and it is not clear to evaluators based on the applications whether the intended use is the same or different and therefore  whether one string is a singular or plural of another, ICANN should issue a Clarifying Question. | Partial | I support the portion of the Recommendation that Singular and Plural variants of the same string should be considered in contention and only one such application permitted to proceed; However, I oppose the portion of the Recommendation that seeks to apply an intended meaning test to determine whether strings are similar; the test should be purely based on the appearance of the string, as the goal is to prevent Internet user confusion and misdirection in the visual-oriented DNS format, absent some circumstances that would make such confusion unlikely despite visual similarity of the strings. |
| 24.5 | If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings, the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application. | Partial | I oppose use of the “Intended Use” test as stated in my opposition to Recommendations 24.3-24.4, but support in the Alternative Should Rec 24.3-24.4 be approved |
| 24.6 | Eliminate the use of the SWORD tool in subsequent procedures. | Partial | Our recommendation should encourage the development and testing of an  algorithmic approach. As Recommendation 31.18 states: “ICANN must reduce  the risk of inconsistent outcomes in the String Confusion Objection Process.” An algorithmic, objective approach is the only way to prevent the errors and litigation of the last round. Some in the WG claimed the problem was too difficult to solve algorithmically but facial recognition (a significantly harder problem) is effective.  Early testing of SWORD demonstrated its effectiveness. Algorithms have grown more powerful since then. Condemning the program to subjective human  judgments will impose unneeded costs, time and argument. An algorithmic  approach would also eliminate or sharply reduce string similarity objections |
| 34.1 | The Working Group affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (CPE). | Full | I do not believe there is a need for specially defined “community” applications, particularly given the challenges in defining a “community” for purposes of priority evaluation which resulted in numerous disputes and litigation in the first round and is certain to do the same in subsequent rounds |
| 34.11 | the Working Group proposes changing the passing score for achieving community priority status from a numerical score to a percentage of the total number of possible points. The Working Group notes that the scoring framework from the 2012 round was rigid and required an applicant to receive a perfect or nearly perfect score on every evaluation criteria in order to receive community priority status. As a result, very few applications were able to achieve community status. Given the Working Group’s affirmation of the importance of the prioritization of community-based applications, the Working Group suggests lowering the threshold for achieving community-based status from the 87.5% of the total available evaluation points (14 out of 16 points) as was the case in the 2012 round to 75-80%. | Partial | I do not object to changing from numerical to percentage scoring. However I do oppose lowering the passing threshold without appropriate analysis which will likely result in gaming of the CPE process |
| 35.3 | Applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit. The Working Group discussed the following potential non-exhaustive list of “Factors” that ICANN may consider in determining whether an application was submitted with a bona fide (“good faith”) intention to operate the gTLD. | Full | There is no way to see into the mind of the applicant and no objective way to measure whether an applicant has a good faith intent to operate the string except in the most extreme examples. The criteria proposed by the WG are unworkable and not a good proxy for measuring good faith intent as there are numerous other reasons each factor could be present other than a lack of intent to operate the string. This will only result in numerous disputes and litigation. |
| 35.4 | ICANN Auctions of Last Resort must be conducted using the second-price auction method, consistent with following rules and procedural steps [rules and procedural steps omitted] | Full | This recommendation appears to be simply a preference by a small group of ICANN insiders.  No problem was ever identified and this proposed solution to the non-problem has never been studied to see if it would fix the problem which no one, in over four years, has located.  This is simply not fact based policy development and the recommendation should have never made it into this final report in the first place. Unfortunately, the proposed solution without a problem has created significant problems including what appears to be a significant, and unnecessary, barrier to entry for new .brand applicants.  In fact, the proposed recommendation seems tailor-made to exclude .brands from the New gTLD Program as it requires .brand applicants to participate in blind bidding, which cannot be increased, with no information about (1) who the other applicants are, (2) how those other applicants intend to use the TLD, and (3) whether or not the other applicants have put forward any Voluntary Registry Commitments to ensure that the TLD will not be used in conjunction with any goods or services that the .Brand applicant trades in.  Additionally, it requires blind bids to be put in prior to the completion of prior rights objections, rendering that flawed objections process even more impotent. |