

Internationalized Domain Names Expedited Policy Development Process

A3: Limited Challenge Mechanism



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A3 Recap Takeaways

The EPDP Team agreed on the following points:

- 1. An applicant can challenge an evaluation determined by the DNS Stability Panel that the applied-for TLD label, whose script is supported by the RZ-LGR, is “invalid”.**
- 2. Eligibility for filing such a challenge is limited to the applicant’s belief that the DNS Stability Panel has incorrectly assessed the label as “invalid”.**
- 3. The evaluation challenge processes and criteria applicable to the DNS Stability Review recommended in the SubPro Final Report should be used for such a challenge.**

SubPro Recommendations & Implementation Guidance for Challenge Mechanism

EPDP Charter Language (emphasis added)

....If an applied-for TLD label, whose script is supported by the RZ-LGR, is determined to be “invalid”, is there a reason NOT to use the **evaluation challenge processes recommended by SubPro**? If so, rationale must be clearly stated. If SubPro’s recommendation on the evaluation challenge process should be used, **what are the criteria for filing such a challenge? Should any additional specific implementation guidance be provided**, especially pertaining to the challenge to the LGR calculation as it can have a profound, decimating impact on the use of RZ-LGR?

Applicable SubPro Recommendations & Implementation Guidance

Recommendation 32.1: The Working Group recommends that **ICANN establish a mechanism** that allows specific parties to **challenge** or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.

Recommendation 32.2: In support of transparency, **clear procedures and rules** must be established for challenge/appeal processes as described in the implementation guidance below.

Implementation Guidance 32.3: **Parties with standing** to file a challenge/appeal should vary depending on the process being challenged/appealed.

Implementation Guidance 32.4: The **type of decision** that may be challenged/appealed should vary depending on the process being challenged/appealed.

Implementation Guidance 32.5: The Working Group’s guidance on the **arbiter** for each type of challenge/appeal is summarized in **Annex F**.

Implementation Guidance 32.8: The Working Group’s guidance on the **party bearing the cost** of a challenge/appeal is summarized in Annex F.

Implementation Guidance 32.9: The Working Group’s guidance on the **remedy** for a successful challenge/appeal is summarized in Annex F.

Process	Outcome that might warrant challenge	Potential affected parties	Parties with standing	Arbiter of challenge	Likely result of a successful challenge	Who bears cost?
DNS Stability	Failure - disqualification for application from program	Applicant	Applicant	Existing evaluator entity - different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant

SubPro also developed the following recommendation and implementation guidance related to the challenge mechanism:

- ❑ Implementation Guidance 32.5 (additional details)
- ❑ Implementation Guidance 32.7
- ❑ Recommendation 32.10
- ❑ Implementation Guidance 32.11
- ❑ Implementation Guidance 32.12
- ❑ Implementation Guidance 32.13

Implementation Guidance 32.5 (Additional Details)

Implementation Guidance 32.5: ...In the case of challenges to evaluation decisions, the arbiter should typically be from the entity that conducted the original evaluation, but the person(s) responsible for making the ultimate decision in the appeal must be different from those that were responsible for the evaluation.

The Working Group recognizes that ICANN itself may be an evaluator for any of the application evaluation components. This would not change the types of challenges allowed as set forth in Annex F. The arbiter of a challenge where ICANN itself was the evaluator should be a person or persons within ICANN that were not involved in the ultimate evaluation decision. If possible, the Working Group also recommends that the challenge process should be done under the supervision of the ICANN Ombudsman.

Implementation Guidance 32.7

Implementation Guidance 32.7: All challenges and appeals except for the conflict of interest appeals should be reviewed under the “clearly erroneous” standard...

(Under a clearly erroneous standard of review, the appeals panel must accept the evaluator’s or dispute panel’s findings of fact unless (1) the panel failed to follow the appropriate procedures or (2) failed to consider/solicit necessary material evidence or information.)

Recommendation 32.10

Recommendation 32.10: The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.

Implementation Guidance 32.11

Implementation Guidance 32.11: A designated time frame should be established in which challenges and appeals may be filed.

Implementation Guidance 32.12: The limited challenge/appeal mechanism should include a “quick look” step at the beginning of the process to identify and eliminate frivolous challenges/appeals...

Implementation Guidance 32.13

Implementation Guidance 32.13: A party should be limited to a single round of challenge/appeal for an issue. With the exception of challenges to conflict of interest determinations, parties should only be permitted to challenge/appeal the final decision on an evaluation or objection and should not be permitted to file “interlocutory” appeals as the process progresses...

Questions for EPDP Team

Questions

1. Are any or all of the additional SubPro recommendation and implementation guidance applicable?

2. Should any additional implementation guidance be developed?