

Registries Stakeholder Group Statement

Issue: Draft version of New gTLD Program Implementation Review

Date statement submitted: December 6, 2015

Reference URL: <http://newgtlds.icann.org/en/reviews/implementation/draft-program-review-16sep15-en.pdf>

The Registries Stakeholder Group (RySG) provides the following comments on the draft New gTLD Program Implementation Review published at the reference URL.

Most of the current RySG members either became registries as part of the 2012 round of new gTLDs, or were already RySG members that also applied in the 2012 round for additional TLDs, so these comments come from direct experience with the process.

The comments are presented in table format including the larger topic being addressed, and if any specific part of the topic is being commented, a specific mention to the item or lesson learned is also provided.

Although in most cases the absence of an RySG comment means we are in general agreement with the report contents, in some issues the stakeholder group had different perspectives and for those no specific comment has been provided.

Best regards.

Topic	Item(s) or Lessons Learned	Comment
Foreword		<p>On its face, the scope of this review is limited to “the experiences of the ICANN staff members charged with executing the New gTLD Program.” The report does not identify which staff members, does not indicate whether former staff members were contacted about their experiences, does not represent that this report is an exhaustive summary (as opposed to illustrative), and does not disclose the methodology used to determine which experiences are included – and which are excluded. Accordingly, the review in its current form warrants correspondingly limited deference by the CCT Review Team.</p> <p>The review is also lacking any mention other than budgeting to TMCH (Trademark Clearing House) and TMDB (Trademark Database) from operational and technical capability perspectives, different from the policy view that might be addressed in the RPM review(s). Although a cornerstone of the program, we found them to be lacking regarding SLAs and integration testing.</p> <p>In a minor detail, we suggest updating figure i to the then current numbers, since an important cut-off date for brand applicants has now passed.</p>
Executive Summary		<p>AGB and draft RA suffered from many changes during the application process, with some of those changes directly impacting commercial registries’ financial projections and bottom-lines. Such changes should be reserved to extremely extraordinary circumstances, and require an approval process similar to the one already in place in 2012-round gTLD agreements (section 7.7).</p>
1.1 Application Submission		<p>Asking for division between a USD 5,000 token fee and an USD 180,000 app fee, both caused issues (including extra banking fees) for some applicants, even though it enabled some other applicants to participate depending on jurisdiction. Requiring separate deposits per application was also not ideal to some of the applicants. We suggest a system similar to a bank account where each deposit gets a token number, which would then be used to draw funds from, for multiple applications. We suggest drafting contracts allowing applicants to either pay 5,000 + 180,000 USD fees or pay the full amount of one or multiple applications. In some countries, in addition to an invoice, a contract between two parties should be executed prior to payment for amounts greater than 15,000 Euros, which is regarded to be a large transfer and is subject to additional checks due to anti-laundering legislation). See Financial Action Task Force (FATF) recommendations http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf , Page 14, D. PREVENTIVE MEASURES, Art. 10. Customer due diligence *, (ii).</p>
1.2 Prioritization		<p>We note that the secondary timestamp process originally envisioned had a regional balancing system that was not transitioned to the draw, which was detrimental to underserved regions.</p> <p>For next rounds, we suggest that processing prioritization is guided only by efficiencies. If prioritization is needed, perform evaluation of elements that are common across multiple applications before the prioritization process begins. If competition between strings is</p>

		considered an issue, a system where applicants identifying other strings as competing with their own, on a 1 per application limit, could be used. For instance, if one applicant has .car and another has .cars, .car might ask that if .car and .cars both proceed with no objections that it signs at the same time that .cars sign.
1.3 Application Comments		We support defining possible outcomes the comments can achieve, so commenters can have more realistic expectations. The comment process should also be aligned with the timeline, so a comment suggesting an objection is untimely after the objection period has ended. We also suggest comments have a link to a statement of interest of the commenter so the comments can be better assessed regarding conflicts of interest.
1.4 Application Change Requests		We suggest that all applicants in a contention set be notified of a change being (a) proposed; (b) put to public comment; (c) accepted.
2.1 Initial and Extended Evaluation	2.1.4.1 Evaluation Process	90% of applications receiving CQs is a clear indicator that questions lacked clarity or requirements were unclear or unachievable. Since the worst offender is COI, please refer to comments on 7.1, but also to our comments on technical and financial evaluation.
2.2 Background Screening		Asking for officers and employees home addresses was a bad private data collection decision that had a bad outcome when this data was exposed. Besides moving much of the screening to the contracting process, we suggest restricting any requested personal info to names with the possible addition of certifications of good standing with law and tax authorities.
2.3 String Similarity Evaluation		IDN Variants that could be bundled (like .quebec and .québec) were prevented from applying in this round; we suggest that policy process on this could be developed to allow those variants to be delegated provided community-defined conditions are followed.
2.4 DNS Stability Evaluation		IDN DNS Stability review should be replaced with simple automatic checks by the application system implementing the LGR (Label Generation Rules) for the IDN in question. ASCII DNS Stability review is already incorporated in the list of blocked strings (like EXAMPLE) and any additions to the list (both ASCII and IDNs) can be part of a public consultation process made prior to the application process in order for such an evaluation to not be required, and its fees deducted from the application fee.
2.5 Geographic Names Evaluation	2.5.5 Conclusion	"geographic games designation" should read "geographic names designation"
2.5 Geographic Names Evaluation	2.5.4 Assessment	<p>Verification of public authority process was lacking; even some approved applications with proper support were not properly verified. We suggest a more formal approach requiring the public authority to use its legally binding communication channel with local citizens (known in some jurisdictions as official press) to publish the support for a specific applicant. We also note that vetting of authorities is critical; in one of the evaluation errors a trademark office was identified as supporting authority, instead of properly elected or selected public officials (city or state council and or executive branch).</p> <p>ICANN should retain the current definition of and approach to Geographic Names, which was developed after multiple iterations of the AGB (and community comment) as well as a Board-GAC</p>

		<p>consultation. There should be no purpose to the Geographic Name designation other than the limited evaluative purpose in the AGB. The Geographic Names definition should not be used as a proxy for or to circumvent national and international law. A vague definition of Geographic Names creates uncertainty for potential applicants and the community; an overly broad definition of Geographic Names interferes with existing proprietary rights.</p>
2.6 Technical and Operational Capability Evaluation		<p>We understand the concerns on accrediting RSPs (Registry Service Providers) in the 2012 round, but the lack of such a program is now making changing RSPs harder for registry operators, which goes contrary to providing competition and choice. We suggest that such an accreditation program is developed now, even before a next round, in order to facilitate the subcontractor assignment process. It would also be available to replace both Technical and Operational Evaluation and Pre-Delegation Testing for a next round if it's so decided, since its effect on a new round would likely be marginal after the expansion already seen in the 2012 round.</p>
2.7 Financial Capability		<p>The structure of the questions assumed for-profit selling of domain names, which is not the case for brand and exclusive-use TLDs. 2012-round experience is showing that failed business structures are quickly succeeded by new operators with no issues to registrants; it also has shown a great disparity between business plans and reality, which made most of the financial information in applications useless. We suggest that consideration be given to restricting this part to a background screening of financial practices of the parent organization(s), removing the need for financial evaluation (which also can reduce application fee). Please see also our suggestion regarding COI (7.1). Some applicants also faced additional financial questions right before RA execution, which we see as a failure of the Financial panel in identifying those issues that should have financial implications to the contractor.</p>
2.8 Registry Services Evaluation		<p>Instead of an open question requiring evaluation, offering the most common examples of what ended up being in Exhibit A of the current agreements provides for an efficient process. Applicants intending to offer only those services would be guaranteed to not go thru RSTEP, making for a predictable application cost. Registries willing to provide additional services would still be able to, and the evaluation of those services would be done by the same team currently processing RSEPs, in order to have non-discriminatory treatment between registries that described services in their application versus registries that filled RSEPs after contract signing. This would also enable a small reduction in application fee.</p>
3.1 GAC Advice	Early Warning	<p>Since GAC was not bound to only issue advice to applications with early warning, we found the EW mechanism to be more trouble than it's worth. We suggest moving the 80% refund threshold to apply to all applicants that decide or are required to withdraw based on effects of GAC Advice on their proposed registries and skip the EW phase altogether. If the EW mechanism is not removed, ICANN should clarify in the AGB that an Early Warning is issued on behalf of individual GAC members, and not the GAC itself (and is not entitled to any presumptions).</p>
3.1 GAC Advice	GAC Advice and Independent	<p>Some of the issues raised by the GAC were in scope for the IO; the proper solution to those would be an automatic trigger for IO objection if a Community or Limited Public Interest is being raised,</p>

	Objector	but that would also impose on GAC a time limit for this type of advice.
3.1 GAC Advice	GAC Advice	We suggest providing applicants whose applications have received GAC Advice that the application should not proceed the opportunity to present to the ICANN Board in person. Board's consideration of such GAC advice demonstrates that, in some instances, the Board did not have a clear understanding of the issue, and providing an applicant with the opportunity to present to the Board in person would have avoided such lack of understanding.
3.2 Objections and Dispute Resolution	String Confusion Objections	We suggest making a 3-member panel the only option for SCOs, which might reduce inconsistencies among objections. We also suggest that all equal strings be included in a contention set if a SCO is deemed valid; not only the objector, but also all other applicants should be allowed to provide defenses pro or against that SCO. Further, the IO could be granted standing for SCOs in the case where registrants of a TLD might be affected by confusion and the current TLD operator does not raise the issue.
3.2 Objections and Dispute Resolution	Community Objections	A good number of community objections were in fact attempts to win a contention set; we suggest a quick-look process to assess such behavior and disqualify such objections. We were also shocked by the expensive fees of these proceedings, and suggest some uniformity with LROs that were similar in difficulty but much less expensive to file or to rebut. Because Community Objection and Limited Public Interest Objection Panels inconsistently applied the AGB criteria, further clarification of those criteria should be provided for any future rounds.
3.2 Objections and Dispute Resolution	Limited Public Interest Objections	We suggest considering limiting this type of objection to the IO and establishing clearer criteria of what is and what is not an LPI Objection. Generally, applicants and the community considered the fees for all objections except for String Confusion and Legal Rights Objections to be high (and higher than expected). ICANN should require DRSPs for the Community and Limited Public Interest Objections to provide lower fees. Because Community Objection and Limited Public Interest Objection Panels inconsistently applied the AGB criteria, further clarification of those criteria should be provided for any future rounds.
3.2 Objections and Dispute Resolution	Review mechanism	We support adding a review mechanism, noting that RfR/IRP proceedings were not tailored to application processes due to limitations on scope, causing delays and disproportionate costs for applicants. We also note that such a review process should also grant standing to any member of the contention set(s) affected by the review.
3.2 Objections and Dispute Resolution	Independent Objector	The Independent Objector should be contractually required to withdraw his objection if a third party has objected to the same application on the same ground. The fact that the Independent Objector claimed to some applicants that "the quality of the third-party objection" constituted an "extraordinary circumstance" demonstrates that the IO should not have such discretion in the future. Because multiple applicants argued that the IO had a conflict of interest that should have precluding the IO from filing an objection against their respective applications and at least one Community Objection Panel dismissed the IO's objection on this ground, there must be an initial procedure/process through which allegations that the IO has a conflict of interest can be addressed and resolved. It is shocking that applicants were forced to spend tens of thousands of

		dollars to defend against IO objections in which the IO appeared to (and in one case, found to) have a conflict of interest. Moreover, it is curious that ICANN staff highlighted the fact that the Independent Objector “has represented governments as Counsel and Advocate in the International Court of Justice in many significant and well-known cases” (173) given that this representation formed the basis of the IO’s conflict of interest that led one Community Objection Panel to dismiss the IO’s objection.
4.2 Auction: Mechanism of Last Resort		We saw no mention of the issue where ICANN pays the auction provider for contention sets settled just before auction; we suggest tuning the auction procedure and auction provider agreement to avoid such costs.
5.1 Contracting		Please see comments to Registry Services, COI and Background Screening topics that affect contracting, which can be significantly expedited by embedding all such factors in the process.
5.2 Pre-Delegation Testing and Transition to IANA		Please see comment regarding Technical Evaluation, where RSP accreditation could make PDT unneeded, reducing both ICANN and applicant costs.
6.1 Applicant Support Program		The defined program was much more restricted than prescribed by GNSO Policy; it seems that eliminating any possibility of gaming was made a much higher priority than actually supporting needy applicants, to the point the program gamed itself out of actually being useful. We suggest replacing a good part of preemptive criteria with post-delegation monetary penalties like a multiple of the difference saved. If ICANN retains the Applicant Support program, ICANN should take cost-effective steps to promote global awareness of the program.
7.1 Continued Operations Instrument		We agree that other mechanisms besides unconditional LoCs should be used for funding EBERO. Since most of the applications required only the base level of the COI, we suggest incorporating the whole amount of one event (USD 18,000) as part of the application fee (notably by reducing the uncertainty factor used in the first round, so no actual increase would be necessary), and making both LoC and full amount deposits with ICANN available as options to fund EBERO during the time they are required. We also note that unconditional LoCs are likely in violation of FATF recommendations, since the beneficiary is an unknown third party to be designated by ICANN. If ICANN retains a COI requirement, it should consult with financial institutions in the countries that accounted for at least 75% of the applications to ensure that ICANN’s requirements are consistent with and permitted by the actual letter of credit practices in those countries.
8.1 Program Processes, Systems, Resources	8.1.4.2 APPLICANT-FACING SYSTEMS - TLD Application System (TAS)	We found no mention of the issues applicants faced regarding characters that were required to describe technical documentation but were not allowed in TAS, requiring workarounds. Any application submission system needs to allow all ASCII characters no matter if they have meaning in mark-up languages or database systems, and allow a significant portion of the Unicode charset to allow proper representation of IDNs, names, locations and purposes. ICANN should take the steps and make the investment necessary to ensure that the TAS (or successor system) is secure and that the numerous “glitches” in this version of TAS that disclosed applicant confidential data to third parties do not occur. One of those steps we

		suggest is a pilot testing phase for TAS and all other portals used in the process prior to the actual application round (in order to avoid multiple glitches and periods of unavailability that plagued the first round).
8.1 Program Processes, Systems, Resources	8.1.4.2 APPLICANT-FACING SYSTEMS - Customer Portal	We suggest that using the same customer service system that is already in place for registries, GDD Portal, instead of an applicant customer service system might be useful for easing up the transition for delegation.
8.2 Service Provider Coordination		Employees/contractors of third-party firms retained as Evaluation Panels should not be permitted to participate in those panels if such employee/contractor has been an active member of an ICANN Supporting Organization, Advisory Committee, Stakeholder Group, or Constituency in the preceding 2 years. This prohibition will avoid the appearance of impropriety and conflicts of interest. ICANN should provide training to all DRSPs to ensure that all panelists have a consistent baseline understanding of the objection criteria, should require all DRSPs to publish their panelist selection criteria before the objection window opens, and should require all DRSPs to include in their RFP responses strict timelines that will apply to the processing and resolution of all objections (and that are shorter than the timelines used by the DRSP for Community and Limited Public Interest Objections).
8.2 Service Provider Coordination	8.2.4.1 Service Provider Selection Process	ICANN should provide transparency and predictability to the procurement process following ICANN's procurement guidelines; publish selection criteria, providers' process documents, and other relevant and non-confidential material in a timely manner. TMCH and TMDB service provider selection are two examples where processes including RFPs were not followed.
8.3 Financial Management		We suggest keeping the allowed variance due to banking fees
8.4 Communications		We found communications to end users regarding the existence of new gTLDs, after the beginning of delegations, lacking. This still reflects today in people not recognizing some new gTLDs as domain names, which can make for bad decisions regarding security or how to reach that online content or service. The same can be said about communications to the software and online services community, which lead to acceptance issues. We suggest defining an additional offshore zone, for sake of clarity in regional breakdown and more even distribution of applications (some large companies used it to apply for TLD and thus were represented as the company from the EUROPE region, where they do not run major operations). Ocean islands do not belong to Europe in geographical terms.
8.5 Customer Service		Although we agree that customer service is critical and welcome improvements in this regard, we note that careful planning and overall streamlining of the process can have a much larger impact in reducing the need for requesting customer service.