
Public Comment Summary Report

Proposed Language for the Next Round Applicant Support Program and Registry Service Provider Evaluation Program Terms and Conditions

Open for Submissions Date:

Wednesday, 24 July 2024

Closed for Submissions Date:

Friday, 23 August 2024

Summary Report Due Date:

Friday, 06 September 2024

Category: Policy

Requester: ICANN org

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Open Proceeding Link:

<https://www.icann.org/en/public-comment/proceeding/proposed-language-for-the-next-round-applicant-support-program-and-registry-service-provider-evaluation-program-terms-and-conditions-24-07-2024>

Outcome:

A total of four Public Comments were submitted by stakeholders from across the community on the proposed language for the Next Round Applicant Support Program (ASP) and Registry Service Provider (RSP) Evaluation Program Terms and Conditions. Submissions expressed that the proposed language was not entirely consistent with the [Final Report on the new gTLD Subsequent Procedures \(SubPro\) Policy Development Process](#) (SubPro Final Report) outputs, with more comments targeted towards ASP. All the Public Comments received will be carefully considered by ICANN org, and any changes required to the proposed language will be reviewed with the SubPro Implementation Review Team in a timely manner to ensure that the Terms and Conditions for both programs are published before their anticipated launch 19 November 2024.

Section 1: What We Received Input On

In this Public Comment proceeding, ICANN org looked for input from the community on whether the proposed language for the Terms and Conditions for the New gTLD Program: Next Round Applicant Support Program and Registry Service Provider Evaluation Program is consistent with recommendations 18.4 and 18.6 as well as recommendations from Topics 6 and 17 from the [Final Report on the new gTLD Subsequent Procedures Policy Development Process](#).

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
At-Large Advisory Committee (ALAC)	Policy staff in support of the At-Large Community	ALAC
Registrars Stakeholder Group (RrSG)	Zoe Bonython	RrSG
Registries Stakeholder Group (RySG)	Registries Stakeholder Group	RySG

Individuals:

Name	Affiliation (if provided)	Initials
Paul McGrady		PM

Section 2a: Late Submissions

At its discretion, ICANN org accepted one late submission from a community group that requested additional time. The comment has been appended to this summary report.

Organizations and Groups:

Name	Submitted by	Initials
Russian Federation	Viacheslav Erokhin	VE

Section 3: Summary of Submissions

In general, submissions expressed that the proposed language was not consistent with the SubPro Final Report outputs, with more comments targeted towards ASP. For example:

- “Consistent with our comments in respect of ASP: 1. Proposed Clause 10: Treatment of rights, obligations The ALAC notes that the provisions around rights and obligations of an applicant from the 2012 AGB have been dropped. We suggest that these provisions be reinstated to provide absolute clarity that an applicant will not acquire any rights in connection with any new gTLD that is intended to be applied for and rights (if any) are solely in respect of its application as set out in the RSP Handbook.” (ALAC)
- “The language contains several references to ICANN's discretion and ICANN's sole discretion. Such references are facially inconsistent with ICANN's Bylaws[...].” (PM)

Topic	Overview of Responses ("Is the proposed language consistent with the relevant SubPro Final Report recommendations?")	Summary of Additional Comments
Terms & Conditions Language consistency with recommendations 18.4 and	<ul style="list-style-type: none"> ● Yes: 1 ● No: 3 ● No response: 0 	ALAC had minor suggestions on grammar, consistency in the use of terms (e.g.,

<p>18.6 from Topic 18: Terms and Conditions, and Topic 17: Applicant Support</p>		<p>“Applicant Support Program” in lieu of “ASP”), and on adding hyperlinks where appropriate.</p> <p>PM’s submission suggested that the IRT should correct any references to ICANN’s discretion or sole discretion by stating such discretion or sole discretion is subject to the requirements of ICANN’s Bylaws.</p> <p>RrSG’s submission suggested that ccTLD ROs could be worthy participants to the ASP. The same submission interpreted Implementation Guidance (IG) 17.6 as confirming Recommendation 17.1.</p> <p>RySG’s submission suggested changing Section 1 to “within 5 business days” as opposed to “within 5 days” when it comes to an event triggering an obligation to notify ICANN.</p> <p>RySG’s submission also suggested including language in Section 3 [ASP portion] that not qualifying for ASP does not provide any disadvantages in the New gTLD application process.</p>
<p>Terms & Conditions Language consistency with recommendations 18.4 and 18.6 from Topic 18: Terms and Conditions, and Topic 6: Registry Service Provider Pre-Evaluation</p>	<ul style="list-style-type: none"> ● Yes: 1 ● No: 2 ● No response: 1 	<p>PM’s submission suggested that the IRT should correct any references to ICANN’s discretion or sole discretion by stating such discretion or sole discretion is subject to the requirements of ICANN’s Bylaws.</p>

Section 4: Analysis of Submissions

In analyzing the submissions, ICANN org will take into account the items below and discuss any changes to the proposed Terms and Conditions language with the IRT, in relation to both the ASP, and also to the RSP:

ASP:

- Discussing changes to language (currently “or”) in Proposed Clause 4 (between “at the time this Application is submitted” and “when ICANN proposes to delegate the new gTLD”) to provide clarity around which terms and conditions are to apply to the applicant at which moment in the process. ALAC has proposed “up to” to replace “or” in this case.
- Discussing the potential inclusion of the intent of IG 17.17 (“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.” - [SubPro Final Report](#)) in the ASP Terms and Conditions, as the IRT ASP Sub-Track agreed it would now apply to **all** successful ASP applicants, not only those who prevailed in an auction, with the aim of reducing the risk of gaming.
- Discussing potentially simplifying the language in Proposed Clause 3 (chances of success in the New gTLD application)
- Clarification on Proposed Clause 7 of the Terms and Conditions (confidentiality obligations, particularly around applied-for string).
- Clarification of the applicability of Recommendations 18.4 and 18.6 on the ASP as well as the New gTLD Program: Next Round
- Discuss suggestion to change language in Section 4 to address gaming or fraud, but not penalize an Applicant that due to its success is able to raise money.

ASP and RSP:

- Discuss suggestion of the inclusion of an explicit non-assignment clause to remove any ambiguity and prevent gaming, also based on BAMC discussions on Assignment Agreements.
- Proposal to add a provision similar to the Terms & Conditions for the 2012 round of the New gTLD Program about (1) an applicant having rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN rights and obligations of an applicant, and (2) prohibiting resale, assignment, or transfer of rights or obligations in connection with its application (Proposed Clause 10).
- Clarification on Proposed Clause 5 (third-party claims, and meaning of “ICANN Affiliates”).

Section 5: Next Steps

All Public Comments received will be reviewed and considered by ICANN org. Any modifications required to the proposed language for the ASP and RSP Terms and Conditions to reflect community input will be reviewed with the Implementation Review Team. As described in the [New gTLD Program: Next Round Implementation Plan](#), ASP and RSP are expected to launch in the fourth quarter of 2024, and both the ASP and RSP Terms and Conditions will have to be finalized and published before then.

1. Appendix: Late Submissions

CONTRIBUTION OF THE RUSSIAN FEDERATION

The Internet has emerged as a fundamental aspect of contemporary society, serving as a powerful medium for connecting individuals across the globe and facilitating access to an array of resources. Its utility extends to domains such as education, research, business, and personal development, making it an indispensable tool in our daily lives. One of the most important aspects of the Internet is its inclusivity. The Internet provides equal access to knowledge, resources, and opportunities for everyone, regardless of their location, background, or socio-economic status. This inclusivity helps to break down barriers and promote equality, allowing individuals to participate in society on a more equal footing.

After reviewing the draft document «The Terms and Conditions for the New gTLD Program: Next Round Applicant Support Program and Registry Service Provider Evaluation Program» and for future discussion during the Public Comment proceeding we find it important to note paragraph 15 of the above-mentioned document which states that «... 15. By submitting this Application, Applicant agrees to comply with all applicable laws and regulations, including those economic, financial, and trade restrictions imposed, administered or enforced by the U.S. government, including but not limited to those administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury (“Economic Sanctions”). Applicant also agrees to immediately notify ICANN if Applicant, or any of the persons or entities listed in this Application, become the subject of any Economic Sanctions».

ICANN's work is crucial in maintaining the openness and accessibility of the global Internet, promoting competition and innovation, and ensuring the ongoing development of new technologies. The mission of the Internet Corporation for Assigned Names and Numbers (ICANN) is «to help ensure a stable, secure, and unified global Internet¹».

Russian Federation want to draws attention to two interrelated issues:

- the dependence of ICANN, as an organizations responsible for global critical infrastructure, on decisions made by a single national administration;
- restrictions on access to New gTLD Program for some Applicants, which violates the principle of non-discriminatory access and inclusivity.

These issues highlight the need for the Internet Corporation for Assigned Names and Numbers (ICANN) to take measures to mitigate the risks for of non-discriminatory access to New gTLD Program.

¹ <https://www.icann.org/en/beginners>

ICANN is a global international organization, and one of national administrations can set up barriers to third party participation.

We would like to emphasize that no single state or group of states should have the right to interfere in the operation of critical Internet infrastructure and/or the activities of ICANN, including the mechanisms for legal regulation of ICANN's operations.

All participants in the Internet ecosystem — users, service providers and operators, registrars, and owners of Internet services and resources — have the right to engage with ICANN independently of any state influence. They also have a right to impartial dispute resolution. These rights must be upheld.

In this regard, we consider it necessary

- to prepare by the ICANN community and stakeholders proposals for measures or mechanisms that can make ICANN less dependent on one state – this goal is in line with the global nature of the Internet and is of paramount importance to the entire international community;
- to provide measures to ensure inclusiveness and equal participation of Applicants from all countries in ICANN activities, in particular New gTLD Program.