



New gTLD Policy Development & Implementation

GNSO Policy Development

San Juan

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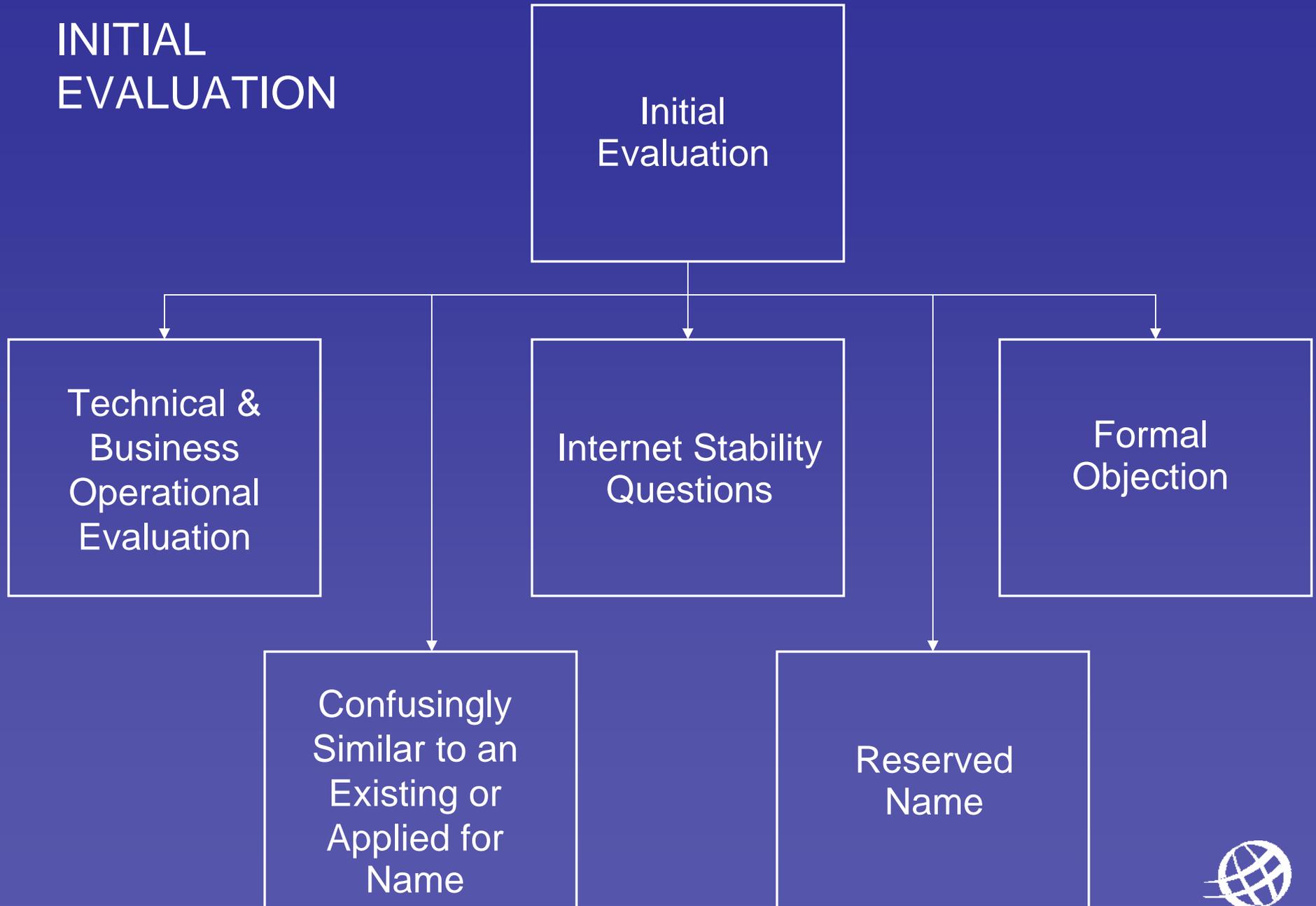
Features of Recent Implementation Work

- Implementation Principles
- Implementation Tasks
- Start-up costs line items
- Communications strategy
- Development of an objection-based process in accordance with the working documents produced to date

New gTLD Evaluation Process

- Application review
- Initial evaluation stage the application will be approved if:
 - Application meets objective technical and business criteria;
 - String itself does not lead to technical instability or unwanted / unexpected results in the DNS;
 - String is not a reserved name;
 - String is not confusingly similar to an existing or proposed string (string contention); and
 - No formal objection is raised.
- Issues raised in the initial evaluation may be resolved in an extended evaluation procedure characterised by a set of dispute resolution processes.

INITIAL EVALUATION



EXTENDED EVALUATION

Extended Evaluation

Technical &
Business
Operational
Qualifications

Technical
Evaluation

Dispute
Resolution
Process

String
Contention
Resolution

Note on Policy Recommendations

- The staff discussion points describe issues regarding the proposed implementation of the policy recommendations as they stand now.
- In most cases the discussion points are thought to have captured the intent of the policy recommendations and the intent here is to confirm or demonstrate that.
- In some cases staff requests additional guidance on certain recommendations.

Recommendations 1, 7, 8, 9, 10

- Implementation of transparent, predictable process through the publication of an RFP describing entire process including:
 - Criteria against which applications are assessed,
 - Timelines.
- There is some tension between predictability / objective criteria and encouraging innovation that may lead to unexpected iteration.
- A base contract will be provided,
 - There will be some allowance for amendment based on business models,
 - Proposed amendments will be posted for comment.

Recommendation 2 and §4.3: String Contention

- Strings must not be confusingly similar to an existing TLD.
- There will be an independently conducted process as part of the initial evaluation to determine if two or more applicants have submitted strings confusingly similar to one another.
- There will be an objection process where interested parties can file a formal objection that a submitted string is confusingly similar to an existing string.
- Similarity among IDN and ASCII strings will be considered.
- Confusingly similar string applications will trigger a string contention resolution procedure that is part of the extended evaluation.

String Contention

- Contention may arise between/among:
 - Competing applications requesting strings that are generic words
 - Competing applications requesting strings that could represent existing institutions or communities
- Parties will be afforded the opportunity to settle the contention issue during the evaluation process
- At the conclusion of the evaluation process, contention may be settled in one of three ways:
 - The parties may elect to enter into arbitration
 - In cases where one string represents a community or established institution, an independent, comparative evaluation will award the string
 - Absent all other methods available, an auction will be conducted

Recommendation 3

- Under “internationally recognized principles of law,” staff will research existing rules and precedent for guiding dispute resolution proceedings
 - Precedent set by proceedings under Paris Convention for the Protection of Industrial Property
 - UDRP-like process
- Allows for objections to alleged infringement to famous and well-known marks or IGO names
 - Protection under the rules of the many jurisdictions, rules and classes of trademarks cannot be provided
- References to Universal Declaration of Human Rights may be asserted as a defense (or as possible claim) to infringement or a defense
- A claim of infringement of legal rights would be asserted as a formal objection to the string triggering a dispute resolution process

Recommendations 4, 5, & 19

- Staff will consult with SSAC and other experts on string evaluation relating to technical instability:
 - Applicant meets established criteria for registry operation.
 - Will string result in user confusion?
 - Might string result in unexpected application responses or violate internet architecture principles?
- String must not be a reserved word
 - Is there a need for a process (with the development of appropriate guidelines) for releasing strings from allocation?
- Registries must use ICANN accredited registrars, means:
 - Registries must use only ICANN accredited registrars
 - Registry operators provide non-discriminatory access, there is no case for community sponsored registries to select certain registrars

Recommendation 6

- Under “internationally recognized principles of law” relating to morality or public order, staff will research existing rules and precedent for guiding dispute resolution proceedings.
 - Precedent set by proceedings under Paris Convention for the Protection of Industrial Property
 - Identification of a single jurisdiction with an established body of law
- Additional discussion regarding the language differences of GAC principles and GNSO recommendation is advised so that staff implementation matches the S.O. and A.C. advice.
- The GNSO recommendation, GAC principle 2.1 and Article 29 of the Universal Declaration of Human Rights recognize that requirements of morality and public order may limit speech.
- A claim of infringement of morality or public order would be asserted as a formal objection to the string triggering a dispute resolution process.

Recommendation 12 and §§ 4.1-4.2

- Challenge and dispute resolution processes have been identified
 - Five proposed grounds for objection have been established
 - There is no proposed objection for geographical place names in the GNSO recommendations but it has been identified by the reserved names working group as a potential objection
 - The GAC recommends that objections are overcome through the express agreement of governments to the string
 - The reserved names working group proposed that objections can be [solely] proposed by ICANN Advisory Committees
 - Staff based proposed procedures on principles that standing to object varies on the nature of the objection
 - There may be legal liability and timeliness issues associated with making an ICANN committee operational
- The procedural rules, standards and resourcing for dispute resolution procedures must still be developed

Proposed Grounds for Objection to a String

- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of speech rights).

- The proposed TLD is string confusingly similar to an existing top-level domain or another application in the round.
- The registration or use of the proposed string will violate the existing legal rights of a third party under international law.
- The registration or proposed use of the string will be contrary to accepted legal norms relating to Morality or Public Order.
- The string represents a geographic identifier.

Standing: Who Can Object?

- Inappropriately purports to represent a defined discrete community that is represented by an established institution.
- Confusingly similar to an existing top-level domain or another application in the round.
- Will violate the existing legal rights of a third party under international law.
- Will be contrary to accepted legal norms relating to Morality or Public Order.
- Represents a geographic identifier.
- Established institution
- Anyone
- Rights holder
- Anyone
- Governments, public authorities

Recommendation 20

- An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.
- This recommendation raises concerns that might be addressed in the implementation plan:
 - Reliance on subjective criteria can be reduced by relying on dispute resolution practices in the public sector for addressing comment,
 - Ensuring that public comment evaluation does not potentially provide a consideration path directly to ICANN,
 - Identify the process for analyzing comment to avoid adding an unpredictable element to the evaluation.
- This recommendation may be accommodated if there is a requirement that the dispute resolution providers consider public comment through the advocacy of the contending parties.

Next Steps

- Develop dispute resolution mechanisms
 - Obtain provider
 - Devise standards
- Develop appeal process
 - Reconsideration
 - Independent review
 - Other
- Take guidance from this meeting and develop final drafts of the RFP and base contract