

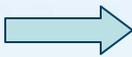
GNSO Council and Staff Discussion New gTLD Policy Recommendations

Los Angeles
11 April 2008

Purpose

- Review staff work toward implementation
- Inform and discuss issues with GNSO
- Confirm mapping of implementation with policy recommendations
- Consult with the GNSO on specific implementation issues
- Review anticipated steps

Agenda – Discussion Format

- **Implementation Work**  **by Terms of Reference**
 - Whether to introduce new gTLDs
 - Allocation methods
 - Contractual conditions
 - Selection criteria
 - **Discussion Topics**
 - **Timelines and next steps**
- ✓ Policy Recommendations
 - ✓ Vision
 - ✓ Planning
 - ✓ Work to date
 - ✓ Results

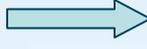
Term of Reference

Whether to introduce new gTLDs

Whether to introduce new gTLDs

- Recommendation 1
 - ICANN must implement a process that allows the introduction of new top level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination
- Recommendation 9
 - There must be a clear and pre-published application process using objective and measurable criteria

Vision – Implementation Work

- At each step  test of fairness, transparency, nondiscrimination
 - Free of favoritism, self-interest, bias, or deception, and conforms to established standards or rules
 - Visible to all participants and other stakeholders
 - Part of ICANN Core Values, Bylaws
- Examples
 - All applicants are given equal treatment
 - Evaluators need to follow a clear scoring methodology based on pre-identified criteria

Vision for Evaluation Process

- Clear and pre-published
 - Establish in advance all steps that applicants will be asked to follow
 - Begins even before application process opens
 - Facilitating questions and input on draft RFP
 - Giving prior notice of pending application round
- Objective and measurable
 - As much as possible, design criteria such that any reasonable person would look at the same information and reach the same conclusion

Planning Implementation Work

- Develop complete process for adding new gTLDs, including:
 - Application and evaluation procedures
 - Objection and dispute resolution procedures
 - Contention resolution procedures
- Establish standardized steps at each stage
- Provide comprehensive information to applicants
- Allocate resources to ensure the program sustainability

Accomplishments to Date (1)

- RFP development in process
 - Several RFP elements drafted
 - Draft process map designed
- Global communications plan developed to accompany launch and evaluation stages
- Dispute resolution procedure in development
 - Basic procedural steps designed
 - Standards drafted and undergoing refinement
 - Potential service providers in discussions with staff

Accomplishments to Date (2)

- Program costs and fees development underway
 - Phase 1 analysis of cost models
 - Economic study
- Interface design drafted
- Global Communications Plan in place
- Base agreement in revision for v4
- Operational readiness
 - Hired staff
 - Initiated risk analysis; internal operational impact analysis

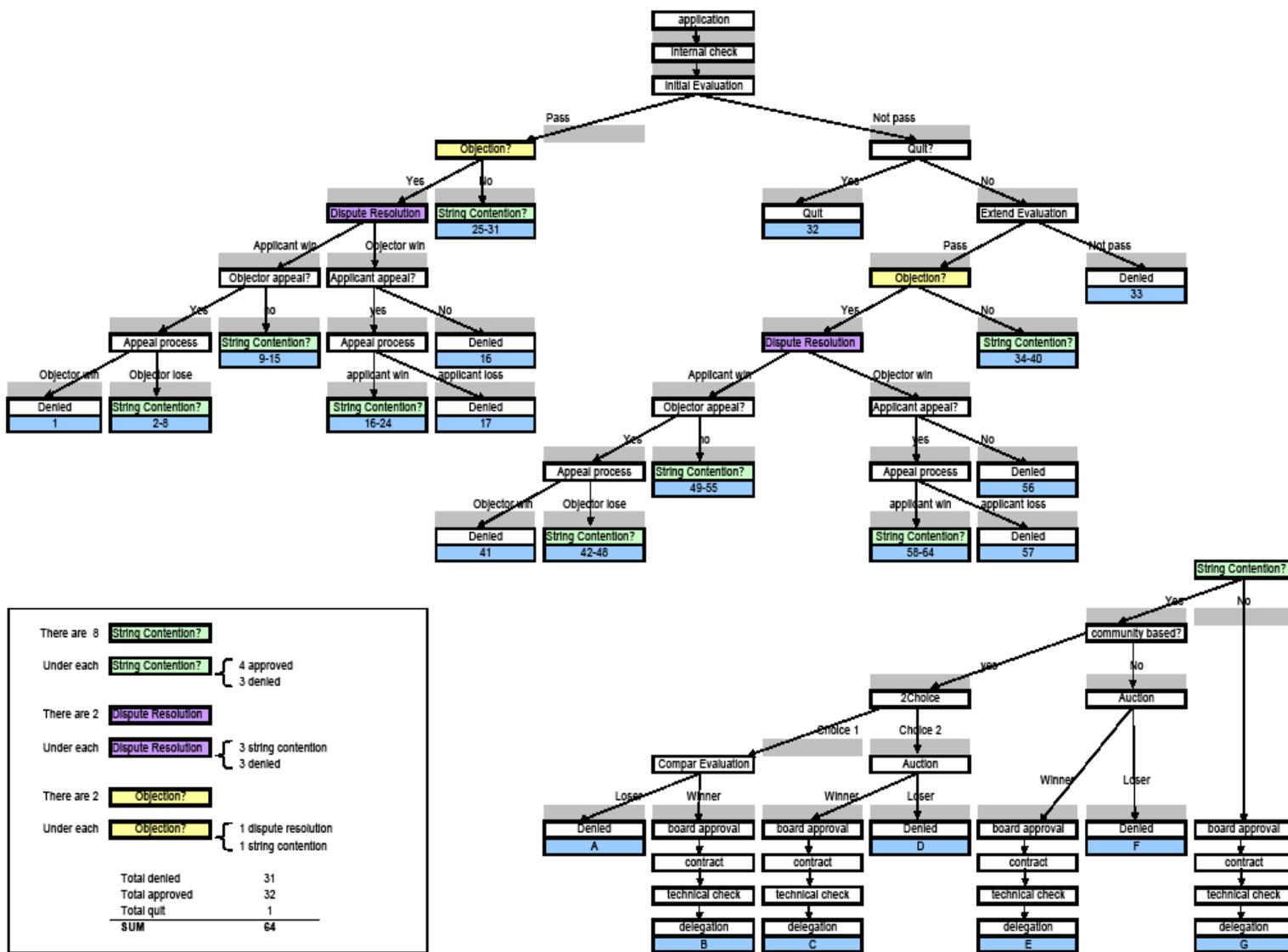
RFP – Structure

- Comprehensive document, in English, that will provide applicants with a step by step roadmap from application to approval
 - Application will be web-based
- Definitions, glossary and interpretation
- Detailed application process
- Eligibility and restrictions
- Criteria: general; business, technical (applicant and string)
- Scoring details
- Detailed phases: Evaluation, objection, string contention
- Fees
- Estimated timelines for each phase

Evaluation Process Map

(PDF file)

New gTLD application paths



There are 8 **String Contention?**

Under each **String Contention?** { 4 approved
3 denied

There are 2 **Dispute Resolution**

Under each **Dispute Resolution** { 3 string contention
3 denied

There are 2 **Objection?**

Under each **Objection?** { 1 dispute resolution
1 string contention

Total denied	31
Total approved	32
Total quit	1
SUM	64

Term of Reference

Allocation Methods

Allocation Methods

- Recommendation 7
 - Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out
- Recommendation 8
 - Applicants must be able to demonstrate their financial and organisational operational capability
- Recommendation 13
 - Applications must initially be assessed in rounds until the scale of demand is clear

Vision for RFP

- RFP criteria for operational and technical evaluation should be
 - Objective
 - Transparent
 - Measurable
 - Clear

} => Meaningful
- Scoring and evaluation process should be comprehensive
 - Ensuring that process enables fair consideration of diversity of applicants and purposes

RFP Planning

- Cooperation with consultants for RFP development
 - SOW posted September 2007
 - Work started December 2007
- Evaluation approach options
 - Rely on promises by applicant
 - Validates applicant information at relevant stages
 - (e.g., some items checked prior to contract and/or delegation)
 - Technical (back-end) provider qualification

Discussion Topic 1

- RFP information
- Could there be additional purposes to the information sought by ICANN in the application, beyond assessment against the criteria?
- Could applicant information be used for purposes such as compliance or sanctions, long-term registry stability, others?

Technical and Operational Criteria

- Note on wording of Recommendation 7 was raised to Council previously
 - Technical criteria is established for reasons of DNS security, stability, interoperability
 - There will be minimum technical criteria applied to all applications, regardless of what “purpose” is set out in application
- Financial and organisational information are grouped as “operational” criteria



Technical Provider Qualification Option

- Consideration of handling technical evaluation through a dedicated qualification mechanism for “back-end” registry providers, with criteria identical to RFP technical criteria

Discussion Topic 2

- Technical Service Provider Qualification
- Does the GNSO believe that such a mechanism would be consistent with the principles and recommendations they have laid out? If so, what would be an appropriate contractual or accountability framework between these providers and ICANN?
- For consideration:
 - Contractual framework
 - Fee model
 - Eligibility
 - Grandfathering issues
 - Ongoing compliance framework

Rounds

- All current implementation planning is for the first round
 - Intention to have dates pre-set for subsequent rounds
 - Part of openness/transparency

Discussion Topic 3

- Communication and transitions between application rounds
- There are different paths for applications and timing will vary for these different paths. What is the appropriate measurement for when the first round is complete and a second can begin? When all applications to have reached their final resolution? Or can ICANN at some point create a "temporary reserved list" for any still-pending applications, excluding these from the next rounds?
- Given the GNSO's desire for the RFP to include scheduling information on subsequent rounds, what is an appropriate time frame for incorporating improvements from experience in Round 1 into the process, and how does this impact the timeline for future rounds?

Contention Resolution – Implementation Guideline F

- If there is string contention, applicants may:
 - Resolve contention between themselves within a pre-established timeframe
 - If there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and
 - The ICANN Board may be used to make a final decision, using advice from staff and expert panels

Vision to Address String Contention

- Contenders enter comparative evaluation if:
 - Any community-based applicant among the contenders has elected comparative evaluation
- Contenders may participate in auction process if:
 - No community-based contender has elected comparative evaluation, or
 - None of the contenders are community-based applicants
- Contenders are free to withdraw or negotiate a solution amongst themselves

Contention Resolution Planning

- Comparative Evaluation
 - Criteria and process development
 - RFP writers have this component as a deliverable
- Auction
 - Analysis confirming that ICANN may legally conduct auctions
 - Engagement of qualified auction service provider
 - Call for expressions of interest posted January 2008
 - Review of responses is in process

Discussion Topic 4

- Community-Based Applications
- If applicants may identify themselves up front as community-based applicants, and they have the option to select and subject other applicants to comparative evaluation, is it the intention that these applicants would have an advantage, and if so, can this be harmonized with principles of fairness and non-discrimination?
- This area may present challenges of perception, as there is likely to be significant diversity within the category of community-based applications

Community-Based Applicants

- Community path
 - Assumption that applicant can self-identify as community-based
 - Is it the intention that community-based applicant should have an advantage?
 - How to design comparative evaluation process and criteria for maximum fairness and objectivity?

Comparative Evaluation Criteria

- Assessing “added value” of a TLD
 - Categorizes a broad and lasting field of human, institutional, or social endeavor or activity
 - Represents an endeavor or activity that has importance across multiple geographic regions
 - Has lasting value
 - Enhances diversity of the namespace
 - Enriches broad global communities
 - Meets needs that cannot reasonably be met in existing TLDs
 - Enhances competition in registration services

Discussion Topic 5

- Comparative Evaluation Criteria
- What are some examples of criteria that could be used for reviewing added value to the DNS, when there are two or more qualified applicants for the same string?

Term of Reference

Contractual Conditions for New gTLDs

Contractual Conditions (1)

- Recommendation 10
 - There must be a base contract provided to applicants at the beginning of the application process
- Recommendation 14
 - The initial registry agreement term must be of a commercially reasonable length
- Recommendation 15
 - There must be renewal expectancy
- Recommendation 16
 - Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved

Contractual Conditions (2)

- Recommendation 17
 - A clear compliance and sanctions process must be set out in the base contract which could lead to termination
- Recommendation 18
 - If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed
- Recommendation 19
 - Registries must use only ICANN-accredited registrars in registering domain names and may not discriminate among such accredited registrars

Vision for Base Contract

- Base contract will be provided to applicant as part of RFP
 - Streamlined – pared down further from last version
- Scalable process for execution of agreement after application is approved
 - Standard versus variable contract provisions
- Dedicated resources to perform ongoing compliance work

Planning for Contract Execution

- Options
 - “One size fits all” contract with no case by case negotiations
 - Several base contract versions depending on type of applicant
 - Time/cost incentive to sign base contract without modification while still allowing applicant to choose negotiation option
 - Individual negotiations (time and resource intensive)

Accomplishments to Date

- Draft v3 includes:
 - Term with reasonable length & renewal presumption
 - Requirement for compliance with Consensus Policies
 - Requirement to use ICANN-accredited registrars
 - Requirement to adhere to failover / best practices
- Open issues
 - Fee structure
 - Structural separation and cross-ownership issues
 - Both areas being informed by economic study

Discussion Topic 6

- Contract Variations
- Should there be a one-size fits all contract or could there be different contracts available depending on the type of applicant (private company, IGO, government)?

Term of Reference

Selection Criteria

Selection Criteria (1)

- Recommendation 2
 - Strings must not be confusingly similar to an existing top-level domain or a Reserved Name
- Recommendation 3
 - Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law
- Recommendation 4
 - Strings must not cause any technical instability
- Recommendation 5
 - Strings must not be a Reserved Word

Selection Criteria (2)

- Recommendation 6
 - Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law
- Recommendation 12
 - Dispute resolution and challenge processes must be established prior to the start of the process
- Recommendation 20
 - An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted

Vision for Reserved Names

- Published Reserved Names List based on RNWG report
- Established procedure for modifications to Reserved Names List
- Staff using GNSO working group report
 - Seeking additional input on infrastructure names
 - Adding IDN test strings

Vision for Geographical Names

- Geographical names are not reserved, as per the RNWG recommendations
- GAC Principle 2.2:
 - ICANN should avoid country, territory, or place names, and country, territory, or regional language or people descriptions, unless in agreement with the relevant governments or public authorities

Discussion Topic 7

- Geographic Names
- How can ICANN to handle applications for these names in a way that will address the GAC's concerns about country, territory, and place names?

Vision for DNS Stability

- Establish parameters for strings that will be disallowed for technical stability reasons
- Establish procedure for how other technical concerns will be addressed

Planning for DNS Stability

- Paper posted for Public Comment in February 2008
 - Contained description of proposed approach
 - 13 comments received
 - Most comments referenced issues of file extensions and argued that these would cause confusion, although none cited actual technical issues
 - Comments from IAB recommended “that an appropriate technical ICANN committee (RSSAC, RSTEP or SSAC would assess, for each new gTLD proposed, if said gTLD would cause technical problems.”
- Parameters for assessing DNS stability will also be included in draft RFP

DNS Stability Criteria Summary

- Labels must consist only of ASCII LDH characters (letters, digits, and hyphen)
- Labels must be 63 characters or less
- Labels must not be made up entirely of digits
- Labels featuring hyphens in the third and fourth character positions must be valid Punycode labels using the approved IDNA prefix
- Labels must not begin or end with a hyphen
- Labels must not begin with the characters “0x” followed by a hexadecimal character

Discussion Topic 8

- File Extensions
- There has been an ongoing discussion concerning whether strings that are commonly-used file extensions should be disallowed as TLDs due to potential user confusion issues
- Should there be any additional consideration of this issue following a set of public comments on this subject?

String Confusion - Staff Planning

- Options considered include:
 - Algorithm
 - Neutral, mathematical, repeatable solution
 - Solution is feasible based on staff outreach
 - Limitations to this
 - ICANN panel
 - Outside ICANN's mission and expertise
 - Exposes ICANN to criticism for subjective decisions
 - Dispute resolution panel
 - Enables finding appropriate expertise
 - Panelists' duty to render objective decisions
 - Appeals process to address allegations of bias or inappropriate procedure

Algorithm Explored Approaches

- Damerau-Levenshtein
 - Fundamental premise is establishing the minimum number of operations needed to transform one string into another, where each operation is assigned a value
 - Operations can be insertions, deletions, substitutions, transpositions
- Expanded Levenshtein
 - Proprietary search algorithm (similar to Levenshtein) that takes string length, sequencing, the number of similar letters, prefixes and suffixes, and the number of dissimilar numbers
- String edit distance measurement
 - Measures the number of *editing operations* that are necessary in order to transform one string into the other

String Confusion - Algorithm

- Task to developers: algorithm able to do visual similarity checks
 - Reserved Names (TBD)
 - Existing TLDs
 - Other strings applied for in the same round
- Comprehensive solution to address the need across the range of scripts, languages, and encodings
- Consistency of results
 - Evaluation based on same set of strings
- Cost and timing for development
- Scalability

String Confusion - Initial Evaluation

- Algorithm is used as a tool
 - to flag identical and similar strings
 - inform applicant
 - streamline initial check
- Staff and consultants fine tuning the parameters and processes to deal with false positives and false negatives
- Evaluators role activated when results beyond a threshold
 - Envisioned expertise of the evaluation panel – linguistic and TM
 - Analyze, validate or refute algorithm results

String Confusion - DRP

- Currently developing standing and process
 - Analyzing relationship between Recommendations 2 and 3 regarding standing
- Objection based on 2 key concepts:
 - Confusingly similar
 - Likelihood of confusion
- Allegation that string is confusingly similar on any ground
- Takes into account context
- Test resulting in a “likelihood of confusion” by consumers: a probability, not a possibility

String Confusion - Accomplishments to Date

- Two algorithms currently in development
 - Undergoing testing
- Dispute resolution standards
 - Legal analysis around creation of dispute resolution standards for objections on the grounds of confusing similarity.

Evolution to objection-based process

- Earlier plans consisted of several-stage process using multiple evaluation panels managed by ICANN. Examples of panels:
 - String confusion; DNS stability; Technical criteria; Business criteria; Morality or Public Order; Rights infringement; Community Representation
- Development of objection-based process
 - Working out this concept with GNSO
 - Removes ICANN from areas not within mission or expertise
 - Creates a channel where these issues can be addressed in independent process by those with relevant expertise

Vision for Dispute Resolution Procedure (DRP)

- Established filing and adjudication procedures for valid objections
- Qualified dispute resolution service provider (DRSP) to administer the procedure
- Procedure provides appropriate appeal mechanisms to participants

Grounds for Objection

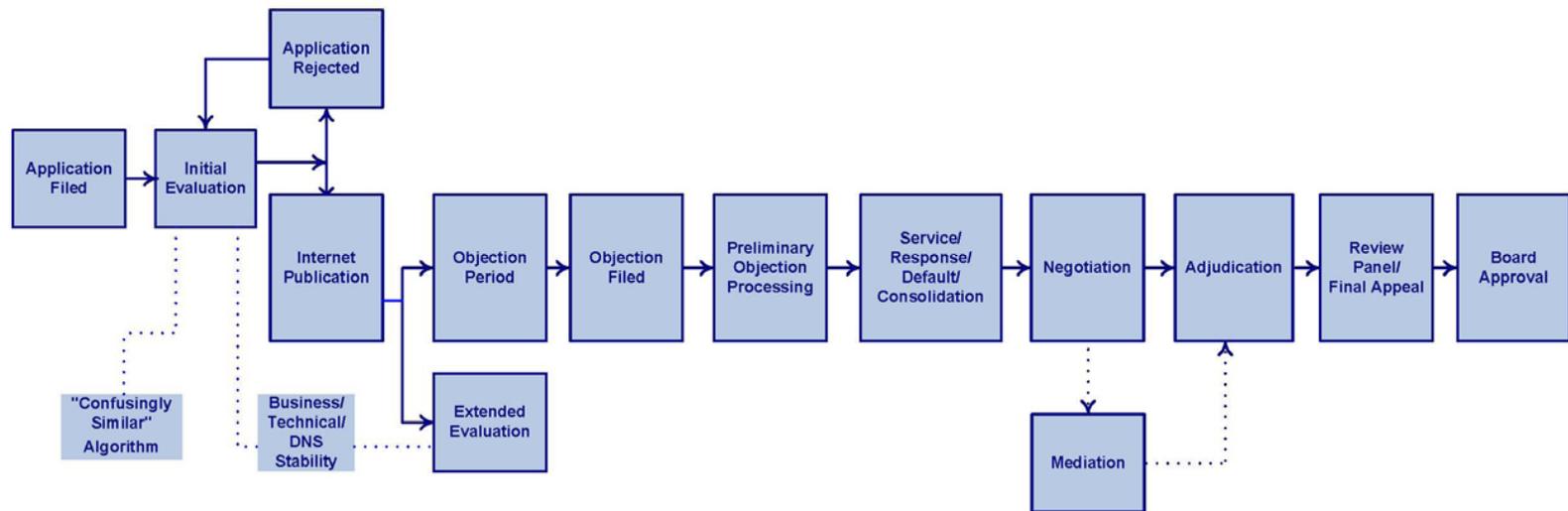
- String confusion (Rec 2)
- Infringement of rights (Rec 3)
- Morality or public order (Rec 6)
- Community Representation (Rec 20)

DRP Planning

- For each recommendation (2, 3, 6, 20), there are two independently derived products:
 - Standards
 - Dispute resolution process
- Different standards are required for each recommendation but many elements of a dispute resolution procedure can be used for all four recommendations

Draft DRP Flow

"INFRINGEMENT RIGHTS" GROUND



Dispute Resolution Procedure

- Discussions continuing with potential dispute resolution service providers
 - Call for expressions of interest posted Dec 2007
- Board's interest in feasibility of the objection-based process
 - The test for “implementability” is whether a ‘DRP’ provider can develop or modify their procedures in a reasonable period of time, provide them at a reasonable cost and provide adequate (regional) bandwidth

Legal Rights

- Establish standards to be used in objections based on rights infringement grounds
 - Perform review of available standards
 - Set of factors to be considered and balanced by the dispute resolution provider
 - More detail than UDRP but seems appropriate given the stage of the controversy, i.e., the label is not yet in use

Standards: Protection of Rights

- Factors to be considered in determining infringement of rights:
 - Similar in appearance, phonetic sound or meaning to existing mark
 - Strength of mark
 - Proposed TLD is already being used as a mark
 - Similarity between string and portions of mark
 - Intent of the junior user / bad faith
 - Applicant rights or legitimate interest in TLD
 - Limited defenses enumerated

Morality or Public Order

- General principles
 - Everyone has the right to freedom of expression
 - Such freedom of expression may be subject to certain narrowly interpreted exceptions that are necessary to protect other important rights
- A core set of rules or standards derived from analysis of exceptions that exist under the laws of a diverse sample of countries

Community Representation

- Challenges of defining community and measuring levels of support or opposition within a community
 - No legal standards identified
- Staff drafting standards that:
 - Establish standing requirements
 - Provide a set of factors that may be used by a dispute resolution provider to assess:
 - Substantial opposition
 - Community
 - Targeting

Discussion Topic 9

- If an application is denied by ICANN due to an objection prevailing against the string, does this carry over to subsequent rounds so that no future applicants could apply for that string?
- Could this vary depending on the different objection grounds?

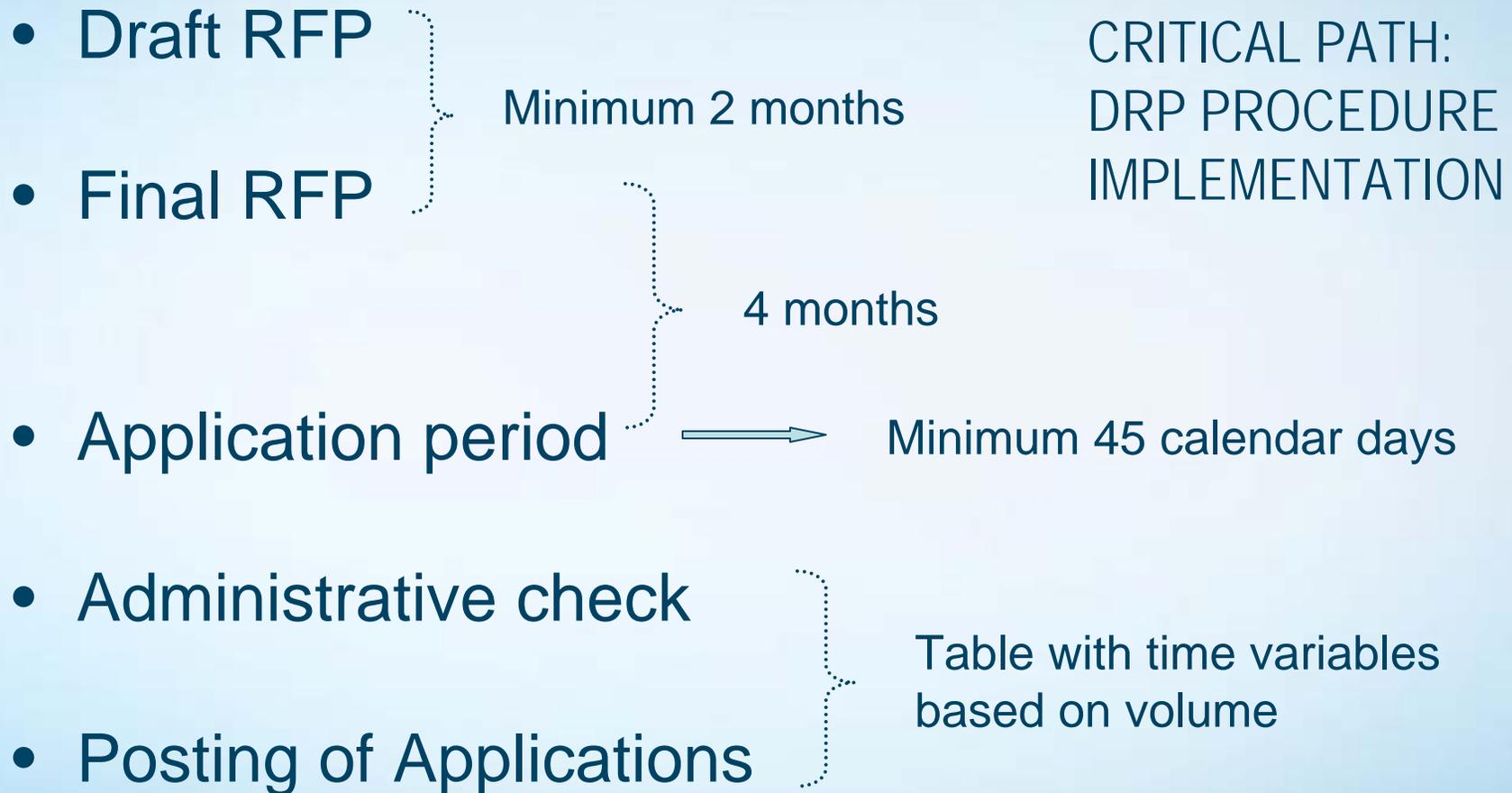
Board and Policy Recommendations

- Board has considered and discussed the recommendations on several occasions
- The threshold issue is whether the recommendations can be implemented, for instance:
 - In a reasonably timely manner
 - At reasonable cost
 - In a clear way without onerous process
 - With a process without deleterious effect on the DNS or competition; and
 - With a process that does not unnecessarily restrict the number of new TLDs

Board and Policy Recommendations (cont)

- Staff provides routine updates for each Board meeting regarding implementation progress
- Implementation work has not been delayed

Timelines/Milestones – Initial Assessment



Thank You!