

Briefing Paper

Understanding the DRAFT New gTLD Applicant Handbook

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- Timeline: October 2008*
- Evaluation Process Flow*
- Objection DRP Process Flow*
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On October 24, 2008, the Internet Corporation for Assigned Names and Numbers (ICANN), which is the organization responsible for governing the global domain name system, released draft policy documents known as “New gTLD Program: Draft Applicant Guidebook” that will bring about landmark changes to the current Internet naming system and have significant impact on business entities globally. Currently, there are only 21 active generic top-level domain (gTLD) extensions (examples are: .com, .net, .org, .info, .biz) and 249 country-code top level domain (ccTLD) extensions (examples are .ca, .fr, .de, .us, .uk) available for registration. However, under ICANN’s new gTLD initiative, hundreds of new gTLDs could be introduced over the next two years, including brand-specific domain extensions like .yourcompanyname, industry-related domain extensions like .sports and geographically-related domain extensions like .berlin.

To help our customers better understand the risks and opportunities of the new gTLD initiative by ICANN, Corporation Service Company® (CSC), the trusted partner of more than 50% of the 100 Best Global Brands , including 3 of the top 4, for global domain name registration and management, has created this Briefing Paper to provide a summary of the 250-page plus “New gTLD Program: Draft Applicant Guidebook” (New gTLD Guidebook). The New gTLD Guidebook is currently open for public comment, but is expected to be finalized by February 2009, with ICANN expected to accept new gTLD applications for consideration by July 2009.

Overview

The Draft New gTLD Guidebook is currently available in 7 languages (English, French, Spanish, Arabic, Chinese, Portuguese and Russian) and is broken down into 6 modules:

- [Module 1](#): Introduction to the New gTLDs Application Process;
- [Module 2](#): Evaluation Procedures (including evaluation criteria);
- [Module 3](#): Dispute Resolution Procedures;
- [Module 4](#): String Contention Procedures;
- [Module 5](#): Transition to Delegation (including the draft registry agreement); and
- [Module 6](#): Terms and Conditions.

The Draft New gTLD Guidebook is also accompanied by 7 explanatory memoranda which were developed by ICANN staff to give further insight and clarification into the basis of the policies proposed. They are:

- [Morality and Public Order Objection Considerations in New gTLDs](#)
- [Protecting Rights of Others in New gTLDs](#)
- [Cost Considerations](#)
- [Geographical Names Process](#)
- [Update on DNS stability Criteria](#) [PDF, 68K]
 - Original DNS stability paper:
<http://www.icann.org/en/announcements/announcement-06feb08.htm>
- [Resolving String Contention](#)
- [Summary Changes to Base Agreement](#)

ICANN plans to hold 2 public comment periods to seek input on the proposed policies and procedures; the first of which will take place October 24 – December 8, 2008 and the second to begin sometime in January 2009. The first application period is projected to begin sometime in late June or July of 2009 and be 45 days in duration, with a second application period expected to be opened in mid-2010.

In ICANN's 10-year history, their two "calls" for new gTLD applications have been very controlled and limited. In both 2000 and 2003, ICANN pre-set the number of applications they would approve (5 and 7, respectively) prior to accepting new applications and followed a process which resulted in TLDs being launched over a period of years, not months. Under the process proposed in the Draft New gTLD Guidebook not only will the quantity and velocity in which new gTLDs are launched increase dramatically, but it is also expected that there will be greater diversity, choice and innovation among the gTLDs.

Since each gTLD string can only be delegated to one registry operator/owner, it will be incumbent upon corporate brand owners to determine early on in this process whether application for a new gTLD is right for their business or whether they should simply monitor developments from a brand protection point of view. The "should I apply" analysis will be highly dependent upon the type of business in which the brand owner is engaged and potential for innovation and brand extension online, the likelihood channel competitors will seek a gTLD that would put them at a competitive disadvantage and the probability that another party holding similar or identical trademark rights under a different class in another global jurisdiction will apply for the string of characters to which you share a legal right. For once a gTLD is delegated to a registry operator, barring insolvency or failure to comply with ICANN requirements, that gTLD will remain in the exclusive control of the party to which it was awarded without the need for them to re-bid or re-apply at any time in the future.

It is also important to note that where applicants who lack trademark rights to a gTLD string attempt to secure a string that infringes upon the trademark rights of another, there are rights protection mechanisms that can knock that application out of consideration. However, corporate brand owners must proactively assert their rights at specified times in the process in order to avail themselves of these protections. Failure to assert their rights at specific junctures within the process may result in waiver of rights and the award of a gTLD to an organization that lacks similar rights.

New gTLD Application Process

Application Basics

Any established corporation, organization, or institution in good standing may apply for a new gTLD, however, applications from individuals or sole proprietorships will not be considered. Applied for gTLD strings must be comprised of at least three (3) distinct letters or characters, can be no longer than sixty-three (63) characters and must meet other technical requirements specified in the [New gTLD Guidebook](#). Applications must be submitted through ICANN's online application system, TLD Application System (TAS). Application materials submitted through TAS, as well as any evaluation materials and correspondence, will be publicly posted on ICANN's website. Only responses to sections in the applications that are pre-designated by ICANN as "Confidential" will not be posted publicly. All applicants must specify whether their applied-for new gTLD string is an open or community-based gTLD upon application.

An **open gTLD** is one that can be used for any purpose and is not required to have any formal relationship with an exclusive registrant or user population and does not have to employ eligibility or use restrictions. A **community-based gTLD**, on the other hand, must be operated for the benefit of a defined community consisting of a restricted population. As a result, an applicant for a community-based gTLD is expected to demonstrate an on-going relationship with a defined community that consists of a restricted population, have applied for a gTLD string strongly and specifically related to the community names in the application, have proposed dedicated registration and use policies for registrants in its proposed gTLD and have its application endorsed in writing by an established institution representing the community it has named. Changes to the open or community-based application designation will not be permitted once the application is submitted to ICANN for processing.

Each applicant will need to submit a completed New gTLD Application, agree to the Application Terms and Conditions (found in Module 6 of the

New gTLD Guidebook), provide proof of legal existence (i.e., articles or a certificate of incorporation, articles of association or equivalents), and proof of good standing (i.e., certificate of good standing or other equivalent documentation issued by a competent government authority), audited financial statements for the most recently completed fiscal year and unaudited financial statements for the most recently ended interim financial period.

In situations where legal existence or good standing certificates or documents are not available, an affidavit drafted and signed by a notary public or a legal practitioner qualified to represent clients before the courts of the country in which the applicant's organization is established and in good standing must be submitted. If the applicant is a government body or organization, it must provide a certified copy of the act or governmental decision that called for its existence. Prior to the gTLD being delegated, the applicant will also need to submit documentary evidence of ability to fund ongoing basic registry operations for a period of three (3) to five (5) years. Some applicants may be required to submit additional documentation in certain cases (i.e., written community endorsement of its application by an institution representing the community the gTLD has proposed to serve, government support or non-objection where a geographical string has been applied for, or documentation of outside funding commitments where the applicant indicates such a situation in its application).

Application Fees

All applicants must also pay the TAS User Registration Fee (USD 100) and the gTLD Evaluation Fee (USD 185,000) and agree to the ICANN Application Terms and Conditions upon application. All fee payments can be made by wire transfer, ACH, money order or check. Payment by credit card (Visa, MasterCard/Maestro, American Express and Discover card) is also available, but the maximum amount accepted per invoice is USD 20,000. Refunds may be available to applicants who choose to withdraw at certain stages of the process, but all refunds will be on a pro rata basis at ICANN's discretion. Refunds will not be issued to applicants whose applications are terminated or found not to successfully meet the evaluation criteria.

Administrative Review for Completeness

Each application received by ICANN will go through an administrative review for completeness to confirm that all required questions are answered, supporting documents are provided in proper format and the application evaluation fees have been received. ICANN will then post a list of applications considered complete and ready for evaluation after the close of the application period. Once this occurs, both the Opposition Period and Initial Evaluation Period will immediately commence.

The Initial Evaluation

All complete applications will undergo an Initial Evaluation. During Initial Evaluation ICANN will assess the applied-for gTLD string, an applicant's qualifications, and proposed registry services.

Assessment of the Applied-for gTLD String

The objective of applied-for gTLD string review is to prevent user confusion and loss of confidence in the DNS. In reviewing the applied-for gTLD string, ICANN will examine three (3) things: whether the applied for gTLD is similar to others and would cause user confusion; whether the applied-for gTLD string might disrupt DNS security and stability; and whether requisite government approval is given in the case of certain geographical names.

Assessment of the Applicant's Qualifications

Concurrent with the applied-for gTLD string review, ICANN will also review the applicant's technical, operational and financial capability to operate the gTLD. This review will be based on the information supplied in response to the questions contained in the application form (see <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>) detailing the applicant's legal identity, contact information applied-gTLD string, applicant's technical capabilities, current financial position, financial planning done in preparation for long-term operation of a new gTLD registry and plans for the operation of the proposed gTLD. Applicants are not required to have deployed an actual registry to complete the requirements for a successful application. It is sufficient at

the time of application to demonstrate a clear understanding and accomplishment of foundational preparations toward the key technical and operational aspects of running a gTLD registry. However, each successful applicant for a new gTLD will be required, following the execution of a registry agreement with ICANN, to complete a technical test before delegation of the applied-for gTLD.

Assessment of the Applicant's Proposed Registry Services

Also concurrent with the applied-for gTLD string and the applicant's qualification reviews, ICANN will conduct a review of the applicant's proposed registry services. A full definition of registry service can be found at <http://www.icann.org/en/regsitries/rsep/rsep.html> and in the draft registry agreement at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. The objective of the review is to determine if the registry services proposed by the applicant might raise significant stability or security issues.

Situations that May Result in Extended Evaluation

If an applicant receives notice of failure to pass the Initial Evaluation because they were unable to demonstrate sufficient technical, operational or financial capability to operate the new gTLD registry, the applicant has fifteen (15) calendar days to submit to ICANN a Notice of Request for Extended Evaluation through the online application system, TAS, and submit fees due for Extended Evaluation (amount of fees unknown at this time). An Extended Evaluation may also result if ICANN identifies a need to further review an application due to DNS stability concerns or if further investigation is needed to assess a registry service proposed by the applicant (fee for this type of extended evaluation may be as much as USD 50,000).

For a visual representation (flow chart) of the overall application process and the evaluation periods, please see the Appendix to this Briefing Paper.

The Opposition Period

Possible Objections

Like the Initial Evaluation Period, the Opposition Period immediately commences when ICANN posts a list of applied-for gTLDs whose applications have been deemed administratively complete. During this period, parties with standing can raise one (1) of four (4) possible objections during the evaluation of an application to be heard before a panel of qualified experts. The four (4) possible grounds for objection are:

- String Confusion Objection (string is confusingly similar to an existing TLD or to another applied-for gTLD string);
- Legal Rights Objection (the applied-for gTLD string infringes existing legal rights of the objector);
- Morality and Public Order Objection (the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law); and
- Community Objection (there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted).

Objection & Response Procedures

Objections must be filed by the posted deadline date and directly with the appropriate dispute resolution service provider (DRSP) based on the objector's grounds for objection. The International Centre for Dispute Resolution will handle String Confusion Objections, The Arbitration and Mediation Center of the World Intellectual Property Organization will handle Legal Rights Objections and the International Chamber of Commerce will handle both Morality and Public Order Objections and Community Objections.

All objections must be filed in English, each objection must be filed separately, objections must be filed electronically and all interactions with

each DSRP must be conducted online. Objections are limited to 2500 words (excluding attachments) and ICANN will publish a document on its website identifying all objections shortly after the deadline for filing objections.

Applicants will have 30 days upon notice of the objection to file a response. All responses must be filed in English, each response must be filed separately, responses must be filed electronically, and applicants must provide full contact details of all parties involved in submitting the response. Each response must also contain a point-by-point confirmation or denial of the claims made by the objector and must limit their response to 2500 words.

Fees

Upon filing the objection and the response, each party must pay a non-refundable filing fee with the DRSP. The Dispute Resolution Filing Fee is currently estimated at USD 1,000 – USD 5,000 and will be the same for both objectors and applicants filing a response. Within 7 business days of constituting a panel to adjudicate a dispute, the DRSP will estimate the total costs of the proceeding and request advance payment in full of its costs from both the objector and the applicant. ICANN expects that String Confusion and Legal Rights Objection proceedings will involve a fixed amount charged by the panelists while Morality and Public Order and Community Objection proceedings will involve hourly rates charged by the panelists. Each party must make advance payment within 15 calendar days of receiving the DRSP's request for payment. After the hearing has taken place and the panel renders its decision, the DSRP will refund any costs paid in advance to the prevailing party.

For a visual representation (flowchart) of the Objection and Dispute Resolution process, please see the Appendix to this Briefing Paper.

String Contention

Creation of Contention Sets

It is likely that during the new gTLD application process there will be multiple applications submitted to similar or identical gTLD strings. Since there can only be one registry operator/owner per string, ICANN has created mechanisms to resolve string contention. Contention sets, groups of identical or similar gTLD strings, will be identified by String Similarity Examiners appointed by ICANN during the Initial Evaluation Period. ICANN will publish contention sets by the close of the Initial Evaluation Period.

While contention sets are determined during the Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process steps have concluded. This is because any application excluded through these steps might modify a contention set identified earlier. Once contention sets have been confirmed, ICANN will resolve the string contention cases through either a process of comparative evaluation or other efficient means for contention resolution.

Comparative Evaluation

Only community-based applications can elect to undergo a comparative evaluation. Comparative Evaluation is a process by which an independent panel scores applicants within a contention set based on four (4) criteria:

- Nexus between Proposed String and Community;
- Dedicated Registration Policies;
- Community Establishment; and
- Community Endorsement.

Each applicant is scored on a scale of 1 to 3 for each criterion. If no applicant scores 11 or more points, there is no clear winner. If only one applicant scores 11 or more, that applicant will be declared the winner. If

more than one applicant scores 11 or more, the evaluators will consider what portion of the community is represented by the application. If one applicant represents a much larger share of the relevant community than another that will be the basis for awarding priority. If no winner is identified by the close of the comparative evaluation of a contention set, resolution of the string contention may be sought through other tie-breaker mechanism. A last resort option for resolving the contention may be auction.

Other Efficient String Contention Resolution Mechanisms

In situations where string contention cannot be resolved through comparative evaluation, ICANN has suggested that the first efficient means of resolution would be settlement among the parties where other contenders drop out and one party continues to proceed. It is important to note, however, that in this scenario those withdrawing cannot apply for a new string in the current round nor can contending parties combine to form a new applicant. Thus, it is likely that the alternative approach will be to settle the contention through an auction process. ICANN has repeatedly emphasized that auction should only be used as a last resort to objectively resolve competing applications.

Delegation

All applicants that successfully complete the evaluation processes—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN in order to proceed to delegation (see <http://www.icann.org/en/topics/new-gtlds/draft-agreement-24oct08-en.pdf>). ICANN may conduct a pre-contract review to ensure that an applicant continues to be a going concern in legal good standing. Following completion of the Board review, each applicant will be required to complete pre-delegation steps (such as a technical testing) as a pre-requisite to entering into the IANA process for delegation into the root zone. The pre-delegation check must be completed within the time period specified in the registry agreement. Once the gTLD is entered into the root zone, pursuant to the terms of the registry agreement between ICANN and the applicant, ICANN may perform audits to ensure that registry operators remain in compliance with agreement obligations. Also, applicants (now registry operators) will also be required to pay a Registry-Level Fee on a quarterly basis going forward. The fee will be either 18,750 or the Registry-Level Transaction Fee, whichever is greater (see Article 6, Section 6.1 for detailed information on how the Registry-Level Transaction Fee is calculated per quarter).

Choose Partners Wisely

Since most companies are not equipped or possess the necessary expertise to apply for and operate a registry in-house, it is likely many will seek 3rd party assistance. CSC strongly recommends that great care and caution is used in selecting partners to assist your organization in understanding the risks, challenges and on-going resource requirements associated with this new gTLD initiative. Be sure to require evidence of financial stability; technical, operational and policy experience, as well as conduct a thorough vendor background screening before signing any contracts or committing funds.

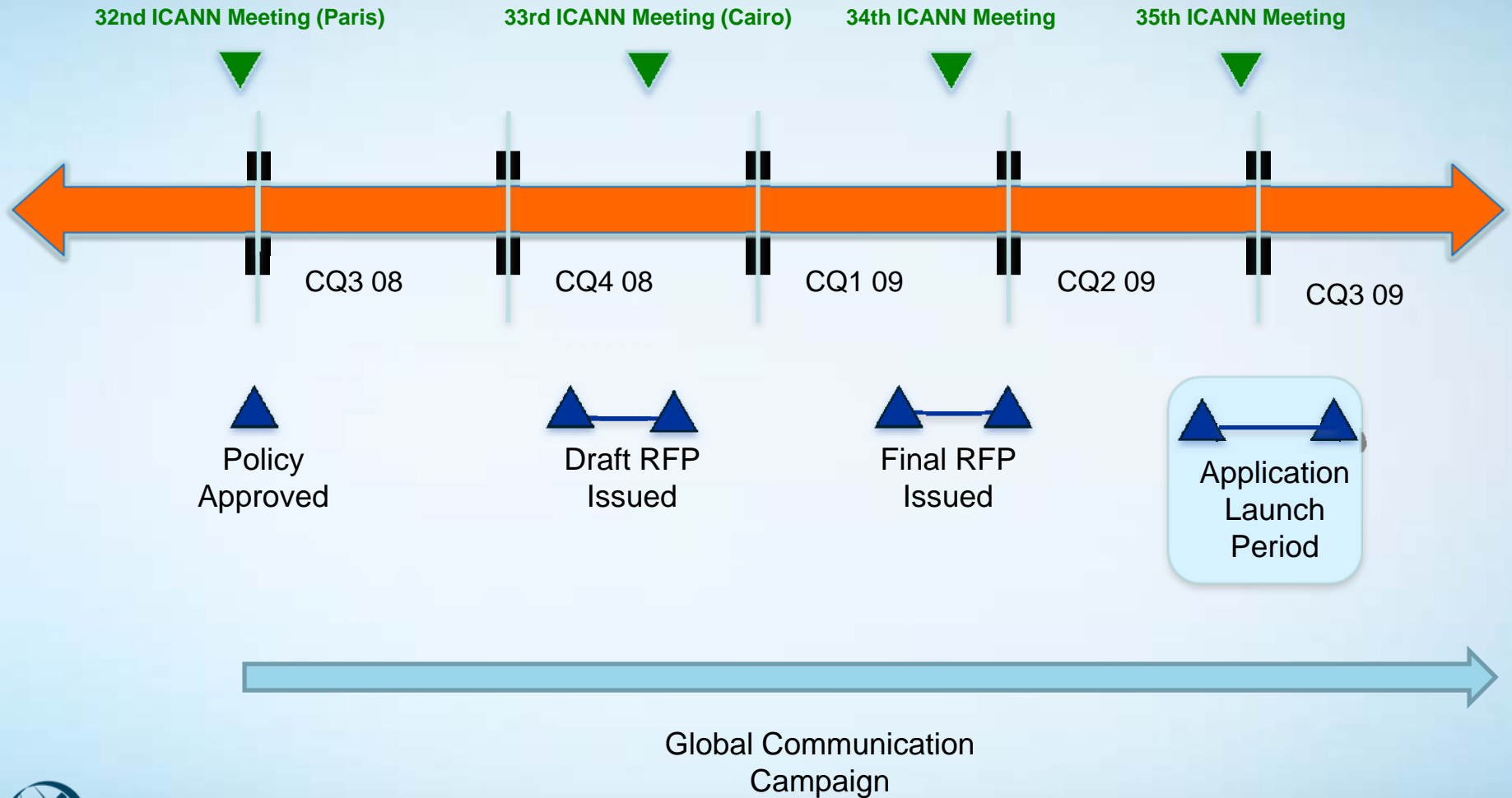
As the trusted partner of leading corporations and law firms for over 100 years and an ICANN-accredited registrar since 1999, CSC is prepared to assist corporations through these landmark challenges. For more information about the New gTLD initiative by ICANN or for assistance in assessing, applying or operating a new gTLD, CSC can help. Please contact CSC at newgtlds@cscinfo.com to request information, be placed on our mailing list, request a free consultation or attend one of our FREE webinars.

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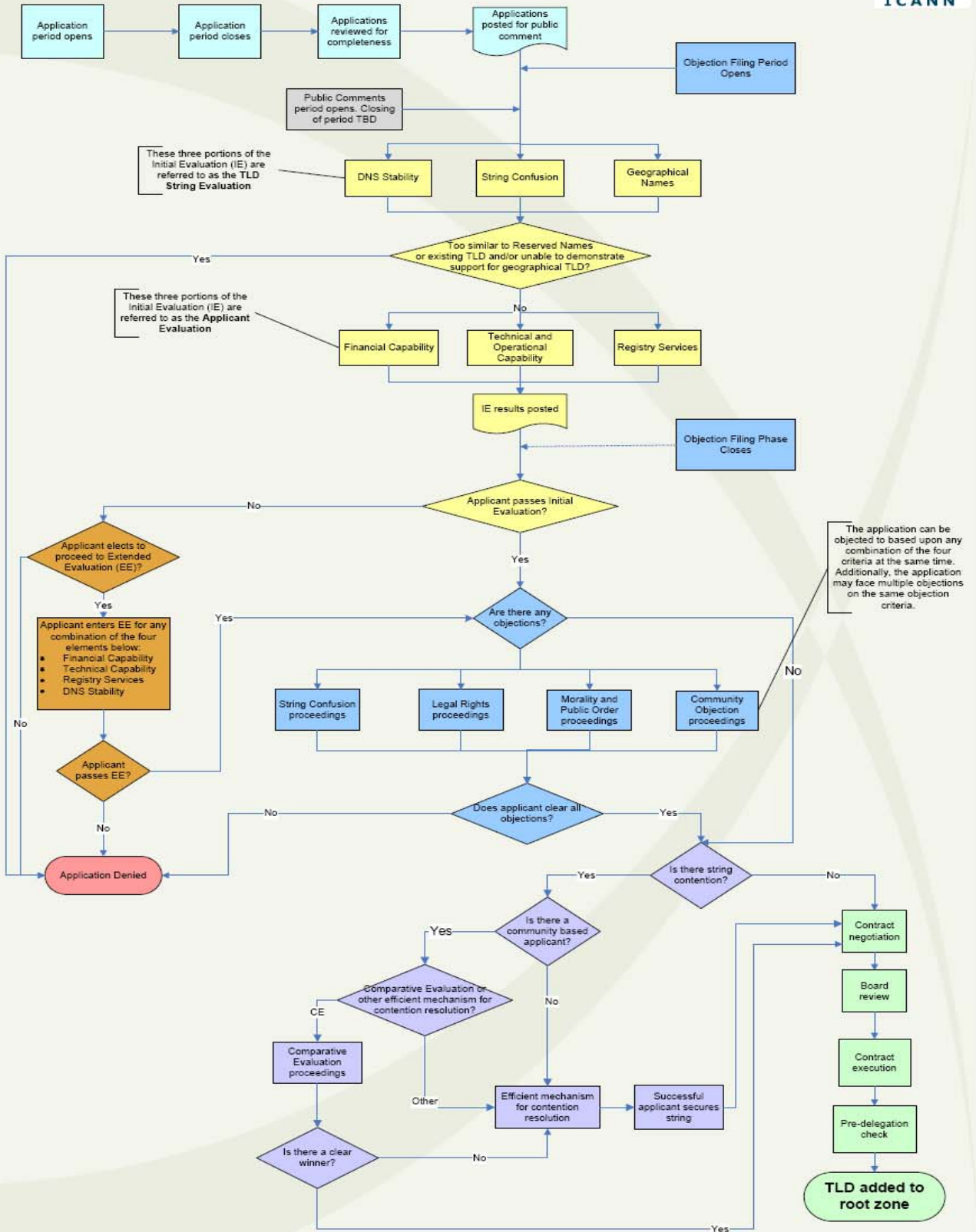
Disclaimer: The information contained in this Briefing Paper is based on the DRAFT New gTLD Applicant Guidebook published by ICANN on October 24, 2008. This document is subject to public comment and revision and is not final at this time. Nothing in this Briefing Paper should be construed as legal advice and has been provided for informational purposes only. Interested parties are encouraged to read the complete New gTLD Applicant Guidebook at <http://www.icann.org>.

Anticipated Timeline New Generic Top-Level Domains



New gTLD Program - Evaluation Process

DRAFT - For Discussion Purposes



DRAFT - New gTLD Program – Objection and Dispute Resolution



An applicant may face anywhere from zero objections to multiple objections in any of the four areas

Objection filing phase opens

Party with standing files objection directly with DRSP for these grounds:

- *String Confusion*
- *Legal Rights*
- *Morality and Public Order; and/or*
- *Community*

Objector pays filing fee directly to DRSP

Objection filing phase closes

Applicant responds to objection by paying filing fee and responding to claims made by objector

Panel reviews parties' submissions and renders decision

Once the DRSPs receive all objections, at their discretion, the DRSPs may elect to consolidate certain objections if there are multiple objections to the same application based on the same ground

Prior to the commencement of proceedings, the objector and the applicant will both submit fees directly to the DRSPs to cover the estimated cost of proceedings. After decision is rendered, the prevailing party will be refunded any costs paid in advance

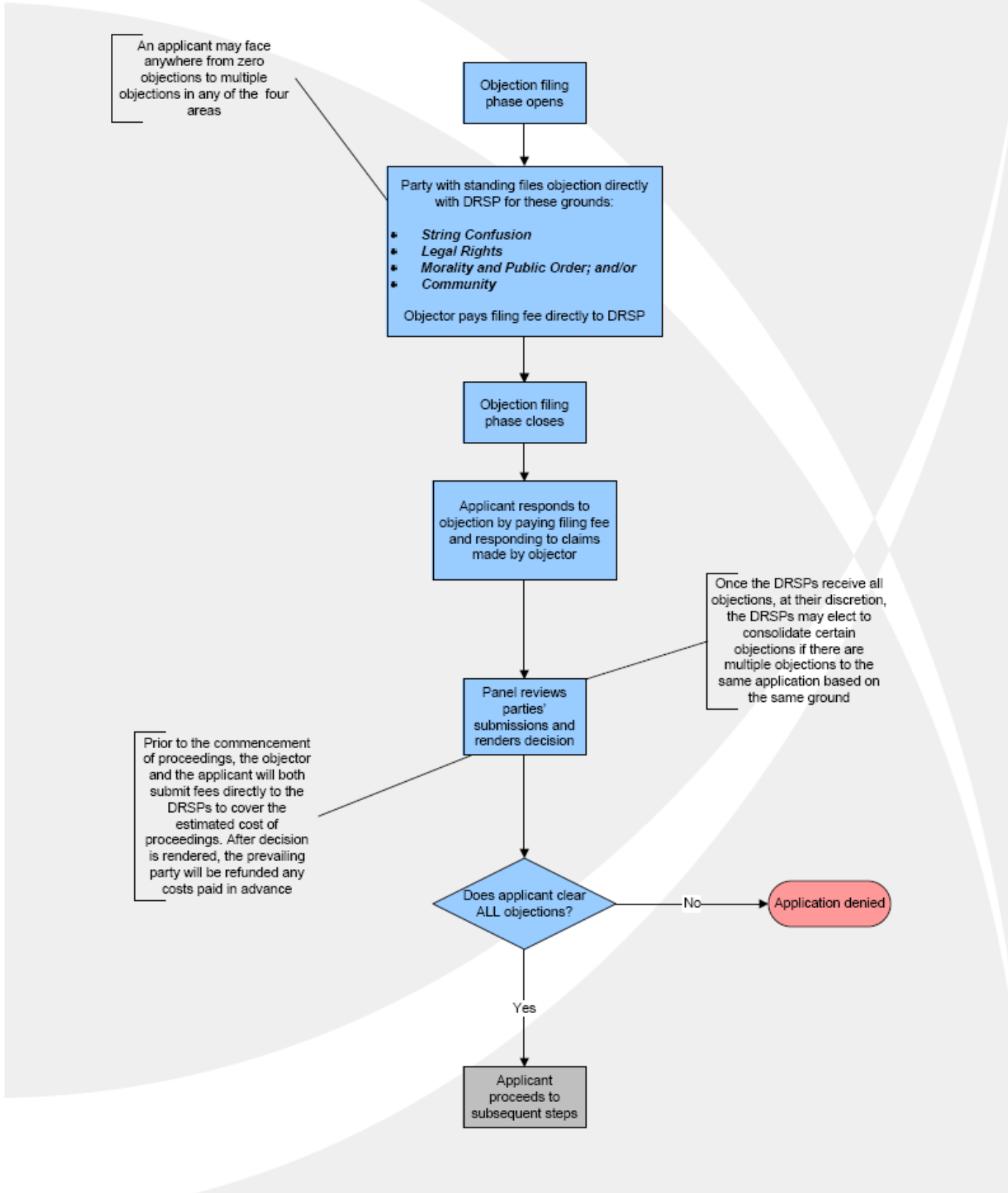
Does applicant clear ALL objections?

No

Application denied

Yes

Applicant proceeds to subsequent steps



DRAFT - New gTLD Program - String Contention

