New gTLD Subsequent Procedures PDP Working Group Initial Report
Comments from Jamie Baxter of dotgay LLC

2.4.2.e.2: The communications period prior to the 2012 round of new gTLDs was approximately six months. Was this period optimal, too long or too short? Please explain.

A focus for deciding on a timeline should involve an analysis of conversion rates of newcomers and application type differences.

The communication period exists to generate awareness about the new gTLD program, both inside and outside of the ICANN community. To effectively attract diversity into the program, the communication period must be sufficient enough in length to support newcomer conversion – awareness through to application submission.

Differences in application type requirements must also be examined to ensure the chosen communication period length does not create disadvantage to any particular type of application based on the ICANN requirements of that application type.

In order to fully understand the true impact that the 6 month communication period in the 2012 round delivered, it would be prudent to understand data points such as:

1. How many applications were submitted by applicants that only learned of the new gTLD program during the communication period?
2. How many applicants may have started the application process after exposure to communication efforts, but failed to submit because of insufficient time?
3. What data has been gathered from community applicants on the length of time required to build community endorsement, both from those who were aware and unaware of the new gTLD program prior to the communication period? Community endorsement is a unique requirement for community applicants and is generally something that takes time.

Our experience provides evidence that 6 months would not have been enough time to drive community engagement and build community stakeholder support for a community application as required by the AGB, primarily because of the specific depth and breadth of the community our application represents. Such factors should not disqualify or disadvantage any community in subsequent rounds and must be considerations when deciding on the length of future communication periods.

2.4.2.e.3: If ICANN were to launch new application windows in regular, predictable windows, would a communications period prior to the launch of each window be necessary? If so, would each communications period need to be the same length? Or if

the application windows are truly predictable, could those communication periods be shorter for the subsequent windows?

Yes. A communication period would still be necessary.

Aside from being an important catalyst for potential new applicants, a communication period is also an important reminder/alert that ICANN is about to receive new gTLDs applications. Even non-applicants will benefit from this trigger in order to engage in ICANN processes designed to scrutinize or eliminate harmful applications by way of comment periods and objection proceedings. Eliminating or diminishing the communications period is not seen to be a choice that would serve the public interest.

2.5.3.e.1: For the next round, is having the applicant submission period set at three (3) months sufficient?

Yes. However if data points collected from the questions I raised in 2.4.2.e.2 show that applications started and submitted as a direct result of the communications effort in the communication period, and which benefited from having enough time because the communication & application period were not overlapped, then I could not support an overlap of the two periods.

If any element of the goals of the communication period include attracting applications from outside of the current ICANN community (ie. those previously unaware or unfamiliar with new gTLDs), then it is crucial that projected needs and prior experiences of this potential applicant pool be full considered in the development of new policy that impacts their potential (and ability) to engage in subsequent rounds. Without such input, limiting or overlapping time periods arbitrarily could work against newcomers.

2.5.3.e.2: Is the concept of a fixed period of time for accepting applications the right approach? Why or why not? Does this help facilitate a predictable schedule for submission and objections/comments?

Yes. Predictability is important and a fixed period of time is a critical piece of information for applicant planning, and for objections/comments to follow.

2.5.4.e.11: Are there any particular locales or groups that should be the focus of outreach for the ASP (e.g., indigenous tribes on various continents)?

If the applicants support program is receiving an overhaul and upgrade in subsequent rounds, it makes sense that outreach should extend to locales and groups that may have declined consideration based on costs and general application support.

Outreach may also look to include information/education that extends beyond just the application process and timelines, with focus on case studies that can help inspire innovation and creativity within populations, initiatives, communities and sectors that may not see a common or productive link to new gTLDs.

2.5.5.e.3: Some in the Work Track have noted that even if a limited challenge/appeals process is established (see preliminary recommendation 2 above), they believe the covenant to not sue the ICANN organization (i.e., Section 6 of the Terms and Conditions) should be removed. Others have noted the importance of the covenant not to sue, based on the ICANN organization's non-profit status. Do you believe that the covenant not to sue should be removed whether or not an appeal process as proposed in section 2.8.2 on Accountability Mechanisms is instituted in the next round? Why or why not?

Yes. The covenant to not sue the ICANN organization should be removed regardless of whether or not an appeal process is adapted. I believe this is important to ensure that ICANN organization remains accountable in a manner beyond it's own remit.

ICANN organization has in past cases ignored or declined to take action on decisions of Independent Review Panels (IRP) and this has drawn into question ICANN's willingness to accept or take responsibility for its mistakes. Because it remains uncertain how (or if) ICANN's new gTLD program and accountability mechanisms will evolve, there must be an alternative remedy available to challenge ICANN organization's actions or inactions. Non-profit status should not be interpreted as license to avoid accountability, especially when the organization in question exists to serve the public interest.

2.6.1.e.4: Some members have suggested that the processing of certain types of applications should be prioritized over others. Some have argued that .Brands should be given priority, while others have claimed that community-based applications or those from the Global South should be prioritized. Do you believe that certain types of applications should be prioritized for processing? Please explain.

Based on the 2012 round, the evidence is quite clear that contention sets including a community application are among those requiring the longest path to contracting, specifically when Community Priority Evaluations (CPE) are expected. Instead of exacerbating this disadvantage, it would seem reasonable to have the entire contention set be prioritized to begin initial evaluation early. Even with prioritization, the

contention set is almost certain to be passed by a majority of all other applications because of the additional 4-9 months required to conduct CPE. Adapting this prioritization for contention sets with community applications does not provide any special advantage, however it does help reduce disadvantages to market entry speed.

2.7.1.e.1: The base Registry Agreement allows registry operators to voluntarily reserve (and activate) up to 100 strings at the second level which the registry deems necessary for the operation or the promotion of the TLD. Should this number of names be increased or decreased? Please explain. Are there any circumstances in which exceptions to limits should be approved? Please explain.

I think there should be some flexibility in this area for those who have demonstrated constituent support to employ elements of the registry business model that offer benefit to either the community members or Internet users.

The example I share is something embedded in the dotgay LLC application for .GAY which includes a community supported plan to introduce community hubs using generic terms (rights.gay, marriage.gay, travel.gay, etc). These community hubs are designed to aggregate community information in an easy access, user-friendly manner. Simultaneously they drive visibility to .GAY registrants that associate with each hub. Community hubs would not be owed by an individual registrant, but instead maintained by the registry in collaboration with the community to add value and benefit for .GAY registrants and Internet users.

It is important however that any registry operator request to exceed 100 strings should be supported with endorsement of some nature that encompasses more than the interests of the registry itself. In the case of community applications, it could be the endorsing organizations that offer support for the request.

2.7.1.e.3.1: Should there be any limit to the number of names reserved by a registry operator? Why or why not?

I agree with a limit, however there should also be a path to exemption under certain circumstances, especially for those looking to innovate in the gTLD space or offer additional benefit to registrants and Internet users.

2.7.1.e.3.2: Should the answer to the above question be dependent on the type of TLD for which the names are reserved (e.g., .Brand TLD, geographic TLD, community-based TLD and/or open)? Please explain.

Likely. I would include community-based TLDs as an approved type specifically because community support for registry use of additional reserved names could be shown through written endorsement at time of application submission. The requirement of community endorsement balances the ability to innovate and address community challenges, without giving excessive access to the registry operator.

2.8.1.e.9: How can the "quick look" mechanism be improved to eliminate frivolous objections?

It was clear that frivolous objections were filed in the 2012 round, costing applicants thousands of dollars to simply respond when the objector had no reasonable standing to object in the first place. Without controls on objections that are frivolous, it is likely to become a further gaming tactic in subsequent rounds.

I propose that for each objection filed, especially for community objections, that a "quick look" mechanism be in place to establish standing. The objector should be responsible for covering the initial cost to establish standing, and only if standing is confirmed should the applicant be required to respond. Applicants named in the objection should also have the opportunity to submit materials in rebuttal to the objector's claim of standing (at no cost to the applicant).

Without a "quick look" the objection process will become littered with gaming, benefiting only those seeking to delay applications, generate fake or unsubstantiated opposition, or drain resources of applicants. The only winners from frivolous objections are those seeking to delay applications and third party providers profiting from the full and unnecessary review of an objection that lacks the necessary standing to succeed.

2.8.1.e.11: Should applicants have the opportunity to take remediation measures in response to objections about the application under certain circumstances? If so, under what circumstances? Should this apply to all types of objections or only certain types?

Yes, and reciprocally the objectors should be <u>required</u> to engage in remediation measures with the applicant before their objection can move forward. This is especially important in community objections because it helps avoid frivolous objections from being filed in the first place.

In our experience, a community objection was filed against us that contained false claims about our application. In the end, the panelist confirmed that the claims in the objection were unsubstantiated and in no way reflected in the contents of our application. Efforts to engage in dialogue with the objector in order to clarify our application and avoid objection fees were ignored, leading us to believe that the objection was simply part of a gaming strategy.

What needs to be sorted is how mediation could be worked out in cases that are legitimate, especially when involving community objections because the current system does not allow for application changes on community-based applications. Mediation measures must be administered in a non-discriminatory manner between standard and community applicants.

2.8.1.e.12: Who should be responsible for administering a transparent process for ensuring that panelists, evaluators, and independent objectors are free from conflicts of interest?

Not ICANN organization. If ICANN organization is confident in their choices for third party providers then complete information on all panelists, evaluators and independent objectors should be made 100% public for all in the ICANN community to comment on. There should no longer be any level of opaqueness with the CPE process or the parties and people involved. It provides no benefit and offers zero confidence or reassurance to any applicant involved in CPE (or their community members), serving no purpose other than to cause greater suspicion and concern.

If a third party will not agree to these terms than they should not be eligible. ICANN should also be restricted from entering into contract with any provider that requires a cloak of secrecy on any aspect of their process and personnel, as occurred with the Economist Intelligence Unit when hired to conduct CPE in the 2012 round.

2.8.1.e.14: Community Objections: Many Work Track members and commenters believe that the costs involved in filing Community Objections were unpredictable and too high. What can be done to lower the fees and make them more predictable while at the same time ensuring that the evaluations are both fair and comprehensive?

ICANN must negotiate on behalf of the applicants to limit the range of costs for community objections. In the 2012 round, steps were taken to limit the amount of materials an objector/applicant could submit, presumably to reign in costs and reduce work load, but that did not translate back in the form of community objection costs.

With the concrete learnings of the 2012 round, ICANN must assume more responsibility for third party negotiations and provide more predictability around costs and stand behind their published cost projections going into subsequent rounds. Cost projections must be published with more care and applicants should no longer be subject to inflated expenses because of ICANN organization mismanagement or unpreparedness.

Like any provider of product or service in the real world, ICANN must learn to be more accountable for the services they are providing and the suppliers they choose to contract with. If costs inflate beyond the projections communicated to applicants at the time the application window closes, ICANN and/or their providers must bear the burden in subsequent rounds, hopefully encouraging ICANN to have tighter oversight on all providers involved in the new gTLD program.

2.8.1.e.15: Community Objections: In the Work Track, there was a proposal to allow those filing a Community Objection to specify Public Interest Commitments (PICs) they want to apply to the string. If the objector prevails, these PICs become mandatory for any applicant that wins the contention set. What is your view of this proposal?

I agree with the idea of having objectors specify PICs in their objection filings, especially when they focus on eliminating harm. This will require further instruction in the community objection filing procedures to ensure that community organizations fully understand their option to engage in this manner and how to effectively specify their requested PIC in their objection.

When a community objection is successful, it may subsequently be necessary to include a negotiation period between the objector and the winning applicant in order to reach agreement on the final language of the PIC. This would be important given that the winning application will never be the application the community organization originally objected to. The PIC may conflict or overlap with the contents of the winning application, so negotiation may be necessary in order to properly merge the PIC.

2.8.2.e.1: Limited Appeals Process: What are the types of actions or inactions that should be subject to this new limited appeals process? Should it include both substantive and procedural appeals? Should all decisions made by ICANN, evaluators, dispute panels, etc. be subject to such an Appeals process. Please explain.

The new appeals process should be available to address legitimate applicant concerns linked to substantive matters, including (but not limited to):

- Evaluator misinterpretations of application contents
- Unsupported claims or assumptions made by evaluators when withholding points
- Unsupported claims or misuse of facts, research and data to withhold points
- Unequal application of standards across applications
- Use of additional standards/measures/metrics not specified in the AGB
- Relevance of support/opposition letters

The process for substantive appeals should be inclusive of all decisions made by ICANN organization & Board members, evaluators, dispute panels, etc as they relate to the new gTLD program. Applicants must be provided opportunity to state their case when it is believed their application has suffered due to substantive mistakes or oversights.

Applications with large and widespread documented support, from communities or otherwise, should especially be given consideration to address substantive concerns. Given that applications with documented support often represent large registrant and/or Internet user populations, the new gTLD program should not be so quick to dismiss or ignore the importance of their collective voices and interests.

2.8.2.e.2: Limited Appeals Process: Who should have standing to file an appeal? Does this depend on the particular action or inaction?

Applicants that feel they have been mistreated by ICANN org & Board, evaluators, dispute panels, etc should have standing to file an appeal based on action, inaction or related decision about their application.

2.8.2.e.3: Limited Appeals Process: What measures can be employed to ensure that frivolous appeals are not filed? What would be considered a frivolous appeal?

A quick look could be employed to see if the appealing party has clearly stated their claim and supported it with evidence. Appeals that cannot point to an error or oversight that could directly impact the final outcome, or are initiated to merely delay or interrupt proceedings should be considered frivolous.

2.8.2.e.5: Limited Appeals Process: Who should bear the costs of an appeal? Should it be a "loser-pays" model?

Substantive appeals with standing should have no additional cost to the appealing party when involving decisions from evaluators or panelists.

As with goods and service providers in the real world, service providers for ICANN should be willing and capable of defending any of their decisions without expecting or requiring any further financial gain. If providers fail to thoroughly and accurately support their decisions they have technically not earned their service compensation. Money should not be an unconstrained variable in ICANN processes, or leveraged to limit legitimate appeals.

I am of the opinion that when a provider performs service in a flawed or insufficient manner, later sparking a legitimate appeal, then whatever time the providers may have spent reaching a flawed or incomplete decision is not something worthy of full compensation. Providers should be paid once for delivering a rock solid decision. They should not be compensated for defending their decisions or for efforts to correct decisions determined to be flawed or insufficient.

2.8.2.e.6: Limited Appeals Process: What are the possible remedies for a successful appellant?

This will depend on the process under appeal, however it makes sense that the requested remedy be a required part of the written appeal.

Challenges to scores may be the least complex to sort out, offering a remedy of score adjustment if the appealing party successfully argues their case in the proceeding.

For example, if there is an appeal to a CPE decision that deducted 1 of 2 possible points in Criteria #4 for Opposition, the appealing party will be burdened with providing evidence that the point was unjustly withheld. In the written appeal, the applicant could state that giving back the point is a requested remedy. This would only happen if it is determined that the service provider cannot adequately justify withholding the point, or according to the rules had mistakenly withheld the point.

2.8.2.e.7: Limited Appeals Process: Who would be the arbiter of such an appeal?

A suggestion would be to have a standing panel to handle appeals, populated with individuals experienced in appellant case proceedings and familiar with balancing process, public interest and fairness.

2.8.2.e.8: Limited Appeals Process: In utilizing a limited appeal process, what should be the impact, if any, on an applicant's ability to pursue any accountability mechanisms made available in the ICANN Bylaws?

Adding a limited appeal process should not impact or change any applicant's ability to pursue accountability mechanisms made available in the ICANN Bylaws.

2.8.2.e.9: Limited Appears Process: Do you have any additional input regarding the details of such a mechanism?

The mechanism could likely mimic many qualities of the reconsideration request forms, which is focused on question/response in written format. It could also be beneficial to include a hearing or testimonial component where applicable.

2.9.1.e.1: During its deliberations, a number of Work Track 3 members expressed that they believed the "definition" of community, available in section 1.2.3.1 of the Applicant Guidebook, was deficient. A number of attempts were made by the Work Track to better define the term "community," but no definition could be universally agreed upon. Do you believe the current definition of "community" in the AGB is sufficiently clear and flexible to represent the intentions of existing policy about community applications and the various types of communities that may seek priority in the new gTLD program? If not, how would you define "community" for the purposes of community-based applications in the New gTLD Program? What attributes are appropriate? Do you have specific examples where demonstrable community support should or should not award priority for a string? Do you believe examples are useful in developing an understanding of the purpose and goals of any community-based application treatment?

I believe that the current definition of "community" in the AGB is sufficiently clear and flexible to represent the intentions of the existing policy about community applications and the varied communities that may seek priority in the new gTLD program. Deficiency did however exist in the implementation of the existing policy during the 2012 round, creating a more limiting interpretation of the policy that ultimately favored certain types of communities over others.

Additional guidelines created by the service providers after applications were submitted impose more restrictive interpretations of language in the AGB, limiting the definition of many AGB terms in subtle ways to create a more gated and ridged boundary on what types of communities could actually find success in the Community Priority Evaluation (CPE) process.

Implementation shortcomings in the 2012 round that ultimately created hierarchy and preference among types of communities should not be permitted to live as a standard for subsequent rounds. Instead of allowing the definition of "community" to be the focus of debate, more energy needs to be directed towards solutions that help ICANN and CPE providers understand the types of communities seeking new gTLDs.

Make the implementation plan more inclusive to match the policy, don't limit the policy to make the implementation plan easier and therefore more exclusive. Providing a path to success for communities that have historical connection to a string and demonstrable community support should not be lost due to the inflexibility of the new gTLD program.

When a community application is submitted with such substantial community endorsement for the operational and governance model that focuses on community interest, offering opportunity and solutions to legitimate community concerns not currently offered or addressed in the TLD space, the CPE process should not be so blind and inflexible in its review and consideration just because its easier.

If priority for communities is the goal of ICANN policy, then the implementation of that policy needs to shift focus and start delivering on its objectives.

2.9.2.e.3: Could/should alternative benefits be considered when scoring below the threshold to award the string (e.g., support in auction proceedings)?

Any benefit considered should be done so in the interest of helping to realize the larger interests of the community that that community application represents, improving their chances of securing the TLD without the financial burden of auction. It seems counterintuitive to discard or discount all of the energy and multi-stakeholder effort that has been put forth in a community application, when it should actually be valued in some way during auction.

2.9.1.e.4: What specific changes to the CPE criteria or the weight/scoring of those criteria should be considered, if the mechanism is maintained?

What seems to be lacking in the existing CPE criteria is a more thorough interpretation of "relevant" for scoring community opposition. It is very troubling that one entity of only minor representation in a larger community has the ability to impact criteria #4 scoring. There are outlying opinions in every community, but it seems overindulgent of the new gTLD program to allow any single outlying view to assume such relevance over the interests of the larger community. Opposition should only impact an application when it represents a significant percentage of the community. This will also make it a greater challenge for competing interests to game CPE through the practice of isolating and influencing just one outlying entity of a community.

Although no specific questions exist in this report about how letters of opposition were handled in the 2012 round, I would like to add that I think it is imperative that a deadline be imposed on the acceptance of letters of opposition that can officially be considered by the CPE panel. Without a deadline this element of CPE will continue to be gamed by those aiming to negatively impact CPE scoring.

As we have learned, CPE didn't get started for almost 2 years after some community applications were submitted, giving competitive efforts a generous amount of time to generate opposition they eventually used to spring on community applicants just

before entering CPE. Letters of opposition should have a specific deadline requirement similar to public comments on applications (ie. 60 days from reveal), giving community applicants proper notice of community concerns and ample opportunity to mitigate them. Disadvantaging community applicants through the shock and surprise method of a last minute letter of opposition submission prior to CPE commencing is pure gaming and should not be permitted, especially when no prior public comment was submitted or community objection was filed. If ICANN continues to permit this practice it ignores existing early warning practices and models (ie. GAC) and shows a deliberate attempt to disadvantage community applicants in the new gTLD program.

Additionally, what seems to be missing from the CPE criteria is an evaluation of the benefit that a community application offers to registrants, community members and Internet users. Specific criteria points, or perhaps bonus points could be awarded for applications that provide solutions for community challenges or goals through the operation of the TLD. Innovation is something worthy of rewarding in CPE.

2.9.1.e.5: In the 2012 new gTLD round, it was determined that community-based applications should have preference over non-community-based applications for the same string. Some have argued that this preference should continue, others have claimed that this preference is no longer needed. Should the New gTLD Program continue to incorporate the general concept of preferential treatment for "community applications" going forward? Is the concept of awarding priority for community-based applications feasible, given that winners and losers are created?

Yes. Preferential treatment for community-based applications should continue in subsequent rounds. When communities identify a need to introduce a new gTLD that is closely linked to their existence or operations, they should have the opportunity for preferential treatment in order to avoid competition with other applicants that have not demonstrated support from the community. Not only does this help ICANN achieve its goals in the area or serving public interest, but it also adds diversity of the TLD space.

2.9.1.e.6: The Work Track also considered a report on CPE prepared by the Council of Europe, which noted the need to refine the definition of community and re-assess the criteria and guidance for CPE in the AGB and CPE Guidelines. Although this paper has not been officially endorsed by the European Commission or the GAC, there are a number of recommendations in this report on community-based applications. The Work Track is seeking feedback from the community on this report and more specifically which recommendations are supported, not supported or which require further exploration. Do you agree with the Council of Europe Report, which in summary states, "Any failure to follow a decision-making process which is fair, reasonable, transparent and proportionate endangers freedom of expression and association, and risks being

discriminatory." Did the CPE process endanger freedom of expression and association? Why or why not?

I support the Council of Europe report and agree with the summary statement.

2.9.1.e.7: In regards to recommendation 2.9.1.c.1 in section c above, what does, "more transparent and predictable," mean to you? For what aspects of CPE would this apply in particular?

When providing guidance on making CPE "more transparent and predictable," it seems prudent that the terms "transparent" and "predictable" must be properly qualified in order to avoid any further misunderstandings, confusion and clarity about expectations.

Our experience as a CPE participant is riddled with frustrations around how these terms were used/interpreted by ICANN in certain circumstances to keep details and processes out of the public eye. And why? At the same time, ICANN's limited interpretation and application of both terms created chaos and concern throughout the broader ICANN community.

The lack of transparency and predictability in CPE generated more opinion reports, accountability mechanism filings, DIDP requests and general dissatisfaction than any other aspect of the new gTLD program. It even culminated with a Board request for an independent investigation into the entire CPE process when the pressure and inability to ignore issues reached a tipping point.

It's fair to say that all of this could have been avoided if ICANN was more "transparent" and offered more "predictability" throughout all of CPE.

"Transparent"

It remains unclear why the implementation team elected to make CPE a very non-transparent process. By this, I mean that details about the panelists, their support teams and the CPE provider's process were hidden from the public. No GNSO policy recommendation regarding CPE required this level of non-transparency and no reason has ever been offered as to why this implementation approach was taken. Although in hindsight this approach may be the best way to protect ICANN's own interests, it did not protect the interest of community applicants and the communities and/or community members they represent.

Making the CPE process "more transparent" means to me the following:

1. Procedures - Providing details on the CPE procedures well after community applications have been submitted is not an act of transparency. Providing CPE procedures well in advance of the communication plan for subsequent rounds of gTLDs is an act of transparency.
2. Panelists - For community objection proceedings the panelist is required to provide background to allow conflict of interest review. None was provided in CPE and to this day no one (possibly including ICANN) knows who served as panelists on any part of CPE. We have only the word of the CPE provider, in an apparent written statement to ICANN, that there were no conflicts of interest involved in CPE. Ironically, a substantial amount of the panelists and panelist teams have suspiciously moved on from employment with the CPE provider since delivering their results, making it even more impossible to engage them in ongoing accountability efforts and investigations surrounding CPE. This is not transparency and remains a serious concern, most especially for historically marginalized populations where any lack of transparency can become a breeding ground for mistreatment and inequities.
3. Documents – If research or other data is going to be used by the panelists to dispute or reject assertions in an application and deduct points, documentation of these materials must be fully referenced and visible in CPE decisions. This includes ensuring that the materials or results can be reproduced or reached in perpetuity after the CPE decision is delivered. This would exclude fleeting polls or data points that cannot be replicated, and fringe editorial or non-consensus opinion that may be in opposition to applicant claims. Allowing panelists to reference materials or make broad statements that can't be substantiated or supported is not an act of transparency.

"Predictable"

This was a challenge from the very beginning with respect to CPE because ICANN didn't fully engage the CPE providers into the process early. ICANN must fully consider how their failures at offering predictability have impacted the business and financial models of applicants, and avoid allowing such gaps to exist in their future processes.

1. Costs – Having the CPE providers engaged earlier could have helped to properly identify the provider's scope of work for CPE and more effectively project costs for applicants. Allowing community applicants to be vulnerable to inflated CPE costs was an ICANN org generated dilemma and is not an act that offers predictability for applicants. Having the entire CPE portion of the new gTLD program contracted and financially scoped before opening the communication period for subsequent rounds does make it more predictable.
2. Guidelines – Applicants submitting their applications with no clue that additional CPE guidelines were part of ICANN org's larger plan with the CPE providers is not an act that offers predictability. Having every relevant CPE related document

published prior to the communication period for subsequent rounds being opened does make it more predictable.

3. Evaluation length – Allowing CPEs to extend out to a 9 month period from the originally published 2 month period, without clear and ongoing updates or explanations, is not an act that offers predictability. A serious look into why timelines were pushed so far on some CPEs, and understanding "why," could help to explain the discrepancies. Establishing expectations based on variables in applications and implementing markers and tools to better communicate status updates for applicants is a way to help make it more predictability.

2.9.1.e.8: Some in the Work Track have noted specific concerns about the way the CPE provider performed evaluations, particularly around the validation of letters of support/opposition. To what extent should the evaluators be able to deviate from pre-published guidance and guidelines? For instance, should the evaluators have the flexibility to perform elements of the evaluation in a procedurally different way?

No deviation should be permitted without the engagement and consent of the applicant, especially if the CPE providers themselves have generated the published guidelines and established the cost of CPE. Allowing unapproved alternations is too slippery of a slope because it could empower the CPE providers beyond applicant recourse and encourage over inflated CPE costs to the applicant.

Reminder: CPE cost inflated from an estimated $10,000 to $24,000 in the 2012 round, with no added benefits to the applicant or requirements put on the CPE providers beyond what was in the AGB. If additional ICANN requirements contributed to the inflated price it was neither shared nor communicated publically.

Any deviation perceived as a short cut or "scope of work incompleteness" (ie. validating every letter) by the CPE provider must result in some form of financial reimbursement to the applicant. Requiring the CPE provider to fulfill their service obligations against the published guidance, guidelines and fee paid by the applicant is something ICANN must be willing to enforce. CPE should not become a process that over-promises on its deliverables in order to inflate the CPE fee, and then be weakened by CPE provider process deviations in order to become more profitable for the CPE provider.

It should go without saying, but I would vehemently object to any deviation from the published guidance and guidelines that contributes to a community applicant's failing grade in CPE. This must never be permitted.