

## Application Queuing - Path Forward to Implementation.

### Issue

1. How to determine the priority of applications during the next round of ICANN's new gTLD program. In other words, how to implement recommendation 19.1 and implementation guidance 19.2 from the Final Report.

### Background

2. Consistent with Recommendation 19.1, in [February 2024](#), ICANN org proposed to implement the prioritization draw inline with the approach that occurred in 2012, with the addition of some logistical/operational improvements. The IRT members participating in the call did not support a repeat of the prioritization draw and instead asked ICANN org to explore ways to avoid the need for a draw and to randomize the prioritization process.
3. [In June 2024](#), ICANN org proposed to forgo the draw and, based on SubPro Final Report implementation Guidance 19.2, use an alternative method to determine processing priority. The approach was intended to address the risks associated with the relevant anti-lottery regulations while efficiently assigning priority processing numbers consistent with the policy recommendation.
4. During the June meeting, IRT members participating in the call then insisted that, based on recommendation 19.1, ICANN had to repeat the draw from 2012.

[In December 2024](#), ICANN org presented a [revised version of the process](#) originally presented during step 2 above, which included a live draw, broadcast virtually but without a public, in person event, as was the case in 2012. See google doc:

[https://docs.google.com/document/d/1T5Gap0fzeOTWNUpBK\\_Bu\\_Xksd7sw6-R6MhLDKhDSsCQ/edit?tab=t.0#heading=h.asvp60xyqoox](https://docs.google.com/document/d/1T5Gap0fzeOTWNUpBK_Bu_Xksd7sw6-R6MhLDKhDSsCQ/edit?tab=t.0#heading=h.asvp60xyqoox)

5. During the same December 2024 call, some IRT members then asked to change the nature of the draw, from a raffle to a randomized draw, forgoing the raffle fee, and thereby possibly avoiding any risks that the application fee could be regarded as the raffle-entry fee. IRT members also asked ICANN to obtain an opinion from the California AG on the risks of alternative ways to determine priority.

### Implementation Path

6. ICANN will implement the draw as presented to the IRT in [December 2024](#), based on recommendation 19.1. ICANN remains open to explore alternatives to the draw, as laid out in [June 2024](#), however, due to the timeline, such a decision needs to be made by the IRT no later than 8 February 2025.

### Rationale

7. The proposed approach aligns with the wording and intent of recommendation 19.1. The PDP WG discussed this issue and did not recommend any fundamental changes to the

2012 process. ICANN org has already provided an alternative prioritization method to the IRT (aligning with implementation guidance 19.2) that would not rely on a raffle/draw but that option was not acceptable to the IRT.

8. One of the largest cost factors of the 2012 round was risk mitigation. Therefore, ICANN has taken the approach to minimize risks that could lead to increases in costs (ultimately born by applicants) and/or may impact the program's timeline. ICANN org believes that a conservative approach to risk when it comes to the prioritization is important so not to place the program, or ICANN more generally, at risk of running an illegal lottery, e.g.:
9.
  - .The application fee could be regarded as the raffle fee and thus ICANN may have to donate 90% of the application fee.
  - Someone might bring a claim that the prioritization draw did not comply with [California Penal Code 320.5](#).
10. We considered the request to ask for an opinion from California's AG. Note that the California AG is statutorily limited to offering opinions to certain public officials, and is prohibited from offering opinions to private citizens like ICANN. The California AG takes the position that, under its statutory authority to issue opinions, it "may give opinions only to these specified public officials, and not to private citizens or to public officials who are not listed in the statute." Cal. Att'y Gen., Legal Opinions of the Attorney General – Opinion Unit, <https://oag.ca.gov/opinions> [oag.ca.gov]; see Cal. Gov't Code § 12519 (listing specific public officials to whom "[t]he Attorney General shall give the Attorney General's opinion").