



Draft Applicant Guidebook

Module 4

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the two methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in string confusion, called contending strings. If either situation 1 or 2 above occurs, such applications will proceed to contention resolution through either comparative evaluation or an efficient mechanism for contention resolution, both of which are described in this module. A group of applications for contending strings is referred to as a contention set.

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. (In this RFP, “similar” means strings so similar that it is probable that detrimental user confusion would result if the two similar gTLDs are delegated into the root zone.) Contention sets are identified during Initial Evaluation from review of all applied-for TLD strings by the panel of String Similarity Examiners. ICANN will publish contention sets by the close of the Initial Evaluation period.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

The String Similarity Examiners will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Confusion Review described in subsection 2.1.1 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or so similar that there is a probability of user confusion if both were to be delegated as TLDs in the root zone. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. Direct and indirect contention is explained in greater detail in the example that follows.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

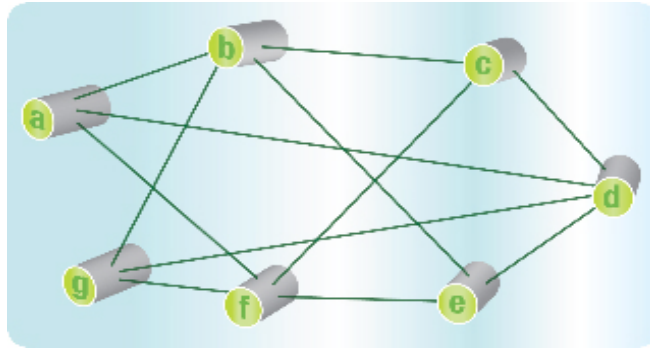


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While contention sets are determined during 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 those steps might modify a contention set identified earlier. A contention set may be split into two sets or it may be eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

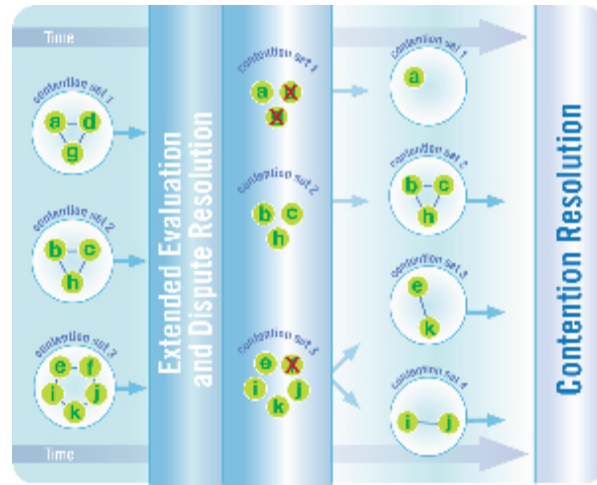


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through comparative evaluation or an efficient mechanism for contention resolution, depending on the circumstances. In this process, ICANN addresses each contention set to achieve an unambiguous resolution.

In their policy advice, the GNSO called for an efficient process to resolve cases of contention where there was no claim of community representation to be used as a factor for resolving the contention. While not settled, candidate means for this process are discussed below and in more detail in a companion paper to the Draft Applicant Guidebook called “Resolving string contention—a complete lifecycle including string contention resolution.” (See <http://www.icann.org/en/topics/string-contention-22oct08.pdf>).

4.1.2 Impact of Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another applicant (refer to Module 3), and the panel does find that string confusion exists; that is, rules in favor of the objector, the two applicants will be placed in direct contention with each other. Thus, the outcome of a proceeding based on a string confusion objection would result in a new contention set structure for the relevant applications.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention may elect to reach a settlement or agreement among themselves whereby one or more applicants withdraws its application. This may occur at any stage of the process, once ICANN publicly posts the applications received on its website.

Applicants may not resolve a case of string contention by changing their applications by, for instance, selecting a new TLD string or creating a joint venture as a means to resolve the contention case.

4.1.4 Possible Contention Resolution Outcomes

Any application with no contention situation left to resolve is allowed to proceed to the next step. In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

There may be more than one application that passes contention resolution within a contention set. If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, if string A is in contention with B, B is in contention with C, but C is not in contention with A. If A wins the contention, B is eliminated but C can go on since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Comparative Evaluation

Comparative evaluation can begin once all applicants in the contention set have completed all previous stages of the process.

The comparative evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the comparative evaluation. Each applicant participating in the comparative evaluation begins with a score of zero.

4.2.1 Eligibility for Comparative Evaluation

As described in subsection 1.2.2 of Module 1, all applicants are required to identify whether their application type is:

- Open; or
- Community-based.

Only community-based applicants may elect a comparative evaluation. ICANN policy states that if there is contention for strings, a claim to support a community by one party will be a reason to award priority to that application. If one community-based applicant within a contention set makes this election, all other community-based applicants in the same contention set will be part of the comparative evaluation.

Applicants designating their applications as community-based will also be asked to respond to a set of questions in the application form that would provide relevant information if a comparative evaluation occurs.

Before the comparative evaluation begins, all community-based applicants in the contention set may be asked to provide additional information relevant to the comparative evaluation. Additionally, the community-based applicants will be required to pay a Comparative Evaluation Fee (refer to Section 1.5 of Module 1) to participate in the comparative evaluation.

4.2.2 Comparative Evaluation Procedure

Comparative evaluations for each contention set will be performed by a comparative evaluation provider appointed by ICANN to review all applications for contending gTLD strings. The panel's charter is to determine whether one of the community-based applications clearly and demonstrably would add more value to the Internet's Domain Name System. Open applicants within the contention set will not participate in the comparative evaluation.

If no single community-based applicant emerges as one that clearly and demonstrably adds more value to the namespace than all the competing contending applications, then all of the parties in the contention set (both open and community-based applicants) will proceed to an alternate mechanism for efficient contention resolution.

4.2.3 Comparative Evaluation Criteria

A panel appointed by the comparative evaluation provider will review and score the one or more community-based applicants who elected comparative evaluation against the criteria in the following table:

Criteria	Score		
	3	2	1
Nexus between Proposed String and Community	String is name or well-known abbreviation of community institution.	String is relevant to applicant's area of interest but also has other well-known associations.	No connection.
Dedicated Registration Policies	Registration eligibility is strictly limited to members of the pre-established community identified in the application. Registration policies also include name selection and use requirements consistent with the articulated scope and community-based nature of the TLD. Proposed policies include specific enforcement measures including investigation practices, penalties, takedown procedures and appeal mechanisms.	Registration eligibility is predominantly available to members of the pre-established community identified in the application, and also permits people or groups informally associated with the community to register. Policies include some elements of the above but one or more elements are missing.	No dedicated registration policies.
Community Establishment	Clearly identified, organized and pre-established community of considerable size and longevity.	The community addressed fulfills some but not all the requirements for a score of 3.	No community addressed.
Community Endorsement	Endorsement by a recognized institution or by member organizations.	Endorsement by some groups with apparent relevance, but also some opposition by groups with apparent relevance.	Assorted endorsements from individuals or groups of unknown relevance – or – no endorsement by any community.

If no applicant scores 11 or more, 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 a basis for awarding priority.*

Following the comparative evaluation, ICANN will review the results and reconfigure the contention set as needed. The same procedure will occur for remaining contention sets involving any community-based application that has elected comparative evaluation. If no community-based applicant that has elected comparative evaluation is left in the contention set, any applications remaining in contention will proceed to a subsequent contention resolution process. Applications not in contention will proceed toward delegation.

4.3 Efficient Mechanism for Contention Resolution

A tie-breaker mechanism will be developed for resolving string contention among the applicants within a contention set, if the contention has not been resolved by other means. Unless the specific conditions for comparative evaluation outlined in Section 4.2 apply, this mechanism will be used to resolve the contention. This mechanism may also be used if no clear winner is identified during the comparative evaluation process.

The GNSO policy recommendations call for an efficient means of resolution. Continued investigation regarding the availability of alternative methods will guide ICANN's development of this mechanism.

The first efficient means of resolution that will be employed is a settlement arrived at by contending parties. Applicants for identical or similar TLDs can arrive at an accommodation where all in direct contention withdraw except for one. As described earlier, those withdrawing cannot apply for a new string. Nor can contending parties combine to form a new applicant. It is expected that many cases of contention will be resolved in this manner as it will be the most efficient and economical for the contending parties.

Failing to arrive at accommodation of the type described just above, auctions are one means of last resort that is being explored to resolve the contention. The purpose of an auction is to resolve contention in a clear, objective manner.

Auction Proceeds – The purpose of an auction is to resolve contention in a clear, objective manner. It is not to raise revenue. While there may be significant proceeds from auctions in the event they occur, it is important to understand that this in no way the purpose of the auction. The annual budget process sets ICANN's funding and spending limits. ICANN has no authorization to spend beyond the budget. ICANN already has precedent of returning revenue to the community when last year and in 2006 ICANN reduced registration fees from 25¢ to 20¢ over two years as a result of an unforeseen growth in revenue. Proceeds from auctions will be reserved until the uses of the proceeds are determined through a community consultation. The proceeds will not go into ICANN's general expense budget but will be separately earmarked for projects or uses identified by the community. This important aspect of the auction process and its result will be an important part of the communications plan for the new gTLD program.

The new gTLD application fee is designed to be cost/revenue neutral. It factors in costs already forgone, future processing costs and legal expenses that are significant and would be a large drain on the Corporation's established budget.

See further details on the exploration of an auction model in the contention lifecycle at <http://www.icann.org/en/topics/string-contention-22oct08.pdf>.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching this stage.

4.4 Contention Resolution and Contract Execution

An applicant that has been declared winner of a contention resolution process will proceed by entering into the contract execution phase. (Refer to section 5.1 of Module 5.)

If the winner of the contention resolution has not executed a contract within 90 days of the decision, ICANN has the right to extend an offer to the runner-up applicant to proceed with its application. For example, in a comparative evaluation, the applicant with the second-highest score (if equal to or greater than eleven, might be selected to go on to the next step, delegation. (Refer to Module 5.) Similarly, in an efficient mechanism for contention resolution, another applicant who would be considered the runner-up applicant might proceed to the delegation step. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.

DRAFT - New gTLD Program - String Contention

