



# UPDATE & CONSULTATION ON New gTLD Subsequent Procedures

## **PREDICTABILITY FRAMEWORK**

Justine Chew  
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# BACKGROUND to Predictability Framework (as at 7 Jan 2020)

- SubPro WG’s deliberations on public comments to Initial Report on topic of Predictability & Clarity in Applications started around April 2019
- **The key question in earlier public comment call was whether there should be a ‘new’ Predictability Framework**
- Since there was support for “Yes”, new recommendations are being drafted for this topic
- Deliberations recommenced on 6 Jan 2020
- Recommendations being new, this is one of several areas where specific comments are expected to be sought in the upcoming public comment period in Q1 2020



## **RELATED SubPro Areas/Topics include:**

- Predictability & Clarity in Applications (now superseded)
- To be distinguished from IRT



## **COMPETITION, CONSUMER CHOICE & TRUST (CCT) RECOMMENDATIONS**

- None

# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Framework (as at 7 Jan 2020)

- Key Issue: How should changes to the program be introduced to address unanticipated issues after AGB is approved?
- Policy Goals:
  - Principle A\* states *“New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.”*
  - Where issues result in changes to program & supporting processes, they must be resolved as predictable, transparent and fair manner as possible to impacted parties
  - Reliance on Predictability Framework specific to program that guides mitigation mechanism selection
  - Where significant issues arise requiring resolution via Predictability Framework, applicants may choose to withdraw and receive appropriate refund
  - Predictability Framework to complement existing GNSO processes & procedures, does not displace GNSO Council’s decision-making

\*GNSO’s Final Report on the Introduction of New Generic Top-Level Domains

# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Model (as at 7 Jan 2020)

### What to expect will be proposed?

(a) Type/scope/context of change will guide process to be followed when change is necessary or requested \*

(b) A **Standing Predictability Implementation Review Team (“SPIRT”)** be formed to review potential changes and recommend the process to be followed

(c) GNSO Council retains oversight of SPIRT, may review all SPIRT recommendations per GNSO Operating Procedures

- Not to be confused with and does not replace IRT – Implementation Review Team
- IRT’s role/work starts after SubPro recommendations are accepted by Board and ends when AGB is approved by Board
- SPIRT’s role/work starts when AGB is approved by Board

\* *Categories of changes still subject to discussion*

# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Model (as at 7 Jan 2020)

### Standing Predictability Implementation Review Team (“SPIRT”)

#### Discussion Commenced:

1. **SPIRT Role:** To provide advice and/or guidance to ICANN Staff, GNSO Council and Community on issues post AGB approval
2. **GNSO Council Role:** To retain supervisory role over SPIRT
3. **Forwarding of issues to SPIRT:** Ideally should be issues impacting more than a single applicant, forwarded by:
  - ICANN Board; or
  - ICANN Org; or
  - GNSO CouncilRationale being SPIRT is under GNSO Council supervision, avoidance of direct lobbying to SPIRT, and does not displace mechanisms for advice to Board

#### 4. **How to forward issues to SPIRT?**

- ICANN Board – letter from Chair of Board or applicable New gTLD Board Committee
- ICANN Org – letter from CEO or head of GDD or designee
- GNSO Council – *still in discussion*

# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Model (as at 7 Jan 2020)

### Standing Predictability Implementation Review Team (“SPIRT”)

#### Still in Discussion:

##### 5. SPIRT Decision-making

- Issues non-binding advice
- Leadership to assess consensus per GSNO WG Guidelines section 3.6
- To strive for consensus on all advice issued but provided reported using s 3.6 methodology consensus not strictly required

##### 6. SPIRT issues advice to who?

- (a) If party who forwarded issue is GNSO Council, whereupon:
- Expeditious consideration towards decision in no more than 2 Council meetings from receipt of advice
  - SPIRT to be informed of decision with rationale & next steps

##### 6. SPIRT issues advice to who?

- (a) If party who forwarded issue is GNSO Council, whereupon:
- Expeditious consideration towards decision within 2 Council meetings from receipt of advice
  - SPIRT to be informed of decision + rationale & next steps
- (b) To party who forwarded issue not being GNSO Council, then subject to prior cc to GNSO Council, whereupon Council is expected to, within 60 days:
- Approve delivery of advice to party; or
  - Raise concerns on advice with SPIRT; or
  - Elect to remove advice from SPIRT process, transfer to other GNSO Operating Procedures

# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Model (as at 7 Jan 2020)

### Standing Predictability Implementation Review Team (“SPIRT”)

#### Discussion Pending:

#### 7. SPIRT Composition

- Should include at least one from SubPro PDP WG and IRT for guidance on reasoning for policy recommendations & implementation decisions, respectively
- Representative?(#) – eg SG, ACs and other SOs may assign members; how to compel participation?
- Membership criteria should identify knowledge, experience, responsibilities to assign orgs(#), rules of engagement, extended SOI beyond declared COI \*

#### 8. Additional SM expertise

- To be available to SPIRT if needed

#### 9. Term length of SPIRT Members

- Should there be term limitations?
- Perhaps 2-years with option to renew for up to 2 additional 2-year terms, with staggered appointments for continuity & knowledge retention

#### 10. (#) Role of SPIRT Members

- Representative vs independent judgement? Act in “representative capacity” or exercise independent judgement?
- Allow independent judgement, leave to assigning org to replace assignee where needed

\* A Statement of Participation, like NCAP SOI

# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Model (as at 7 Jan 2020)

Standing Predictability Implementation Review Team (“SPIRT”)

### Discussion Pending:

#### 11. COI Procedures

- SPIRT Members to complete Statement of Participation, subject to periodic review
- Reference to ICANN Bylaws on transparency, anti-discriminatory treatment, COI;
- Follow Expected Standards of Behavior per ICANN Accountability and Transparency Framework

#### 12. Confidentiality Obligations

- Presumption of full transparency with at min publicly archived mailing list and all SPIRT call recordings
- In extraordinary event requiring confidentiality, opt for meetings per Chatham House Rules and if needed, additional rules & procedures to be developed by SPIRT in coordination with staff

#### 13. Role of ICANN Staff

- ICANN Org to play supporting role or follow IRT?
- Recall that ICANN Org can forward issues to SPIRT

#### 14. SPIRT Leadership

- Chair to be selected from amongst membership as early as possible
- Have possibly up to 2 Vice-Chairs, consider diversity of Community/members\*

#### 15. Role of Public Comment

- Since advice related to operational issues, not subject to public comment unless agreed by SPIRT consensus
- Also, advice directed to GNSO Council not normally subject to public comment beyond GNSO Operating Procedures

\* Look at CSC Charter



# SNAPSHOT OF SUBPRO WG DELIBERATIONS

## Predictability Model (as at 7 Jan 2020)

Category of Changes to Program

Discussion Pending:

Type of Change	SPIRT involved?	Require Public Comment?	Notes
1a. Operational – Minor	No	No	
1b. Operational – Non Minor	No	No	
1c. Operational – New Process	Yes	No	
2. Possible Policy level changes	Yes	Yes, if policy impact indicated	<ul style="list-style-type: none"> <li>• SPIRT to recommend when an otherwise operational change has a possible policy implication</li> <li>• SPIRT to review proposal change and notify GNSO Council in case of possible policy impact</li> </ul>
3. Possible Policy level new proposals	Yes	Yes	<ul style="list-style-type: none"> <li>• SPIRT to notify GNSO Council of new proposals with report on policy impact, if any, of the change</li> </ul>