



UPDATE & CONSULTATION ON New gTLD Subsequent Procedures

PREDICTABILITY FRAMEWORK (v02)

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10 January 2020

BACKGROUND to Predictability Framework (as at 10 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- Predictability & Clarity in Applications (now superseded)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 10 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 10 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 advise on/guide the process to be followed

(c) GNSO Council retains oversight of SPIRT, may review all SPIRT advice/guidance 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 10 Jan 2020)

Standing Predictability Implementation Review Team (“SPIRT”)

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 under consideration*
5. **SPIRT Decision-making**
 - Issues **non-binding** advice/guidance
 - 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

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Standing Predictability Implementation Review Team (“SPIRT”)

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

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 SPRIT if needed

* *A Statement of Participation, like NCAP SOI*

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Standing Predictability Implementation Review Team (“SPIRT”)

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

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

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Standing Predictability Implementation Review Team (“SPIRT”)

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*

* *Look at CSC Charter*

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

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Category of Changes to Program

Type of Change	SPIRT involved?	Require Public Comment under GNSO OpProc?	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"> • SPIRT to recommend when an otherwise operational change has a possible policy implication • SPIRT to review proposal change and notify GNSO Council in case of possible policy impact
3. Possible Policy level new proposals	Yes	Yes	<ul style="list-style-type: none"> • SPIRT to notify GNSO Council of new proposals with report on policy impact, if any, of the change

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Category of Changes to Program

Type of Change	SPIRT involved?	Require Public Comment?	Effect/Notes
<p>1a. Operational – Minor</p> <ul style="list-style-type: none"> Defined as “a change to ICANN’s internal processes that has no material impact on applicants or community members, change applications, or any of the processes & procedures to AGB, including evaluation questions or scoring criteria, but may involve way in which ICANN Org or its 3rd party contractors meet their obligations under AGB”, eg: <ul style="list-style-type: none"> <input type="checkbox"/> Change in internal process workflow for contracting or PDT <input type="checkbox"/> Change in back-end accounting systems <input type="checkbox"/> ICANN Org selecting or changing subcontractor to perform assigned tasks under AGB where original selection did not involved feedback from ICANN Community <input type="checkbox"/> ICANN Org rolling out org-wide change covering Program processes but with no material impact 	No	No	

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Category of Changes to Program

Type of Change	SPIRT involved?	Require Public Comment?	Effect/Notes
<p>1b. Operational – Non-Minor</p> <ul style="list-style-type: none"> Defined as “a change to ICANN’s internal processes that has (or likely to have) material impact on applicants or community members” Such changes must be communicated to all impacted parties (or reasonably foreseeable impacted parties) Eg: <ul style="list-style-type: none"> <input type="checkbox"/> Change in ICANN Org’s internal Service Level Agreements related to contracting or PDT that adjusts overall timeline * <input type="checkbox"/> Change made to workflow for handling change requests (eg. A procedural change rather than change in scope of allowable change request) <p><i>* A substantial change in evaluation timeline or fees is better dealt with under 1c. Operational – New Process</i></p>	No	No	

SNAPSHOT OF SUBPRO WG DELIBERATIONS

Predictability Model (as at 10 Jan 2020)

Category of Changes to Program

Type of Change	SPIRT involved?	Require Public Comment?	Effect/Notes
<p>1c. Operational – New Process</p> <ul style="list-style-type: none"> Defined as “not a change to ICANN’s internal processes but rather a New ICANN Org Internal Process and is likely to have a material impact on applicants or community members” Such changes to be referred to SPIRT for solution development Eg: <ul style="list-style-type: none"> <input type="checkbox"/> A new public comment platform/tool is intended to be utilized <input type="checkbox"/> A new process/platform created to submit an existing objection type <input type="checkbox"/> A new procedural mechanism to determine order in which applications are evaluated (eg. Digital archery to randomization) 	Yes	No	

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Predictability Model (as at 10 Jan 2020)

Category of Changes to Program

Type of Change	SPIRT involved?	Require Public Comment?	Effect/Notes
<p>2. Possible Policy Level Changes</p> <ul style="list-style-type: none"> • Defined as “potential changes to implementation that may materially differ from the original intent of existing policy and could be considered creation of new policy” • Such changes to be referred to SPIRT for solution development, where SPIRT could: <ul style="list-style-type: none"> ❖ Recommend that change is not significant (ie not likely to have material impact) and which is consistent with existing recommendation(s) and ensuing policy implementation ❖ Recommend that additional community consideration is needed, by referring to GNSO Council ❖ Under extraordinary circumstances, recommend New gTLD Program be halted for specified period, accompanied by triggering mechanism and rationale for recommendation <p>☐ Eg.: Development of an application ordering mechanism</p>	Yes	Yes, if policy impact indicated	<ul style="list-style-type: none"> • SPIRT to recommend when an otherwise operational change has a possible policy implication • SPIRT to review proposal change and notify GNSO Council in case of possible policy impact

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Predictability Model (as at 10 Jan 2020)

Category of Changes to Program

Type of Change	SPIRT involved?	Require Public Comment?	Effect/Notes
<p>3. Possible Policy Level New Proposals</p> <ul style="list-style-type: none"> Defined as “new mechanisms, that may be considered to be withing policy development remit” Such changes to be referred to SPIRT for consideration for solution development, where SPIRT could: <ul style="list-style-type: none"> ❖ Recommend that change is not significant (ie not likely to have material impact) and which is consistent with existing recommendation(s) and ensuing policy implementation ❖ Recommend that additional community consideration is needed, by referring to GNSO Council ❖ Under extraordinary circumstances, recommend New gTLD Program be halted for specified period, accompanied by triggering mechanism and rationale for recommendation Eg.: <ul style="list-style-type: none"> <input type="checkbox"/> Development of a new RPM <input type="checkbox"/> Development of a new contract specification <input type="checkbox"/> Creation of new exemptions to Code of Conduct 	Yes	Yes	<ul style="list-style-type: none"> SPIRT to notify GNSO Council of new proposals with report on policy impact, if any, of the change