

New gTLD Subsequent Procedures PDP WG Actions & Notes
ICANN66 Sessions 1, 2, 3 & 4
02 and 04 November 2019

Notes:

Session 1:

Report to the full Working Group from Work Track 5 Geographic Names at the Top Level

-- No actions captured.

Sessions 2 and 4:

1. Name Collisions/NCAP:

a. ICANN Board response to the GNSO letter to the Board dated 20 September 2019 requesting the Board's views "related to dependencies, if any, between the Name Collision Analysis Project (NCAP) and the ongoing policy work of the New gTLD Subsequent Procedures PDP. The letter will be posted at: <https://gns0.icann.org/en/council/correspondence>

-- At this point the Board doesn't see if there are any dependencies, until they see NCAP Study 1.

-- Question: Is there a plan if the NCAP study finds huge problems that are dependencies?

Answer: That can't be an outcome of Study 1, but could be of future studies, but at that point in time we would be well into implementation work.

-- The conclusion of the PDP WG will not be held up by the conclusion of Study 1.

-- Question: Has there ever been a situation when we have been in implementation and then had to return to the PDP?

a. NCAP Meeting on 01 November 2019:

-- NCAP Discussion Group is part of the NCAP commissioned by the OCTO and SSAC to give our thoughts to the SSAC, as they are responsible to provide a report to the Board on Name Collisions. See: <https://community.icann.org/display/NCAP/NCAP+Discussion+Group>.

-- Discussion Group meets at every ICANN Meeting. Next one will be at ICANN67 in Cancun, Mexico.

-- Timeline is (but we can't be sure) that Study 1 would go to the Board at the same time as the PDP WG Final Report.

-- Study 1 will determine if there will be other studies.

-- If there are impacts on implementation, then there should be collaboration between the Study Group and the Implementation Team.

-- See the main NCAP page:

<https://community.icann.org/display/NCAP/SSAC+Name+Collision+Analysis+Project+%28NCAP%29+Home>.

-- Need to know if a string is at high risk for name collisions – feeds into predictability.

-- Clear from NCAP Discussion Group meeting on 01 November that OCTO is managing the process.

-- Raised the issue of alerting the Board ahead of time on where Study 1 is going. OCTO is briefing the Board Technical Committee monthly. These are verbal updates.

-- If there is no predictable process then that leaves the door open for security and stability issues.

-- Sounds like Study 2 is where the bulk of the work will be done. Study 1 is just an historical review and gap analysis.

-- If we have to go back to the PDP, there is a mechanism to go back when policy comes up in the course of implementation.

-- In whose jurisdiction do .corp, .home, and .mail fall?

-- Study 1 will look at whether there is data other than what we know about that will give us a different result from what we already know.

-- Reminder that one of the things the WG can recommend is that an additional study can be conducted – such as to determine low-, medium-, or high-risk strings.

2. Substantive Discussions on Select Topics

a. Predictability:

(https://docs.google.com/document/d/12_x8zYR9r6zXqfA7dmoosSPH12NmcyJ-2FEjecGrBh4/edit?usp=sharing)

Issue We Are Trying to Address:

Principle A of the [GNSO's Final Report on the Introduction of New Generic Top-Level Domains](#) states that “New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.” Applicants and other parties interested in the New gTLD Program, however, believed that there were a number of changes that were made after the launch of the 2012 program which hindered the program’s predictability. Therefore, the WG Charter asked the Working Group to consider, “How can changes to the program introduced after launch (e.g., digital archery/prioritization issues, name collision, registry agreement changes, public interest commitments (PICs), etc.) be avoided?” Stated differently, the ICANN Board commented that “The Board is concerned about unanticipated issues that might arise and what mechanism should be used in such cases.”

Policy Goals:

- *To the extent that issues arise, after the application acceptance window commences, that may result in changes to the program and its supporting processes, those issues must be resolved in a manner that is as predictable, transparent, and as fair as possible to the impacted parties.*

- *To promote the predictable resolution of issues, the community should rely on a Predictability Framework, specific to the New gTLD Program, that guides the selection of mitigation mechanisms.*
- *In the event significant issues arise that require resolution via the Predictability Framework, applicants should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund.*
- *The Predictability Model intends to complement the existing GNSO processes and procedures and is not intended to be a substitute or replacement for those, nor should the Model be seen as supplanting the GNSO Council's decision-making authority. In fact, the GNSO processes and procedures are incorporated into the Predictability Framework explicitly. In the event of a conflict, existing GNSO processes and procedures, including GNSO Input, Guidance, and EPDP as contained in the Annexes to the GNSO Operating Procedures take precedent.*

Proposals:

- a. The type/scope/context of a change to the program will guide the process that should be followed when a change/modification to the program is necessary or requested after the launch of the program.
- b. The Working Group recommends that a Standing Predictability Implementation Review Team ("SPIRT") be formed after publication of the final Applicant Guidebook to review potential changes to the program and to recommend the process that should be followed when considering those changes in accordance with the guidance provided below.
- c. The GNSO Council shall be responsible for oversight over the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.

Categories of Changes to the New gTLD Program after Publication of the Applicant Guidebook

Changes to ICANN Organization Internal Processes

- What if ICANN is rolling something across the organization that affects the implementation of new gTLDs? Does the Implementation Review Team get involved (the SPIRT)?
- ICANN Org should get input from the SPIRT. Should go into the SPIRT's recommendation of what needs to be done.
- There shouldn't be unexpected impacts so that is why the SPIRT should be consulted.
- When we put together the concepts of how review teams should operate we did look at checks and balances.
- Try to add some rigor, or numerical elements, around the categories. Create clear demarcation between different categories.
- Not trying to get into ICANN Org's day-to-day operations.

- a. If the proposed change is not a change to an Internal Process, but rather a New ICANN Organization Internal Process and it is likely to have a material impact on applicants or

community members, then we would employ the use of a new Standing Predictability Implementation Review Team (“SPIRT). Examples of this type of change include:

- A new public comment platform/tool is intended to be utilized;
- A new process/platform is created to submit an objection (for an existing objection type);
- A new procedural mechanism to determine the order in which applications are evaluated (e.g., changing from digital archery to randomization).
- Question about where something like a substantial change in the evaluation timeline or fees would apply.

Because the process is new, collaboration with the Standing IRT is likely needed. Staff will work with the community to develop the solution. Once changes are agreed, communicate changes to affected parties before they are deployed. The changes here are envisioned to have a non-substantive impact to applicants and/or community members.

Possible Policy Level Changes

These are potential changes to implementation that may materially differ from the original intent of the policy and could be considered creation of new policy. An example is the development of an application ordering mechanism (e.g., digital archery). Collaboration with the community through the SPIRT is essential. Staff will collaborate with the SPIRT and to determine the mechanism by which the solution will be developed.

Possible Policy Level New Proposals

These are new mechanisms, that may be considered to be within the remit of policy development. Examples include:

1. Development of a new rights protection mechanism ;
2. The development of a new contract specification (e.g., public interest commitments).
3. Creation of new exemptions to the Code of Conduct

These new policy level changes to the program must be referred to the SPIRT . Staff will collaborate with the SPIRT to consider the issue and determine the mechanism by which the solution will be developed.

These new policy level changes to the program must be referred to the SPIRT . Staff will collaborate with the SPIRT to consider the issue and determine the mechanism by which the solution will be developed. Options could include:

1. Recommending that the new proposal does not rise to the level of policy development (e.g., an implementation detail) and/or that the new proposal is consistent with existing recommendation(s).
2. The SPIRT may recommend that additional consideration is needed. In this case the SPIRT shall refer the matter to the GNSO Council. The GNSO Council would then have the discretion to decide whether to handle the issue via a PDP, ePDP, to consider invoking the GNSO Input Process (GIP), or GNSO Guidance Process (GGP) or any other mechanism at its disposal which it deems appropriate.

3. Under extraordinary circumstances, the SPIRT could recommend to the Council that the New gTLD Program could be halted for a communicated amount of time.

All recommendations of the SPIRT are subject to the review and oversight of the GNSO Council, who maintains the discretion on whether or not to adopt the recommendations of the SPIRT.

Role of the SPIRT & GNSO policy change process in change control

Role of the SPIRT/Composition of the SPIRT

- Many comments reflected the fact that the group should be representative of the community similar to that of IRTs.
- RySG expressed some concern that there needed to be the required expertise on this group to handle some niche questions that might be before the Standing group.
- Given concerns on representation, should community organizations be compelled to have members on the SPIRT or is the availability of slot(s) adequate? Can participation be compelled in the first place?

Conflicts of interest procedures

- Should there be a requirement of not having any applicants, back-end operators, etc. on the SPIRT? If not, then how do we ensure that the SPIRT has the requisite expertise?
- Should we require that no member file any comments, objections, disputes, etc. on any applications?

ICANN Staff role and level of participation

- Should ICANN's role in this process be akin to their participation in IRTs?
- As ICANN Org may surface an issue itself, should ICANN Org utilize/wield the Predictability Framework? Should all issues, even operational ones, be filtered through the SPIRT as a first step? If so, how can the ICANN and the community avoid getting bogged down in process?

Discussion:

- Question: What is the difference between the IRT and the Standing IRT (SPIRT)? Answer: After the PDP is done, ICANN Org will with Council initiate an implementation review team (IRT). Once the program is launched that group is done. We are saying that after launch there should be a standing IRT to handle implementation issues.
- Can we put in a recommendation or guidance to the GNSO Council that there should be a broader call for participants?
- Put in the language from the GNSO Operating Procedures for constituting an IRT.
- Always an effort to try to recruit an IRT that has all of the representative stakeholders. It depends on who volunteers. Also, an IRT is convened when the Board approves a policy. Then the ICANN staff person is leading the group. This SPIRT sounds more like a Working Group.
- Should be able to have the ability to call on an expert.
- Could say that there should be a chair but the Council would make the choice through the selection committee.
- There are a lot of complexities in what is being proposed here.

- Should include subject matter experts and people who have the knowledge and experience, and require full transparency (add that).
- Deliberations shouldn't be confidential.
- When developing the GNSO Operating Procedures there was an extensive discussion on whether to require a declaration of conflicts of interest and it was determined that there was no way for a WG member to not have interest so it was determined that there would be statements of interest. Also, in the voting section of the procedures it is specifically stated that there are no conflicts of interest for Councilors. Requiring conflicts of interest may not be realistic.
- You could have an option for someone to voluntarily recuse.
- Not sure of the need for confidentiality. If all this SPIRIT can do is recommend policy or not then the policy process would need to develop the policy in a transparent process.
- Unless something touches on the confidential portion of the application.
- Suggest: "Absent extraordinary circumstances, all proceedings of the SCONE shall be open, recorded, transcribed, and publicly available."
- On the staff role, who raises the issue? Can it come from some other part of the community, only from staff? From the Council? What is the threshold for who can bring them? Example from the previous round: prioritization draw. Answer: Staff would bring most of the issues and there would have to be some sort of threshold.
- This would not be used by an applicant who has an issue.
- ACTION: Add the points about statements of interest, periodic review, and put in brackets something like recusal?

Other topics are:

String Contention - Mechanism of Last Resort

<https://docs.google.com/document/d/16qDoiK6vydQp6a0v9tMvU2I5fcypJY24hCzTIVTjKwk/edit?usp=sharing>

Limited Appeals Mechanism

<https://docs.google.com/document/d/1pw98QzloHsVaM22VjYy95G-QmHULKbB2gPTSdzQIXhw/edit?usp=sharing>

Session 3:

1. Current Status:

- The WG has published an Initial Report and a Supplemental Initial Report
- All public comments received were first organized then considered substantively, with that substantive consideration now nearly complete.
- The WG is in a transition period where it will primarily focus on preparing draft Final Recommendations.
- A public comment period on select topics will likely be needed prior to finalization of the Final Report.

-- The WT5 Final Report, delivered with Consensus support, will be integrated into the overall Final Report.

2. Review and discussion of potential topics requiring additional public comments

-- Public input has been sought via Community Comment 1, Community Comment 2, the Initial Report, and a Supplemental Initial Report, as well as dialogue at ICANN meetings.

-- The basis for additional public comment should be focused on whether or not the public should reasonably already have had the opportunity to provide comment previously.

-- The public comment would also focus on outcomes (i.e., draft Final Recommendations), not on new concepts or deliberations.

-- Therefore, while this discussion now is instructive, final decisions will be dependent upon actual draft outcomes.

Topics Suggested for Additional Public Comments:

2.2.2 Predictability -- Likely to go out Again for Comment with proposed framework structure.

2.2.3 Applications Assessed in Rounds – possible

2.2.6 Accreditation Programs (RSP Pre-Approval) – possible

2.3.2 Global Public Interest – possible

2.4 Application Change Requests – possible

2.5.1 Application Fees -- possible

2.7.3 Closed Generics – possible

2.7.4 String Similarity – possible

2.8.1 Objections – undetermined

2.8.2 Accountability Mechanisms – likely

2.1 Auctions: Mechanisms of Last Resort – possible

2.2 Private Resolution of Contention Sets (including Private Auctions) – undetermined

2.11.1 Registry System Testing – TBD pending summary doc review

2.12.1 TLD Rollout – TBD pending summary doc review

2.12.3 Contractual Compliance – TBD pending summary doc review

All of the Summary Working Documents can be found here, as we make our way through the rest of these slides:

<https://community.icann.org/display/NGSPP/Summary+Working+Documents>

Discussion:

-- Should there be public comment on all topics again? There already were opportunities for public comment.

-- What about interdependencies? Does the public understand where these fall? The big picture hasn't gone out.

-- Seems that if we have a discussion as a WG as to whether there should be a public comment on all of the recommendations then why have a discussion of a sub-set of comments. Until today we haven't heard a request for putting out all recommendations for public comments.

-- Public Comment process has a lot of overhead so topics that go out for comments should be purpose driven.

-- Example, if we agree on doing a sealed bid option but the group is seeking input on the timing, that could be a public comment.