

**ICANN**

**VIRTUAL POLICY FORUM**

**68**



# New gTLD Subsequent Procedures PDP Working Group 23 June 2020

# Agenda

---

1

Welcome and  
Introduction

2

Background and  
Current Status

3

Topic 1: Private  
Resolutions

4

Topic 2:  
Predictability  
Framework

5

Next Steps and AOB

# Background and Current Status

## Agenda Item 2

# What is the PDP about? Why is it important?

---

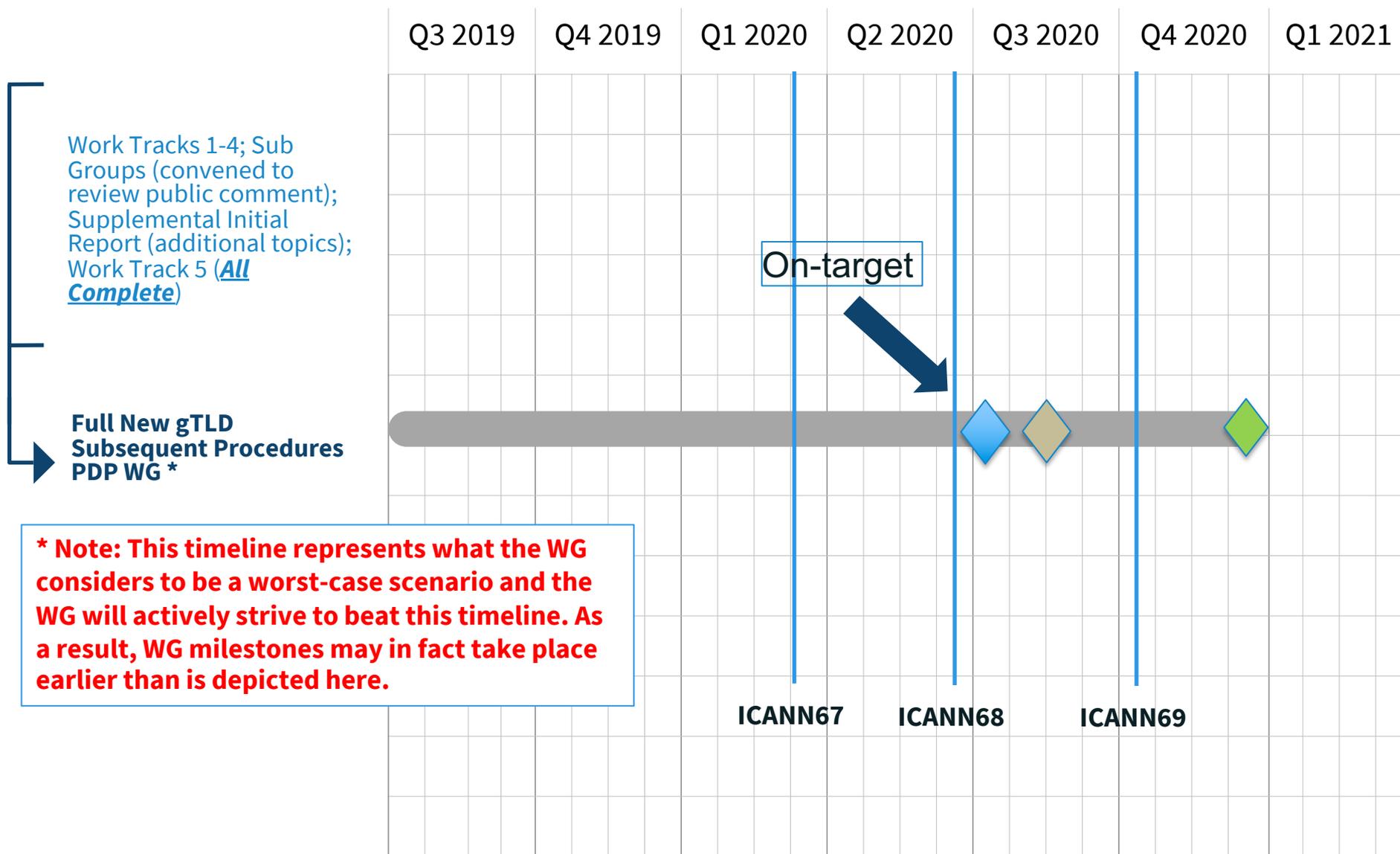
- ⦿ GNSO recommendations from 2007 resulted in the Applicant Guidebook and the 2012 round of the New gTLD Program.
- ⦿ The New gTLD Subsequent Procedures PDP (“SubPro”) is focused on considering the 2012 round policy and **determining what changes might need to be made to the original GNSO recommendations from 2007 and/or implementation.**
- ⦿ The PDP was **chartered** and began its work in early **2016**
  - Charter available here: <https://gns0.icann.org/en/issues/new-gtlds/subsequent-procedures-charter-21jan16-en.pdf>
- ⦿ The PDP has over 40 separate topics identified in its charter and initially broke into Work Tracks (1-5) to tackle work. Sample of topics:
  - Community Applications
  - Applicant Support
  - Geographic Names at the Top Level

# Current Status

---

- ⦿ The Initial Report was published for public comment on 3 July 2018.
- ⦿ The WG also worked on a set of 5 topics that needed additional discussion, which were published in late October 2018 for public comment in the form of a Supplemental Initial Report.
- ⦿ Work Track 5 (geo names at the top-level) published its own Supplemental Initial Report in December of 2018.
- ⦿ ***The WG has nearly finalized its draft Final Recommendations and is working towards publishing its draft Final Report for public comment shortly after ICANN68.***

# SubPro Timeline \*



## KEY



Publish draft Final Report for public comment



Close of Public Comments



Final Report Delivered to Council

# Topic 1: Private Resolutions

## Agenda Item 3

# Background

---

- In 2012, some applicants resolved their contention by mutually agreeing to participate in private auctions **where the auction price was equally divided by the “losing” bidders** (minus an administrative fee for the auction provider).
  - Applicants were able to **leverage those funds to increase their positioning in other auctions, making it more difficult for others to compete** (e.g., an applicant for a single gTLD).
  - Applicants were able to **gain financially** by participating in private auctions, **even if they had no intention to operate the gTLD.**
- *Both of these outcomes have the distinct possibility of **becoming incentives for frivolous applications in future new gTLD application rounds.***

# Divergent Interests

---

- ⦿ In comments to the Initial Report, ICANN Board noted that, “In particular, we are concerned about how gaming for the purpose of financing other applications, or with no intent to operate the gTLD as stated in the application, can be reconciled with ICANN's Commitments and Core Values.”
- ⦿ Some WG members agreed with sentiment and considered ways to minimize the practice (see Hybrid Proposal 2+ later in slides).
- ⦿ Alternatively, some WG members assert there is not actually a problem to solve; believe that applicants should be given freedom to resolve string contention in creative manners.
  - Some noted that, at least for private auctions, all parties must mutually participate.
  - Some also noted that by eliminating some avenues of private resolution, it increases the likelihood of last-resort auctions (with some believing this could be a mechanism to line ICANN's pockets with auction proceeds).

# Space For Compromise?

---

- ⦿ In summary, the diverging interests appear to be:
  - *Allowing applicants to creatively seek ways to resolve string contention.*
  - *Seeking to remove incentives for applicants to submit applications where there is no strong intent to operate the gTLD (e.g., incentives being, to leverage funds for other contention sets and/or financial benefit).*

## Questions:

- ⦿ Assuming that incentivizing frivolous applications is bad for the program, **how can creativity still be allowed/encouraged?**
- ⦿ Are there program benefits to private auctions and other forms of private resolution (that are consistent with ICANN's Commitments and Core Values)?

# Hybrid Proposal 2+

---

Primary goals of proposal:

1. ***Reducing incentives for submission of frivolous applications***
2. Also, integrating agreed improvements to auctions: mechanism of last resort (i.e., single round, sealed bid auction).

Key elements to achieve **goal 1**:

- ⊙ Add T&Cs against “Prohibited Application Activities” below:
  - Submitting applications for financial benefit
  - Resolving contention where non-winning applicants receive financial benefit to lose.
- ⊙ Incorporate mandatory contractual warranty/representation in RA that the Registry Operator did not participate in any of the Prohibited Application Activities.

# Amending Hybrid Proposal 2+

---

- ⦿ Emphasis is on **interest** of *reducing incentives for submission of frivolous applications.*
- ⦿ The proposal allows for applicants to create partnerships and joint ventures.

Can the support for the **interest** of *creative contention resolution* be increased in this proposal?



# Topic 2: Predictability Framework

## Agenda Item 4

# Predictability Framework – Key Features

- ⦿ **Purpose:** Many changes made after the launch of 2012 program which hindered the program’s predictability. While the WG’s recommendations seek to reduce unanticipated issues, the WG nevertheless recognizes that such issues may still arise. ***Accordingly, the WG is seeking to ensure that there is a predictable manner for the community to understand the mechanism by which such issues can be resolved (i.e., triage for issues).*** This should NOT be confused with the WG seeking to develop solutions now to unforeseen issues.
- ⦿ **Remit:** When an unanticipated issue is identified, there shall be a “**Framework**” established to analyze the type/scope/context of the issue and if already known, the proposed or required Program change, to assist in determining the impact of the issue/change and the process/mechanism that should be followed to address the issue.

# Predictability Framework – Key Features

- Secondly, a **body must exist to utilize the “Framework”**. The WG is considering a **Standing Predictability IRT (SPIRT) to serve in this role**. The “Framework” recognizes that issues can be of varying levels of seriousness/impact and accordingly, can be put into 3 buckets.
  1. **Minor or non-minor changes to ICANN’s internal processes:** This bucket exists in part to allow ICANN Org flexibility to operate the New gTLD Program effectively. Requiring any change, no matter how minor, to be filtered through SPIRT can paralyze program.
  2. **New or significantly altered internal ICANN processes:** This bucket exists to ensure that where parties are highly likely to be meaningfully affected, that the solution must be developed in collaboration between ICANN Org and the community (i.e., SPIRT).
  3. **Policy changes or new policy:** This bucket exists for circumstances where an issue arises and there is some ambiguity in how it should be resolved. **If an issue is unambiguously policy, there is unlikely to be the need to filter the issue through the SPIRT (e.g., develop policy immediately)**

# Predictability Framework – Key Features

---

- ⊙ As currently devised, SPIRT limited to **serve as a body that utilizes the Framework** and provides that recommendation to the GNSO Council (and if applicable, the issue originator as well). The SPIRT may also be asked to help scope an issue during the course of its consideration of the issue. However:
  - The SPIRT shall NOT develop solutions (except in collaboration with ICANN Org for issues in bucket 2). It will generally be limited to serving as a triage body that helps in identifying resolution *mechanisms*.
  - The SPIRT shall NEVER be used to make policy or circumvent the policy process.
  - The SPIRT shall ALWAYS be subordinate to the GNSO Council, to help ensure that the SPIRT remains faithful to its remit.

# Some Concerns Raised

---

- ⦿ The SPIRT may develop policy and undermine Council remit.
- ⦿ The SPIRT can be lobbied.
- ⦿ ICANN Org should not be able to make decisions on its own (i.e., bucket 1).
- ⦿ Determining what is policy versus implementation is always hard/subjective, so why would the SPIRT be able to do it better?
- ⦿ Determining which "bucket" something is in will not always be clear.
- ⦿ The Framework and SPIRT may be seen as overly complicated and need to be simplified
- ⦿ Are there measures to address these concerns? What is the "risk profile" for each of these issues (e.g., likelihood and severity)?

# Next Steps and AOB

Agenda Item 5