



UPDATE & CONSULTATION ON
New gTLD Subsequent Procedures
Consensus Building on Recommendations

PREDICTABILITY FRAMEWORK (v03)

Justine Chew
8 September 2020

Key Issues in Subsequent Procedures

Topic 2: Predictability

- ❖ To recap, some significant changes were introduced after the 2012 program was launched, thus hindered predictability, eg. digital archery/prioritization issues, name collision, RA changes, Public Interest Commitments.
- ❖ 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 have been drafted to answer **“How should changes to the program be introduced to address unanticipated issues after the AGB is approved? ”**

Policy Goals

Principle A: “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 after AGB is approved, 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 substitute, replace or supplant GNSO Council’s decision-making authority

What is the New gTLD Subsequent Procedures (“SubPro”)?

- o The set of rules and mechanisms applicable to the next round for New gTLDs i.e. they DO NOT apply to legacy TLDs, ccTLDs, or delegated new gTLDs or those still unresolved from the 2012 application round
- o “An update” to the 2012 Round rules and mechanisms

Review of existing positions on Predictability



ALAC STATEMENT has said:

- Predictability best served by settling all subsequent procedures prior to launch of next round, but acknowledge that this may not be entirely possible, so supports use of a Predictability Framework and concept of a Standing IRT to resolve issues post AGB approval.
- Need for predictability must also be considered from Internet end-users' POV – expectations as to use of a gTLD from application to post-delegation.
- Belief that the Standing IRT must include one or more people considering the Program from end-users' perspective, to support and advise on implementation.
- Belief that more extensive deliberation is required on the details regarding the Standing IRT – panel and process – and further public comment process is warranted.
- Wishes to consider whether all operational changes mooted in Predictability Framework should be subject to public comment process, in light of GNSO Op procedures.



COMPETITION, CONSUMER CHOICE & TRUST (CCT) RECOMMENDATIONS

- None

Summary of SubPro Recommendations/Implementation Guidance

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

Recommendation 2.1:

- ICANN must establish predictable, transparent and fair processes and procedures for managing issues arising after the AGB is approved which may result in changes to the Program and its supporting processes.
- WG recommends that ICANN Org use the Predictability Framework per Annex E as its guidance during implementation to achieve the goal of predictability in mitigating issues.
- The Predictability Framework is principally for analyzing the type/scope/context of an issue and if already known, the proposed or required Program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue – a tool to help the community understand how an issue should be addressed vs determining what the solution should be; it is not a mechanism to develop policy.
- Recommends the formation of a Standing Predictability Implementation Review Team (“SPIRT”) as body responsible:
 - For reviewing potential issues related to the Program,
 - To conduct analysis using the framework, and
 - To recommend the process/mechanism that should be followed to address issue.
- GNSO Council responsible for SPIRT oversight, may review all recommendations of SPIRT per GNSO Op Procedures & Annexes.

Implementation Guidance 2.2: In recognizing the challenges in determining the details of the framework and establishing SPIRT, WG emphasizes that implementation of both should focus on simplicity and clarity.

Implementation Guidance 2.3:

- ICANN Org should maintain and publish a change log or similar record to track changes to the Program, especially those that arise and addressed via the Predictability Framework and SPIRT.
- GNSO Council should be informed of updates to change log on a regular and timely basis.
- Interested parties should be able to subscribe to the change log to be informed of changes.

Recommendation 2.4: 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 appropriate refund (per standard refund schedule).

Implementation Guidance 2.5: Re Rec 2.4, a refund should be permitted on an exceptional basis even if it does not follow the refund schedule.

Summary of Annex E – Predictability Framework

Predictability Framework: Categories of Changes to Program post AGB Approval

- Only the GNSO Council, ICANN Board or ICANN Org may initiate action on an issue or proposed Program change
- Resolving issue depends on the type of change, to be analyzed by SPIRT

Type of Change	Description	SPIRT involved?	Require Public Comment?	Process
1. Operational: Change to ICANN Org internal processes				
a. Operational - Minor	“A change to ICANN Org’s internal processes not having a material impact on applicants / community members, change applications, or processes/ procedures set forth in AGB.” Usually, no change to AGB incl. evaluation Qs or scoring criteria.	No	No	Changes implementable by ICANN Org without need for consultation, but must be reported on after implementation in change log.
b. Operational – Non Minor	“Changes to ICANN Org’s internal processes likely to have material effect on applicants / community members.”	Yes	No	<ul style="list-style-type: none"> • ICANN Org must inform SPIRT for SPIRT to decide if need to collaborate with ICANN Org in developing solution. • All impacted parties to be notified prior to deployment. • GNSO Council to be kept informed. • Changes must be reported on after implementation in change log.
c. Operational – New Process or Significant Change to Internal Process	<p>“<u>EITHER</u> New processes likely to have material impact on applicants / community members <u>OR</u> Changes to ICANN Org’s internal processes likely to have significant impact on applicants / community members which:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Result in suspension of round <input type="checkbox"/> Result in delay of future round <input type="checkbox"/> Result in delay in processing applications by more than 30 days <input type="checkbox"/> Target specific application types” 	Yes	No	<ul style="list-style-type: none"> • ICANN Org must inform SPIRT for SPIRT to decide if need to collaborate with ICANN Org in developing solution. • GNSO Council or ICANN Board may initiate action and request SPIRT’s assistance. • All impacted parties to be notified prior to deployment. • Changes must be reported on after implementation in change log.

Summary of Annex E – Predictability Framework

Predictability Framework: Categories of Changes to Program post AGB Approval

- Only the GNSO Council, ICANN Board or ICANN Org may initiate action on an issue or proposed Program change
- Resolving issue depends on the type of change, to be analyzed by SPIRT

Type of Change	Description	SPIRT involved?	Require Public Comment?	Process
2. Possible Policy Level - Changes that may have a Policy Implication				
d. Changes that may have a Policy Implication	“Potential changes to implementation that may materially differ from original intent of policy, could be new policy.”	Yes	Possible, per GNSO Op procedures	<p>If GNSO Council, ICANN Board or ICANN Org initiate action, the Framework will be used to screen if there is a policy implication and recommend mechanism for developing solution:</p> <ul style="list-style-type: none"> • Recommend change is not significant • Recommend additional consideration by community, deferring issue to GNSO Council to decide which GNSO process to use • Under extraordinary circumstances, recommend Program be halted for specified time – rationale must be provided to GNSO Council for consideration • All recommendations subject to review / oversight of GNSO Council
3. Possible Policy level - New Proposals that may have Policy Implication				
e. New Proposals that may have Policy Implication	“New mechanisms that may be considered to be within the remit of policy development.”	Yes	Possible, per GNSO Op procedures	<p>If GNSO Council, ICANN Board or ICANN Org initiate action, the Framework will be used to screen if there is a policy implication and recommend mechanism for developing solution:</p> <ul style="list-style-type: none"> • Recommend new proposal does not rise to level of policy development • Recommend additional consideration by community, deferring issue to GNSO Council to decide which GNSO process to use • Under extraordinary circumstances, recommend Program be halted for specified time – rationale must be provided to GNSO Council for consideration • All recommendations subject to review / oversight of GNSO Council

Summary of Annex E – Predictability Framework

SPIRT Chartering

1. SPIRT Recruitment

- a) **Open to volunteers – taking into account areas of expertise needed**, to be identified prior to issuing call for volunteers. Additional expert participation may be sought after call closes.
- b) Call for volunteers to indicate scope, timeframe, roles of participants, and value to group.
- c) Call to be issued to all members of SubPro PDP WG and IRT, and beyond to ensure broad participation by parties directed impacted by issues.
- d) **Composition to be balanced among SGs, if possible.**

2. Composition of SPIRT

- a) Must include at least 1 participant from SubPro PDP WG and IRT to provide insight on original reasoning behind consensus policy decisions.
- b) Have a GNSO Council liaison.
- c) **Open to all interested parties – not necessarily representative of the ICANN Community – subject to usual rules of engagement, Statement of Participation etc.**
- d) 2-year term with option to renew for up to 2 additional 2-year terms (max 6 consecutive years)
- e) Staggered membership for continuity so at least half of inaugural SPIRT members will have initial term of 3 years.
- f) Statement of Participation = standard GNSO SOI + **additional info as required to declare an interest/conflict.**

3. SPIRT Role

- a) Review potential issues, conduct analysis utilizing framework, recommend process/mechanism to be followed to address issue
- b) **Issues can only be forwarded to SPIRT by ICANN Board, ICANN Org or GNSO Council.**
- c) SPIRT delivers advice/guidance to entity which forwarded issue to SPIRT, subject to draft to GNSO Council first if issue can from ICANN Board or ICANN Org.
- d) Timelines to apply for response/action by GNSO Council provided.

Summary of Annex E – Predictability Framework

SPIRT Chartering

4. ICANN Staff Interaction with SPIRT

- a) **SPIRT provides guidance and/or validation to ICANN Org, makes recommendations to GNSO Council.** So ICANN Org plays supporting role.
- b) Staff liaisons to come from ICANN Org GDD, legal and policy support.

5. SPIRT Operating Principles

- a) Presumption that SPIRT will operate with full transparency – publicly archived mailing list, recording of all SPIRT calls. In extraordinary event for confidentiality, SPIRT should conduct meeting(s) per Chatham House Rules (preferably), and if necessary, additional rules/procedures may be developed by SPIRT in coordination with ICANN staff.
- b) SPIRT Chair to be selected from amongst SPIRT members as early as practicable, with 2 Vice-Chairs to be selected also with regard to diversity.
- c) **SPIRT Decision-making**
 - SPIRT = advisory body, so advice and/or guidance shall not be binding on any party, does not replace any method of advice/guidance per Bylaws.
 - SPIRT Chair, in consultation with any her vice-chairs, will assess level of consensus, relying on GNSO WG Guidelines sec. 3.6.
 - SPIRT shall strive towards achieving consensus on all advice and/or recommendations from SPIRT; but can provide input in accordance with s. 3.6.
 - Mechanism for appeal by any SPIRT member – to first approach appointed GNSO Council liaison. Failing satisfactory resolution, can approach GNSO Council Chair or ICANN Ombudsman.
 - **SPIRT deliberations are not to reopen previously explored policy issue, in general.**
- d) **Quite extensive provisions to identify/address Conflicts of Interest**
- e) Role of Public Comment – see table on slides 6-7.
- f) Code of Conduct – cannot take action designed to discriminate against any entity/applicant or groups of entities/applicants.

Impact of SubPro Recommendations, IGs & Annex E

IMPACT For At-Large Consensus Building

- Where Predictability Framework and creation of SPIRT are concerned:

Existing Positions	Sufficiently addressed by?
Supports use of a Predictability Framework and concept of a Standing IRT to resolve issues post AGB approval	Recommendation on Predictability Framework and creation of SPIRT
Need for predictability must also be considered from Internet end-users' POV – expectations as to use of a gTLD from application to post-delegation	Composition & recruitment for SPIRT <ul style="list-style-type: none"> Open to volunteers – taking into account areas of expertise needed Member(s) can represent ALAC but need not to do – ALAC to exercise oversight Composition to be balanced among SGs, if possible
Standing IRT must include one or more people considering the Program from end-users' perspective, to support and advise on implementation	As above
More extensive deliberation is required on the details regarding the Standing IRT – panel and process – and further public comment process is warranted	As recommended
To consider whether all operational changes mooted in Predictability Framework should be subject to public comment process, in light of GNSO Op procedures	As recommended – public comment process is not automatic, only where GNSO Operating Procedures call for it or at the initiation of GNSO Council.

Pending Issue

- Should SPIRT be reviewed on an annual basis with results of any review to be publicly available? Not addressed as no agreement in SubPro PDP WG on this; to be considered further in implementation phase.