

Overview

The Predictability Framework will be used to address issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Predictability Framework seeks to ensure that these issues are managed in a predictable, transparent, and fair manner.

Predictability Framework: Categories of Changes to the New gTLD Program after Approval of the Applicant Guidebook

Only the GNSO Council, ICANN Board or ICANN Org may initiate action on an issue or proposed Program change that needs to be analyzed to determine in which category it belongs. The category will assist in proposing an appropriate course of action for handling the change as outlined below.

1. Operational: Changes to ICANN Organization Internal Processes

a. Operational - Minor

Description: A minor change is defined as "A change to ICANN Org's internal processes that does not have a material impact on applicants or other community members, change applications, or any of the processes and procedures set forth in the Applicant Guidebook." This usually involves no changes to the Applicant Guidebook, including the evaluation questions or scoring criteria, but may involve the way in which ICANN Org or its third-party contractors meet their obligations under the Applicant Guidebook. Examples include:

- A change in the internal process workflow for contracting or pre-delegation testing;
- Changing back-end accounting systems;
- ICANN Org selecting or changing a subcontractor to perform assigned tasks under the Applicant Guidebook where the original selection process did not involve feedback from the ICANN community.
- ICANN Org rolling out an organization wide change the includes New gTLD Program processes but nevertheless has no material impact

Process: ICANN org shall use the Framework to determine if an issue falls in this category. All minor ICANN Org internal process changes may be implemented by ICANN Org without a need for consultation but shall nevertheless be reported on subsequent to their implementation in a change log, or similar.

b. Operational - Non-Minor

Description: These are changes to ICANN Org’s internal processes that have (or are likely to have) a material effect on applicants or other community members. Examples include:

- A change in ICANN Org’s internal Service Level Agreements related to contracting or pre-delegation testing that adjusts the overall timeline;
- Changes made to the workflow for handling change requests (e.g., a procedural change rather than a change in the scope of allowable change requests).

Process: ICANN org shall use the Framework to determine if an issue falls in this category. ICANN org must inform the SPIRT of issues arising in this category and the SPIRT will have the option to collaborate with ICANN org as a solution is developed. The SPIRT will keep the GNSO Council informed about any work it is doing in this regard. All non-minor changes to ICANN Org’s internal processes must be communicated to all impacted (or reasonably foreseeable impacted parties), prior to deployment of the change, and shall be reported on subsequent to their implementation in a change log, or similar.²⁶³

c. Operational - New Process or Significant Change to Internal Process

Description: These are either of the following:

- New processes that are likely to have a material impact on applicants or community members. Examples 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).
- OR Changes to ICANN Org’s internal processes that have (or are likely to have) a significant impact on applicants or other community members and is expected to:
 - Result in suspension of a round
 - Result in delay of a future round
 - Result in delay in processing of applications by more than 30 days
 - Target specific application types

Process: ICANN org must inform the SPIRT of issues arising in this category and the SPIRT will have the option to collaborate with ICANN org as a solution is developed. The GNSO Council or ICANN Board may also initiate action on an issue they believe to be in this category and request assistance from the SPIRT. Once changes are agreed, changes should be communicated to all impacted (or

²⁶³ Changes here are expected to be procedural in nature. To the extent that a change is envisioned to the scope or nature of a process (e.g., changes to the standing requirements or dispute resolution principles for objections), the issue is more appropriately considered under section (c) below.

reasonably foreseeable impacted parties) parties prior to deployment of the change, and shall be reported on subsequent to their implementation in a change log, or similar.

2. Possible Policy Level - Changes that May Have a Policy Implication

d. Description: 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).

Process: If the GNSO Council, ICANN Board or ICANN Org initiate action on an issue that they believe to be in this category, the Framework will be used to screen if there is a policy implication and recommend the mechanism by which the solution will be developed. Options could include:

- Recommending that the change is not significant (meaning that it is not likely to have a material impact on an affected party) and that the proposed change is consistent with existing recommendation(s) and ensuing policy implementation;
- Recommending that additional consideration by the community is needed. In such a case, the issue would be referred to the GNSO Council. The GNSO Council would then have the discretion to decide whether to handle the issue via a PDP, EPDP, GNSO Input Process (GIP), GNSO Guidance Process (GGP) or any other mechanism at its disposal which it deems appropriate.
- Under extraordinary circumstances, there could be a recommendation that the New gTLD Program be halted for a communicated amount of time. In such a case, the triggering mechanism and rationale for recommending this extraordinary action must be provided to the GNSO Council for its consideration.

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

3. Possible Policy Level - New Proposals that May Have Policy Implication

e. Description: These are new mechanisms that may be considered to be within the remit of policy development. Examples include²⁶⁴:

²⁶⁴ Note that some types of new mechanisms are so clearly within the remit of policy development that it is not necessary to involve the SPIRIT. An example would be a change to rights protection mechanisms that protect trademark owners in the new gTLD process.

- The development of a new contract specification (e.g., public interest commitments);
- Creation of new exemptions to the Code of Conduct.

Process: If the GNSO Council, ICANN Board or ICANN Org initiate action on an issue that they believe to be in this category, the Framework will be used to screen if there is a policy implication and recommend the mechanism by which the solution will be developed. Options could include:

- 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) and ensuing policy implementation.
- Recommending that additional consideration is needed. In this case the issue shall be referred 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.
- Under extraordinary circumstances, there could be a recommendation to the GNSO Council that the New gTLD Program could be halted for a communicated amount of time. In such a case, the triggering mechanism and rationale for recommending this extraordinary action must be provided to the GNSO Council for its consideration.

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

Utilizing the Predictability Framework: Role of the Standing Predictability Implementation Review Team (SPIRT)

Given the unique and complicated nature of the New gTLD Program, the Working Group recommends that a Standing Predictability Implementation Review Team (SPIRT) (pronounced “spirit”) be established to utilize the Predictability Framework.

The SPIRT would therefore be the body empowered to provide input to the GNSO Council, the ICANN Board, ICANN Org, and the ICANN community on issues regarding the new gTLD Program after the approval of the Applicant Guidebook. The SPIRT can, for example, review any potential change before it is made to determine which of the categories delineated above are relevant to the change. The following is a summary of when the GNSO Council, ICANN Board or ICANN Org is expected to request involvement from the SPIRT:

Type of change	SPIRT involved	Notes
A - Operational - minor	no	ICANN Org records all changes in change log.
B - Operational - non-minor	yes	ICANN Org records all changes in change log.
C - Operational - new process or significant change to internal process	yes	ICANN Org records all changes in change log. It is a SPIRT task to recommend when an otherwise operational change has a possible policy implication
D - Possible policy level changes to existing processes	yes	
E - Possible policy level new proposals	yes	

The GNSO Council shall maintain a supervisory role over the SPIRT. Ultimately, the GNSO is “responsible for developing and recommending to the Board substantive policies relating to generic top-level domains.”²⁶⁵ and is responsible for managing the policy development process of the GNSO.²⁶⁶

SPIRT Chartering

1. SPIRT Recruitment

- a. The Standing Predictability Implementation Review Team (SPIRT) volunteer recruitment process should take into account what areas of expertise are expected to be needed. Identification of necessary areas of expertise should preferably be done before issuing a call for volunteers. Additional expert participation in the SPIRT may be sought throughout implementation as needs are identified.
- b. The call for SPIRT volunteers should clearly identify the needed areas of expertise, the scope and approximate time frame of the work, the roles of SPIRT participants, and the value the group is expected to bring.
- c. The call for SPIRT volunteers should at a minimum be sent to all members of the PDP working group and IRT that were responsible for

²⁶⁵ <https://www.icann.org/resources/pages/governance/bylaws-en/#article11> at 11.1

²⁶⁶ <https://www.icann.org/resources/pages/governance/bylaws-en/#article11> at 11.2

developing the policy and implementation recommendations. The call for volunteers may need to reach beyond the working group members to ensure broad participation by parties directly impacted by the implementation and parties with specialized expertise needed for implementation. In some cases, additional outreach at the start or at a later stage of the SPIRT may be necessary to ensure that appropriate expertise is available and that directly affected parties are involved in the SPIRT.

- d. To the extent feasible and applicable, composition of the IRT should be balanced among stakeholder groups. In addition to the usual ICANN stakeholders, the IRT should also contain prospective applicants for new gTLDs and others knowledgeable and experienced in the various new gTLD processes and procedures.

2. Composition of the SPIRT

- a. The SPIRT should at a minimum, at the time it is initiated, include at least one participant from the original PDP WG and PDP Implementation Review Team who can provide insight into the original reasoning behind consensus policy recommendations and implementation decisions.
- b. The GNSO Council is expected to designate a GNSO Council liaison to the SPIRT to ensure a direct link to the GNSO Council if/when needed.
- c. The SPIRT should be open to all interested parties, but may not necessarily be representative of the ICANN community, as actual participation may depend on interest and relevance of the new gTLD Process. Membership criteria should identify knowledge, experience, responsibilities to their respective organization, rules of engagement, a Statement of Participation, etc.
- d. Length of Term²⁶⁷
 - Members shall serve a two-year term with the option to renew for up to two additional two-year terms (i.e., a maximum of six (6) consecutive years). A member who has served three consecutive terms must remain out of office for one full term prior to serving any subsequent term as a SPIRT member. Additionally, the intention is to stagger member terms to provide for continuity and knowledge retention.
 - To facilitate this, at least half of the inaugural SPIRT members will join for an initial term of three years. Subsequent terms will be for two years.
- e. The Statement of Participation should include all of the usual elements of a GNSO Statement of Interest plus additional information the GNSO Council may see fit, including but not limited to, whether the participant is (or will be) employed by, under contract with, has a financial interest in, or providing consulting, financial, legal or other services to, any new gTLD applicant, objector, or commenter. The Statement of Participation is

²⁶⁷ Term limits may only be appropriate and applicable if participation is limited in some manner.

not intended to exclude any person/entity from participating, but rather to provide complete information about the participant to the community. All Statements of Participation shall be made public.

- f. The SPIRT may determine that additional subject matter expertise, beyond members, is needed to inform discussions on matters that fall within the remit of the SPIRT. If there are budget implications related to the participation of such external resources, funding should be confirmed in advance with the appropriate ICANN Staff organization.

3. SPIRT Role

- a. The SPIRT shall serve as the body responsible for reviewing potential issues related to the new gTLD Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.
- b. Who can raise an issue to the SPIRT?
 - Issues forwarded to the SPIRT should be subject to thoughtful analysis and have an impact beyond a single applicant. As such, issues can only be forwarded by:
 - ICANN Board;
 - ICANN org; or
 - The GNSO Council
 - For avoidance of doubt, the SPIRT cannot refer an issue to itself.
 - **Rationale:** Although any SO/AC may raise issues regarding the new gTLD Program, the issues must be vetted through one of the above entities in order to be taken up by the SPIRT. The reason that other SOs or ACs may not request that an issue be taken up by the SPIRT directly is because:
 - (a) the SPIRT is under GNSO Supervision,
 - (b) we want to avoid lobbying efforts to have the SPIRT take up issues, and
 - (c) nothing herein is intended to serve as a substitute for, or replacement of, the mechanisms set forth in the Bylaws for providing advice to the ICANN Board. Rather, the creation of the SPIRT is intended as an additional tool for the ICANN Organization, Board and GNSO to address issues that arise after the approval of the Applicant Guidebook.
- c. How can each of these Groups forward an issue to the SPIRT?
 - **ICANN Board:** By letter from the Chair of the ICANN Board or applicable New gTLD Board Committee;
 - **ICANN Org:** By letter from the ICANN CEO and/or his/her designee;

- GNSO Council: By letter from the Chair of the GNSO Council or his/her designee.
- d. Who receives the Advice / Guidance issued by the SPIRT?
- In general, all advice/guidance issued by the SPIRT should be delivered to the entity that forwarded the issue under Section 1 above.
 - Where an issue was forwarded under Section 1 by a party other than the GNSO Council (i.e., ICANN Board or ICANN Org), the GNSO Council should be provided with a draft of the advice/guidance prior to such advice/guidance being delivered to the party that forwarded the issue.
 - Role of GNSO Council where issue was forwarded by a party other than the Council. Upon being provided with a copy of the draft advice/guidance, the GNSO Council shall within no greater than 60 days, unless a 30 day extension is requested by the Council:
 - Approve the delivery of the draft advice/guidance to the party that initially forwarded the issue;
 - Raise issues/concerns regarding the advice/guidance for the SPIRT to address prior to delivering the advice/guidance to the party that initially forwarded the issue; or
 - Elect to remove the advice/guidance from the SPIRT process in favor of implementing one of its own policy processes under the GNSO Operating Procedures (eg., PDP, ePDP, GNSO Input, etc.) for additional consideration. In this case, the GNSO Council shall communicate its decision and rationale to the party that initially forwarded the issue.
 - Role of GNSO Council where it was the party raising the issue.
 - Where the GNSO Council originally forwarded the issue to the SPIRT, it should employ processes and procedures to consider SPIRT recommendations as expeditiously as possible, and seek to make a decision in no more than 2 GNSO Council meetings from receipt of SPIRT advice/recommendations.
 - The GNSO Council shall inform the SPIRT of its decision, providing rationale and proposed next steps.
4. ICANN Staff Interaction with the SPIRT
- a. The SPIRT will provide guidance and/or validation to ICANN org as well as make recommendations to the GNSO Council. Therefore, ICANN org will play a supporting role.
 - b. ICANN will provide staff liaisons from ICANN org GDD, legal, and policy support.
5. SPIRT Operating Principles
- a. There is a presumption that the SPIRT will operate with full transparency, with at a minimum a publicly archived mailing list and recording of all SPIRT calls. In the extraordinary event that the SPIRT should require confidentiality, the SPIRT is normally encouraged to conduct its

meeting(s) in accordance with the Chatham House Rule as the preferred option, and if necessary, additional rules and procedures may be developed by the SPIRT in coordination with ICANN staff.

- b. **SPIRT Leadership:** A Chair will be selected by the SPIRT from amongst its members as early as practicable. The SPIRT should select up to two Vice-Chairs, taking into account the diversity of the ICANN community (e.g., avoid all leadership positions coming from the same geographic region or SO/AC/SG/C, avoid extensive overlap of skillset, etc.)
- c. **SPIRT Decision-making**
 - The SPIRT is intended to serve as an advisory body to provide guidance to ICANN Org, the ICANN Board and the ICANN Community. Such advice and/or guidance shall not be binding on any party and does not replace any other method of providing advice or guidance under the Bylaws.
 - The Chair of the SPIRT, in consultation with any vice-chairs, will assess the level of consensus within the SPIRT, using standard decision making methodology as outlined in section 3.6 of the GNSO WG Guidelines.
 - The SPIRT shall strive towards achieving Consensus on all advice and/or recommendations from the SPIRT. Even if consensus is not reached, the SPIRT can provide input on any particular issue received, as long as the level of consensus/support within the SPIRT is reported using the standard decision making methodology outlined in section 3.6 of the GNSO WG Guidelines.
 - Any SPIRT member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the SPIRT or GDD Staff should first discuss the circumstances with the GNSO Council liaison to the SPIRT. In the event that the matter cannot be resolved satisfactorily, the SPIRT member should request an opportunity to discuss the situation with the Chair of the GNSO Council or their designated representative. In addition, an IRT member always has the option to involve the ombudsman (see <https://www.icann.org/resources/pages/accountability/ombudsmanen> for further details).
 - SPIRT deliberations should not be used as a tool to reopen a previously explored policy issue only because a constituency or stakeholder group was not satisfied with the outcome of a previously held process on the same policy issue, unless the circumstances have changed and/or new information is available.
- d. **Conflicts of Interest**
 - SPIRT members must complete a Statement of Participation, which should be kept current and are subject to periodic review. As noted, the Statement of Participation may have questions specific to serving on the SPIRT.
 - The ICANN Bylaws make clear that it must apply policies consistently, neutrally, objectively and fairly, without singling any

party out for discriminatory treatment; which would require transparent fairness in its dispute resolution processes. Members of the SPIRT should accordingly disclose in their Statements of Participation (Chapter 6 of the GNSO Operating Procedures on Statements of Interest is relevant²⁶⁸) any financial interests and, possibly, incentives as they pertain to a specific complaint or issue under review. The term “Conflict of Interest” will not pertain to the actions of SPIRT members, but that does not imply that there may not be circumstances whereby a member might feel the need to abstain from a SPIRT decision. At no time should any single application be singled out for disparate treatment from other applications that are similarly situated.

- SPIRT members shall follow ICANN’s Expected Standards of Behavior as outlined in the ICANN Accountability and Transparency Framework.
 - To support transparency, SPIRT members shall disclose on a regular and ongoing basis if an issue being addressed by the SPIRT involves an application of which a SPIRT member has a direct interest, including as applicant, and/or through their firm, company or client. Disclosures shall take place at the beginning of every SPIRT meeting and will be captured on the recording of the meeting.
 - When appropriate, the Member of the SPIRT may recuse himself/herself, but required disclosure of a direct involvement in an application with an issue before the SPIRT does not, in and of itself, require recusal.
- e. Role of Public Comment.
- Recommendations related to operational issues will normally not be subject to public comment unless agreed to by Consensus within the SPIRT.
 - Recommendations that are directed towards the GNSO Council will normally not be subject to any additional public comment beyond what is normally envisioned by relevant operating procedures (e.g., if a PDP is required, then those rules prevail). However in rare instances, a public comment period may be conducted prior to delivering recommendations to the GNSO Council if agreed to by Consensus within the SPIRT.
- f. Code of Conduct
- Members of the SPIRT will be subject to a code of conduct stating that they may not take action that is designed to discriminate against any entity/applicant or group of entities/applicants.

²⁶⁸ Of note, this section of the GNSO Operating Procedures requires that, “At the beginning of each meeting the Chair of the GNSO Group shall ask all Relevant Parties whether they have updates to their Statements of Interest.”