Standing Predictability Implementation Review Team (SPIRIT) Chartering

This document contains the SPIRT Chartering text from the <u>Final Report</u> (pp.322- 328). ICANN staff has annotated the text in red with possible questions for discussion to finalize the SPIRT Charter.

<u>1. SPIRT Recruitment</u>

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 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.

Potential issues for IRT consideration:

- Establishing who is responsible for issuing the call for volunteers? ICANN org? SO/ACs?
- Providing an objective definition of how to determine whether a party is or is not "directly impacted/affected by the implementation".
- Establishing a mechanism for resigning from the SPIRT prior to the end of terms.
- Determining when someone can join SPIRT.

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. Advisory Committees may, but shall not be required to, appoint a liaison to the SPIRT.

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 Term

• 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 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.

Potential Issues for IRT consideration:

- Ideally, how should membership of the SPIRT be balanced, given the direction to differentiate between "the usual ICANN experts'' and other new gTLD stakeholders? In particular, how to balance participation based on "interest and relevance of the new gTLD Process" with the directive in section 1 that where feasible, "composition of the IRT should be balanced among stakeholder groups"?

- Confirming that the group is open to all.
- Determining how the selection criteria are applied and who enforces them, and if people can self nominate and join without explicit support of/nomination by their SO/ACs?
- Discussion of whether there should be an upper membership limit.
- Defining the role and responsibility of liaisons versus other members.
- What are the criteria to determine when an external resource is necessary?
- See section 6 for discussion of Statement of Participation in relation to potential conflicts of interest.

3. SPIRIT 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 ICANN 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.
• Every item referred to the SPIRT should contain an expected turnaround time in the referral request. This will also allow for certain items to be handled in an expedient fashion when required and others to have a longer time where speed may not be needed.

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 (e.g., 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 two (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.

2. 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.

Potential issues for IRT consideration:

- What tools other than a mailing list and wiki page are required for the SPIRT?
- Confirmation that SPIRT calls should only occur on an ad hoc basis
- Confirmation that it is for the SPIRT leadership to coordinate with staff to schedule these ad hoc calls.

3. 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[1] as the preferred option, and if necessary, additional rules and procedures may be developed by the SPIRT in coordination with ICANN staff.

b. <u>SPIRT Leadership</u>: 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.)

Potential issues for IRT consideration:

- What criteria should determine whether the Chatham House Rule is used or not? What is the alternative to conducting meetings under the CHR?
- Establishing procedures for nominating and electing Chair and Vice-Chairs.
- Determining term length for Chair/Vice Chairs, including how to ensure that leadership terms do not end at the same time for all.
- What are the reporting requirements of the SPIRT and who is responsible for fulfilling them?

c. <u>SPIRT Decision-making</u>

• 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 Working Group 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 Working Group 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

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[1] The Chatham House Rule (CHR) is a governance model which encourages inclusive and open dialogue when holding discussions on potentially controversial topics. When a meeting, or part of a meeting, is held under the CHR, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. The purpose of the rule is to facilitate open discussion since anything said is "off the record". More information can be found at the following link.

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, a SPIRT member always has the option to involve the ombudsman.
• 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.

Potential Issue for IRT consideration:

● Is the IRT content with GNSO Working Group Guidelines, section 3.6 as the sole basis for decision making methodology?

d. Conflicts of Interest

• SPIRT members must complete a Statement of Participation, which should be kept current and is 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 relevant) 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.

Potential issues for IRT consideration:

● Are there any specific SPIRT related questions required for Statement of Participation, as suggested in point 1: "the Statement of Participation may have questions specific to serving on the SPIRT"?
● What information should be disclosed by participants in the SPIRT Statement of Participation/Interest?

- Should the Statement of Participation and Statement of Interest be separate documents?

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.

Potential issue for IRT consideration:

- Should there be SPIRT specific requirements for the code of conduct, beyond the usual ICANN Expected Standards of Behavior?