New gTLD Subsequent Procedures

## Background

In 2005, the Generic Names Supporting Organization (GNSO) began a policy development process (PDP) to consider the introduction of new gTLDs. The two-year PDP process resulted in a set of 19 GNSO policy recommendations for implementing new gTLDs. In order to implement the policy recommendations of the GNSO, and to take into consideration subsequent additional policies and recommendations from the community (including the GNSO, GAC, ccNSO, ALAC, SSAC and the ICANN Board through the New gTLD Program Committee (NGPC)), a number of draft Applicant Guidebooks (AGBs) were developed by ICANN staff. Numerous comment periods were held to encourage participation of community stakeholders in the finalization of the AGB. The iterative and inclusive nature of efforts to develop the AGB was in part to adhere to Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains.*

*The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.*

*All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

Although in June 2011, ICANN’s Board of Directors approved the final AGB and authorized the launch of the New gTLD Program, subsequent revised versions of the Final Applicant Guidebook were released by ICANN staff, including the ultimate final New gTLD Applicant Guidebook dated June 4, 2012 (a few months after the application window closed)[[1]](#footnote-1).

The application window opened on 12 January 2012. A total of 1930 complete applications were received and the first set of Initial Evaluation results were released on 22 March 2013, followed by the first set of new gTLD delegations on 21 October 2013. Even after the submissions of applications, completion of initial evaluations, contract signatures and some delegations, changes to parts of the AGB, including the Registry Agreement, procedures involving contention sets, geographic names, objections, name collision, etc. were introduced and approved by the NGPC.

## Current

All applications have completed the evaluation process. As of the start of 2015, there are nearly 500 gTLDs delegated and approximately 1000 applications still proceeding through the remaining steps of the program, which includes contention resolution, contracting, accountability mechanisms including the Independent Review Process (IRP), and other processes[[2]](#footnote-2). Though the current round is ongoing, efforts to examine the round have already begun, which includes but is not limited to:

* Staff led analysis of the impact of the program on the security and stability of the root zone system;
* Staff led assessment of the effectiveness of rights protection mechanisms;
* Staff led effort to provide an initial assessment of the effectiveness of rights protection safeguards put in place to mitigate potential issues in the New gTLD Program[[3]](#footnote-3)
* GNSO request for an Issue Report on the status of rights protections, to be delivered 18 months after the delegation of the first new gTLD;
* Per Section 9.3 of the Affirmation of Commitments, a community driven review of the program’s impact on Competition, Consumer Trust, and Consumer Choice[[4]](#footnote-4);
* The creation by the GNSO Council of a Discussion Group to review the first round of the new gTLD program to commence the process of considering possible adjustments for subsequent new gTLD application procedures.

The creation of the GNSO Discussion Group was via the following GNSO Council resolution[[5]](#footnote-5):

“The GNSO Council creates a new Discussion Group to discuss the experiences gained by the first round of new gTLD applications and identify subjects for future issue reports, if any, that might lead to changes or adjustments for subsequent application procedures”

## Deliberations of the Discussion Group

**As the original policy recommendations as adopted by the GNSO Council and ICANN Board has “been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains[[6]](#footnote-6)”, those policy recommendations remain in place for subsequent rounds of the new gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process.**

The Discussion Group (DG) agreed to pursue its task of reviewing the first round of the New gTLD Program in a series of iterative work plan steps:

1. The DG has reflected upon their experiences from the first round and identified issues that may need to be addressed for subsequent procedures. The issues have been portrayed in a mind map to help organize the issues into logical categories.
2. The DG has created a matrix, available in Annex A, that attempts to map the issues to the original policy principles, recommendations, and implementation guidance. It is envisioned that this exercise will aid in determining if the issue raised is potentially:

* A clarification, expansion, or other amendment of an existing policy recommendation;
* A new policy issue (when the issue cannot be mapped to any existing policy principle, recommendation, or implementation guidance);
* An issue involving the implementation of an existing or new policy to serve as guidance for when subsequent procedures begin.
* Identification of ‘cross-cutting’ issues that affect multiple aspects of the programme (e.g. notion of community will impact application, contention resolution, evolution, appeals, accountability, etc.)
* Interplay between the gTLD program – including appeals – and ICANN accountability mechanisms.

It may also help establish what policy recommendations do not require further clarification or modification and are to remain as previously approved by the ICANN Board.

The objective of this analysis is to aid the DG in its development of recommendations to the GNSO Council on which issues should be worked on within one or more policy processes (which may include one or more formal PDPs) and how this work could be best structured (see also 3).

1. Following this initial analysis, the DG was in a position to propose how it envisions the issues can be grouped and worked on. The GNSO Council may want to consider the following factors in determining the path forward:

* Can the issues be addressed in a single PDP or should separate PDPs be initiated (each with its own Issue Report and charter)?
* Can certain issues be worked on through processes other than the formal PDP?
* Can the issues all be worked on simultaneously? If not, what are the factors that affect the order?
  + Are there dependencies between issues?
  + Are some issues more critical to address immediately? Do all issues need to be resolved prior to launching subsequent procedures?
  + Are sufficient community and staff resources available?
  + Are there parallel processes that might affect the outcome of the working group deliberations?
  + Are external resources, such as independent legal counsel, academic or international expert guidance required?

The DG considered many of these questions and determined that it considers keeping all issues contained to a single Issue Report/single possible PDP as the preferable outcome. The DG feels that the issues identified do not necessarily need to be worked on concurrently, but should be considered in a holistic fashion to ensure that the proper factors are considered in reaching outcomes. In addition, the DG is concerned with bandwidth issues in regards to both ICANN staff and community members, which may arise from having separate Issue Reports/PDPs.

1. The issues as identified in the matrix will be organized and presented in a draft charter, available in Annex B, which is expected to be included in a potential ICANN staff prepared Issue Report. In addition to the draft charter, a motion to request an issue report and an issue report request will also be prepared. Collectively, these documents should provide the elements below:

* Suggested groupings of the issues.
* Description of the issues.
* Description of the impact of such issue on affected.
* From step two above, the recommended mechanism needed to resolve the issue (e.g., new policy, policy clarification, implementation recommendation, or other).
* A series of proposed questions or considerations for each issue that may be used for a potential Issue Report/possible PDP effort.

1. This summary document, supporting Appendices, and descriptions of the identified issues, will be presented to the GNSO Council for their deliberation in determining how to proceed in advancing the development of new gTLD Subsequent Procedures, which the DG anticipates will be a request for an Issue Report.

The DG understands that a substantial amount of analysis will be needed if and when the list of issues is considered during the Issue Report drafting by ICANN staff. It is expected that an Issue Report would be driven by the topics described in the draft charter and influenced by the additional detail contained within the matrix, described in 2. The DG also welcomes ICANN staff further considering the set of factors as listed in 3, and hopes to see options for undertaking the work. The DG looks forward to the opportunity to provide comment and guidance in the future, including in regards to an Issue Report if and when it is published for public comment.

1. http://newgtlds.icann.org/en/applicants/agb [↑](#footnote-ref-1)
2. Current statistics from the 2012 new gTLD program are available here: <http://newgtlds.icann.org/en/program-status/statistics> [↑](#footnote-ref-2)
3. https://www.icann.org/public-comments/rpm-review-2015-02-02-en [↑](#footnote-ref-3)
4. https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en [↑](#footnote-ref-4)
5. Full text of the GNSO Council resolution can be found here: <http://gnso.icann.org/en/council/resolutions#201406> [↑](#footnote-ref-5)
6. The GNSO Final Report on the Introduction of New Generic Top-Level Domains is available here: http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm [↑](#footnote-ref-6)