

New gTLD Framework of Predictability

Problem Statement

Applicants and other parties interested in the New gTLD Program expected a level of predictability and stability within the program after launch that many felt was not adequately met. How can predictability for all interested parties be enhanced?

Anticipated Outcome

While the community will endeavor to establish policy recommendations that result in as stable a program as possible, it acknowledges that it's possible that all issues cannot be identified beforehand. Accordingly, the New gTLD Subsequent Procedures PDP WG is seeking to establish a framework by which, even in the event of changes deemed necessary by the community, the mechanisms by which these issues will be resolved **are predictable**.

Policy implementation is governed by the Consensus Policy Implementation Framework (CPIF)¹, which contains measures and guidance to resolve situations where implementation is determined, or perceived, to not match policy recommendations. This framework is intended to complement the CPIF, not replace it, and is targeted at addressing issues that arise after program launch (i.e., implementation is considered complete).

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Comment [1]: I don't understand what this means.

Comment [2]: Hi Donna, the first draft of this document was positioned as after implementation, since there are prescribed methods to resolve issues that arise during the course of the IRT. I think this drafting team will need to determine whether it wants to do something above and beyond measures that already exist.

Community Engagement

As noted in the above section, the community will seek to develop clear recommendations that can be implemented, in order to result in a program where there is minimal ambiguity or change needed. An integral part of that effort is to ensure that the process is well supported by community engagement, early and often, in order to develop recommendations that have broad community support.

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There are multiple mechanisms that support community engagement, all of which have been leveraged by the New gTLD Subsequent Procedures PDP WG. These include:

¹ For additional detail about policy implementation, please see the Consensus Policy Implementation Framework (CPIF) here: <https://www.icann.org/en/system/files/files/qdd-consensus-policy-implementation-framework-31may15-en.pdf>

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- As mandated by the GNSO PDP Manual, outreach to the Supporting Organizations (SOs), Advisory Committees (ACs), Stakeholder Groups (SGs), and Constituencies (Cs) to seek input.
- Utilizing liaisons between community organizations (e.g., between the GNSO and the GAC) and between other GNSO PDP WGs and related efforts (e.g., Competition, Consumer Choice & Consumer Trust Review Team).
- Supporting early engagement with the Governmental Advisory Committee (GAC).
- Providing newsletters to keep the community informed of the efforts of the PDP WG.
- Holding community-focused sessions at ICANN meetings to encourage wider input on key topics within the Working Group's Charter.

The Predictability Framework

Changes to ICANN organisation Operations

- Minor Process Update
 - Definition: A change to ICANN's internal processes that does not have a material effect on applicants or other community members.
 - Examples: A change in the process workflow for contracting or pre-delegation testing.
 - Expected Mitigation Strategy: None needed.
- Revised Processes/Procedures
 - Definition: A change to ICANN's internal processes that may have a minimal to significant effect on applicants or other community members.
 - Examples: A change in internal SLAs related to contracting or pre-delegation testing that adjusts the overall timeline. A change made to the workflow for change requests.
 - Expected Mitigation Strategy: Communicate changes to affected parties before they've been deployed.
- New Processes/Procedures
 - Definition: A new process created that will have an effect on applicants or other community members.
 - Examples: A new public comment platform is developed. A new process is created to submit objections.
 - Expected Mitigation Strategy: Because the process is new, collaboration with the community (e.g., IRT, or similar) is likely needed. Staff will work with the community to develop the solution. Once changes are agreed, communicate changes to affected parties before they've been deployed.

Fundamental, Possibly Policy-level Changes

- Revisions
 - Definition: A potential change to implementation that may materially and significantly differ from the original intent of the policy.

Comment [3]: May want to consider how change requests are handled, though this might not be the proper home for that subject.

Comment [4]: The WG may want to suggest some sort of impact assessment for these operational changes to help determine under which category a change falls.

Comment [5]: A key question for me here is how do we anticipate and protect against needing new processes at certain points of the applicant window? And then this bullet can help to manage the process should changes still be needed downstream. I'm not sure exactly where this fits in the framework or if it does, but timing seems to be important. For example, there may be points in time where new processes and procedures are relatively low impact and others where they are very impactful. There may be parts of the application window cycle (if windows exist) where ICANN should strive to only make incremental changes where needed and hold off on major ones unless absolutely necessary.

Comment [6]: The IRT will presumably have been dissolved at this stage - does some sort of IRT-lite or standing committee make sense?

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- Examples: Development of an application ordering mechanism (e.g., digital archery).
- Expected Mitigation Strategy: Collaboration with the community (e.g., IRT, or similar) is essential. Staff will collaborate with the community to consider the issue and agree upon the mechanism by which the solution will be developed. Options could include:
 - Determination that the change is not significant and that the proposed change is consistent with existing recommendation(s).
 - Determination that additional consideration is needed. For instance, a request could be sent to the GNSO Council to consider invoking the GNSO Input Process (GIP) or GNSO Guidance Process (GGP).
 - Under extraordinary circumstances, the New gTLD Program could be halted for a communicated amount of time.
- **New**
 - Definition: A new mechanism, that may be considered to be within the remit of policy development.
 - Examples: Development of a new rights protection mechanism (e.g., URS). The development of a new contract specification (e.g., public interest commitments).
 - Expected Mitigation Strategy: Collaboration with the community (e.g., IRT, or similar) is essential. Staff will collaborate with the community to consider the issue and agree upon the mechanism by which the solution will be developed. Options could include:
 - Determination that the change does not rise to the level of policy development (e.g., an implementation detail) and/or that the proposed change is consistent with existing recommendation(s).
 - Determination that additional consideration is needed. For instance, a request could be sent to the GNSO Council to consider invoking the GNSO Input Process (GIP), GNSO Guidance Process (GGP), or the **GNSO Expedited PDP Process (EPDP)**.
 - Under extraordinary circumstances, the New gTLD Program could be halted for a communicated amount of time.

Comment [7]: I think one of the challenges here is that there may be different interpretations of when policy change needs to occur. Collaboration is important, but I wonder if some sort of change control process is warranted. Or perhaps the standard ICANN procedures give us enough of a framework? If so, maybe it would be helpful for us to document those processes, how policy level change can be initiated within them, and at what points the community has the opportunity to engage/provide input.

Comment [8]: Similar comment as above - is a standing IRT or something similar needed?

Comment [9]: by who?

Comment [10]: Again, I think there is a question about timing. Are there points in time where new policy-level changes are appropriate and others where they should only be made under very specific circumstances? If so, what are those points in time and under which circumstances should major changes be allowed as an exception to the rule?

Role of Implementation Review Team (IRT) & GNSO policy change process in change control

The work of the IRT does not end when the AGB is published, as changes in the implementation remain possible after that point. The IRT would not be involved in reviewing the process, that is a task for another review process, but rather would be responsible to deal with any changes that may be necessary to the established implementation.

Comment [11]: IRP or IRT?

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Since the 2012 round, the GNSO procedure toolkit has added Implementation Review Teams and methods for amending policy when required and with consensus. These tools can offer some support and mitigation for change processes.

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The IRT can, for example, review any change before it is made to determine which of the categories delineated above are relevant to the change. It is also the group that can raise any issues of policy-implementation conflict to the GNSO Council for further discussion and possible uses of, e.g., the Expedited PDP or the GNSO Guidance Process.

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| Type of change | IRT involved | Notes |
|--|--------------|---|
| <u>Operational- minor</u> | <u>no</u> | |
| <u>Operational - Revision</u> | <u>yes</u> | <u>It is IRT task to determine when an otherwise operational change has a possible policy implication</u> |
| <u>Operational - New process</u> | <u>yes</u> | <u>It is IRT task to determine when an otherwise operational change has a possible policy implication</u> |
| <u>Fundamental / possible policy impact - Revision</u> | <u>yes</u> | |
| <u>Fundamental / possible policy impact - New</u> | <u>yes</u> | |

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Role of public comments in the change process

Which categories of change discussed above require a public comment for approval..

| Type of change | Require Public Comment? | Notes |
|----------------------------------|-------------------------|---|
| <u>Operational- minor</u> | <u>no</u> | |
| <u>Operational - Revision</u> | <u>no</u> | |
| <u>Operational - New process</u> | <u>no</u> | |
| <u>Fundamental / possible</u> | <u>Yes, if policy</u> | <u>IRT to review proposed change and notify</u> |

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|---|-------------------------|--|
| <u>policy impact - Revision</u> | <u>impact indicated</u> | <u>council in case of possible policy impact</u> |
| <u>Fundamental / possible policy impact - New</u> | <u>Yes</u> | <u>IRP to notify council of proposed change with report on policy impact, if any, of the change.</u> |

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