

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).

Community Engagement

~~The~~ As noted in the above section, the community will seek to develop clear, implementable recommendations 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.

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/gdd-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

~~In general, Policy development within the GNSO utilizes two phases. For an abundance of clarity, this Predictability Framework can be considered in the context of the phases of effort around 1) policy development, and 2) policy implementation. However, with respect to the New gTLD Program, given the historical need to address unforeseen circumstances or other implementation ambiguities, we are proposing the addition of a third element to the Predictability Framework: namely, and 3) operations of the New gTLD Program. This third element of Predictability Framework (Phase 3 below) is only intended to be utilized for the phase related to operations of the New gTLD Program and is NOT intended to apply to any other Policy Development process unless explicitly stated therein, (i.e., Phase 3 below).~~

Commented [1]: Comment from Anne Aikman-Scalese: "The guidelines in the proposed Predictability Framework in fact make the implementation process far LESS predictable for the majority of the community. Standing IRT is the correct solution and the numerous references to "collaboration with the community" make the process very vague indeed. Fundamentally, GNSO should be determining whether or not changes and revisions involve policy. IRT is an effective gate for this determination since it is representative of the community."

Commented [2]: May want to consider how change requests are handled, though this might not be the proper home for that subject.

Phase 1 - Policy Development Process

Policy development related to New gTLDs will take place within a GNSO chartered Policy Development Process (i.e., New gTLD Subsequent Procedures). The PDP is governed by the [GNSO Working Group Guidelines](#), ~~and~~ [Policy Development Process Manual](#) and its applicable [Charter](#). To the extent there are unforeseen issues (e.g., new policy issue not covered by the existing WG Charter), there are existing mechanisms to resolve (e.g., GNSO Council votes to amend charter). ~~This Predictability Framework is not relevant to this phase.~~

Phase 2 - Policy Implementation

Policy implementation takes place under the auspices of the [Consensus Policy Implementation Framework](#) (CPIF). To the extent there are unforeseen issues or if implementation is inconsistent with the intent of policy recommendations, there are existing mechanisms to resolve these issues (e.g., the Implementation Review Team (IRT) may consult with the GNSO Council). Again, this Predictability Framework is not relevant to this phase.

Phase 3 - Operations / Administration of the New gTLD Program

This third phase is only being recommended for the New gTLD Program. –The Working Group acknowledges that if there is an IRT for Subsequent Procedures, there may still be additional unforeseen questions related to the operations of the New gTLD Program even Operations of the New gTLD Program take place after the IRT has completed its work. For the implementation of Consensus Policy, this phase can be considered analogous to the time after the policy effective date. For the purposes of the New gTLD Program, the effective date may better be considered as the date of program/Applicant Guidebook adoption by the ICANN Board or the opening of the application window. This framework is solely focused on this phase.

Commented [3]: Consider making a definitive decision on which one it should be

There are several types of changes that may be required after the new gTLD Program re-launches. Categories are established below. Below we attempt to which attempt to draw distinctions in the type of changes and the mechanisms proposed to handle those changes that may be needed after program launch. These distinctions are intended to balance the need to allow for disposition of issues that arise with proper community consultation when warranted versus allowing the ICANN Organization on its own to effectively manage the program in a reasonable and efficient manner. For By way of example, in terms of impact to applicants and the wider community, the need for new contractual requirements may be vastly different than ICANN needing additional resources to complete an assigned task set forth in the Applicant Guidebook. meeting staffing needs by hiring a contractor (in which case, the impact is essentially nil).

Commented [4]: Consider using a different term than "Categories"

Note, while this framework often discusses the change as if it has already been determined, it is also intended to be utilized in the circumstance where an issue arises and potential solutions/changes have not yet been proposed by ICANN or the wider community.

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Changes to ICANN organization internal operations

- Minor Process Update
 - Definition: A change to ICANN's internal processes that does not have a material impact on applicants or other community members. This usually involves no changes to the Applicant Guidebook, but may involve the way in which the ICANN Organization or its third party contractors meet their obligations under the Applicant Guidebook.
 - Examples:
 - A change in the internal process workflow for contracting or pre-delegation testing;
 - Changing a new back-end accounting systems is deployed.
 - ⇒ The ICANN Organization selecting or changing subcontractor to perform assigned tasks under the Applicant Guidebook.
 - Expected Mitigation Strategy: None needed.
- Revised Processes/Procedures

Commented [6]: Comment from Anne Aikman-Scales: "I bungled an "Anonymous" suggestion in Google docs to delete the reference to the notion that changes in processes and procedures that have a "significant effect on applicants and other community members" can be made by simply communicating these changes to the community. PLEASE NOTE THAT IN THIS BULLET POINT THERE IS NO COMMUNITY COLLABORATION REQUIRED. THERE IS ONLY A REQUIREMENT THAT CHANGES IN ICANN PROCESSES AND PROCEDURES BE COMMUNICATED BEFORE THEY ARE DEPLOYED. Example given: "A change made to the workflow for change requests" – what does this mean and what opportunity do community members have to object to change requests from registry operators? Will that be preserved or not preserved? Would ICANN change that procedure without consulting with the community? Doesn't this depend on the nature of the change request? Who should be determining whether a change request is significant or not in terms of whether it affects policy or not? (My answer – IRT)"

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- Definition: A change to ICANN's internal processes that have a material effect on applicants or other community members.

- Examples:

- A change in internal Service Level Agreements related to contracting or pre-delegation testing that adjusts the overall timeline;
- Ca 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).
- ⇐ Minor delays caused by unforeseen circumstances.

- Expected Mitigation Strategy: Communicate changes to affected parties before they've been deployed.

- New Processes/Procedures

- Definition: A new process created that will have a material effect on applicants or other community members.

- Examples:

- A new public comment platform is developed.
- A new process is created to submit objections.
- ⇐ A new procedural mechanism to determine the order in which applications are evaluated (eg., changing from Digital Archery to Randomization)

- Expected Mitigation Strategy: Because the process is new, collaboration with the community (e.g., standing 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 needed change to implementation that may materially differ from the original intent of the policy and could be considered creation of new policy.

- Examples: Development of an application ordering mechanism (e.g., digital archery).

- Expected Mitigation Strategy: Collaboration with the community (e.g., standing 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:

- The standing IRT, or similar will make a determination that the change is not significant and that the proposed change is consistent with existing recommendation(s).
- The standing IRT, or similar will make a determination that additional consideration is needed. For instance, a request could be sent to the

Commented [7]: Anne Aikman-Scalèse - DELETE "to significant". No changes that have SIGNIFICANT effect on community members should be made via mere communication to affected parties. What exactly is a "change made to the workflow for change requests"?

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Commented [8]: why is IRT collaboration not required?

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Commented [9]: Comment from Anne Aikman-Scalèse: "Example given is "A new process is created to submit objections". The "Mitigation Strategy" is "Staff will work with the Community to develop the solution". THE QUESTION WHETHER A NEW METHOD OF SUBMITTING OBJECTIONS INVOLVES POLICY OR DOES NOT INVOLVE POLICY SHOULD BE DETERMINED BY IRT, NOT STAFF."

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Commented [10]: Consider whether "material" should be in there.

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Commented [11]: The IRT will presumably have been dissolved at this stage - does some sort of IRT-lite or standing committee make sense?

Commented [12]: Comment from Anne Aikman-Scalèse: "'Revisions' section makes reference to implementation that may "materially and significantly differ from the original intent". The text goes on to say that "Staff will collaborate with the community." Later it says that staff may determine (presumably in collaboration with the community) that the "change is not significant" even though the definition says the revision may in fact be quite significant. WHY DOES THIS SUGGEST THAT A SIGNIFICANT AND MATERIAL REVISION CAN MOVE FORWARD WITHOUT RESORT TO THE POLICY PROCESS IF IT IS DETERMINED "IN COLLABORATION WITH THE COMMUNITY" THAT THE REVISION IS "NOT SIGNIFICANT"?"

Commented [13]: Similar comment as above - is a standing IRT or something similar needed?

Commented [14]: by who?

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:
 - The standing IRT, or similar will make a 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).
 - The standing IRT, or similar will make a 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.

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

The Working Group believes that a Standing Implementation Review Team should be constituted after the publication of the Applicant Guidebook to consider. The work of the standing IRT begins when the AGB is published and is responsible for considering changes in the implementation after that point. The standing IRT would be responsible for dealing with any changes that may be necessary to the established implementation.

TO BE DISCUSSED:

- COMPOSITION OF THE IRT
 - NUMBER OF MEMBERS
 - APPOINTMENT OF MEMBERS
- LENGTH OF TERM OF THE IRT MEMBERS
- ROLE OF THE IRT MEMBER (REPRESENTATIVE Vs. INDEPENDENT JUDGMENT)
- CONFLICTS PROCEDURES OF IRT MEMBERS
- CONFIDENTIALITY OBLIGATIONS?

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Commented [15]: appointment of members: I am strongly in favor of this model, since individual judgment might be not enough (to see the issue from multiple angles properly in situation where there is not enough time)

Commented [16]: length of term: could be "1 year and then the constituency, which this member represents needs to express support again or to assign another representative"

Commented [17]: conflicts procedures: there needs to be an express mechanics for replacement of the members (to timely step down and to be replaced by the hot seat rep from the same constituency) for situation where conflict of interests for the particular application / TLD arise. In case where all members of the constituency would be affected - the replacement is not required (to avoid exclusion of Registries or Registrars from the very beginning)

Commented [18]: confidentiality: should be done on per issue basis with additional extensions like "to be shared with the constituency ExCom and GNSO reps only" and with additional obligations for the mentioned persons

- ICANN STAFF PARTICIPATION

The standing IRT can, for example, review any potential 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.

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

Commented [19]: How about urgent or major types of changes in operations? A criteria list with points may be one method to determine where it sits w/in the categories i.e. costs, level of risk, timeline impact on applicants, etc.

OTHER TOPICS TO DISCUSS

- DECISION MAKING PROCESS FOR IRT
- APPOINTMENT OF OUTSIDE EXPERTS
- PUBLIC CONSULTATIONS?
- TRANSPARENCY?
- ACCOUNTABILITY?
- DUTY OF ICANN ORGANIZATION TO FOLLOW RECOMMENDATIONS OF THE IRT

Commented [20]: Transparency: it might not go well with confidentiality in some situations

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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 |
|----------------|-------------------------|-------|
| | | |

| | | |
|-------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------|
| Operational- minor | no | |
| Operational - Revision | no | |
| Operational - New process | no | |
| Fundamental / possible policy impact - Revision | Yes, if policy impact indicated | Standing IRT to review proposed change and notify council in case of possible policy impact |
| Fundamental / possible policy impact - New | Yes | Standing IRT to notify GNSO council of proposed change with report on policy impact, if any, of the change. |