ICANN 63

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Face to Face Sessions: New gTLD Subsequent Procedures

Co-Chairs: Cheryl Langdon-Orr and Jeff Neuman
Sub Group Leads: Christa Taylor, Michael Flemming, Robin Gross, and Rubens Kuhl

ICANN63
20 October 2018

ICANN

Agenda

Session 1: 13:30-15:00

⊙   Review of the Supplemental Initial Report

Session 2: 15:15-16:45

⊙   ICANN and community readiness for subsequent procedures

Session 3: 17:00-18:30

⊙   Sub Group 1-3 kickoffs

Session 1: 13:30-15:00

- **Welcome, introductions, and background**
- **Review of the Supplemental Report**

Welcome

Overall WG Co-Chars:

- ○ Jeff Neuman
- ○ Cheryl Langdon-Orr

⊙ Sub Group A

- ○ Robin Gross
- ○ Jeff Neuman

⊙ Sub Group B

- ○ Rubens Kuhl
- ○ Christa Taylor

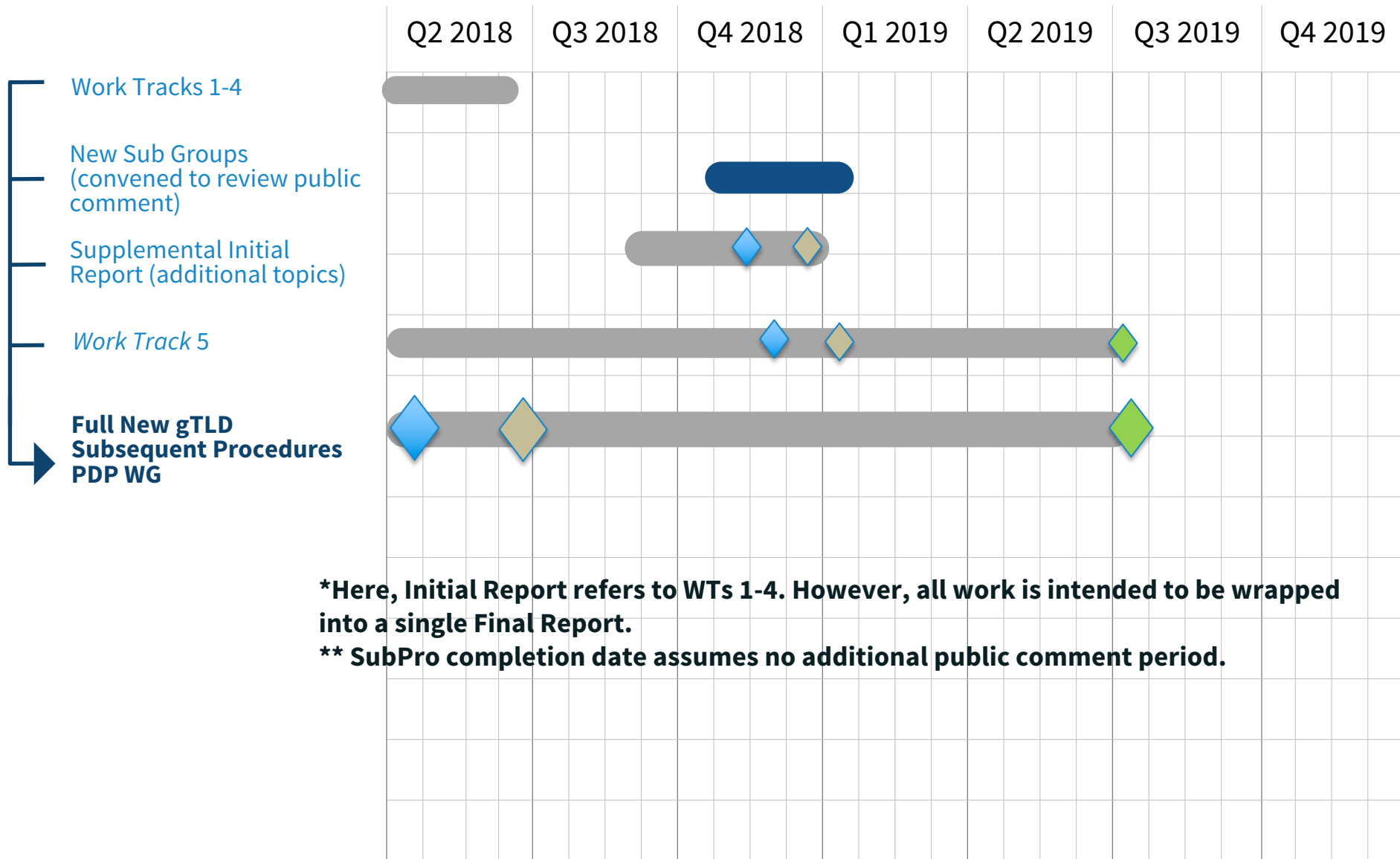⊙ Sub Group C

- ○ Michael Flemming
- ○ Cheryl Langdon-Orr

Background

- GNSO recommendations from 2007 resulted in the Applicant Guidebook and the 2012 round of the New gTLD Program.

- The New gTLD Subsequent Procedures PDP ("SubPro") is focused on considering the 2012 round policy and **determining what changes might need to be made to the original GNSO recommendations from 2007**.

- The PDP was **chartered** and began its work in early **2016**
  - Charter available here: https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-charter-21jan16-en.pdf

- The PDP has over 40 separate topics identified in its charter and broke into Work Tracks (1-4) to tackle work.

Current Status

- An Initial Report was published for public comment on 3 July 2018, with the period closing on 26 September.

- Comments received have been organized and collated for review by a set of three new Sub Groups (A, B, and C). These Sub Groups will begin reviewing comments during ICANN63.

- The WG also worked on a set of 5 topics that needed additional discussion, which will be published for public comment in the form of a Supplemental Initial Report (shortly after ICANN63).
  - Report will document deliberations on 5 topics and preliminary recommendations, potential options, and questions.
  - <u>Like the Initial Report, the WG did not conduct consensus calls on any preliminary recommendations in the Supplemental Report.</u> After review of public comments received on this report, the Working Group will conduct a formal consensus call on all recommendations before the group integrates these topics into its Final Report.

SubPro Timeline

	Q2 2018	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019

Work Tracks 1-4

New Sub Groups (convened to review public comment)

Supplemental Initial Report (additional topics)

Work Track 5

Full New gTLD Subsequent Procedures PDP WG

*Here, Initial Report refers to WTs 1-4. However, all work is intended to be wrapped into a single Final Report.
** SubPro completion date assumes no additional public comment period.*

KEY

◆ Publish Initial Report

◆ Close of Public Comments

◆ Final Report Delivered to Council

Session 1

Review of the Supplemental Report

Draft Language for Consideration

Auctions: Mechanism of Last Resort (1/5)

Potential Options: Types of Auctions
- Existing Mechanism from 2012 Guidebook.
- Sealed Bid auction (Vickrey auction) - applicants would submit their single highest bid upon application submission.
    - Type 1: If an applicant's applied-for string is in contention, the highest bidder would be placed first in the queue to have their application evaluated and if successful, would pay the second highest bid to ICANN.
        - Allows for applicants to bid the precise value of the string & may eliminate contention sets at the beginning.
        - Some noted concerns that evaluators, knowing the value placed on the string by an applicant, could be biased in some manner.
    - Type 2: Evaluate all applications, and only if all applications get through other stages do you open the bids of surviving applications.
    - Some concerned about ICANN securing this highly proprietary information
    - Both types rely heavily on having deep pockets. It was also noted that this form of auction would need to consider how it handles Applicant Support and community-based applications.

Draft Language for Consideration

Auctions: Mechanism of Last Resort (2/5)

Potential Options: Alternatives of Auctions

- Request for Proposals.
    - Could involve third-party evaluators.
    - Could establish criteria around diversity to factor in as part of basis for awarding the TLD (Eg., priority could be given to applicants applying for their first TLD, applicants that are more community-focused rather than commercially-focused, and minority-supported applicants).

- Random Draw.
    - A drawing mechanism to select a "winner" in the contention set
    - Simple, fair and efficient
    - Can eliminate a number of issues with resolving string contention
        - Does not favor those with the most money
        - Less incentive for private resolution through private auctions
        - No comparative evaluation
        - But may need license to not be considered a "lottery"

- System of Graduated Fees. A system of graduated fees could be established for each additional application submitted by an applicant, which could reduce the size of the pool of total applications and perhaps limit the number of applications that ultimately end in an auction of last resort.
    - Would favor larger entities with multiple applications and might also affect applicants' strategies in relation to the formation of applicant entities.

Preliminary Recommendations and/or Implementation Guidance Available

Options and/or Questions for Community Comment Available

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Draft Language for Consideration

Auctions: Mechanism of Last Resort (3/5)

Preliminary Recommendations

- Many in the Working Group believe that ICANN auctions of last resort should remain in place within the program.

- However, the Working Group considered whether there should be additional options for applicants to voluntarily resolve contention sets by mutual agreement before being forced into an ICANN auction of last resort. [See Topic #4 Change Requests].

Preliminary Recommendations and/or Implementation Guidance Available

Options and/or Questions for Community Comment Available

Draft Language for Consideration

Auctions: Mechanism of Last Resort (4/5)

Questions

- The preliminary recommendation above states that auctions of last resort should remain in place. However, some participants in the Working Group believe that auctions of last resort are inherently unfair and should be modified, restricted or modified. One of the main arguments is that auctions reward only those with the most amount of money rather than those that may best operate the TLD in the public interest. In addition, they believe that auctions discriminate against applicants in the developing world who may not have the resources to complete in an auction. Do you agree or disagree? Please provide a rationale for your response.

- Should other aspects (e.g., non-financial) be introduced to make auctions of last resort more "fair"? One mechanism that has been mentioned is to consider auction bids from an entity in the Global South as double or triple that of the same bid from an entity not from the Global South. For example, a bid of $100 from an entity in the Global South could be comparable to a bid of $200 from a bidder on the same string that was not from the Global South. Why or why not?

- What, if any, other measures should the Working Group consider to enhance "fairness"?

Preliminary Recommendations and/or Implementation Guidance Available

Options and/or Questions for Community Comment Available

Draft Language for Consideration

Auctions: Mechanism of Last Resort (5/5)

Questions, cont.

- Do you believe that a comparative evaluation process, a determinative drawing, or some other mechanism could replace auctions of last resort? Why or why not?

- Some participants noted that auctions of last resort could allow a deep-pocketed applicant to secure all strings within a given market. One potential solution raised was to place a limit on the number of auctions an applicant could participate in though others argued that limiting the number of applications would be considered anti-competitive and difficult to enforce. Do you agree that the identified issue is of concern and if so, what do believe is a potential solution?

Draft Language for Consideration

Private Resolution of Contention Sets (including Private Auctions) (1/4)

1. Concern was expressed from some (including ICANN Board) about the use of private auctions and other forms of contention resolution in subsequent rounds of new gTLD applications. More specifically, they are concerned that there will be some applicants that apply for new gTLD strings for the sole purpose of being paid to withdraw their applications in a contention set for which the applicant would receive compensation greater than the application fee.

    *   Should the Applicant Guidebook and program Terms & Conditions should be amended to state that resolution of string contention via private resolution, where a party is paid to withdraw, be disallowed.
    *   If so, should the future base Registry Agreement should include a provision that states that if a registry operator is shown to have taken part in a private resolution for their given string, it may result in having that TLD taken away from them?

2. Others supported Private Auctions and did not want ICANN to act as a regulator between private parties.

Draft Language for Consideration

Private Resolution of Contention Sets (including Private Auctions) (2/4)

Potential Options, cont:

3. Some believe that a simple "no private auction" rule could easily be circumvented with other forms of private resolutions of contention sets that amounted to compensating one or all of the other losing members of a contention set.
    - Thus, should all forms of private resolution of contention sets be banned (e.g., no private auctions, no mutual agreements, no changes as a result of private negotiations, etc)?

4. Another option is to allow certain types of private resolutions, but disallowing others.
    - For example, as discussed in several sections of the Initial Report and in this Supplemental Initial Report, many Working Group members favored allowing applicants in a contention set to change their applied-for-string if that change is mutually agreed by the members of the contention set and the newly changes strings (a) were reasonably related to the original applications and (b) did not move the applicants' newly selected strings into a different contention set.
    - Changes would need to be approved by ICANN (after public comment, opportunity to object, name collision risk, etc.).
    - If parties are found to have engaged in non-acceptable forms of private resolution, that will result in (a) the application not being allowed to proceed – if a Registry Agreement was not signed by the time it is discovered, or (b) forfeiture of the registry (if after a Registry Agreement is signed).
    - But some were not comfortable in putting ICANN in a position of approving (or disapproving) mechanisms of private resolution.

Draft Language for Consideration

Private Resolution of Contention Sets (including Private Auctions) (3/4)

Questions:

- Do you believe private resolutions should be continued in the future? If so, should the funds be distributed amongst the remaining applicants within the auction or in some other method i.e. charity, ICANN, etc? If so, what methods are most appropriate?

- Do you agree with many Working Group members who believe that prohibitions in the Applicant Guidebook, Terms & Conditions, and in the Registry Agreement are the best way to prevent private resolutions in the future. In other words, participation in a private resolution, including private auction, where applicants may profit from withdrawing their applications would result in a cancellation of your application (if discovered during the application process) or forfeiture of its TLD (if it is discovered after the TLD is awarded). Do you agree? Do you believe other suggested mechanisms (e.g., increasing application fees), may be more effective, or could be used in tandem?

- If you agree that private resolution overall is potentially problematic, do you believe that there is any practical way to prevent private resolution that allows losing applicants to receive a financial benefit? Or is the issue with private resolution one that requires a complete ban? Or is it impossible to prevent private resolutions, and they should therefore be allowed (as noted in option 2 above)? Please explain.

Draft Language for Consideration

Private Resolution of Contention Sets (including Private Auctions) (4/4)

Questions, cont.:

- Do you believe instead that there are practical ways to allow some forms of private resolution but disallow others, as indicated in option 3 above?
- Some believe that if an application fee for a TLD were high enough, it would deter applicants from applying for TLDs with the intent of profiting from a private resolution. Do you believe that increasing application fees will have that effect? Why or why not? If you agree, at what amount would application fees need to be set at to deter applicants from applying for TLDs with the intent of profiting from withdrawing their applications (e.g., rough estimate or instead, criteria by which an amount could be established)?

Draft Language for Consideration

Role of Application Comment (1/3)

Preliminary Recommendations

- Implementation Guidance: The system used to collect application comment should better ensure that the email and name used for an account are verified in some manner.

- Implementation Guidance: The system used to collect application comment should support a filtering and/or sorting mechanism to better review a high volume of comments. The system should also allow for the inclusion of attachments.

- ICANN should be more explicit in the Applicant Guidebook on how public comments are to be utilized or taken into account by the relevant evaluators, panels, etc and to what extent different types of comments will or will not impact scoring. In addition, to the extent that public comments are to be taken into account by the evaluators, panels, etc., applicants must have an opportunity to respond to those comments.

Draft Language for Consideration

Role of Application Comment (2/3)

Questions:

- While there was a cutoff for application comments to be considered by evaluators, the cutoff for Community Priority Evaluation was far later in the process, allowing for a much longer period of time for comments to be received for this evaluation element. The longer period of time allowed was due to the timing of CPE (i.e., only after program elements like Initial Evaluation, Extended Evaluation, and objections conclude). Is this, or other factors, valid reasoning and/or fair to have the comment period for CPE extend longer than for Initial Evaluation? Do you believe it makes sense to shorten this particular application comment period, perhaps just having it run in parallel to the Initial Evaluation comment period?

- In the 2012 round, applicants were given the opportunity through Clarifying Questions to respond to comments that might impact scoring. From one perspective, this may have reduced the incentive for applicants to respond to all input received through the public forum, including comments that may be perceived as negative. Do you consider this a issue that needs to be addressed? If so, what measures do you propose in response to this problem?

Draft Language for Consideration

Role of Application Comment (3/3)

Questions, cont:

- If there is a application comment period prior to evaluations, should applicants be given a certain amount of time to respond to the public comments prior to the consideration of those comments. For example, if there is a 60-day public comment period, should an additional time period of 7-10 days be added solely for the purpose of providing an opportunity for applicants to respond to the comments if they so choose?

Draft Language for Consideration

Change Requests (1/3)

Preliminary Recommendations

- A criteria based change request process, as was employed in 2012, continues to make sense going forward. But some operational improvements should be made.
    - ICANN org could seek to provide guidance on both changes that will likely be approved and changes that will likely NOT be approved.

    - ICANN org should also set forth the types of changes which are required to be posted for public comments and which are not.

    - ICANN org should set forth in the Applicant Guidebook the types of changes that would require a re-evaluation of some or all of the application and which changes would not.

    - Some types of change requests that were disallowed in 2012 should be allowed in subsequent procedures under certain circumstances. [See next slide]

Draft Language for Consideration

Change Requests (2/3)

Certain application changes intended to resolve string contention.

- Joint Venutres? ICANN org may determine that in the event of a joint venture, re-evaluation is needed to ensure that the new entity still meets the requirements of the program. The applicant may be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.

- Change of String? Some examples to consider in allowing for a new string to be selected include prepending/appending a new element to the original string or selecting a string that is closely related to the class/sector of the original string. ICANN org must perform a re-evaluation of the new applied-for string in all string related evaluation elements (e.g., DNS Stability, String Contention, etc.) and the application for the new string would be subject to string related objections (e.g., String Confusion Objections, Legal Rights Objections, etc.). Another Working Group member noted that in allowing for a string change, the new string would need to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures.The applicant may be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delay.

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Draft Language for Consideration

Change Requests (3/3)

Questions:

a) Do you agree with allowing these types of changes? Why or why not? Does the implementation guidance above seem reasonable if these changes are allowed? The implementation guidance asks that ICANN provide better clarity on what types of changes will or will not be allowed and also what changes may require re-evaluation. Do you have suggestions on how to provide more precise guidance? Would this guidance replace or complement the seven criteria (see section (b) above for reference) above?

b) If these changes are allowed, what are the potential risks or possibilities for gaming these types of changes? How can those risks be mitigated?

c) For the limited ability to change the applied-for string, what do you believe should be the criteria in considering such requests? Are there examples of where a change of an applied-for string should NOT be approved?

d) What role should public comment play in determining if a change request should be granted?

e) Reflecting on the seven criteria utilized for considering change requests in 2012 (see section (b) above for reference), do you have specific changes that you would suggest being made to those criteria for usage in the future?

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Draft Language for Consideration

Registrar Support for New gTLDs (1/3)

No Preliminary Recommendations at this time

Potential Options:
The following proposals have been discussed by the Working Group as options which can be pursued if there is support from the community to do so. Many of them require substantial resources by ICANN. No cost benefit analysis on these options have been performed and the Working Group is seeking input from the community on these proposals.

- ICANN org could select a "last-resort" wholesale registrar that would provide resellers with the ability to sell TLDs that lacked market interest and/or have their target markets in regions or verticals lacking ICANN-Accredited registrars. In order to not burden ICANN org or the selected registrar with making initial deposits for TLDs, only registries allowing Post Payment terms would be eligible for this resource.
- ICANN org could provide a "clearinghouse" for payments between the registries and registrars that operate in different currencies.

Draft Language for Consideration

Registrar Support for New gTLDs (2/3)

<u>No Preliminary Recommendations at this time</u>

Potential Options, cont:

- In order to assist smaller registries during their launch period, ICANN could allow an increase to the number of names that can be registered without the use of an ICANN-Accredited Registrar. Expanding the number of names while at the same time allowing these names to be registered for purposes other than the promotion or operation of the TLD could allow these smaller registries to "get off the ground" and gain the momentum needed to become attractive enough for ICANN Accredited Registrars to carry.
- The Applicant Guidebook could note that there may be some benefit to potential applicants in communicating with ICANN accredited registrars before submitting an application, so that they fully understand potential market and technical integration issues that might be encountered.
- Some members of the Working Group also proposed that the Registry contract should bundle the capacity of becoming an Accredited Registrar.

Draft Language for Consideration

Registrar Support for New gTLDs (3/3)

Questions:

- Please comment on each of the proposal set forth above. What are the pros and cons of those proposals? Should any or all of them be adopted? Why or why not?
- Are there any other proposals that could assist TLD Registries that have difficulty attracting ICANN Accredited Registrars?
- Should ICANN even get involved in assisting Registries or is this outside the scope of ICANN's mission, bylaws, or mandate? Please explain.
- The Working Group has not yet found a way to identify whether a TLD with low market performance has low performance due to lack of demand or lack of sales channels. How could the underlying issues be identified?

Session 2: 15:15-16:45

ICANN and community readiness for subsequent procedures

Introduction

- ⊙ Focus on ICANN community's readiness in preparing for subsequent new gTLD procedures. Given the length of time it took to implement the 2012 round, we believe it is important for the community to begin preliminary discussions on how the trajectory for implementation can be shortened.

- ⊙ What can be done during the pre-planning phase (i.e., things that can be undertaken while the PDP is still in operation)?

- ⊙ We will discuss a set of questions and seek input from the community and ICANN org. Note, many of the questions appear directed at ICANN org, but input from all participants is encouraged.

Question 1

- When can the GNSO Council initiate the Implementation Review Team (IRT) process? In other words, does the GNSO Council need to wait for ICANN Board approval of the Final Report in order to launch an Implementation Review Team on Subsequent Procedures?

Question 2

- In order of priority, what information/details are needed by ICANN org to begin implementation efforts for the opening up of the next round?

Question 3

⊙ If there is going to be a RSP "Pre-approval process", and that process is expected to launch prior to the opening of the next round of new gTLDs, what information will be needed by ICANN org to begin preparations for that process?

Question 4

- In anticipation of the opening up of the next round of new gTLDs, what steps can ICANN org take to prepare, even in the absence of having final details on the policy recommendations / implementation guidance of every element of the new gTLD Program.

Question 5

⊙ Preliminary recommendations - Are key elements either missing or not feasible for implementation as recommended? If there are any elements that ICANN org view as not feasible, what changes to the policy or implementation are recommended by ICANN org that address the potential concerns for which the policy was meant to address?

Session 3:17:00-18:30

Sub Group 1-3 kickoffs

Sub Group Leadership

- **Sub Group A: Robin Gross and Jeff Neuman**

- **Sub Group B: Christa Taylor and Rubens Kuhl**

- **Sub Group C: Michael Flemming and Cheryl-Langdon Orr**

Purpose of the Sub Groups

- The WG's Initial Report was published for public comment on 3 July 2018, with the period closing on 26 September.

- ~70 comments were received from a wide spectrum of individuals and groups.

- Comments were extremely comprehensive, well thought out and covered most, if not all, topics in the Initial Report.

- Comments received on the preliminary recommendations, options, and questions across the approximately 40 topics in the Initial Report.

- Comments received have been organized and collated for review the Sub Groups (A, B, and C).

- Today serves as the kickoff for the Sub Groups - will begin reviewing comments during ICANN63.

Sub Group Operations

- Assumption: Sub Groups can get through approximately 1 subject per meeting. Meeting once a week allows the WG to complete its public comment review by the end of February 2019.

- Proposed logistics: Starting the week of 5 November, the three Sub Groups will each meet once a week for 60 minutes. Generally, the Sub Groups will strive to not have calls at the same time, but there may be multiple Sub Group calls on the same day.

- The Full Working Group will temporarily move to meeting bi-weekly (though may change that as wr get closer to ICANN 64).

- Each Sub Group will have a space on the Wiki and will have its own email list.

- Work of each Sub Group must utilize the mailing lists to complete assignments. Not everything will be resolved on actual calls.

- Leaders will be responsible for sending e-mails to the Sub Group summarizing conference call discussions and on-topic email threads.

Sub Group Operations, cont.

⊙ Expectations for Sub Groups: Review comments and try to assess their potential impact, which could include:

  ○ Supporting a preliminary recommendation / option

  ○ Opposing a preliminary recommendation / option

  ○ Modifying a preliminary recommendation / option

  ○ Providing additional information for WG consideration

  ○ Suggesting additional data to be collected

  ○ Suggesting additional options, or changes to exist an preliminary recommendation / option

⊙ The Sub Groups are responsible for assessing the potential impact and then making recommendations to the full WG on how to treat the comments.

⊙ The Sub Groups are responsible for extrapolating any common patterns, trends, or concepts that are in the comments received and for providing alternatives to the full Working Group on potential recommendations, options, etc. that may bridge or resolve differences expressed.

Sub Group Operations, cont.

⦿ To the extent possible, Sub Groups should identify to the Full Working Group areas where they believe compromise between positions may be possible and also where they believe they will not be possible.

⦿ Sub Group Leaders wii not be taking consensus calls on the work on the Sub Groups.

⦿ In the event of any disagreements between the Sub Group members and the Sub Group Leaders, such disagreements should be brought to the Overall Co-Chairs. To the extent that the disagreement involves one of the Co-Chairs (serving as a Co-Leader of Sub Group), the impacted Overall Co-Chair shall recuse him or herself from presiding over such dispute and one of the GNSO Council Liaisons shall be appointed to stand in for the impacted Overall Co-Chair that recused him or herself.

Sub Group Kickoff

⊙ Meet your co-leads! Meet some of your fellow Sub Group members!

⊙ Each Sub Group has selected a single topic to serve as an example of how the review process is expected to work.

⊙ Each Sub Group will have its own individual Adobe Connect room, so remote participants will have an opportunity to listen and have their voices heard.

  ○ Understood that some members will want to join more than one Sub Group breakout – all groups will be recorded for you catch up later and send comments to the list if necessary.

⊙ Sub Group A will stay in the current room and use existing AC

  ○ gnso-newgtld-wg-sg1@icann.org

⊙ Sub Group B will go to 121 and use https://participate.icann.org/sc-policy/

  ○ gnso-newgtld-wg-sg2@icann.org

⊙ Sub Group C will go to 129 and use https://participate.icann.org/sc-policy/

  ○ gnso-newgtld-wg-sg3@icann.org

AOB

Engage with ICANN – Thank You and Questions

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