

# 2020-12-14 New gTLD Subsequent Procedures PDP

The call for the New gTLD Subsequent Procedures Working Group will take place on **Monday, 14 December 2020 at 15:00 UTC for 90 minutes**.

For other places see: <https://tinyurl.com/y28uamt3>



## PROPOSED AGENDA

1. Review Agenda/Updates to Statements of Interest
2. Review draft Final Report Public Comments – to prepare see the links to the Public Comment Review Tool on the wiki at: [\[docs.google.com\]https://community.icann.org/display/NGSPP/h.+Published+Draft+reports](https://community.icann.org/display/NGSPP/h.+Published+Draft+reports) and review the following topics and comments:

a. Update from Small Team – Auctions – References: See the Public Comment Review Tool at: <https://docs.google.com/spreadsheets/d/1kmZRLAsW6wITyQ8LA3KhOQzU1UABL9zCPWw39Yc9IB8/edit?usp=sharing> [docs.google.com]

See the draft Final Report starting on page 163, with Contention Resolution Transparency Requirements starting on page 166 at: <https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf> [gnso.icann.org]

- b. Topic 8: Conflicts of Interest [docs.google.com]
- c. Topic 10: Applicant Freedom of Expression [docs.google.com]
- d. Topic 33: Dispute Resolution Procedures After Delegation [docs.google.com]

3. AOB

## BACKGROUND DOCUMENTS

*Note: For the schedule of the upcoming meeting topics, please see the Work Plan at: [https://docs.google.com/spreadsheets/d/1ftMpOLkeLaJAHRUZ6dy1vTR6Ja\\_VGtKQ5KnPfMttbkE/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1ftMpOLkeLaJAHRUZ6dy1vTR6Ja_VGtKQ5KnPfMttbkE/edit?usp=sharing) [docs.google.com]. WG members are requested to review scheduled topics and comments prior to the meetings.*



## RECORDINGS

[Audio Recording](#)

[Zoom Recording](#)

[Chat Transcript](#)

GNSO transcripts are located on the [GNSO Calendar](#)



## PARTICIPATION

[Attendance](#)

Apologies: none



## Notes/ Action Items

### Action Items:

[Topic 8: Conflicts of Interest](#)

Row 13 – WIPO and Row 14 – Intellectual Property Constituency (IPC) and PETILLION Law Firm re: Refer to best practice resources.

**ACTION ITEM:** Cite the source as a reference in the rationale.

[Topic 10: Applicant Freedom of Expression](#)

Row 10 -- Thomas Barrett (Individual); Row 11 -- Internet Governance Project; Row 13 – ICANN org re: Suggests providing greater specificity

**ACTION ITEM:** Add a footnote in the rationale to this ongoing work in WS2 and the Framework of Interpretation.

[Topic 33: Dispute Resolution Procedures After Delegation](#)

Row 14 – ALAC

**ACTION ITEM: Ensure that this outreach is not excluded from Topic 13: Communications recommendations.**

AOB: PICs/RVCs:

**ACTION ITEM: Leadership will provide to the WG to review redlines to the text of the PICs/RVCs section based on the WG discussion during the meeting on 14 December.**

**Notes:**

1. Updates to Statements of Interest: None provided.

2. Review draft Final Report Public Comments – to prepare see the links to the Public Comment Review Tool on the wiki at: <https://community.icann.org/display/NGSPP/h.+Published+Draft+reports> and review the following topics and comments:

a. Update from Small Team – Auctions – References: See the Public Comment Review Tool at: <https://docs.google.com/spreadsheets/d/1kmZRLAsW6wITyQ8LA3KhOQzU1UABL9zCPWw39Yc9IB8/edit?usp=sharing>; See the draft Final Report starting on page 163, with Contention Resolution Transparency Requirements starting on page 166 at: <https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf>

-- There are some firmly held beliefs either to allow without guardrails other than in the recommendations; others that think the recommendations go far enough.

-- At the end of the day although there were fruitful conversations the recommendations in the draft Final Report will stay as they are.

-- At the meeting on 11 December we asked if the disclosure requirements were enough to provide protections.

-- See what happens in the next round to see if the harmful behavior happens – gather from disclosure data.

-- There are strong beliefs on all sides and without data on actual harms it will be hard to get agreement on any changes.

-- Question: The Small Team didn't address the comments that were submitted in the draft Final Report – will the WG address them? Answer: The Small Team did look at a lot of the comments, although we got stuck on the Board's comments.

-- Did look at the IPC comments on exempting .brands from the sealed bid, but didn't get any traction.

-- WG will address the responses to the Board separately after the Final Report is delivered.

b. [Topic 8: Conflicts of Interest](#)

Row 10 -- InfoNetworks LLC re: COI provisions should not prevent experts from serving as CPE panelists.

Leadership Comments: Question: Would our recommendations prevent experts from serving? Leadership didn't think that the recommendation would prevent this.

Row 12 -- dotBERLIN GmbH & Co. KG and Hamburg Top-Level-Domain GmbH re: Geo names panel should be transparent.

Leadership Comments: Was this not the case in 2012 round? Not aware that it wasn't transparent in the previous round. Noted.

Row 13 – WIPO and Row 14 – Intellectual Property Constituency (IPC) and PETILLION Law Firm re: Refer to best practice resources.

Leadership Comments: Perhaps citing this source? This has been presented as a possible source, for example.

**ACTION ITEM: Cite the source as a reference in the rationale.**

Row 15 – ICANN org

Leadership Comments: Define Conflict of Interest? Not sure it is for the WG to provide Examples.

c. [Topic 10: Applicant Freedom of Expression](#)

Row 10 -- Thomas Barrett (Individual); Row 11 -- Internet Governance Project; Row 13 -- ICANN org re: Suggests providing greater specificity

Leadership Comments: Prefer not to provide examples; the framework of interpretation was developed and ICANN has had an external review. Decided in WS2. Propose a footnote or reference to the more recent reports regarding Human Rights impacts studies and assessment. WG should be cognizant of the ongoing work on the Human Right aspects of WS2 and Freedom of Expression.

Discussion:

-- Agree with adding a reference to Workstream 2 work on Human Rights Core Value Framework and implementation.

-- It may behoove applicants to consider that Framework.

-- What the WG references should be the full community work, not ancillary work.

-- The Framework is already active since the bylaws activated it once the Framework was approved.

-- We need to ensure there is no 'confusion' between the finalised FOI-HR work and the recommendation \*for\* Impact assessments being implemented and the continuing discussions from interested parties with specific expertise in Human Rights advocacy more generally...

-- The IRT should link to the Human Rights Framework in the AGB - applicants need to know about this.

-- If an application is Objected to on Human Rights grounds (moral objection) and we haven't referenced the Human Rights Framework in the AGB, it's going to be an issue. So this probably needs more than just a footnote.

**ACTION ITEM: Add a footnote in the rationale to this ongoing work in WS2 and the cite the Framework of Interpretation.**

d. [Topic 33: Dispute Resolution Procedures After Delegation](#)

Row 9 -- ARTICLE 19

Leadership Comments: Noted; maybe add to the rationale that it's tough to bring a PICDRP because it's hard to show how they have been harmed.

Row 12 -- BC

Leadership Comments: Noted. ICANN and Registries did make some clarifications to the process recently. And in the 2nd PICDRP case we know that there is not agreement on whether the process was followed.

Row 13 -- ICANN Board

Leadership Comments: More details needed; maybe add to the rationale that it's tough to bring a PICDRP because it's hard to show how they have been harmed. We do have a recommendation that this should be clear. Also, the Board and Org noted recent improvements that should have covered this issue.

Row 14 -- ALAC

Leadership Comments: Do we mention dispute proceedings in the outreach/ communication campaign efforts? We think it covers outreach on all aspects of the new gTLD program.

**ACTION ITEM: Ensure that this outreach is not excluded from Topic 13: Communications recommendations.**

3. AOB:

a. RVCs/PICs

-- Comments from Alan. Needs to be a recommendation that contracts have to be enforceable. If ICANN be involved in the choice of a dispute processor then an registry could pick whoever they want to judge their own case. We need to ensure that the entity judging the case is impartial.

-- What prevents a registry from having that in PICs? PICs are part of the Registry contract.

-- WG should provide rules for dispute providers.

-- Didn't think we needed to make a recommendation that contracts must be enforceable because they are by nature enforceable because they are contracts.

-- PICs are part of registry contracts.

-- The choice of the dispute processor is made by both parties, not just by the registry, and it would be part of the contract.

-- Maybe say "it is our understanding" when we are not simply giving an opinion, but stating what was said elsewhere; say "I believe" where stating an opinion.

-- Maybe say "for the purpose of clarification we believe that PICs and RVCs are part of the contract and fully enforceable."

-- Add to the rationale that PICs and RVCs can be enforced.

-- We should make a recommendation that it should be in the registry contract that the choice of the dispute processor must be agreed to by the two parties.

-- Agree with Alan that voluntary PICs and RVCs should require third party dispute resolution process. Mandatory PICs should stay internal.

**ACTION ITEM: Leadership will provide to the WG to review redlines to the text of the PICs/RVCs section based on the WG discussion during the meeting on 14 December.**

#### b. Consensus Call: Minority Statements

-- Are accepted as is; not altered by the WG or leadership.

-- Minority Statements will not be included in a Consensus Call -- they will come after.

-- An individual can file a Minority Statement; but must be a member.

-- We don't silence the views of any member.

-- Consensus Call: state in support of or not in support of the recommendations.

-- Leadership will make the determination according to section 3.6 of the WG Guidelines.

-- If individuals have stated their non-support for similar reasons, then those could be a minority view – but this is not the same as a Minority Statement in response to the consensus designations.