New gTLD Subsequent Procedures PDP Working Group Draft Final Report

Community Webinar
14 September 2020
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(5 mins)

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(45 mins)

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Background on the PDP

Agenda Item 1

What is the PDP about? Why is it important?

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

- A Discussion Group was convened in 2014, which helped establish the scope for the New gTLD Subsequent Procedures PDP ("SubPro") that followed. 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 and/or implementation**.

- 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 initially broke into Work Tracks (1-5) to tackle work.

Milestones

- The Initial Report was published for public comment on 3 July 2018.

- A Supplemental Initial Report was published for public comment on 30 October 2018.

- Work Track 5 (geo names at the top-level) published its own Supplemental Initial Report in December of 2018.

- Given that some of the recommendations have been substantively updated since the Initial Report and Supplemental Initial Report, a draft Final Report was published for an additional Public Comment period on 20 August 2020.

SubPro Timeline

	Jul 2020	Aug 2020	Sep 2020	Oct 2020	Nov 2020	Dec 2020	Jan 2021

Work Tracks 1-4; Sub Groups (convened to review public comment); Supplemental Initial Report (additional topics); Work Track 5 (**_All Complete_**)

Full New gTLD Subsequent Procedures PDP WG

ICANN69

◆ Publish draft Final Report for public comment

◆ Close of Public Comments

◆ Final Report Delivered to Council

Overview of the Draft Final Report and Public Comment Opportunity

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Draft Final Report

- Includes draft final recommendations and implementation guidance on the 40+ topics within the Working Group's charter.

- Takes into account deliberations of the Working Group and community input received through a number of Public Comment periods.

- For each topic, the report includes:
  - Draft outputs and the rationale associated with these outputs.
  - Brief summary of key issues that were raised in deliberations since publication of the Initial Report and Supplemental Initial Report.
    - Summary does not repeat the comprehensive material included in the Initial and Supplemental Initial Report and should be read in conjunction with these documents.
  - List of intersections between the topic and other issue areas, in addition to related efforts outside of the PDP.

- Consensus call will take place after the recommendations are finalized following the public comment period.

Types of Outputs

There are 5 types of outputs included in the report:

a) <u>Affirmation</u>: An element of the 2012 New gTLD Program was, and continues to be, appropriate/acceptable for subsequent procedures. Absent agreement for a change, the "status quo" is the default position.

b) <u>Affirmation with Modification</u>: The WG recommends a relatively small adjustment to the existing policies or implementation.

c) <u>Recommendation</u>: The WG expects these to be approved and implemented consistent with the WG's intent; Often address **what** the Working Group recommends takes place.

d) <u>Implementation Guidance</u>: The WG strongly recommends the stated action, with a strong presumption that it will be implemented, but recognizes that there may exist valid reasons to not take the recommended action exactly as described; Often refers to **how** a recommendation should be implemented.

e) <u>No Agreement</u>: In a very few cases, there no agreement on recommendations and no clear "status quo" or default position.

Public Comment Opportunity

- The public comment period is 40 days long and **closes on 30 September**.

- The WG requests that you focus input on:
  - *Areas that have substantively changed since publication of the Initial Report and Supplemental Initial Report.*
  - *Questions that the WG has posed to the community for feedback.*
  - *New information that has not yet been considered by the WG.*

- Input from earlier Public Comment periods has been discussed and taken into account in the development of the draft Final Report. Please do not repeat input that has been previously provided.

- The outputs included in each topic in the report are intended to be considered as a package.

- Please use the Google Form provided to submit your input or contact staff support if you are unable to do so. A tutorial on the Google Form is available.

Public Comment Input Form -- Example (1/2)

Topic 2: Predictability

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 15 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Added details to the Initial Report's conceptual Predictability Framework, including defining different "buckets" of changes, clarifying which parties can raise issues, and explaining in more detail the jurisdiction of the Framework/SPIRT.
- Added specific details to the structure of the SPIRT, governance model and operating procedures.

If you choose one of the following responses there is no need to submit comments:

○ Support Output(s) as written

○ Not ideal, but willing to accept Outputs as written

○ No Opinion

Public Comment Input Form -- Example (2/2)

Draft Final Report Recommendations: Topic Highlights

Agenda Item 3

Topic 2: Predictability

- Draft Recommendation Highlights:
  - Establish methods for managing issues that arise in the New gTLD Program <u>after</u> the Applicant Guidebook is approved which may result in Program changes.
    - Use a framework for analyzing the issue to determine the impact of the change and the process/mechanism that should be followed to address the issue. This is **not** a mechanism to develop policy.
    - Establishment of a Standing Predictability Implementation Review Team ("SPIRT") working under GNSO Council oversight to review potential issues, conduct analysis utilizing the framework, and recommend a process/mechanism to address the issue.
  - ICANN Org to publish a change log to track changes to the New gTLD Program

- Public Comment Opportunity:
  - A number of details have been filled in since publication of the Initial Report regarding the Predictability Framework and the SPIRT, especially in Annex E of the report.

Topic 9: Registry Voluntary Commitments/Public Interest Commitments

◉ Draft Recommendation Highlights:

- Continue with the concept of mandatory and voluntary PICs but change the name "voluntary PICs" to "Registry Voluntary Commitments" (RVCs). PICDRP will apply to RVCs, as this is a terminology change.

- Continue to require mandatory PICs captured in Specification 11 Sections 3(a)-(d) of the RA; Provide single registrant TLDs with exemptions and/or waivers to Sections 3(a) and 3(b).

- Maintain the framework established by the NGPC for Category 1 strings; Establish a new evaluation process and panel to consider which applied-for strings require these safeguards.

- Allow applicants to submit RVCs with the application or at any time prior to execution of the RA to respond to public comments, objections, whether formal or informal, GAC Early Warnings, and/or GAC Consensus Advice.

- Require applicants to state whether an RVC is limited in time, duration and/or scope and also state the reasons and purposes for making the RVC.

- RVCs must be readily accessible and presented in a manner that is usable.

- The WG defers to broader community work on the issue of DNS Abuse.

◉ Public Comment Opportunity: The recommendations on this topic have been substantively updated in a number of areas since the Initial Report. Outputs regarding Category 1 safeguards and DNS Abuse are new.

Topic 17: Applicant Support

- Draft Recommendation Highlights:
  - Continue ASP in subsequent procedures, including financial assistance and pro-bono non-financial assistance.
  - Expand financial assistance beyond the application fee to also cover costs such as application writing fees, attorney fees related to the application process.
  - Improve outreach, awareness-raising, application evaluation, and program evaluation elements of ASP; Establish a dedicated Implementation Review Team.
  - Expand outreach and evaluation criteria to also target "middle applicants."
  - Applicants qualified for Applicant Support who participate in auctions of last resort receive a bid credit or multiplier.
  - ASP applicants not awarded Applicant Support may optionally transfer to the standard application process.

- Public Comment Opportunity:
  - A number of elements of the recommendations and implementation guidance have evolved substantively since Initial Report.
  - Question for community input: Should ASP include ongoing registry fees?

Topic 20: Application Change Requests

◉ Draft Recommendation Highlights:

   ○ Maintain a high-level, criteria-based change request process, as in 2012.

   ○ ICANN org to document changes that will: likely be approved or not approved; will and will not require re-evaluation; and will and will not require public comment.

   ○ Community members have the option of being notified if an applicant submits an application change request that requires a public comment.

   ○ Application changes are permitted to facilitate the settling of contention sets through business combinations or other forms of joint ventures.

   ○ .Brand TLDs are permitted to change the applied-for string as a result of a contention set where (a) the change adds descriptive word to the string, (b) the descriptive word is in the description of goods and services of the Trademark Registration, (c) such a change does not create a new contention set or expand an existing contention set, (d) the change triggers a new public comment period and opportunity for objection and, (e) the new string complies with all New gTLD Program requirements.

◉ Public Comment Opportunity:

   ○ No substantive difference from the Initial Report, but new recommendations added to allow resolution of string contention 1) through business combinations and 2) through string change for .Brand TLDs in limited circumstances.

Topic 23: Closed Generics

- Draft Recommendation Highlights:
  - The WG has made no recommendations to allow or disallow Closed Generics in light of diverging viewpoints.
  - Typically where there is no agreement, the WG recommends applying the Status Quo (i.e., no changes to 2012 implementation).
  - In this unique case, the WG was not able to agree on what the Status Quo actually was, given the Board's expectation that the Working Group would develop policy on this matter.
  - The output is therefore designated as "No Agreement."

- Public Comment Opportunity:
  - While there were no recommendations on this topic in either the Initial Report or Draft Final Report, the deliberations on this topic have been extensive since the Initial Report was published, and new ideas/proposals are included in the deliberations section for this topic.
  - Question for community input: The Working Group is seeking input on three proposals submitted by Working Group members on this topic, including whether there are elements or high-level principles from the proposals that should be discussed further by the WG.

Topic 32: Limited Challenge/Appeal Mechanism

◉ Draft Recommendation Highlights:

  ○ Establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.

  • Recommendations identify evaluation elements that may be challenged and objection decisions that may be appealed under this mechanism.

  ○ Mechanism is not a substitute or replacement for accountability mechanisms in the ICANN Bylaws.

◉ Public Comment Opportunity:

  ○ Recommendations have been substantively updated since the Initial Report, including listing specific evaluation mechanisms that can be challenged and objection decisions that can be appealed. A new annex contains details for each type of challenge/appeal with respect to standing, the arbiter of the challenge/appeal, who is responsible for costs, standard for appeal, and remedies (see Annex F).

Topic 34: Community Applications

- Draft Recommendation Highlights:
  - Applicants in contention sets that have passed Community Priority Evaluation (CPE) continue to get priority, as in 2012.
  - Improve efficiency, transparency, and predictability of CPE, including development and publication of CPE procedures before the opening of the application submission period.
  - Evaluators may engage in written dialogue with CPE applicants and issue Clarifying Questions to those who submit letters of opposition to community-based applications.
  - Letters of opposition, if any, are to be considered in balance with documented support for the application.
  - Limitations placed on any independent research the CPE Panel conducts.

- Public Comment Opportunity:
  - Some of the recommendations for this topic are new since publication of the Initial Report.
  - Question for community input: Feedback on proposed changes to CPE Guidelines.

- ⦿ Draft Recommendation Highlights:
  - ○ Continue with the concept of auctions of last resort as a means to resolve string contention.
  - ○ Applicant Guidebook (AGB) to specify that applicants will be permitted to creatively resolve contention sets in a multitude of manners, subject to program requirements.
  - ○ Applications must be submitted with a bona fide ("good faith") intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD.
    - • The WG discussed possible factors that ICANN may consider in determining whether an application was submitted with a bona fide ("good faith") intention to operate the gTLD.
  - ○ Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements. Applicants disclosing relevant information will be subject to Protections for Disclosing Applicants.

◉ Draft Recommendation Highlights (continued):

  ○ ICANN Auctions of Last Resort will be conducted using the second-price auction method in which the the applicant that submits the highest Last Resort Sealed Bid amount pays the second-highest bid amount.

  ○ Overview of process steps:

    • String Similarity Evaluation for is completed for all strings.

    • Applicants in contention sets are informed of the number of other applications in their contention set but are given no other information regarding the other applicants. All applicants must submit a sealed bid for each relevant application.

    • Non-confidential information submitted in applications will be published on "Reveal Day," after which applicants may participate in various forms of private resolution.

    • All applications are evaluated and are subject to other application procedures.

    • Auction of last resort takes place, if applicable.

⦿ Public Comment Opportunity:

○ The WG had previously considered several options regarding mechanisms for the ICANN Auctions of Last Resort. In the Draft Final Report, the WG has recommended the second price sealed-bid mechanism and added procedural details.

○ The Working Group had previously been trending towards disallowing private resolution where a party is paid to withdraw, but is now focusing instead on seeking to ensure that applications are submitted with a bona fide ("good faith") intentions, while also allowing private resolution (including private auctions). Contentions sets resolved via private resolution have information disclosure requirements.

○ Questions for community input:

• What factors should be considered when determining if an application was submitted with a bona fide intention to operate a gTLD?

• Punitive measures if an application is found to have been submitted lacking a bona fide intention?

Q & A

Agenda Item 4