

GNSO COUNCIL SMALL TEAM – SubPro Pending Recommendations

Subject	Council Triage for Expected Pending SubPro Recommendations
Background	<p>On 12 September 2021, the ICANN Board directed ICANN org to perform an Operational Design Phase (ODP) on the New gTLD Subsequent Procedures PDP. ICANN org initiated the ODP in early January 2022 and delivered the Operational Design Assessment (ODA), the main output from ODPs, on 12 December 2022.</p> <p>The Board has taken into account the ODA and in a summary document, has indicated that it will approve the majority of the SubPro recommendations at ICANN76. However, because of a variety of concerns, the Board does not plan to consider 38 recommendations at ICANN76 and will instead place them in a pending state. The Board has met with the Council to make it clear that dialogue and engagement is the Board’s preferred method to address their concerns versus sending letters back and forth.</p> <p>The Council has determined that a small team of Councilors is the right mechanism to carefully analyze each of the pending recommendations, consider Board concerns, and propose a best path forward for resolution.</p>
Assignment	<p>Task:</p> <p>The small team will be asked to perform the very narrow task of reviewing the Outputs marked as “pending” by the Board and suggest a path for resolution. A key assumption is that the path forward to resolve Board concerns may not be the same for every recommendation. Therefore, the small team will carefully review recommendations marked as “pending” in the Board’s communication to the Council:</p> <p>https://gns0.icann.org/sites/default/files/policy/2023/presentation/outputs-that-the-board-marks-as-pending-28feb23-en.pdf and perform a triage exercise. The triage exercise could result in the recommendations being placed in buckets for their ideal path forward rather than each recommendation being address individually.</p> <p>Liaisons from the Board and Org are encouraged. However, the small team may elect to review the final output with the co-chairs of the Board’s SubPro caucus prior to sharing with the full Council.</p> <p>Background information: Procedurally, there are a number of paths forward. In suggesting a path forward for each recommendation (or bucket of recommendations), the small team should consider the materiality/scope of the Board’s concerns and level of effort/duration to complete the action. At a minimum, the options available to the Council appear to be:</p> <ul style="list-style-type: none">• Provision of clarifying information to the Board.• Determination that the issue can be resolved during implementation.• The Council may modify or amend any approved recommendations (i.e., per Section 16 of the PDP Manual) prior to final action by the ICANN Board. Following this path is perhaps the “proactive” path forward and may be best applicable to relatively minor changes. While the Council is responsible for modifying or amending the recommendation language, this option still requires the reconvening of some form of

	<p>the PDP Team and subsequent consultation with that PDP Team, a public comment period, and Council approval by a Supermajority threshold.</p> <ul style="list-style-type: none"> • Allowing Board non-approval of a recommendation may be pragmatic in certain instances. Per Section 9 of Annex A in the ICANN Bylaws, in the event “the Board determines that such policy is not in the best interests of the ICANN community or ICANN,” the Council would have the opportunity to submit a “Supplemental Recommendation”. <ul style="list-style-type: none"> ○ That “Supplemental Recommendation” could affirm or modify the relevant recommendation. ○ However, the Council could elect to allow the non-approval of the recommendation to stand and not submit a “Supplemental Recommendation”. This approach could make sense in limited circumstances where for instance, the Board intends to instruct ICANN org to follow the spirit of the recommendation but is unable to accept the recommendation as precisely drafted. In other words, this could be a pragmatic path forward where it may be unnecessary to formally approve the recommendation because the intended outcome is nevertheless achieved. <p>In the Board’s summary document, the Board noted that it was open to sharing amendment proposals to address concerns, if that was desired by the Council. The small team could consider requesting this information to better support its work since presumably, the Board would have had to perform their own triage exercise in order to have a sense of how the issue could be addressed.</p>
Timing	The small group shall start its work shortly after ICANN76. The task should be completed no later than 13 April?
Members	<p>Membership: The small team shall be open to any interested and committed Councilor, with knowledge of the SubPro Final Report preferred.</p> <p>Leadership: The small team should identify a Lead from amongst the Councilors on the small team to help in leading meetings and providing updates to the full Council. If and when the Lead is to discuss the topic outside of the Council context, the Council shall agree on talking points.</p> <p>ICANN org liaison(s): ICANN org’s GDS function is invited and encouraged to assign at least one liaison to support the small team.</p> <p>ICANN Board liaison(s): The ICANN Board is invited and encouraged to assign at least one liaison to support the small team.</p>
Documents	<ul style="list-style-type: none"> • SubPro Final Report: https://gns0.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf • SubPro Operational Design Phase: https://www.icann.org/en/system/files/files/subpro-oda-12dec22-en.pdf

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Documentation of the Work	<ul style="list-style-type: none">• Anticipated Board Action in Cancun and Dependencies: https://gns0.icann.org/sites/default/files/policy/2023/presentation/subpro-outputs-conerns-and-dependencies-28feb23-en.pdf• Outputs that the Board marks as “pending”: https://gns0.icann.org/sites/default/files/policy/2023/presentation/outputs-that-the-board-marks-as-pending-28feb23-en.pdf<ul style="list-style-type: none">○ For additional context, the ICANN Board input to the Draft Final Report (see line 54) may be useful: https://docs.google.com/spreadsheets/d/1VOCuHrCIWc3D9aJV2-woOob8atmg6o20AzE7NMse5CE/edit#gid=472588409 <ul style="list-style-type: none">• A wiki page will be created to capture at a minimum, membership, background document and new documents generated by the small team, and meeting recordings.• Unless a specific meeting might benefit from an unrecorded dialogue, all meetings will be recorded.• A mailing list will be created for this small team and will be publicly archived on the Wiki. Observers may request to be added to the mailing list on a read-only basis.
Next Steps	<ol style="list-style-type: none">1. Once this assignment form is agreed upon, make call for volunteers2. Small team members to review the Outputs that the Board marks as “pending”3. Initiate work on the task and once complete, provide to the Council for consideration. <p>While not in the remit of this small team, next steps will include:</p> <ul style="list-style-type: none">• Council agreement on the path(s) forward• Identification of the participation model• Development of a work plan to resolve all issues