

Draft Final Report on the new gTLD Subsequent Procedures Policy Development Process

Status of This Document

This is the draft Final Report of the GNSO New gTLD Subsequent Procedures (SubPro) Working Group.

Preamble

The objective of this draft Final Report is to present draft final recommendations and implementation guidance on topics within the Working Group's charter. The draft recommendations and implementation guidance included in this report are the culmination of years of Working Group deliberations and community input that take into account input received through a number of public comment periods, including a survey of existing Stakeholder Group / Constituency / Advisory Committee statements from the 2012 round of new gTLDs, a set of dozens of initial questions aimed at getting input on the processes and results of the 2012 new gTLD round, as well as comments on the Working Group's Initial Report and Supplemental Initial Report. Given that some of the recommendations have been substantively updated, this draft Final Report is being published for an additional public comment period. While the full report is open for comment, the Working Group would like input to focus on areas that have substantively changed since publication of the Initial Report and Supplemental Initial Report and in limited instances, questions that the Working Group has posed to the community for feedback.

This Final Report may be translated into different languages; please note that only the English version is authoritative.

With over 250 members and observers in the Subsequent Procedures Working Group, dozens of issues in scope, and thousands of hours spent on addressing the 2012 New gTLD Program and improvements that can be made to the program moving forward, the Co-Chairs have decided to defer any consensus calls until the Working Group's recommendations are finalized. Therefore, this draft Final Report does not contain a "Statement of level of consensus for the recommendations." While no consensus calls have been held at this point, the Co-Chairs believe that this report accurately reflects the direction that the Working Group is taking on the topics included in its charter.

After a review of public comments received on this draft Final Report, the Working Group will finalize the recommendations and other outputs. The Co-Chairs will conduct a formal consensus call on all recommendations and outputs before the Working Group issues its Final Report.

Part 2 of this report focuses on the substance of topics addressed by the Working Group. Each topic follows the same basic structure, with a focus on Working Group draft outputs and the rationale associated with these outputs. There are 5 types of outputs: (a) Affirmation, (b) Affirmation with Modification, (c) Recommendation, (d) Implementation Guidance, and/or (e) No Agreement. These are described in the box below. Each topic also briefly summarizes key issues that were raised in deliberations since publication of the Initial Report and Supplemental Initial Report. This summary does not repeat the comprehensive explanations, background and discussion material included in the Initial and Supplemental Initial Report and should be read in conjunction with the deliberations summary included in the Initial and Supplemental Initial Report. Finally, noting the large number of topics and the interdependency between many subjects, each topic summarizes intersections between the topic and other issue areas, in addition to related efforts outside of the PDP, and the reason for the interdependencies.

The purpose of this public comment period is to obtain input on recommendations that have changed substantively since publication of the Initial Report and Supplemental Initial Report, as well as a limited number of specific questions. The Working Group would like respondents to focus their input on these specific items. This draft Final Report is the product of several years of Working Group deliberations, numerous public comment periods, community consultations at ICANN meetings, and correspondence received and sent. Further, this means that this draft as a whole is carefully balancing the interests of all the Working Group members, including arguments for and against certain outcomes that have been made over the years.

Therefore, respondents are discouraged from repeating input that has been provided in previous public comment periods, as this feedback has been extensively discussed and taken into account in the development of the draft Final Report. When providing comments or responding to a question contained in the draft Final Report, the emphasis should be on providing new information that you do not believe the Working Group has previously considered; and accordingly, that response should include an explanation and/or supporting documentation for why the Working Group's proposed outcome should be different.

Because the outputs included in each section of the report are intended to be considered as a package, respondents are requested to consider them in this manner when preparing their public comment response. For each section of the report, respondents will be presented with a summary of substantive differences, if any, that have been made since publication of the Initial Report and Supplemental Initial Report and asked to what extent they support the outputs. There will be an opportunity to provide additional explanation. In addition, a limited number of questions are included on specific topics for which the Working Group is seeking additional input from the community. The structure of this public comment forum is intended to support the targeted nature of the public comment period.

The Co-Chairs offer sincere gratitude to Working Group members and ICANN Policy Staff for their ongoing dedication that has enabled us to deliver this draft Final Report.

Types of New gTLD Subsequent Procedures WG outputs

Affirmation: Affirmations indicate that the Working Group believes that an element of the 2012 New gTLD Program was, and continues to be, appropriate, or at a minimum acceptable, to continue in subsequent procedures. Affirmations may apply to one or more of the following:

- Policy Recommendation, Implementation Guideline, or Principle from the 2007 policy
- Existing provisions of the 2012 Applicant Guidebook; or
- Other elements of implementation introduced after the release of the final Applicant Guidebook but applied to the 2012 application round.

In the event the Working Group was unable to recommend an alternate course of action, the Working Group operated on the basis that the “status quo” should remain in place as a default position. This status quo consists of the 2007 policy, the final Applicant Guidebook, and any implementation elements that were put into practice in the 2012 application round.

Affirmation with Modification: Similar to affirmations, but used in cases where the Working Group recommends a relatively small adjustment to the 2012 New gTLD Program’s policies or implementation. In some cases modifications to the policy or implementation language are necessary to reflect what actually occurred during the 2012 gTLD round.

Recommendation: The Working Group expects that the GNSO Council and ultimately the ICANN Board will approve and implement all recommendations set forth in this Final Report, and ICANN Org will work closely with an Implementation Review Team (IRT) to ensure that implementation takes place in line with the Working Group’s intent. Recommendations often address **what** the Working Group recommends takes place, as opposed to how it should take place. Recommendations typically use the term “must,” indicating that the recommended action is required to take place and/or necessary for the new gTLD program.

Implementation Guidance: The Working Group strongly recommends the stated action, with a strong presumption that it will be implemented, but recognizes that there may exist valid reasons in particular circumstances to not take the recommended action exactly as described. However, the party to whom the action is directed must make all efforts to achieve the purpose behind the recommended action (as expressed in the rationale and the Recommendation to which the Implementation Guidance is linked, if applicable) even if done through a different course. In all cases, the full implications must be understood and carefully weighed before choosing a different course. Implementation Guidance commonly refers to **how** a recommendation should be implemented. Implementation Guidance typically uses the term “should” indicating that the Working Group expects the action to take place, noting the caveats above.

No Agreement: In a very few cases, the Working Group did not reach agreement on recommendations and/or Implementation Guidance where there arguably was not a clear “status quo” or default position from the 2012 round to affirm. Therefore, this Final Report attempts to capture the different views of the members of the Working Group, but makes no further assertion about policy or implementation for subsequent procedures on the matter.

1 Executive Summary

1.1 Introduction

On 17 December 2015, the GNSO Council initiated a Policy Development Process and chartered the New gTLD Subsequent Procedures Working Group. The Working Group (WG) was tasked with calling upon the community’s collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.

As the original policy recommendations adopted by the GNSO Council and ICANN Board have “been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains”, those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council decides to modify those policy recommendations via a policy development process. The Working Group is chartered to develop new policy principles, recommendations, and implementation guidance or to clarify, amend, or replace existing such elements.

A Call for Volunteers to the Working Group was issued on 27 January 2016. The Working Group held its first meeting on 22 February 2016 and has met regularly since that time. With over 250 members and observers in the SubPro Working Group, and dozens of issues to address regarding the 2012 New gTLD Program, the SubPro Co-Chairs divided the initial phase of work into a set of “Overarching Issues” and five Work Tracks. Each of the five Work Tracks covered a number of related issues with the help of one or more Co-Leaders. The first Initial Report was published for public comment on 3 July 2018 and contained the output of the Working Group on the Overarching Issues as well as preliminary recommendations and questions for community feedback from Work Tracks 1-4. The Working Group subsequently produced two supplemental Initial Reports. A Supplemental Initial Report covering additional issues that were deemed to warrant deliberations by the Working Group was published for public comment on 30 October 2018. On 5 December 2018, the Working Group’s Work Track 5 published a Supplemental Initial Report for public comment focused exclusively on the topic of geographic names at the top level. Work Track 5 adopted its own Final Report by consensus and submitted it to the full Working Group on 22 October 2019.

This draft Final Report is a culmination of the work completed to produce the Initial Report and Supplemental Initial Report, as well as subsequent deliberations taking into account public comments received on these documents. The Working Group is also putting forward without modification the Final Report produced by Work Track 5.

1.2 Draft Final Recommendations and other Outputs

For the reasons mentioned in the Preamble, this draft Final Report does not contain a “Statement of level of consensus for the recommendations.”

Also as discussed in the Preamble, this report contains 5 types of outputs: Affirmation, Affirmation with Modification, Recommendation, Implementation Guidance, and No Agreement. Given the broad scope of this Working Group and the extensive list of topics contained in its Charter, the set of draft outputs are also substantial. As a result, the Working Group will copy all of the outputs in a table and make them available in Annex G. The purpose of doing so is twofold: 1) the Working Group wanted to avoid this Executive Summary from becoming too long and repetitive and 2) the Working Group wanted to consolidate the outputs to facilitate community review.

Work Track 5 on Geographic Names at the Top-Level produced a Final Report exclusively focused on the subject of geographic names at the top-level. The recommendations in the report were adopted by the Work Track by consensus and passed to the full Working Group for its consideration. The Working Group anticipates that it will adopt these recommendations without modification as part of its Final Report.

Please see Annex G for the consolidated table of draft outputs.

1.3 Deliberations and Community Input

The Working Group reached out to all ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) as well as GNSO Stakeholder Groups (SGs) and Constituencies (Cs) with a request for input at the start of its deliberations, which included a specific request for historical statements or Advice relating to new gTLDs¹. All responses received were reviewed by the Working Group and incorporated into deliberations for each of its Charter questions. The Working Group also sought to identify other community efforts that either might serve as a dependency to its work or simply an input to be considered. These efforts included the Competition, Consumer Trust & Consumer Choice (CCT) Review Team and the PDP on the Review of All Rights Protection Mechanisms in All gTLDs, among others.

Initially, the Working Group as a whole considered a set of six (6) overarching issues that have an impact on many of the topics contained in the Working Group’s Charter. Specific to these overarching issues, the Working Group prepared a set of questions and sought input from all SOs, ACs, SGs, and Cs. This outreach, called Community Comment 1

¹ See outreach and inputs received on the Wiki here: <https://community.icann.org/x/2R6OAw>

(CC1)², and the resulting responses were taken into account in the Working Group's deliberations.

The Working Group determined that the best way to conduct initial work on the approximately 35 remaining topics was to divide the work into four (4) Work Tracks (WTs). Each of these Work Tracks had two co-leads to guide the deliberations. The Work Tracks prepared a second set of questions, called Community Comment 2 (CC2)³, on the subjects within their respective remit. CC2 was issued directly to all SO/AC/SG/Cs, but also published for public comment. The resulting responses were taken into account in the Working Group's deliberations.

At ICANN meetings, the Working Group engaged in direct outreach with the Governmental Advisory Committee (GAC) and the At-Large Advisory Committee (ALAC) with a focus on topics known to be of particular interest to these groups (e.g., community-based applications, Applicant Support, etc.). These outreach efforts aided the Working Group's deliberations, particularly by helping to ensure that viewpoints from community members outside of the Working Group are also considered.

As noted in the Preamble, in early 2018, the Working Group established a Work Track 5 (WT5), dedicated to the singular topic of geographic names at the top-level. Work Track 5 published its own Final Report, wholly separate from this one. Work Track 5 conducted outreach by connecting to the relevant communities through Work Track Co-Leaders and participants engaged in those communities. There was a Work Track Co-Leader representing each of the ALAC, the ccNSO, the GAC, and the GNSO. While serving WT5 in a neutral manner, the Co-Leaders also acted as liaisons to their respective communities, ensuring that members of their communities are aware of the work and of the opportunities to engage. The Work Track 5 Co-Leaders regularly met with SOs and ACs during ICANN meetings. Further engagement took place through cross-community sessions held at ICANN59 and ICANN62 on the topic of geographic names at the top level.

1.4 Conclusions and Next Steps

This draft Final Report will be posted for public comment for approximately 40 Days. After the Working Group reviews public comments received on this report, it will complete this section documenting any conclusions based on the overall findings of the report.

² See Community Comment 1 outreach and inputs received, on the Wiki here: <https://community.icann.org/x/3B6OAw>

³ See Community Comment 2 outreach and inputs received, on the Wiki here: <https://community.icann.org/x/Gq7DAw>