

Policy Development Process Working Group Updates

2020 LAC Domain Names Week

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New gTLDs Subsequent Procedures PDP Update

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://gns0.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 for public comment in December of 2018 and then submitted a Final Report to the full Working Group.
- 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 from 20 August through 30 September 2020.

Recommendation Overview

- Report contains 5 types of outputs:
 - Affirmation
 - Affirmation with Modification
 - Recommendation
 - Implementation Guidance, and
 - No Agreement.
- 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.

Recommendation Highlights

Topic 2: Predictability Framework

Recommendation 2.1: ICANN must establish predictable, transparent, and fair processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Working Group recommends that ICANN org use the Predictability Framework detailed in Annex E of this Report as its guidance during implementation to achieve the goal of predictability in mitigating issues.

Additionally, the Working Group recommends the formation of a Standing Predictability Implementation Review Team (“SPIRT”)(Pronounced “spirit”) to serve as the body responsible for reviewing potential issues related to the Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.

Recommendation Highlights (Cont.)

Current Status of Discussions:

- Clarification that the framework is not a replacement for existing GNSO processes and procedures.
- New Implementation Guidance: The SPIRT should be subject to a lean, focused review once it has undertaken enough work to support this review. The review should be supervised by the GNSO Council. The SPIRT should continue to operate during the period that the review takes place.

Recommendation Highlights (Cont.)

Topic 6: Registry Service Provider Pre-Evaluation

Recommendation 6.2: The Working Group recommends establishing a program in which registry service providers (“RSPs”) may receive pre-evaluation by ICANN if they pass the required technical evaluation and testing conducted by ICANN, or their selected third party provider. The only difference between a pre-evaluated RSP and one that is evaluated during the application evaluation process is the timing of when the evaluation and testing takes place; Therefore, all criteria for evaluation and testing must be the same.

Summary of other recommendations:

- Participation in the process must be voluntary.
- Process must be open to all entities.
- Pre-evaluation occurs prior to each application round and only applies to that specific round. Reassessment must occur prior to each subsequent application round.
- Must be funded by those seeking pre-evaluation on a cost-recovery basis. Costs of the program should be established during the implementation phase by the Implementation Review Team in collaboration with ICANN org.
- A list of pre-evaluated RSPs must be published on ICANN’s website with all of the other new gTLD materials and must be available to be used by potential applicants with an adequate amount of time to determine if they wish to apply for a gTLD using a pre-evaluated RSP.

Recommendation Highlights (Cont.)

Topic 32: Limited Challenge/Appeals Mechanism

Recommendation 32.1: The Working Group recommends that ICANN 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. The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws. The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions.

Summary of other recommendations:

- Clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance.
- Process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance.

Recommendation Highlights (Cont.)

Current Status of Discussions:

- New Implementation Guidance: That the Working Group recognizes that ICANN itself may be an evaluator for any of the application evaluation components. This would not change the types of challenges allowed as set forth in Annex F. The arbiter of a challenge where ICANN itself was the evaluator should be a person or persons within ICANN that were not involved in the ultimate evaluation decision. If possible, the Working Group also recommends that the challenge process should be done under the supervision of the ICANN Ombudsman.

Recommendation Highlights (Cont.)

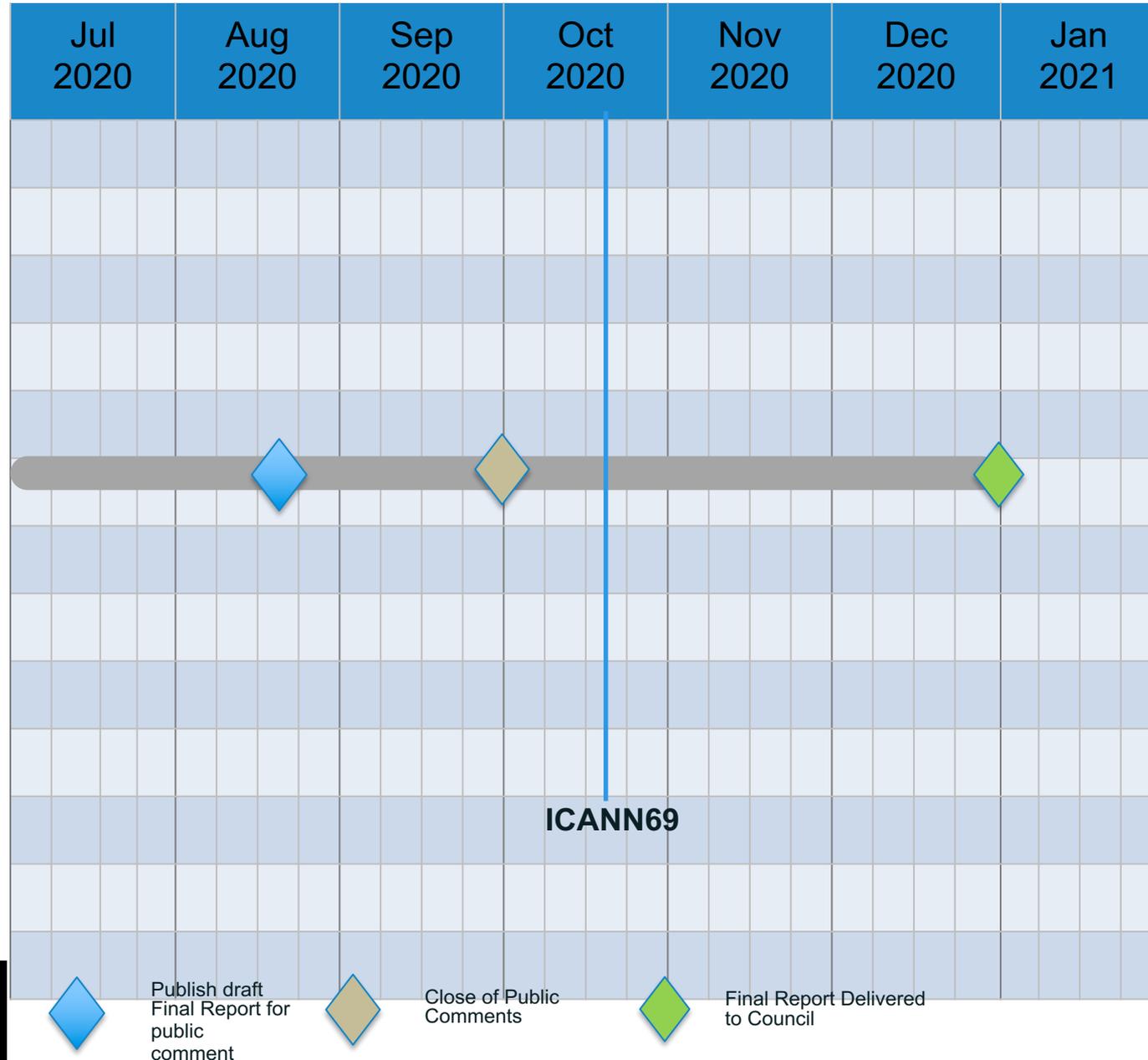
Topic 21.1: Geographic Names (Work Track 5)

- Work Track 5 is a sub-team of the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG) whose Final Report was included as Annex I – Work Track 5 Final Report on Geographic Names at the Top Level.
- The overall WG is 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 2007 Introduction of New Generic Top-Level Domains policy recommendations.
- Work Track 5 focused on reviewing the existing policy and implementation related to the topic of geographic names at the top level, determining if changes were needed, and recommending revised or new policy and/or implementation guidance, as appropriate.
- All recommendations coming out of Work Track 5 were reviewed and discussed by the full Working Group and to the extent that they are included in the WG's Final Report, will be subject to a consensus call in the full WG.

SubPro Timeline

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



KEY

Next Steps

- Working group wraps up work:
 - Completes review of public comments
 - Finalizes recommendations and the Final Report
 - Completes consensus call
 - Submits Final Report to GNSO Council
- GNSO Council considers recommendations and Final Report, and if adopted sends to the ICANN Board
- ICANN Board considers recommendations and Final Report

Review of All Rights Protection Mechanisms in All gTLDs PDP Update

What is the PDP about? Why is it important?

- Chartered in March 2016 to conduct a two-phased PDP
- Phase 1 – RPMs applicable to gTLDs launched under the 2012 New gTLD Program:
 - Trademark Post-Delegation Dispute Resolution Procedures (TM-PDDRP)
 - Trademark Clearinghouse (TMCH)
 - Sunrise and Trademark Claims offered through the TMCH
 - Uniform Rapid Suspension (URS) dispute resolution procedure.
- Phase 2 – UDRP (an ICANN Consensus Policy since 1999)
- To complete Phase 1 by End-November 2020 (new 40-day extension granted in September 2020 in addition to 5.5 months previous extension)

Milestones

- **May – Early September 2020:** Review Public Comments from 55 contributors
 - Two Sub Groups reviewed public comments for preliminary recommendations and questions for community input
 - Full Working Group reviewed
 - Public comments for individually-submitted proposals, overarching charter questions, and general input for the Initial Report
 - Two Sub Groups' suggestions & public comment review outcome
 - EPDP Phase 1 Recommendation 27 Wave 1 Analysis & CCT-RT Recommendations
- **Mid September – Mid-November:**
 - Finalize Phase 1 Recommendations
 - Conduct Consensus Call
 - Complete Final Report
- **End-November:** Submit Final Report to GNSO Council

Recommendation Overview

- 35 Total Recommendations
- 34 achieved “Full Consensus” 1 was “Consensus” (TMCH Final Recommendation #1)
 - 15 are for new policies and procedures
 - 10 modify existing operational practice
 - 9 maintain the status quo
 - 1 Overarching Data Collection recommendation

Recommendation Highlights

URS Final Recommendation #1

The Working Group recommends that URS Rule 3(b), and, where necessary, a URS Provider's Supplemental Rules be amended to clarify that a Complainant must only be required to insert the publicly-available WHOIS/Registration Data Directory Service (RDDS) data for the domain name(s) at issue in its initial Complaint. Furthermore, the Working Group recommends that URS Procedure paragraph 3.3 be amended to allow the Complainant to update the Complaint within 2-3 calendar days after the URS Provider provides updated registration data related to the disputed domain name(s).

URS Final Recommendation #8: The Working Group recommends that the ICANN org establishes a compliance mechanism or mechanisms to ensure that URS Providers, Registries, and Registrars operate in accordance with the URS rules and requirements and fulfill their role and obligations in the URS process. The Working Group recommends that such compliance mechanism(s) should include an avenue for any party in the URS process to file complaints and seek resolution of noncompliance issues.

Recommendation Highlights (Cont.)

Sunrise Final Recommendation #1: The Working Group recommends that the Registry Agreement for future new gTLDs include a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of intentionally circumventing the mandatory RPMs imposed by ICANN or restricting brand owners' reasonable use of the Sunrise RPM. Implementation Guidance: The Working Group agrees that this recommendation and its implementation are not intended to preclude or restrict a Registry Operator's legitimate business practices that are otherwise compliant with ICANN policies and procedures.

Trademark Claims Final Recommendation #6

The Working Group recommends that the language of the Trademark Claims Notice be revised, in accordance with the Implementation Guidance outlined below. This recommendation aims to help enhance the intended effect of the Trademark Claims Notice by improving the understanding of recipients, while decreasing the risk of unintended effects or consequences of deterring good-faith domain name applications. The Working Group agrees that the Trademark Claims Notice be revised to reflect more specific information about the trademark(s) for which it is being issued, and to more effectively communicate the meaning and implications of the Claims Notice (e.g., outlining possible legal consequences or describing what actions potential registrants may be able to take, following receipt of a notice).

Recommendation Highlights (Cont.)

TMCH Final Recommendation #1

Agreed Policy Principles:

The Working Group recommends that the scope and applicability of the TMCH be clarified and limited in accordance with the following agreed policy principles:

Only word marks that meet one of the following requirements are eligible for the mandatory Sunrise and Trademark Claims RPMs:

Nationally or regionally registered word marks from all jurisdictions; or

Word marks validated by a court of law or other judicial proceeding; or

Word marks that are protected by a statute or treaty that is in effect at the time the mark is submitted to the TMCH and that are listed with a national or regional trademark office. This provision is important for the protection of certain marks of international governmental and non-governmental organizations (see Explanatory Note below).

“Word marks” include service marks, collective marks, certification marks and word marks protected by statute or treaty, as further limited by Policy Principle #3 below.

Geographical indications, protected designations of origin, and other signs protected by quality schemes for distinguishing or indicating the geographic source or quality of goods or services are not eligible for the mandatory Sunrise and Trademark Claims RPMs unless they are also trademarks as defined in 1(a) or 1(b) above.

The TMCH Validation Provider(s), registry operators and other third parties may provide ancillary services to intellectual property rights-holders. To the extent that the TMCH Validation Provider validates and accepts other forms of intellectual property (such as geographical indications) in order to provide such additional voluntary services, these other forms of intellectual property must be held in a separate ancillary database.

The Working Group is using the phrase “quality scheme” in the sense used by the European Union when describing its quality policy: see, e.g.: https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en

Next Steps

- Working Group submits Final Report to GNSO Council
- GNSO Council considers recommendations and Final Report, and if adopted sends to the ICANN Board
- ICANN Board considers recommendations and Final Report

Questions