

# SPIRT Issue Submission Form

Please complete the following form if you believe there is an issue with the New gTLD Program that you would like the SPIRT Leadership Team to review and consider. Submissions will be reviewed and considered by the SPIRT Leadership Team prior to SPIRT Meetings.

Email \*

heather@ftld.com

Your name \*

Heather Diaz

Are you a member of the SPIRT? If you have selected no, please stop here. The alert form is for \* SPIRT member use only. If you are not a SPIRT member, please discuss your request with GNSO Councilors so they may bring it forward to the GNSO Council for discussion and consideration for referral to the SPIRT.

Yes

No

Your Affiliation \*

RySG/fTLD Registry

Please provide a link to your GNSO Statement of Interest (SOI) \*

<https://icann-community.atlassian.net/wiki/spaces/gnsosoi/pages/496238644/Heather+Diaz+SOI>

Date of Issue Submission \*

MM DD YYYY

05 / 12 / 2026

Please provide a summary of the issue impacting the New gTLD Program. Please specify the actionable request at the top. \*

### Potential Gaming of the Prohibition on Private Resolution of New gTLD Contention Sets

There currently exists a legal ambiguity/inconsistency, between the Applicant Guidebook and the GNSO original SubPro Consensus Policy Advice, that could provide Applicants and third-party providers the ability to circumvent the intended prohibition of private resolution of contention sets as described below.

Section 5.2.3. of the Applicant Guidebook states that “the New gTLD program processes leading up to and including, where applicable, a New gTLD Auction (including any CPE that may occur prior to, and which could eliminate the need for, a New gTLD Auction) provide the only permissible path to contention set resolution. Any other resolution methods, such as private auctions or joint ventures, or any other arrangement designed to resolve contention privately, are strictly prohibited.”

In furtherance of this general prohibition on private contention set resolution, Section 5.3.2.1 of the Applicant Guidebook prohibits certain communications and activities between Applicants in the same contention set, except in a limited number of circumstances outlined in Section 5.2.3.2, namely “outside of the defined periods where communication is prohibited.”

Considering the exception provided for in Section 5.3.2.1, there appears to be a permissible window of communication between Applicants seeking the same string between August 13, the day after the application window closes (and no new gTLD applications can be submitted) and Reveal Day.

This permissible window of communication and private resolution of contention sets appears to be consistent with Affirmation with Modification 35.1 in the New gTLD Subsequent Procedures Final Report dated 1 February 2021 which states “applicants may: i) resolve contention between them within a pre-established timeframe in accordance with the Applicant Guidebook and supporting documents.”

However, Section 5.2.3.3 of the Applicant Guidebook entitled Violation of the Rules Prohibiting Private Resolution of Contention Strings states that “[p]rior to signing a Registry Agreement or withdrawing an application, all applicants must certify compliance with the Guidebook, including these rules prohibiting private resolution of contention.”

While the original GNSO SubPro Consensus Policy Advice recognized the potential for “preestablished timeframe” for private contention resolution, that was conditioned being “in accordance with the Applicant Guidebook and supporting documents.”

The current Applicant Guidebook makes no reference to private resolution of contention sets being permitted at ANY TIME, only permissible communications between applicants in contention prior to Reveal Day. However, Section 5.2.3.3 of Applicant Guidebook, as noted above, requires all applicants who either sign a Registry Agreement or request a refund to

certify they did not violate the prohibition on the private resolution of contention sets. Therefore, my request of SPIRT is the following:

If SPIRT believes that private contention resolution between applicants is permissible prior to Reveal Day, then the Applicant Guidebook should be amended to specifically acknowledge this by amending the text of Section 5.2.3.3 as follows:

Prior to signing a Registry Agreement or withdrawing an application, all applicants must certify compliance with the Guidebook, including these rules prohibiting private resolution of contention commencing on Reveal Day.

This clarification will provide applicants and potential third-party service providers the ability to allow the free market to work and for private parties to resolve contention sets either through private auctions or other partnerships.

If, however, the original intention of ICANN community was to prohibit private auctions post the close of the application window, then Section 5.2.3.2 should be amended to strike the language "occurring outside of the defined periods where communication is prohibited" thus barring communication between applicants in potential contention (i.e. seeking the same string as either the primary or secondary choice) after the close of the application window on August 12th.

In your estimation, how would you classify this issue? For definitions of program change classifications, see Appendix 6 subsection A6.2: Description of Change of the [New gTLD Program: 2026 Round Applicant Guidebook](#). \*

\*Kindly note that for minor operational changes (Type 1), the SPIRT will not be involved and shall review the decision through the Change Log.

- Minor Operational Change (Type 1)\*
- Non-minor Operational Change (Type 2)
- Policy Change (Type 3)

Does this require the GNSO Council's urgent attention and response (i.e. Standard Process or Expedited Process)? Please note that the GNSO Council has discretion to determine whether an issue should be treated as urgent and handled on an expedited basis.

- Non-Urgent (i.e. Standard Process)
- Urgent (i.e. Expedited Process)

In your estimation, does this issue have a material impact on applicants? For a definition of "material impact" in the context of the New gTLD Program, see Appendix 6 subsection A6.5 of the [New gTLD Program: 2026 Round Applicant Guidebook](#). \*

- Yes
- No

If yes, please explain the material impact applicants may experience due to this issue. If no, please insert N/A.

Yes. Applicants should be provided clarity on their ability to legally resolve contention sets amongst themselves or using private auction providers prior to Reveal Day without running afoul of ICANN's prohibition on Private Resolution.

In your estimation, what kind of material impact does this issue have on applicants? \*

- Changes the status of an application
- Changes the outcome of an evaluation of an application
- Has a non-trivial monetary or operational impact on applicants
- Has a non-trivial impact on the timeline of application processing, up to the point of delegation
- This issue does not have a material impact on applicants

Has this issue previously been presented to and reviewed by ICANN org and/or the GNSO Council? \*

- Yes
- No

If yes, please provide the rationale for re-submitting it to the SPIRT. If no, please insert N/A. \*

N/A

Has this issue been discussed at a previous SPIRT meeting? \*

- Yes
- No

If yes, please explain why the SPIRT should revisit this issue. If no, please insert N/A. \*

N/A

If yes, when was this issue last discussed?

MM DD YYYY

/ /

Additional Questions and Comments

N/A

I agree that my personal data will be processed in accordance with the ICANN Privacy Policy (<https://www.icann.org/privacy/policy>), and agree to abide by the website Terms of Service (<https://www.icann.org/privacy/tos>). \*

Accept

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