

**SUMMARY OF PUBLIC COMMENTS  
ON THE DRAFT WORKING DOCUMENT  
OF THE BOARD GOVERNANCE COMMITTEE'S  
GNSO REVIEW WORKING GROUP ON GNSO IMPROVEMENTS**

**29 October – 14 December**

The ICANN Board Governance Committee (BGC) created a working group, comprising current and former Board members, to manage the GNSO improvement process. The purpose of the "BGC GNSO Review Working Group" (hereinafter "BGC WG") is to consider the work that has been done by the London School of Economics Public Policy Group and others to determine whether, in general, the GNSO has a continuing purpose in the ICANN structure and, if so, whether any change in structure or operations is desirable to improve its effectiveness. The Board has asked the BGC WG to recommend to the BGC a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

The GNSO Improvements Report (Report) dated 15 October 2007 reflects the BGC WG's examination of many aspects of the GNSO's functioning, including the use of working groups and the overall policy development process (PDP), and the structure of the GNSO Council and its constituencies. It updates the preliminary report posted on 19 June 2007.

Eight public comments relating to the draft Report<sup>1</sup> were received between 29 October and 14 December 2007, and are summarized below in order of receipt:

[Avri Doria](#) (Chair of the GNSO & NomCom Appointee)

- Finds herself in agreement with much of the report.
- Notion of GNSO's management function, however, should be more than responsibility for process. It should be expanded to include responsibility for policy management. In agreement with Thomas Narten that it is critical Council has a voice in deciding whether the policy recommendations of a WG are good for the Internet community.
- Supports the idea of Working Groups, despite the challenge involved in creating ones that are of sufficiently diverse and of manageable size. But Council needs to remain responsible for the policy activities and output of WGs.
- Councilors should be chosen as stewards for the WGs, and the Council should have a role in determining whether the policy recommendations are compatible with ICANN's mission and core values, as well as other policy recommendations. A policy recommendation must not be seen individually, but in light of other policy processes and efforts.

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<sup>1</sup> One comment also filed in December related to text labels and single letter/digit names, and a second one concerned a specific registration.

- This does not mean that the Council should be able to reject the work of a WG because it disagrees with the conclusions. It does mean that the council should be able to return policy recommendations to the WG with policy issues and concerns that it believes were not adequately addressed.

#### IP Justice/Robin Gross

- Many of the Report's recommendations would certainly improve the effectiveness of the GNSO, but the report does not adequately consider the values inherent in GNSO Council voting and the dangers of forcing consensus in all cases. A vote can be both necessary and desirable, limiting deadlock, situations where a party benefits from no change, and the influence of a "small, radical, and vocal minority."
- Lauds replacing the current GNSO constituencies with four main groups, each of which would receive an equal vote. Supports consolidating the 3 existing constituencies related to business interests because views them as already virtually identical, and functioning as a cohesive voting block. Believes re-balancing of interests within the GNSO is critical to ensuring that ICANN not be unduly dominated by any single interest and that the rights of billions of non-commercial users of the Internet be adequately taken into account in ICANN policy.
- Supports reducing size of the GNSO Council as envisioned in the Report, but would go farther and have only 3 representatives per stakeholder group.
- New constituencies should not create financial barriers in greater participation by individuals.
- GNSO should continue to be main body for policy development, not the Board. Bylaws should have sufficient flexibility for the PDP process. GNSO should continue to function as a check on policy development. Does not support a GNSO transition to a purely managerial function. On the contrary, Board should support council by funding Councilors' travel costs.
- Supports WG approach instead of current one, which is duplicative and polarizing, but prefers that the GNSO vote on the outcomes by supermajority, which protects the interests of stakeholders who are not intimately involved in every working group. This approach also protects against "stacking" a WG. A Council vote should therefore serve to ensure sufficiently broad support, rather than inhibit compromise.

#### GNSO Council

- Welcomes the use of WGs for policy development and notes the Council has already used that model in its recent work. Council, however, would like to retain flexibility in its options for policy development, including timelines. Concerned that the running of the WGs put a huge burden on chair so further thought will need to be given to how to mitigate that.

- Welcomes refinement of the PDP process and timelines. Notes that if rationale for WGs is inclusiveness, then rationale for Council should remain representativeness. Needs to be safeguards to protect against capture of WGs. Suggests that debate is needed on whether the current wording of the list of “consensus policies” is correct. Supports each PDP having a self-assessment process.
- Supports recommendations that deliver improvements in process, administration, and communication. Supports creating proxy voting in parallel with the proposed improvements. Welcomes (i) improvements in the provision of staffing resources, an improved GNSO website and financial support to Councilors for F2F meetings; (ii) Staff help for outreach and membership expansion, including in different languages; (iii) and stronger conflict of interest provisions. Notes that clearer operating procedures are desirable for constituencies, but that there needs to be a balance between harmonised procedures and bottom-up self-determination.
- Welcomes improvements in internal coordination with the Board, other supporting organisations and committees.
- Welcomes moving swiftly on these improvements and notes the challenges presented by the proposed timeline.

### Business Constituency

- Supports recommendations that deliver improvements in process, voting, administration, communication and policy formulation. Welcomes increased and consistent staff support, help with outreach and membership expansion, including in different languages. Notes improvements to the ICANN website and continuing need for better document management tools and a focus on increasing the usability of the GNSO’s section.
- Optimistic about a WG model for policy development as a default option. Welcomes refinement of the PDP process and timelines and a self-assessment procedure. Notes that an open group is not necessarily representative. Over time, commercial interests may predominate. Notes burden on chairperson.
- Supports well-researched expert advice that contributes to ICANN’s policy development, improved provision of staffing resources, an improved website, development of WG rules of procedure and immediate financial support to Councilors for F2F meetings.
- Supports the Council call to introduce proxy voting on Council when needed.
- Believes it is premature to restructure Council at this time given forthcoming reviews of NomCom and ALAC, and the challenges of implementing agreed steps in a timely manner. Particularly concerned with a reduction of influence of commercial users

from the current one third (9 of 27 votes) to one fifth (4 of 19 votes) at a time when ICANN is seeking to increase participation of commercial users.

- Supports removal of weighted voting – untied to any other changes- and believes that would enable task forces to work as designed.
- Suggests a wider debate is needed on whether the current wording of the list of “consensus policies” is correct.
- Term limits should be left to discretion of constituencies and should apply also to NomCom members.
- Stakeholder groups could be found within constituencies, and be fluid and “issue sensitive.” Representation would be only at the higher, constituency level.
- Concerned with reestablishing GNSO’s primary mission as managing policy development process b/c it could less motivation to participate in ICANN. Management of GNSO policy should be Staff responsibility.
- Does not support establishing a clear avenue for appeal of constituency membership decisions b/c it is overly bureaucratic. If there is a problem, the consistency can establish an appeals process, as BC has done, or Ombudsman can step in. Publication of rejected applicants’ names could raise privacy issues.
- Supports better coordination with other ICANN bodies but cautions that the elected GNSO Chair’s role is liaison and coordination, not representation of the Council.

#### ISPCP (ISP & Connectivity Providers Constituency)

- The ISPCP supports the need for constant review and change as part of an ongoing process of continual improvement.
- There is no ‘big bang’ solution that can be implemented that will resolve all without incurring significant risks to the policy-making process for the GNSO. Plus, many challenges ahead, such as new gTLDs. Thus supports a phased approach towards change.
- The BGC WG recommends that a working group model become the foundation and focal point for consensus policy development work in the GNSO, and potentially for other Council activities. The potential value of this approach has recently become evident; we cite the
- Supports spirit of the recommendation to move to a WG model as it allows access to all interested stakeholders and facilitates the drive towards genuine consensus based policies. However, the success of this approach hinges on appointing strong, experienced and competent chairs who will remain neutral. Currently this appears to be a very challenging issue, particularly when considering the breadth of work

scheduled for the GNSO. The concept of setting a minimum threshold at the outset for active support before decisions are reached is particularly essential. Concerned about ICANN staff recruiting and compensating outside experts to assist with particular areas, unless done at the request of the WG. Possibility of ICANN support for travel and funding is accepted in principle but needs to be carefully controlled and monitored. Supports asking Staff to work with Council to develop a set of working principles, rules and procedures for GNSO working groups, but also proposes that Staff and council review the efficacy of these arrangements at six monthly intervals across the first year.

- Supports more flexibility for the PDP, so that the process can be more readily adapted to the particular task at hand. Believes that in the future voting arrangements will remain equally as important as they are today.
- Agrees that, if the development of policies through WG consensus can be made to work, the Council can evolve from a policy development organ to one that manages the policy development process and then take on a more strategic role. But several aspects of the proposed restructuring are totally unacceptable as well as lacking in detail. There are also some misunderstandings and inaccuracies. Specifically:
  - Cross-constituency meetings started to save time at ICANN meetings, not to coordinate policy among the 3 consistencies involved. No reason to believe that all constituencies within a stakeholder group will agree on policy.
  - Supports in principle limiting terms, as long as there are exceptions for a situation where a constituency is unable to elect those representatives who are best placed in terms of required skills, experience or ability to dedicate time and effort to Council business.
  - Questions why ISPs and connectivity providers are not considered “suppliers”? The more accurate term might be “those under contract with ICANN,” but this may be the only example where those with a contractual relationship with the body that has the overarching responsibility for critical resources are afforded such influence over key decisions that impact their business. Any grouping of Suppliers must include ISPs and connectivity providers.
  - Welcomes elimination of weighted voting but is concerned that new balance is not correct. And, at least initially, voting will remain important. In the event of a tie between suppliers and users, it would be broken by the NomCom appointees, who may lack an operational or strategic perspective. Supports a non-voting role for NomCom members.
  - Believes that size of Council has not caused problems, but rather weighting voting has. Moreover, a 50:50 division of voting power between registries and registrars, and other consistencies, is not an acceptable balance. The impact of reducing the voice of the broad business community (IP, ISP and BC) voices should not be underestimated.

- Role of constituencies within a stakeholder group is unclear. Unless provisions are made to ensure that every constituency has some direct representation on the Council (viz. a seat or seats), the smaller constituencies will in effect be dominated by those that are able to secure board seats and provide a disincentive for participation. Furthermore, the practical inability to get a seat at the table would provide a powerful disincentive to form new constituencies.
- Decision on any restructuring of Council should be deferred for 12 months, allowing time to introduce new ways of working, train Chairs and outreach to new constituencies, while continuing with the already demanding work program of the GNSO. Six months for such major changes is certainly not realistic.
- Applauds efforts to make constituencies more transparent, accountable and accessible. But the adoption of a single set of rules that would apply to all constituencies could be unduly restrictive. Better to set a framework of principles within which the Constituencies can work, rather than the “one size fits all approach.”

[Marilyn Cade](#) (Individual, member of BC)

- Proposal for restructuring has no legitimacy. Going ahead runs the risk of harming the participation of major stakeholders in ICANN.
- First priority should be areas of agreement, which are improvements to the PDP and its associated processes. These improvements could be done in 4-8 months and address how to develop further a WG model. ICANN should provide a budget for travel reimbursement (as well as allow a proxy to attend on behalf of a Councilor).
- Restructuring of GNSO and enhancing constituencies should have a longer timeline, perhaps one year, and start only after significant outreach by ICANN. Also, any restructuring needs to be postponed until completion of the reviews of the other ICANN groups and must be bottom-up.
- Categorizing businesses as “consumers” is incorrect. [Note: Report does not use this term.]
- It is not the role or responsibility of the GNSO Council to manage the constituencies, which are self-forming and self-operating.
- Report should emphasize that the GNSO Council is a sub-part of the GNSO. Moreover, the Chair of the GNSO is not the chair of the SO. Rather than ask the Chair to take on a coordination role, the Council and the SOs should consider ways to improve interaction.
- All Board members should be encouraged to follow GNSO developments, not just those elected from it.

### Intellectual Property Constituency (IPC)

- Appreciates the BGC WG's diligent efforts in preparing the Report and in reaching out for input from all interested parties.
- Supports phased implementation of Report and deferring restructuring of Council, for practical reasons and because some recommendations are premature, requiring considerable additional study and discussion. Practically, the schedule is too ambitious. Policy-wise, the Report does not take into account the impact of developments like opening many new gTLDs, or the other reviews under way.
- A WG model should be available to the GNSO in its policy development role, but not required for all work, especially as the GNSO is different from more technical bodies.
- Voting is beneficial, applying an objective rule. The ICANN Board uses it.
- Supports PDP revisions, including removing the rules from the By-Laws.
- Does not find any hard evidence that the GNSO is under inclusive, inefficient or ineffective due to its current structure, and thus dramatic overhaul is not necessary. Prefer a phased approach – increased staff support, PDP revamped, and strengthened WG model – which may resolve many of the identified problems.
- Questions including IPC as part of “commercial registrants” group b/c interest broader.
- Supports training Councilors and PDP participants.
- More research is needed to determine why no new constituencies have been formed, notwithstanding the Bylaws provision for doing so.
- Questions value of a “GNSO-discussion list” without clarification of purpose.
- Suggests that consideration be given to number and method of GNSO selecting Board members, establishment of a cross-SO IP Advisory Committee; and removing the prohibition on ICANN paying Councilors' expenses.

### USCIB/Heather Shaw

- General support for the proposals to examine new WG models, improve the PDP, and enhance GNSO communication within itself and with other ICANN bodies. Recommends adopting a phased approach to implementation, focusing on the less contentious issues in the near term and putting off the more contentious issues, e.g. restructuring, until greater consensus is reached.

- With respect to WGs, supports efforts to enhance participation of stakeholders in bottom-up policy development, while also improving effective and efficient development of policy with realistic timelines for policy development.
- Supports greater flexibility in PDP timelines, in particular of providing earlier notification of policies under consideration and longer response periods in order for stakeholders to develop positions in the PDP. This is especially important for trade associations and organizations like USCIB, where developing consensus positions across a variety of stakeholders is a time consuming process. The deadlines for comment as prescribed in the PDP process need to be extended to allow for consensus building while remaining efficient.
- Endorses all the BGC WG's recommendations to improve relationships between the GNSO, ICANN staff, and other SOs and Advisory Committees.
- Suggest consideration of methods to improve intra-GNSO communication between the various constituencies. Often constituency positions form and harden without understanding of other interests, which can slow the PDP when constituencies discuss issues at the Council level. Given the broad range of constituency interests within USCIB's own membership, it understands value of cross-constituency discussion throughout the PDP, beginning at an early stage. Thus suggests GNSO examine ways to engender similar communication among its variety of constituent stakeholders.

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