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**REPORT OF THE
BOARD GOVERNANCE COMMITTEE
GNSO REVIEW WORKING GROUP
ON
GNSO IMPROVEMENTS**

*****FOR PUBLIC INFORMATION*****

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1. Executive Summary

The Board Governance Committee (BGC) created a working group, comprising current and former Board members, to oversee improvements to the Generic Names Supporting Organization (GNSO). The purpose of the “BGC GNSO Review Working Group” (BGC WG) is to consider the reviews conducted 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 charged the BGC WG with recommending a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

This Report on GNSO Improvements (Report) summarizes our 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. We have been guided by several key objectives, including (i) maximizing the ability for all interested stakeholders to participate in the GNSO’s processes; (ii) ensuring recommendations can be developed on gTLD “consensus policies” for Board review, and that the subject matter of “consensus policies” is clearly defined; (iii) ensuring policy development processes are based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively; and (iv) improving communications and administrative support for GNSO objectives. We have also considered carefully the thoughtful public comments submitted and taken them into account in the preparation of this Report. Above all, we have sought ways to improve inclusiveness and representativeness in the GNSO’s work, while increasing its effectiveness and efficiency. Our deliberations have achieved near consensus on a comprehensive set of recommendations that addresses five main areas:

Adopting a Working Group Model: A working group model should become the focal point for policy development and enhance the policy development process by making it more inclusive and representative, and – ultimately – more effective and efficient. This approach can be a more constructive way of establishing areas of agreement than task forces, where membership is limited and discussion can become polarized along constituency lines. It also enables key parties to become involved in the beginning and work together to address complex or controversial issues. Appointing skilled chairs and drafters, as well as proper scoping of the WG’s objectives, will be integral parts of development of a successful model. Steps should be taken immediately to move to a working group model for future policy development work, developing appropriate operating principles, rules and procedures that can draw upon expertise gained from policy development in the IETF, W3C, RIRs and other organizations.

Revising the PDP: The PDP needs to be revised to make it more effective and responsive to ICANN’s policy development needs. It should be brought in-line with the time and effort actually required to develop policy, and made consistent with ICANN’s existing contracts (including, but not limited to, clarifying the appropriate scope of

GNSO “consensus policy” development). While the procedure for developing “consensus policies” will need to continue to be established by the Bylaws as long as required by ICANN’s contracts, the GNSO Council and Staff should propose new PDP rules for the Board’s consideration and approval that contain more flexibility. The new rules should emphasize the importance of the preparation that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert research in order to define properly the scope, objective and schedule for a specific policy development goal, and the development of metrics for measuring success.

Restructuring the GNSO Council: The Council should move away from being a legislative body concerned primarily with voting towards becoming a smaller, more focused strategic entity, composed of four broad stakeholder groups, with strengthened management and oversight of the policy development process, term limits for members of the Council, the elimination of weighted voting and a training and development curriculum for Council members. The BGC WG deliberated extensively as to the most appropriate way to restructure constituency representation on the Council. We recommend a 19-person Council consisting of 16 elected members, four from each of four stakeholder groups, with two of these groups representing those parties “under contract” with ICANN, namely registries (4 seats) and registrars (4 seats). These we refer to as “ICANN contracted parties.” The other two stakeholder groups will represent those who are “affected by the contracts” (“ICANN non-contracted parties”), including commercial registrants (4 seats) and non-commercial registrants (4 seats). In addition, three Councilors would be appointed by the Nominating Committee (pending conclusion of the NomCom Improvement process). In addition, as the Council moves from being a legislative body to a strategic manager overseeing policy development, the current emphasis on formal voting should be significantly reduced.

A minority of Working Group members suggests explicitly recommending that "ICANN non-contracted parties" be apportioned into 5 seats for commercial registrants and 3 seats for non-commercial registrants.

An additional minority view suggests -- as stated in the Working Group's previous report -- that the GNSO Council should have the flexibility to propose an alternative configuration of the stakeholder groups that comprise the "ICANN non-contracted parties" side, provided that such alternative is submitted with sufficient notice to permit the Board to vote on the proposal at the Paris ICANN meeting in June 2008. Conversely, if no alternative proposal is forwarded to the Board within this timeframe, the configuration proposed above should be implemented.

Enhancing Constituencies: Constituency procedures and operations should become more transparent, accountable and accessible. The Board should ask the GNSO constituencies to work with staff to develop participation rules and operating procedures for all constituencies that set certain minimum standards regarding the importance of transparency and accountability. The criteria for participation in any ICANN constituency should be objective, standardized and clearly stated. In addition, Staff should work with each of the constituencies to develop global, targeted outreach

programs aimed at increasing participation and interest in the GNSO policy process, including information on the option to self-form new constituencies.

Improving Communication and Coordination with ICANN Structures: There should be more frequent contact and communication between the GNSO Council, GNSO constituencies and the members the Council elects to the Board, and among the Chairs of the GNSO, other Supporting Organizations (SOs) and Advisory Committees (ACs), especially in advance of each ICANN Meeting. The Council and the GNSO constituencies should consider additional ways in which the GNSO can further improve communication, cooperation and coordination with other ICANN structures.

The Report describes our recommendations and rationale in detail. We believe there is broad and strong support for changes in the functioning of the GNSO, based on input from GNSO participants and other members of the ICANN community. While the need to update and improve the GNSO is not disputed, there is no magical set of proposals that could be received without controversy or opposition. We have therefore balanced, as best we can, different – and sometimes competing – interests in order to formulate recommendations on the basis of what we believe can benefit the ICANN community as a whole. The GNSO improvements process is evolutionary and is intended to reflect the importance of the GNSO to ICANN and to build upon the GNSO’s successes to-date.

This report has been submitted to the full Board Governance Committee (BGC) for its consideration, and is being posted for public information. If approved by the BGC, this report will be submitted for Board action after a public comment period. If approved by the Board, staff will be directed to develop an implementation plan in consultation with the community.

2. Introduction

The Board Governance Committee (BGC) created a working group, comprising current and former Board members, to oversee improvements to the Generic Names Supporting Organization (GNSO). The purpose of the “BGC GNSO Review Working Group” (BGC WG) is to consider the reviews conducted 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 charged the BGC WG with recommending to the BGC a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications. The Board has made it clear that these efforts should include the GNSO and broader ICANN community in a collaborative process designed to strengthen the GNSO.

At the outset, we wish to make clear that we consider the GNSO’s responsibility for recommending substantive policies relating to gTLDs vital to ICANN’s functioning. ICANN is dependent upon volunteers like those who have helped build the GNSO into

what it is today. Due to the efforts of these and other participants in the broader ICANN community who have donated significant time and effort, the GNSO can point to several achievements thus far. These include, for example, the [Restored Names Accuracy Policy](#), the [Inter-Registrar Transfer Policy](#), and recent recommendations on new gTLDs. We therefore look forward to working with the ICANN community to help the GNSO evolve into an even more effective instrument of policy development.

We believe there is broad and strong support for changes in the functioning of the GNSO, based on input from GNSO participants and other members of the ICANN community. While the need to update and improve the GNSO is not disputed, there is no magical set of proposals that could be received without controversy or opposition. Indeed, this is to be expected in a global and diverse organization like ICANN, with vocal participants representing different entities and interests throughout the world. We have therefore balanced, as best we can, different – and sometimes competing – interests in order to formulate recommendations on the basis of what we believe can benefit the ICANN community as a whole.

It is important to keep in mind that improving the GNSO is an evolutionary concept intended to reflect the importance of the GNSO to ICANN and to build upon the GNSO's successes to date. Our recommendations are also evolutionary from a practical perspective. First, there may be a need for additional recommendations, depending on further information that may come to light upon completion of the reviews of other ICANN structures. It is important to note here that the Bylaws already recognize the need for ongoing review of ICANN structures, and that there will be a subsequent review of the GNSO in a few years. Second, there are areas where we believe it is important for the Council and GNSO constituencies to become involved in developing the details of a smooth and successful implementation. These areas include the rules and procedures that will govern establishment and operation of working groups and the new policy development process; and the participation rules and operating procedures for the Council and all constituencies.

Following Board approval of a set of GNSO improvements, we recommend that Staff be responsible for creating a proposed "Implementation Plan" in consultation with the community, which would (i) address all action items; (ii) recommend any corresponding changes to the ICANN Bylaws, (iii) create a realistic timetable for overall implementation; and (iv) prepare a budget to support the recommended improvements. We suggest that the BGC WG transition to an "Implementation Consulting Group" that would provide guidance to the implementation team(s) on the context of recommendations contained in the Report, elaborate on discussions that led to development of specific recommendations, and provide any other background and respond to questions of interpretation that might be helpful throughout the implementation process. This Implementation Consulting Group would serve as a "steward" and work closely with the GNSO Council, GNSO constituencies and the broader ICANN community to help implement the improvements approved by the Board.

2.1 The Generic Names Supporting Organization (GNSO)

Article X of ICANN's Bylaws state that there "shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains."¹ It further provides that the "GNSO shall consist of (i) various Constituencies representing particular groups of stakeholders . . . and (ii) a GNSO Council responsible for managing the policy development process of the GNSO."

The Bylaws require periodic review, ideally every three years, of ICANN's structure and operations. Under Article IV, entitled "Accountability and Review," the goal of these reviews (including the GNSO review) is "to determine (i) whether that [particular] organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

2.2 GNSO Reviews

2.2.1 LSE

The results of the Review of the GNSO undertaken by the London School of Economics (LSE) Public Policy Group were posted on 26 September 2006, see <http://www.icann.org/announcements/announcement-15sep06.htm>. The LSE Review proposed 24 recommendations to help improve the GNSO's effectiveness. They can be summarized briefly as:

1. Establish a centralized register of all GNSO stakeholders, including all members of constituencies and task forces.
2. Indicate how many members participate in development of each constituency's policy positions.
3. Increase staff support to improve coherence and standardization across constituencies.
4. Appoint a GNSO Constituency Support Officer to help constituencies develop their operations, websites and outreach activity.
5. Increase balanced representation and active participation in constituencies proportional to global distributions.
6. Change GNSO participation from constituency-based to direct stakeholder participation.

¹ There is a distinction between the development of "consensus policies" that bind registries and registrars in accordance with their contracts with ICANN, and the development of other kinds of advice. See Section 4.2, below. The Bylaws need to be revised to make this distinction clear, as well as clarify the roles of the Board and the GNSO with respect to non-"consensus policy" advice developed by the GNSO.

7. Improve the GNSO website and monitor traffic to understand better the external audience.
8. Improve GNSO document management and make policy development work more accessible.
9. Develop and publish annually a two-year GNSO Policy Development Plan that dovetails with ICANN's budget and strategic planning.
10. Provide (information-based) incentives to encourage stakeholder organisations to participate.
11. Make the GNSO Chair role more visible and important.
12. Strengthen GNSO conflict of interest policies, such as by permitting no-confidence votes in Councilors.
13. Establish term limits for GNSO Councilors.
14. Increase use of project-management methodologies in PDP work
15. Rely on more F2F meetings for the GNSO Council.
16. Provide travel funding for GNSO Councilors to attend Council meetings.
17. Make greater use of task forces (described in Annex A of the Bylaws on GNSO Policy-Development Process).
18. Create a category of "Associate Stakeholder" to establish a pool of available external expertise.
19. Simplify the GNSO constituency structure in order to respond to rapid changes in the Internet, including by substituting 3 larger constituency groups representing Registration interests, Business and Civil Society.
20. Reduce the size of the GNSO Council (which can result from restructuring the constituency groupings).
21. Increase the threshold for establishing consensus to 75% and abolish weighted voting.
22. Change the GNSO's election of two Board members to use a Supplementary Vote system (in which Councilors vote for 2 candidates at the same time).
23. Reduce the amount of prescriptive provisions in the Bylaws about GNSO operations and instead develop GNSO Rules of Procedure.

24. Assess periodically the influence of the GNSO's policy development work, e.g., once every five years.

The LSE Review's Executive Summary and a more detailed description of these 24 recommendations may be found in Annex 10.1.

Between 5 December 2006 and 11 January 2007, ICANN received and posted public comments concerning the LSE Review, see <http://forum.icann.org/lists/gnso-improvements>. Comments were received from four of the GNSO's six constituencies: gTLD Registries (RyC); Commercial and Business Users (BC); Non-Commercial Users (NCUC) and Intellectual Property Interests (IPC). These comments are summarized in Appendix 10.2.

2.2.2 Prior Reviews

In 2004, ICANN commissioned Patrick Sharry to conduct a review of the GNSO Council (not the GNSO in general). Mr. Sharry examined the PDP timelines; staff support for policy development, policy implementation and compliance; how policy issues arise; voting patterns; constituency representation; and communications and outreach. He recommended that the Council include members from all five ICANN regions and find ways to encourage more non-English speaking participants; revamp the PDP, including by having a scoping phase and regular reporting on milestones achieved; develop a formal process for seeking input from other ICANN structures; use more face-to-face meetings and possibly a facilitator to help achieve consensus; establish a Service Level Agreement (SLA) with Staff to establish metrics for support; develop a closer working relationship with the General Counsel's office; assess the viability of each policy recommendation; establish a way to monitor compliance with, and review the effectiveness of, each policy; utilize the Ombudsman's services more; determine how NomCom Councilors can add value; supply the NomCom with a description of what skills and expertise it needs most; and overhaul the GNSO website (see Annex 10.3 of this Report and the full review at <http://gnso.icann.org/reviews/gnso-review-sec1-22dec04.pdf>). There were three substantive comments posted on the Sharry Review from the GNSO Council, the Registry Constituency, and Danny Younger, see <http://forum.icann.org/lists/gnso-review>. One point by the Registry Constituency noted that the opportunity for public comment is not necessarily "sufficient without more outreach to impacted parties."

The GNSO Council also conducted a Self Review, which can be found in Appendix 3 of Mr. Sharry's review (see Annex 10.4 of this Report and <http://gnso.icann.org/reviews/gnso-review-sec2-22dec04.pdf>). The Council highlighted its work on several consensus policies, including the [Whois Data Reminder Policy](#), the [Inter-Registrar Transfer Policy](#), the [Whois Marketing Restriction Policy](#), the [Restored Names Accuracy Policy](#) and the [Expired Domain Deletion Policy](#). The GNSO also provided policy advice to the Board and staff on a set of criteria by which to judge applicants seeking to operate .NET. The GNSO Self Review recommended making PDP timelines less rigid; using Staff and independent experts to prepare more analyses and

issues papers; having Staff legal counsel available as needed; developing a project management process; establishing monitoring and enforcement mechanisms for new policies; and developing a complaints process for gTLD registration practices.

All three of these reviews share a common approach in certain respects: (i) allowing for more flexibility in the PDP process; (ii) ensuring strong Staff support for policy development; and (iii) developing better mechanisms for public participation and discussion.

2.3 Board Governance Committee Working Group (BGC WG)

On 30 March 2007, the Board created a working group of the BGC, comprising current and former Board members, to manage the GNSO improvement process (See Annex 10.5). Its members are Roberto Gaetano (Chair), Rita Rodin, Vanda Scartezini, Tricia Drakes, Raimundo Beca, Susan Crawford, and Vittorio Bertola. The purpose of the "BGC GNSO Review Working Group" (BGC WG) is to consider the work done by the LSE, Patrick Sharry, and the GNSO itself, along with public, constituency and Board comments on those reviews, in an effort to decide (i) whether, in general, the GNSO has a continuing purpose in the ICANN structure and, if so, (ii) whether any change in structure or operations is desirable to improve its effectiveness. The Board has asked the BGC WG to recommend a comprehensive proposal to the BGC to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

During the past several months, the BGC WG has carefully considered the independent reviews of the GNSO and GNSO Council, the GNSO's internal review, public and constituency comments on these reviews, input from the Public Forums held during the ICANN Meetings in Lisbon and San Juan, the public comments on our preliminary report received during the comment period that ran from 19 June to 19 July 2007 and feedback from current and past chairs of the GNSO.

Our preliminary report was posted on 19 June 2007 (see <http://www.icann.org/announcements/announcement-19jun07.htm>) and discussed with the BGC and the ICANN community during the ICANN Meeting in San Juan. (A transcript of the Public Forum is available at <http://sanjuan2007.icann.org/files/sanjuan/SanJuan-ICANN-PF-GNSOImprovements-25June07.txt>). A summary of the public comments that were received on that report is in Appendix 10.6 and is posted at <http://icann.org/topics/gnso-improvements/>). Discussion at the Public Forum and online was focused, comprehensive and constructive. Perhaps most important, it indicated that there is no one set of proposals that can satisfy everyone, or even nearly everyone.

On 15 October 2007, the BGC WG posted a draft report presenting its recommendations to the Board on key questions for discussion with the BGC and the ICANN community at the ICANN Los Angeles Meeting and for public comment via the ICANN website (see

<http://www.icann.org/topics/gnso-improvements/gnso-improvements-report-15oct07.pdf>). A workshop was held on 29 October 2007 in Los Angeles, which provided the opportunity for the BGC WG to gain insights on concerns of the ICANN community. Several speakers noted their support for the comprehensive package of changes that were proposed, while others raised questions and concerns that we have sought to address. A transcript of the discussion is available at <http://losangeles2007.icann.org/files/losangeles/LA-GNSOImprovements-29OCT07.txt> and the webcast may be found at <http://media1.icann.org/ramgen/2007/la/workshop-gnso-improvements-10-29-07.rm>). In addition, public comments relating to the draft Report were received between 29 October and 14 December 2007 (see <http://forum.icann.org/lists/gnso-improvements>), mostly reflecting questions or concerns raised at the Workshop, which we have taken into account in our subsequent discussions. A summary of these public comments is in Appendix 10.6 and posted at <http://icann.org/topics/gnso-improvements/>.

This entire process was designed to promote transparency and to provide the opportunity for extensive input, discussion and feedback on the recommendations.

2.4 BGC WG Objectives

The BGC WG has been guided by several objectives in considering possible improvements to the GNSO Council structure. Two of these objectives relate to the degree to which the GNSO's policy development and constituency processes are inclusive and representative of a broad variety of different actors involved with gTLDs. Three objectives relate to effectiveness of policy development, and two concern efficiency, including staff, communications and administrative support. The seven key objectives are:

- Maximizing the ability for interested stakeholders to participate in the GNSO's policy development processes;
- Supporting Council efforts to prioritise and benchmark GNSO policy objectives and align resources as appropriate;
- Ensuring that recommendations developed on gTLD "consensus policies" (those policies that registries and registrars under contract with ICANN have agreed are appropriate for GNSO policy development and binding on them) are a result of consensus agreement among stakeholder representatives, and that minority views are recorded. (GNSO advice on other issues would not constitute "consensus policies" within the meaning of ICANN's contracts, see Section 4.2 below);
- Maximizing the quality of policy outputs by ensuring that policy work receives adequate support and is informed by expert advice and substantive stakeholder input;

- Ensuring policy development processes are based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively;
- Maximizing the use of volunteers' time to achieve objectives, including by providing adequate Staff support, and the processes and tools needed to be successful; and
- Improving communication and administrative support for objectives, including by upgrading the GNSO website, improving information distribution and solicitation of public comments, and providing robust online collaboration and document management tools.

These objectives are consistent with the four principles recommended by the LSE Review:

- GNSO policy development activities should become more visible and transparent to a wider range of stakeholders.
- Reforms should enhance the representativeness of the GNSO Council and its constituencies.
- Operational changes could help enhance the GNSO Council's ability to reach consensus on policy positions that enjoy wide support in the ICANN community.
- GNSO stakeholder representation structures need to be flexible and adaptable.

In developing these objectives and the recommendations that follow, the BGC WG has carefully considered all of the reviews and related public comments on various aspects of the GNSO's operations. The recommendations set forth below focus on key elements of the GNSO, including formalizing a **Working Group** model, revamping the **Policy Development Process**, enhancing the **Council's** effectiveness by re-organizing it on the basis of four broad stakeholder groups, improving the inclusiveness and representativeness of the **Constituencies**, and strengthening the GNSO's **Relationships** with other ICANN bodies. Each of these subjects is analyzed in terms of how best to contribute to the critical goals of (1) inclusiveness/representativeness; (2) effectiveness; and (3) efficiency.

3. Recommendations re: Working Groups

The BGC WG recommends that a working group concept become the foundation and focal point for consensus policy development work in the GNSO, and potentially for other Council activities. This model would constitute an improvement over the current system, in which the GNSO Council essentially replicates itself through policy development task forces comprised of constituency representatives, which can lead to

inefficiencies and even deadlock. We have learned that a policy development process based on voting can encourage participants to try to form majority alliances to gain support for their specific position over others, rather than explore solutions that can be acceptable and more consistent with the best interests of the broader Internet community. In a more open, inclusive working group setting, participants should be able to analyze and debate problems and potential solutions without feeling that they have to develop or assert a particular, or fixed, “constituency” position.

The GNSO Council has experimented with a working group model in the launch of the recent GNSO IDN Working Group. After much discussion, the Council opened the working group to participation by interested experts who did not belong to a GNSO constituency. The IDN WG worked successfully to identify areas of (i) agreement; (ii) support (meaning less than 100% agreement); and (iii) alternative view(s).

The GNSO subsequently established a WHOIS Working Group, patterned on the successful IDN WG. The objective of the WHOIS WG was to examine how task force recommendations might be improved to address implementation concerns that had been raised, rather than reach a consensus position on work that had already been done. For this reason, the WHOIS WG is not directly relevant to establishing a working group model for future policy development work, although it does provide insights into productive ways that working groups might be structured. In the WHOIS WG, only constituency representatives were full “members” and able to “vote”. The vast majority of participants were “observers.” Approximately 40 out of 70 members were new to the GNSO policy development process. The Working Group Chair did his best to determine areas of possible consensus, using the terms “agreement,” “support” and “alternative views.” With such a large group, however, it was sometimes difficult to record agreement because not everyone attended every meeting. One idea that emerged from this experience is to consider how mailing lists and online collaboration tools might augment the use of conference calls to facilitate active participation by all working group members. Another lesson that emerged from this experience is the importance of taking steps to help ensure that participants believe their input was considered by the working group and is reflected adequately in the WG’s conclusions.

Preliminary feedback suggests that the working group model has potential for the GNSO and ICANN, if accompanied by appropriate rules, procedures and safeguards. It can be a more constructive way of engaging groups that are not part of the existing constituency structure. This stands in contrast to a task force limited to constituency representatives, where discussion can replicate constituency positions rather than explore common ground. Under the current policy development process, those who know they have a majority may have little incentive to cooperate with the minority or compromise, and the minority can be tempted to focus on spoiling activity rather than constructive criticism. The working group model is of course more labor intensive for both its leadership and Staff, including in terms of orienting new participants, policing mailing lists (if open) and enforcing rules that may be new to some participants.

We note that other bottom-up policy development organizations, including the IETF and W3C, have adopted a model of using working groups to facilitate successful policy development and to achieve agreement on recommendations. In addition, the RIRs formulate new policies on mailing lists before presenting them publicly. The way in which the IETF,² for example, handles conflicting positions may be instructive. The establishment of “rough consensus” does not require that everyone in the working group agree. It does require that an overwhelming majority agree, and that the positions presented by those who do not agree have been completely discussed, with the reasoning of all sides noted. Such a thorough and exhaustive process may provide a more effective means of determining whether agreement or strong support can be achieved.

To promote consensus in the W3C,³ the organization requires Chairs of working groups to ensure that all legitimate views and objections are considered and endeavor to resolve them, whether these views are expressed by active participants or others. “Consensus” occurs when a “substantial number of individuals in the set support the decision and nobody in the set registers a ‘Formal Objection.’” Where “unanimity is not possible, a group should strive to make consensus decisions where there is significant support and few abstentions.” There is no requirement that “a particular percentage of eligible participants agree to a motion in order for a decision to be made.” To avoid decisions where there is little support and many abstentions, “groups set minimum thresholds of active support before a decision can be recorded.”⁴ More information about the

² The IETF, which is responsible for protocol engineering, development, and standardization, consists of volunteers who meet three times a year. Technical work is done in working groups, which are organized by topic into several areas (e.g., routing, transport, security, etc.). A working group is defined as a group of people who work under a charter to achieve a certain goal. That goal may be the development of an informational document, creation of a protocol standard or resolution of problems in the Internet. The IETF discourages reopening issues that were decided in earlier working group meetings. Working groups are encouraged to meet between IETF meetings, either in person or by video or telephone conference. Doing as much work as possible over the mailing lists is encouraged in order to reduce the amount of work that must be done at meetings. (More information about the IETF may be found at <http://www.ietf.org/home.html> and in RFC 1391, “The Tao of IETF: A Guide for New Attendees of the Internet Engineering Task Force,” at <http://www.ietf.org/rfc/rfc1391.txt?number=1391>.)

³ The World Wide Web Consortium (W3C) develops protocols and guidelines focusing on Web interoperability and uses open-ended working groups to facilitate policy development. W3C membership is open to all entities and includes vendors of technology products and services, content providers, corporate users, research laboratories, standards bodies and governments. W3C offers individuals an affiliate membership. When there is sufficient interest generated in a particular topic by members or W3C staff, the Director of W3C, Dr. Tim Berners-Lee, announces the development of a proposal for a new Activity or Working Group charter, depending on the breadth of the topic. An Activity Proposal describes the scope, duration and other characteristics of the intended work, and includes the charters for one or more Working Groups. When there is support among W3C members for investing resources in the topic of interest, the Director approves the new Activity and the working group is launched.

⁴ In some cases, even after careful consideration of all points of view, a group might find itself unable to reach consensus. The Chair may record a decision where there is dissent (i.e., there is at least one Formal Objection) so that the group may make progress (for example, to produce a deliverable in a timely manner). Dissenters cannot stop a group's work simply by saying that they cannot live with a decision. When the

consensus-building process, and how dissent is reflected, as well as the appeals process, may be found at <http://www.w3.org/2005/10/Process-20051014/policies>.

The Regional Internet Registries (RIR) help develop policies to guide the management of Internet number resources. The RIR “policy development process is consensus based, open to anyone to participate and is transparent in archiving all decisions and policies so that they are publicly accessible” (see <http://aso.icann.org/docs/rir-policy-matrix.html#8>). ISOC notes that formal “policy development processes, along with publicly available, open mailing lists, ensure that address management policies take into account broad perspectives on the issues that impact the community (see <http://www.isoc.org/briefings/021>). For a description of the specific process used by ARIN to develop policy, for example, see <http://www.arin.net/policy/irpep.html>.

The IETF, W3C and RIR models can prove useful in determining how a working group structure could help make GNSO decision-making more inclusive, effective and efficient. The goal is not to replicate the processes and procedures developed in other organizations, but to determine what lessons or benefits they might offer ICANN. The experience of members of the ICANN community with these other organizations, particularly on the Board and in the GNSO, can help determine which practices might be useful to adapt to an ICANN setting.

We therefore recommend that the GNSO Council, constituencies and Staff establish an implementation team that would work together to develop appropriate operating rules and procedures for the establishment and conduct of GNSO Working Groups as the primary vehicle for policy development. This effort should draw upon the broad and deep expertise within the ICANN community on how consensus-building methods used by other organizations might benefit ICANN. The rules should incorporate the specific suggestions below designed to improve inclusiveness, effectiveness and efficiency of GNSO policy development with respect to working groups. While there may be a situation where deviation from the WG model might be appropriate, any such decision by the Council should occur only on an exceptional case-by-case basis, and with strong justification and support.

We also recommend that the implementation team charged with developing the rules and procedures for working groups also be charged with developing the rules and procedures for a revised policy development process, as described in Section 4 below, since these activities are closely related and should be considered together. The implementation team should call upon the BGC Implementation Consulting Group for input and guidance during the course of developing draft procedures. All implementation timelines should assure that adequate time is allotted for public comment on draft rules and procedures to be solicited and considered, including consideration by the ICANN Board.

Chair believes that the Group has duly considered the legitimate concerns of dissenters as far as is possible and reasonable, the group can move on.

3.1 Steps to improve inclusiveness

In order to involve more people in the policy development process, working groups should be open to anyone interested in joining and offering their insights and expertise. This inclusiveness can have significant benefits in terms of being able to develop, and then implement, policies addressing complex or controversial issues. More concretely, a working group can engage all stakeholders and help prevent later opposition by parties that did not participate in shaping the policy. This model can also ensure that all stakeholders have a chance to participate in policy development, even if they do not form a new constituency grouping or join an existing one.

To promote inclusiveness, notices about the creation of working groups should be posted clearly and as broadly as possible, both inside and outside of the ICANN community, and in different languages. This should be done a reasonable amount of time before work begins in order to allow the news to spread and for interested parties to join. We recognize that extra posting adds time prior to the launch of working groups, but this is an extra step that is needed to promote inclusiveness. To the extent feasible, proactive outreach – including, if possible, in languages other than English – should also be done by Staff and the GNSO Council and constituencies to encourage broad participation.

3.2 Steps to improve effectiveness

While open working groups can offer many benefits in terms of broad participation and support, it is equally important that inclusiveness not compromise effectiveness. A strong, experienced and respected Working Group Chair appointed by the GNSO Council will be a key ingredient of a successful outcome. Such a person, for example, should be able to distinguish between participants who offer genuine reasons for dissent, and those who raise unjustified issues in an effort to block progress. The Chair should have the authority to enforce agreed upon rules against anyone trying to disrupt discussions and be able to exclude people in certain cases, provided an avenue of appeal is available. In addition, the Chair should be able to ensure that anyone joining a working group after it has begun has reviewed all documents and mailing list postings, and agrees not to reopen previously decided questions. The Chair must also assume a neutral role, refrain from pushing a specific agenda, and ensure fair treatment for all opinions and objectivity in identifying areas of agreement. The Council and Staff might consider using a professional facilitator to help a Chair ensure neutrality and promote consensus, or to provide other expertise. Any outside experts must of course be knowledgeable about ICANN and its processes in order to be effective.

A second aspect of an effective model will be the development of clear internal rules to govern working groups, including with respect to Statement of Interest disclosures and protections. As described below in Section 5.3 with respect to Councilors, it will also be advisable for working group members to declare when they have a particular interest in a matter under discussion. The Council and Staff should work together to ensure that the operating principles, rules and procedures are responsive to a variety of situations and can support sound policy development. This work should consider the following principles:

- The Chair of a working group must ensure that the group considers all legitimate views and objections, and endeavors to resolve them, whether these views and objections are expressed by active participants or others.
- At the outset, either the working group or the Council should set a minimum threshold for active support before a decision can be considered to have been reached. This may involve balancing numeric and distributional components.
- The Chair must work to foster consensus, trying to design and promote proposals that can be acceptable to as many participants as possible. “Agreement” is reached either when all participants say that they can accept a decision that has been reached or the Chair determines that this is not possible but there is only minor dissent. In the latter case, the minority opinion(s) and their rationale will be recorded.
- Where such agreement is not possible, a group should strive to reach agreement on points where there is significant support and few abstentions. Support for the points should be well-documented and include the positions and reasoning of those who do not agree.
- Decisions where there is widespread apathy should be avoided. On the other hand, dissenters should not stop a group's work simply by saying that they cannot accept a decision. Instead, they should propose an alternative that would be acceptable to them and also meet the needs of other working group members. When the Chair believes that the working group has duly considered the legitimate concerns of dissenters, the group can decide to record the alternate view(s) and end that aspect of the discussion.
- The author(s) of the working group report will play a crucial role in building consensus, and should be distinct from the Chair, who in other organizations does not play a role in this part of the process. The drafting group should ideally comprise a variety of voices, to help ensure that the outcome is constructive and broadly supported.
- There should be a procedure for appealing a decision of the Chair (perhaps to the Council) with respect to the proper application of the agreed rules.
- Participants must agree to openly and honestly express their views, or the views of the stakeholders they represent; to listen to the points of view of others and to focus on the merits of what is being said; and to develop and contribute to options that represent common ground. Participants should be engaged actively in the process and contribute to discussions and drafting activities. An effective process requires that participants take seriously commitments to participate and contribute to assuring a well-considered and thoughtful process.
- Participants have the right to disagree with an option that has been presented but, as noted above, they also have the responsibility to offer reasonable alternatives.

- Each participant who represents a GNSO constituency or another interest group should undertake to keep that group updated on working group progress and to bring the concerns of their constituency or interest group to the table.
- Participants must disclose certain information on standardized Statement of Interest and Declaration of Interest forms, which will be available online for public review.

A third component of a successful working group will be the ability of ICANN Staff to provide the group with sufficient support. This should include the option of recruiting and compensating outside experts for assistance on particular areas of work and allocating budget accordingly. These decisions will need to be made on a case-by-case basis, depending on the issue under discussion, the expertise of the participants in the working group and the budget.

We note that there are likely to be broader budget implications in using working groups more frequently, and now is an ideal time in ICANN's development to consider this question. It is logical to ensure that ICANN's resources are aligned with one of its most important functions, namely effective policy development relating to gTLDs. It will be important to ensure that the GNSO has the infrastructure and support in place to oversee a successful working group structure and policy development process. Questions regarding the costs of a working group model, including the right balance between conducting work on mailing lists and in person, will need to be addressed in this context. It should be decided, for example, whether travel funding should be made available if a face-to-face meeting outside of an ICANN Meeting appears useful. The possibility of funding, if needed, might provide an incentive for people to volunteer to be the Chair or Vice-Chair of a working group, or to become active in constituencies and/or interest groups.

Another important question concerns facilitating the participation in working groups of those who are not comfortable working in English. The challenge may include not only the translation of documents into other major languages, but also translating comments into a language that most participants can understand. Interpretation at certain working group meetings is another issue that could be explored. With respect to these questions, there may be lessons to learn from other organizations, such as the IETF, W3C and the RIRs. Budget and resource requirements must also be forecasted and considered.

3.3 Steps to improve efficiency

The Council will exercise oversight of the working groups, including assessing the level of consensus reflected in its reports. As indicated, both a strong, neutral Chair and clear rules are critical components of adopting an effective and efficient working group model. The Council has a vitally important role to play in terms of both selecting the Chair (and, if useful, one or more Vice-Chairs) and developing the operating principles, rules and procedures for working groups. As important as is inclusiveness, it cannot be achieved at the expense of efficiency. Thus, Council agreement on clear operating principles, rules

and procedures applicable to all working groups, combined with realistic mandates and schedules for a specific working group, will be absolutely necessary for the model to work. With these issues properly addressed, a working group model might be able to achieve a number of goals that have sometimes eluded GNSO task forces.

3.4 Conclusions

Our recommendations and proposed action items on formalizing a working group structure for ICANN include:

- Working Groups should become the foundation for consensus policy development by the GNSO Council. Such an approach tends to be a more constructive way of establishing agreement than task forces, where discussion can replicate constituency positions rather than explore common ground. There is value in enabling parties to become a part of the process from the beginning. This inclusiveness can have benefits in terms of being able to develop and then implement policies addressing complex or controversial issues.

Proposed Action Item: The Board requests the Council to take steps immediately to move to a working group model, as described above, for all future policy development work, and other aspects of its work as appropriate.

- The Council and Staff should work together to develop appropriate operating principles, rules and procedures for the establishment and conduct of GNSO Working Groups. An implementation team comprised of Staff, Council members and GNSO constituency representatives should be established for this purpose, and it should also be tasked with revising the policy development process (PDP). This effort should draw upon the broad and deep expertise within the ICANN community on how lessons learned in other organizations, including but not limited to the IETF, W3C and the RIRs, might benefit ICANN. These rules and procedures should consider the following elements:
 - Working groups should be open to anyone interested in joining and offering their insights and expertise. At the same time, safeguards to prevent any single group from “capturing” a working group must be developed. The implementation team should define a proper balance that invites new stakeholders to participate but that keeps working groups to a manageable size for constructive discussion.
 - Notices about the creation of working groups should be posted clearly and as broadly as possible, both inside and outside of the ICANN community, in different languages and as early as possible, to allow greater opportunity for broad participation. In addition, Staff and constituencies should undertake proactive outreach, including in languages other than English.
 - A strong, experienced and respected Chair is essential. The Chair – and any Vice-Chair(s) – must play a neutral role by refraining from pushing a specific

agenda, ensuring fair treatment for all legitimate views and guaranteeing objectivity in identifying areas of agreement. The Chair should have authority to enforce agreed rules against anyone trying to disrupt discussions, and be able to exclude people in certain cases, with the possibility of an appeal (perhaps to the Council).

- At the outset, the working group or the Council should set a minimum threshold for active support established before a decision can be considered to have been reached. This may involve balancing numeric and distributional components.
- Where such agreement is not possible, a group should strive to reach agreement on points where there is significant support and few abstentions. Support for the points should be well-documented and include the positions and reasoning of those who do not agree.
- Decisions where there is widespread apathy should be avoided. On the other hand, dissenters should not be able to stop a group's work simply by saying that they cannot live with a decision. Instead, they should propose an alternative that would be acceptable to them and could also meet the needs of other members of the working group. When the Chair believes that the working group has duly considered the legitimate concerns of dissenters as far as reasonably possible, the group can decide to record the alternate view(s) and move on to other issues.
- The author(s) of the working group report will play a crucial role in building consensus, and should be distinct from the Chair. The drafting group should ideally comprise a variety of voices, to help ensure that the outcome is constructive and broadly supported.
- There should be a procedure for appealing a decision of the Chair (perhaps to the Council) with respect to the proper application of the agreed rules.
- Anyone joining a working group after it has begun must review all documents and mailing list postings, and agree not to reopen previously decided questions.
- Members of working groups must disclose certain information on standardized Statement of Interest and Declaration of Interest forms, which will be available online for public review.

Proposed Action Item: The Board tasks the Staff to work with the Council and GNSO constituencies to develop a set of working principles, rules and procedures for GNSO working groups, including but not limited to the points above, and to present those principles to the Board within six months. The Board recommends that an implementation team be established for this purpose, and it should also be tasked with developing the rules and procedures for

working groups, as described above. Sufficient time must also be allotted to solicit and consider public comments on draft rules and procedures developed by this team.

- ICANN Staff must be ready to provide sufficient support to a working group. This should include the option of recruiting and compensating outside experts for assistance on particular areas of work, providing translation of relevant documents, and developing relevant training and development programs. Most important, the budget implications of additional resources for working groups should be factored into the planning cycle to the extent that has not already happened.

Proposed Action Item: The Board:

(i) Tasks the Staff with preparing a report on the budget implications of moving to a working group model, including costs associated with using expert input and professional facilitators, any additional travel costs and translation and/or interpretation costs. The report should include an indication of how much funding might be available in the current fiscal year and in future years. This report should be presented to the Board within six months; and

(ii) Tasks the Staff to work with the Council to put in place, within six months, an initial package of training and development programs and other systems to create a group of skilled chairs and a pool of facilitators familiar with ICANN issues and able to assist with GNSO policy issues (see also Section 5.3, below). This initial package will be augmented to include training on the new working group model and PDP once they are developed by the implementation team and approved by the ICANN Board.

4. Recommendations re: Policy Development Process (PDP)

The GNSO Policy Development Process (PDP) is set out in the ICANN Bylaws. Those who have worked within the current GNSO PDP have found it to be inflexible and not helpful for successful policy development. Review of previous PDPs suggests that it is not practical to complete policy work in the timeframes contained in the PDP. The LSE Review of the GNSO and the Sharry Review of the GNSO Council both concluded that changes need to be made to the PDP. Additional modifications are also required to support the move to a working group approach, particularly in terms of greater flexibility on elements like timelines.

Many in the ICANN community support removing the PDP requirements from the Bylaws and incorporating them into the GNSO's operating procedures. The procedure for developing "consensus policies," however, must track with ICANN's contractual requirements, and should be clarified in the Bylaws. We therefore recommend that the GNSO Council, constituencies and Staff work together to propose new PDP rules for the Board's consideration and approval, and that an implementation team, described above,

be established for this purpose. Once approved, the rules would become part of the GNSO's operating procedures. They could be subject to periodic review by the Council, which may propose further changes to the Board for its approval.

The introduction of more formalized working groups, as described above, and the changes in the way the Council and constituencies operate that are described in the sections that follow, are designed generally to improve the most essential task the GNSO Council is responsible for – policy development. This Section details specific steps that should be taken to improve what is commonly referred to as the “PDP process.”

4.1 Steps to improve inclusiveness

Using working groups to conduct policy development, as described in Section 3, can offer significant benefits over a task force model in terms of broadening participation and improving the inclusiveness of the process.

4.2 Steps to improve effectiveness

The PDP process should be enhanced and clarified to align better with ICANN's consensus policies as defined in its contracts with registries and registrars, and this clarification should be reflected in the Bylaws. In launching a working group to produce policy development recommendations, or in assessing the level of consensus reflected in its outcome, the Council should be mindful of the distinction between the development of “consensus policies” that bind registries and registrars, and the development of other kinds of advice to the Board. This distinction should be clarified in the Bylaws.

ICANN's registry agreements⁵ contain a specific definition of the term “consensus policies.” They are defined as “those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering [certain] topics” These topics include: “(1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services . . . ; (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to

⁵ ICANN's contracts with registrars contain different provisions and also bind them to implement “consensus policies” that meet certain criteria. Section 4.3.1 of ICANN's Registrar Accreditation Agreement (2001) defines “Consensus Policies” as “those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.”

registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names).”

These topics are further defined to include, without limitation “(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration); (B) prohibitions on warehousing of or speculation in domain names by registries or registrars; (C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); (D) maintenance of and access to accurate and up-to-date information concerning domain name registrations; (E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and (F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.”

Although the contracts suggest that the Bylaws will set forth a specific Consensus Policy development process, at present they contain only a general policy development process. It thus falls to the Council to distinguish between situations when the GNSO is considering a new consensus policy, which could become binding on registries and registrars, and when it is providing a different kind of advice to the Board, which the Board can reject without a supermajority vote. As suggested above, the GNSO Council’s PDP should be better aligned with the contractual requirements of “consensus policies” and also should clearly distinguish the development of “consensus policies” from general policy advice the GNSO Council may wish to provide the Board.

We therefore believe the Bylaws should be amended to make clear that “consensus policies” can be created only on a set of defined issues and in accordance with certain procedures, with reference to ICANN’s contracts. The Bylaws should also note that what is needed to develop a consensus policy is a process for consultation and expression of views and, ultimately, a Board decision. In cases where the GNSO adopts a consensus policy recommendation by a supermajority vote, the Bylaws now provide that the Board will adopt the policy unless it determines, by a vote of more than 2/3, “that such policy is not in the best interests of the ICANN community or ICANN.” The Bylaws should clarify that this procedure applies only to issues upon which “consensus policies” can be developed, pursuant to ICANN’s contracts. The GNSO is of course free to provide advice on other policy issues related to gTLDs, but it is not binding on the Board or on parties under contract with ICANN.

Another way to improve the effectiveness of the PDP is to provide for periodic assessment to determine the effectiveness of revised rules, processes, procedures and operations on policy development work. Unlike LSE Rec. #24, we do not believe that we should establish a time frame for review of the PDP at this juncture. We do believe that self-review by the Council of its PDP role will be an important component of its work generally. Indeed, frequent self-assessment can lead to immediate improvements in the GNSO Council’s ability to make meaningful policy contributions. We therefore recommend that the Council ask each working group to include in its report a self-

assessment of any lessons learned. The Council should also seek the working group's input on metrics that could help measure the success of the policy it recommends (see GNSO Self Review Rec. #10.3.4). Subsequent review by the Council should examine the extent to which the policy adopted has been implemented successfully and proven effective (see Sharry Rec. #12 & 15; GNSO Self Review Rec. #10.2.8).

It would also be helpful for the PDP process to align better with ICANN's strategic plan and operations plan, as was proposed in LSE Rec. #9. Recommendation #9 suggested that the GNSO publish annually a "Policy Development Plan" for current and upcoming work. Indeed, it is important across the entire ICANN community that projects and resource allocations are better aligned with strategic objectives. ICANN has a well developed planning process, with a three year Strategic Plan that is reviewed and updated annually and an annual Operating Plan. As the GNSO Council's policy development work is such a critical part of ICANN's function, it is important that there be a strong nexus between the work plan of the GNSO Council and the ICANN planning process. The GNSO Council has taken important steps in this direction by publishing its own operating plan, which sets out a timeline for planned policy development processes.

We therefore recommend that the Council, GNSO constituencies and staff execute, within six months, a more formal "Policy Development Plan" that is linked to ICANN's overall strategic plan, but at the same time is sufficiently flexible to accommodate changes in priority determined by rapid evolution in the DNS marketplace and unexpected initiatives (e.g., the use of a wildcard by a Registry). This work by the Council would be consistent with its new focus on developing as a strategic manager – reflecting the Bylaws' charge that it be "responsible for **managing** the policy development process of the GNSO" – rather than functioning as a legislative body (emphasis added).

We recommend that this work be done by the implementation team described above, so that this effort is directly linked to the establishment of rules and procedures for implementing a working group model. Additional time should be allotted to allow for the submission of, and consideration of public comments on the contours of the proposed implementation. ICANN Staff should also work with the GNSO Council to propose, within six months, metrics that can help the Council better align policy development with ICANN's planning.

4.3 Steps to improve efficiency

Recommendation #23 of the LSE Review recommended that the PDP rules be removed from the Bylaws in order to provide greater flexibility, but this does not seem consistent with ICANN's contracts. Recommendation #5 of the Sharry Review suggested that the Council seek approval from the Board for revised PDP rules, which seems preferable. Such a revised PDP could have elements on scoping ("history of the issue, key questions, contractual issues, terms of reference, timelines, milestones including deliverables and check points for legal opinion"); policy work ("including research, consultation with constituencies, periods for public comment"), timelines consistent with the complexity of the task; regular reporting to Council on milestones as established in the scoping phase; and a final report and public comment period as in the current PDP.

Several of these elements are similar to recommendations in Section 10 of the GNSO Self Review, such as requiring work to be done prior to launch of a PDP and having strong staff and expert support. Recommendation 10.1.2 of the GNSO Self Review, for example, suggested that the GNSO be allowed, “to set and review timelines according to the level of consensus on a particular issue and the amount of volunteer and staff resources available for the specific issue.”

As noted above, the procedure for developing “consensus policies” will need to continue to be established by the Bylaws as long as that is what ICANN’s contracts require. The BGC WG therefore recommends that the implementation team comprised of GNSO Council members, constituencies and Staff work together to propose new PDP rules that address these issues, for the Board’s consideration and approval. Once approved, the rules would become part of the GNSO’s operating procedures. They should be subject to periodic review by the Council, which may come back to the Board to recommend changes.

In preparing these new PDP rules, the implementation team should emphasize the importance of the work that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert research in order to define properly the scope, objective and schedule for a specific policy development goal. The implementation team should also consider whether there are certain aspects of the PDP, such as the adjustment of timelines, where the Board could authorize the Council to make the call.

4.4 Conclusions

Our recommendations and proposed action items for improving the PDP include:

- While the procedure for developing “consensus policies” will need to continue to be established by the Bylaws as long as required by ICANN’s contracts, Council and Staff work should together to propose new PDP rules for the Board’s consideration and approval. Once approved, the rules would become part of the GNSO Council’s operating procedures. They should be subject to periodic review by the Council, which may come back to the Board to recommend changes. The rules should better align the PDP with the contractual requirements of “consensus policies,” as that term is used in ICANN’s contracts with registries and registrars, and distinguish that procedure more clearly from general policy advice the GNSO may wish to provide the Board. In addition, the Bylaws should clarify that only a GNSO recommendation on a consensus policy can, depending on the breadth of support, be considered binding on the Board, unless it is rejected by a supermajority vote.
 - In preparing the new PDP proposal, the implementation team should emphasize the importance of the work that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert research in order to define properly the scope, objective and schedule for a specific policy development goal. The implementation team should also consider whether there are certain issues, such as the adjustment of timelines for PDP, where the Board could authorize the Council to make the decision.

Proposed Action Item: The Board requests that the GNSO Council and constituencies work with Staff to develop a draft revised Policy Development Process within six months that incorporates the working group approach and is consistent with the considerations outlined above. The implementation team described above should be established for this purpose. The new PDP rules should consider how the GNSO Council’s policy development procedures can contain greater flexibility, consistent with ICANN’s contractual obligations to registries and registrars.

- Periodic assessment of the influence of the GNSO Council, including the PDP, is another important component of successful policy development. Frequent self-assessment by the Council and its working groups can lead to immediate improvements in the GNSO’s ability to make meaningful policy contributions. The Council should ask each working group to include in its report a self-assessment of any lessons learned, as well as input on metrics that could help measure the success of the policy recommendation.

Proposed Action Item: The Board requests:

(i) The Council, with the support of Staff, to implement a self-assessment process for each working group to perform at the end of a PDP, which should contain metrics for evaluating the effectiveness of the policy and any lessons learned from the PDP. Subsequent review by the Council should discuss the extent to which the policy adopted has been implemented successfully and proven effective; and

(ii) The GNSO Council Chair to present an annual report to the ICANN community on the effectiveness of new GNSO policies using the metrics developed at the end of each PDP. The report should also contain a synthesis of lessons learned from policy development during the year with a view to establishing best practices. The report should be presented annually at an ICANN public meeting each year, and the material should be incorporated into the ICANN Annual Report prepared by Staff.

- The PDP should be better aligned with ICANN’s strategic plan and operations plan. A formal Policy Development Plan should be linked to ICANN’s overall strategic plan, but at the same time should be sufficiently flexible to accommodate changes in priority determined by rapid evolution in the DNS marketplace and unexpected initiatives.

Proposed Action Item: The Board requests:

(i) The Council, constituencies and staff to execute, within six months, a more formal “Policy Development Plan” that is linked to ICANN’s overall strategic plan, but at the same time is sufficiently flexible to accommodate changes in priority (establishing the above-described implementation team for that purpose); and

(ii) Staff to propose, within six months, metrics that can bring the PDP more in sync with ICANN’s planning.

It should be noted that sufficient additional time will need to be allotted for the submission and consideration of public comments on the new draft PDP.

5. Recommendations re: GNSO Council

The GNSO consists of “a GNSO Council responsible for **managing** the policy development process of the GNSO” (see Bylaws, Article X (2) (ii)) (emphasis added). The six constituencies currently recognized as representative of a group of GNSO stakeholders in the ICANN Bylaws each elect three representatives to the Council. In addition, three people are selected by ICANN’s Nominating Committee, for a total of 21 Councilors. Under Article X(1) of the Bylaws, the GNSO as a whole is “responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.”

Currently, the Council manages the policy development process through the establishment of task forces on specific subjects, in accordance with Annex A of the Bylaws on GNSO Policy-Development Process. Constituencies can appoint a representative to each task force, which then deliberates on the issue and works with its Chair and ICANN Staff Manager to prepare a report for the Council to discuss. Both a task force and the Council attempt to reach agreement by a supermajority vote. If such a vote is not possible, then the task force report must contain the positions taken by task force members and their constituencies. Upon receipt of the report, the Council reviews its conclusions and works with the Staff Manager to develop a report for the Board. The Board Report includes a statement of any recommendation of the Council reached by Supermajority or, if such a vote was not possible, then a statement of all positions held by Council members.

Several concerns have emerged with respect to this process. We highlight three of them. First, the emphasis on voting at both the task force and the Council level has sometimes made it more difficult for GNSO stakeholders to try and develop common positions. On other occasions, it has shifted the emphasis from analyzing policy problems and developing potential solutions to determining the lowest common denominator and collecting the necessary votes to control the outcome. The result can be deadlock or an outcome that does not address the most pressing issues. Second, there is duplication of effort in that differences that emerge at the task force level are then mirrored by the Council, since in both situations the members vote by constituency. Third, the amount of time and energy that the Council has devoted to task forces, whether in terms of establishing them, overseeing their work, or debating their conclusions, has left insufficient time for the Council to focus on what is perhaps its most important function – setting the overall strategy for managing policy development by the GNSO Council. As the Bylaws state, the GNSO Council is responsible for “managing” the policy development process of the GNSO, not necessarily conducting policy development itself.

Rather, it is charged with managing and overseeing the process, and ensuring that it can produce useful policy recommendations to the Board. In many cases, the same individuals serve on both the Council and PDP task forces, leading to the conclusion that the GNSO Council has “recreated” itself in task forces, particularly in terms of policy positions and voting.

It is important to re-establish the GNSO Council’s primary mission of managing the policy development process, as well as opening up the policy development process. We would therefore like to see the GNSO move away from a model of policy development based primarily on voting, which can encourage division rather than cooperation, and towards a more collaborative, inclusive approach. The use of working groups to increase inclusiveness in ICANN’s policy development model has been discussed earlier. In this Section, we suggest concrete steps to help the Council move from being a legislative body towards becoming a more strategic body with strengthened management and oversight of the policy development process. Our goal is to enhance the responsibilities of the Council and ensure it has the tools it needs to oversee the policy development process.

5.1 Steps to improve inclusiveness

One way to enhance inclusiveness and enable more people to become involved in Council activities is to establish term limits for Councilors, thus giving more people an opportunity to serve in these important positions. Just as there are term limits for the Board, there should also be term limits for Council members. Recommendation #13 of the LSE Review suggested a term limit of 3-4 years because “of the small number of councilors in some constituencies and the potential for de-legitimizing perceptions to arise” (see Section 3.30) (proposing two 2-year terms or one 3-year term). We believe that the preferred limit is two 2-year terms, which provides representatives with the incentive to excel in order to be reelected. We also believe that a limited “grandfather” clause makes sense.

It is significant that the GNSO Council has proposed the adoption of a maximum of two terms for all Councilors, effective immediately. Under the Council proposal, there would be no grandfathering except to allow an incumbent to serve out his or her term. The only exception would occur in a “special circumstance,” such as geographic diversity requirements, where no alternative representative is available to serve. Indeed, term limits should gradually be synchronized throughout the ICANN election and appointment system. The Board has deferred consideration of the GNSO Council’s proposal pending preparation of our recommendations.

We also note that each review of the GNSO Council and constituencies that has been conducted has documented shortcomings in the Council’s communication methods, which serve as a barrier to broader participation and inclusiveness. Improvements are needed in a number of areas. For example, GNSO Council and constituency documents should be more broadly accessible, informative and understandable by the global community. Most importantly, the GNSO website and online public comment processes should be redesigned and (to the extent possible) made multi-lingual, along the following guidelines:

- The GNSO website should be simple for everyone to understand and use;
- It should be easy to locate information about all current policy issues, and for each issue there should be a succinct summary, links to more detailed information, a status report, and next steps;
- There should be access to archives of all GNSO Council activity, including Council minutes;
- There should be links to all constituency websites; and
- There should be links to other relevant ICANN structures and activities.

We also recommend that the Council work with Staff to improve the GNSO Council's document management system and to develop an improved means to solicit meaningful public comments, and to use project management methodologies to implement these improvements and to better support policy development activities. The use of such methodologies was suggested by LSE Rec. #14 and GNSO Self Review Rec. #10.2.7. ICANN is already applying project management methodologies and practices to its policy support activities, and staff should work with the Council and GNSO constituencies to further incorporate these methodologies in the GNSO's work, as appropriate. The goal is to achieve consistent and predictable ways of organizing and managing activities to improve their quality, transparency, and accountability.

5.2 Steps to improve effectiveness

As noted in the discussion above, the Council should focus more on its strategic role, rather than act as a legislative body. We propose that among the Council's most important functions should be oversight of working group processes and monitoring the progress of working groups to remove barriers to success and to ensure successful results. The Council should decide whether and when to organize a working group, based on input from the Board or an Advisory Committee. Alternatively, it may engage in fact-finding and public discourse to investigate potential issues ripe for policy development. The Council should be responsible for launching a working group by deciding upon the appropriate mandate and timeline (including milestones), and then ensuring that the working group has an experienced and neutral Chair, performs adequate outreach and has sufficient technical expertise and knowledge of ICANN.

Another item of high priority for the Council is monitoring the progress of each working group. In doing so, the Council should offer guidance and support to assist the working group in reaching a satisfactory conclusion, with the participation of all relevant stakeholders. In particular, the Council should check that:

- The scoping of the issue remains valid;
- All relevant stakeholders are aware of, and involved, in the process;
- No one stakeholder group is dominating the process;
- Any necessary expert opinion has been provided;
- Data has been provided and used where appropriate; and
- The proposed policy can be implemented.

Once a working group has completed its work, it should present its report and conclusions, including any minority views, to the Council for review. The Council's role is to ensure that the working group followed the appropriate procedures. It should check that the working group achieved its goal and acted consistently with its mandate, including with respect to outreach, inclusiveness, effectiveness and efficiency. The Council should also verify the level of agreement in the working group. In forwarding the working group's report to the Board, the Council should indicate the extent to which it believes that the working group has fulfilled its mandate. The Council can forward a minority report of its own, if appropriate. The Council should not reopen the substance of the policy issue(s) addressed by the working group, which would undermine the rationale for and efficacy of that process. At the same time, the Council could have the option of sending an issue back to the working group for reconsideration if a supermajority believes that the report omitted critical facts or did not accurately reflect the working group's deliberations.

In addition, the Council could analyze trends and changes in the gTLD arena and, as a consequence, provide advice on the use of ICANN resources affecting the gTLD name space. The Council could begin a constructive dialogue with a broad range of Internet stakeholders in order to fully understand DNS-related technologies, trends, and markets. This knowledge can help the Council set the appropriate strategic vision and direction for gTLD policy development, as well as coordinate the process in a meaningful way. Given that there is significant expertise reflected among the GNSO constituencies, the constituencies should also be invited to participate and contribute to the Council's overall analysis of trends and changes in the gTLD arena.

The Board has found it useful to establish several committees to focus specific attention on some of its many ongoing responsibilities, such as the Committee on Meetings and the Committee on Conflicts of Interest. The Council may wish to follow this pattern by establishing committees of 4-5 members to guide work in a certain area where focused attention and follow-up are required. The subject just mentioned – benchmarking and trends analysis – might be a prime candidate for such an approach.⁶ Staff and the Council are encouraged to consider other areas where the establishment of smaller committees might be useful. Another area that might be appropriate for management by committee (along with legal and policy staff support) is consideration of conflicts-of-interest issues as they arise.

Some are concerned that enhancing the managerial responsibilities of Council members may make it harder to recruit Councilors and new constituency representatives. We disagree, and believe that there will continue to be strong incentives for talented individuals to participate because of the potential impact they can have on important decisions ICANN will make in the future. The restructured Council will have an equally important role in this process, if not more so. In addition, use of working groups will

⁶ We would also like to reinforce the policy development recommendations in the previous Section that can help the Council establish a clear strategic dimension for its work. These include concrete measures to help forge policy development and implementation priorities, such as developing ways to assess and benchmark gTLD policy implementation. In addition, the Council should ask each working group to include in its report a self-assessment of lessons learned and an evaluation of its working methods

provide many more opportunities to exhibit leadership and active involvement in forging key policies.

We also strongly support continuation of the liaison roles that the ALAC, GAC and ccNSO have with the Council.

5.3 Steps to improve efficiency

Steps to shift the focus of the Council away from a legislative orientation and towards strategic tasks can have a positive impact not only on its effectiveness, but also on its efficiency. Freeing the Council to manage and oversee the policy development process rather than undertake this task itself will mean that it can devote its attention to ensuring the proper scoping and implementation of a working group's mandate.

To help the Council reach its full potential, ICANN should ensure that this body is inclusive and representative of the broad interests found among the GNSO constituencies and other stakeholders, while limiting its size to enhance its effectiveness and promote efficiency. Balancing all of these factors, and cognizant of the limitations of the current structure pointed out by the LSE report, we recommend a reorganized Council that has the potential to be more representative, agile and collegial.

Our recommendation is to structure the Council on the basis of four broad stakeholder groups to represent better the wide variety of groups and individuals that compose the ICANN community. This change raises several interrelated questions: (i) what is the optimal allocation of representation in the Council and how should Councilors be elected; (ii) what is the optimal size of the Council; and (iii) whether there should continue to be weighted voting. As we expected, there are strong views on these questions from representatives of different interests. We have listened closely to all comments and see merit in many suggestions we have received. We view our role as focusing on what appears best for the GNSO and the ICANN community as a whole, balancing competing interests and developing a comprehensive, indivisible proposal to address all of these questions.

We thus deliberated extensively as to the most appropriate way to restructure constituency representation of the Council. We recommend a 19-person Council consisting of 16 elected members, four from each of four stakeholder groups, with two of these groups representing those parties "under contract" with ICANN, namely registries (four seats) and registrars (four seats). These we refer to as "ICANN contracted parties." The other two stakeholder groups will represent those who are "affected by the contracts" ("ICANN non-contracted parties"), including commercial registrants (four seats) and non-commercial registrants (four seats). From our perspective, it makes sense to consider small and medium enterprises, large businesses, intellectual property interests, internet service providers, financial, e-commerce and other economic interests as partners in the commercial registrants group. It also makes sense to consider non-commercial, academic, philanthropic, research, individual registrant groups and other non-commercial registrants as partners in the non-commercial registrants group. In addition, three

Councilors would be appointed by the Nominating Committee (pending the completion of the NomCom Improvement Process being conducted by the BGC).

A minority of Working Group members suggests explicitly recommending that "ICANN non-contracted parties" be apportioned into 5 seats for commercial registrants and 3 seats for non-commercial registrants.

An additional minority view suggests -- as stated in the Working Group's previous report -- that the GNSO Council should have the flexibility to propose an alternative configuration of the stakeholder groups that comprise the "ICANN non-contracted parties" side, provided that such alternative is submitted with sufficient notice to permit the Board to vote on the proposal at the Paris ICANN meeting in June 2008. Conversely, if no alternative proposal is forwarded to the Board within this timeframe, the configuration proposed above should be implemented.

The 19 Councilors will form a slightly smaller Council, which is consistent with LSE #20 to reduce the size. At the same time, we believe that there will be a sufficient number of Councilors to oversee what is expected to be a busy agenda. Under this restructuring plan, there is no longer a justification for weighted voting. In addition, as the Council moves from being a legislative body to a strategic manager overseeing policy development, the current emphasis on formal voting should be significantly reduced.

We want to emphasize that a new non-commercial Stakeholders Group must go far beyond the membership of the current Non-Commercial Users Constituency (NCUC). We must consider educational, research, and philanthropic organizations, foundations, think tanks, members of academia, individual registrant groups and other non-commercial organizations, as well as individual registrants, as part of a non-commercial registrants Stakeholders Group.

We also want to point out that the effort to have a balance within ICANN between commercial and non-commercial registrants reflects only a sense of equity. We welcome ongoing efforts to forge a stronger partnership between the international business community and ICANN, and would be surprised if Council restructuring were to be viewed as an impediment. On the contrary, we believe that an improved Council will yield concrete benefits for business and other stakeholders. In addition, all stakeholder groups and the constituencies that form them will be expected to conduct greater outreach and seek to recruit a broader, more diverse membership.

The proposal to create four broad Stakeholder Groups bears some similarity to Recommendation #19 of the LSE Review, which suggested creating three larger constituency groups representing registration interests, business and civil society. The LSE suggested such a reorganization to respond to "multiple pieces of evidence about how interests are currently organizing themselves within the GNSO" (see LSE Review, Section 4.35). It sought to propose a structure that is "simpler, balanced, clearer to explain to potential members and time-proofed against future changes in the Internet that are certain to occur." Instead of a rigid structure that can have difficulty adapting to changes "over as little as seven years," a new structure could "flexibly accommodate

changes in the balance and weights of different sectors and types of involvement with Internet policy issues.”

We agree with this conclusion and support the need for a new way to approach organization of the Council. The stakeholder groups may function only as a “caucus,” bringing together like-minded stakeholders to elect representatives to the Council who can represent them. This structure would be fluid enough to accommodate new constituencies or the formation of new interest groups. It will be important for the implementation team to consider how to implement this flexibility within the overall stakeholder structure set forth in these recommendations. Our goal is definitely not to create a new layer of bureaucracy, as we heard concerns about at the San Juan Meeting. Alternatively, if the GNSO believes it is desirable, the four stakeholder groups could take on additional functions, such as trying to coordinate and document positions on policy development questions.

One advantage of this new model for organizing stakeholder participation is to remove concern that the addition of new constituencies or interest groups could create an internal imbalance in the current composition of the Council. By creating four broad stakeholder groups, the number of constituencies is less important and can increase (or decrease) with time. Indeed, it would be inconsistent with ICANN’s processes to try to limit arbitrarily the number of constituencies that people could self-form. Making it easier to form a new constituency can also address any obstacles people perceive in joining existing constituencies. Overall, this approach can encourage the participation of more people in the GNSO. Many details, of course, remain to be worked out concerning the new stakeholder structure for the Council, including the role of constituencies and/or interest groups within them. As noted earlier, we welcome the GNSO working with Staff to develop the appropriate Implementation Plan.

Under this comprehensive reorganization of the Council, there would no longer be a justification for weighted voting. Indeed, as the Council becomes a more strategic and supervisory body, voting in general should become less important. There may still be a need to vote for elections (e.g., for GNSO representatives to the Board and GNSO officers) if the Council cannot otherwise agree. There may also be occasions when the Council believes that it must vote to assess the extent to which a working group has satisfied its mandate and developed a consensus policy. If the model is working properly, however, then the issue under consideration by the working group will have been well scoped, all relevant stakeholders will have been part of the process and the group will have been empowered to reach a consensus that is sound and can be implemented.

There may, of course, be instances when a policy presented to the Council presents a problem. A situation may arise in which some members of the Council believe that a working group process was not followed properly. For example, relevant stakeholders may not have been included sufficiently in the policy development process, or a weak Chair may have allowed the views of one stakeholder group to dominate the discussion or outcome of the working group. We recommend that the Council monitor carefully the activities of working groups as they progress, rather than waiting for each process to

conclude and a final result presented to the Council. As an additional safeguard, the Council should be able to vote (by a supermajority) on whether the rules were followed and, if not, what the appropriate remedy should be.

Under another scenario, some Council members may believe that a working group recommendation could not reasonably be implemented. Again, the Council should ensure that working group practices are followed: the issue should have been properly scoped, all relevant stakeholders should have been invited to participate in the process (including those able to provide advice on implementation issues) and expert opinion should have been sought where necessary (including on implementation issues). Indeed, the Council is responsible for monitoring the progress of working groups to ensure that best practices are being followed, and that any problems are addressed as soon as they arise. The Council should also be able to direct, by a supermajority vote if necessary, that additional work needs to be done to identify a policy that can be implemented or that expert advice on implementation issues is necessary.

It may be also the case that members of the Council believe that the policy presented by a working group is not satisfactory. This should be a rare occurrence. If the policy issue has been properly scoped, and the relevant stakeholders have been involved in a well managed process that includes interim reports and “checkpoints,” it should be unlikely that the Council would find the result untenable.

In a situation where a working group is unable to come to an agreement and presents the Council with alternative views, the Council should have the option of forwarding them to the Board with the Council’s views in addition to the other views expressed. Alternatively, the Council may consider, by supermajority vote, whether to consider first re-scoping the issue. It is presumed that this situation would arise when a working group process or rule was not followed appropriately, or when new information is identified that reasonably requires reconsideration by a working group. Absent some demonstrable process failure, this option should not be available solely in the hope of achieving a different result.

In addition to restructuring the Council, there are other steps that can help improve its effectiveness. One important step is to improve communication with other ICANN bodies. We recommend more frequent contacts between the GNSO Council and constituencies and the members of the Board elected from the GNSO, and more frequent contacts among the Chairs of the GNSO, other Supporting Organizations and Advisory Committees. These steps, which are consistent with LSE Rec. #11 concerning the profile of the GNSO Council Chair, are described in Section 7 on “Relationships with Other ICANN Bodies.”

LSE Rec. #15 suggested that enhanced efficiency could result from more reliance on face-to-face (F2F) meetings. In the last few years there have indeed been inter-sessional meetings of the Council, such as to develop policy on the introduction of new gTLDs. Conference calls and email are used to conduct work between ICANN Meetings and these inter-sessional gatherings. It is not possible to say that one method is more efficient than another, but rather that they have different uses. Flexibility is key here, while recognizing that any additional face-to-face meetings would have budget implications for

ICANN. Because not all Councilors may have a professional reason to attend inter-sessional meetings between formal ICANN Meetings, ICANN has covered the expense of economy travel and accommodation for representatives from each constituency. It is also likely that, if the GNSO Council moves to a working group model, there may be less need for inter-sessional Council meetings.

Another step to improve efficiency is to strengthen the Council's conflict of interest provisions. LSE Rec. #12 suggested that they be made consistent with those of the Board. People who take part in the GNSO Council, and GNSO policy development in particular, often do so because they have an interest in the outcome. These interests can be based on principles or financial gain (either directly in the sense that the person conducts business which could be affected by GNSO policy decisions or indirectly as a representative of a group that could be affected). The traditional concept of conflict of interest test may be difficult to apply in some of these circumstances. Rather than a conflict of interest policy (which might preclude an individual from taking part in a policy process because they stand to gain from the outcome – which is exactly the reason why most participants in the GNSO policy development process do take part), what is needed is a “Statement of Interest” approach that allows the interests of participants to be declared publicly. Consideration should be given to supplementing “Statements of Interest,” with “Declarations of Interest” in which participants are asked to state whether they or their employer have issues that are material and specific to “work under consideration” or where a person's or company's “interest” might be a material factor to such work.

An additional step to improve efficiency (as well as effectiveness) would be for ICANN to provide Council members and constituency representatives with training and education to better equip them to participate effectively. Although the GNSO Council and constituencies rely heavily on volunteer participants to fulfill their objectives, no training or skills development is currently available through ICANN. For example, Council and task force chairs are selected with no requirements for, or development of, the skills required to effectively manage workflow and group decision-making. While leaders have been effective to date, the increasingly complex environment and policy challenges facing the GNSO Council merit consideration of leadership preparation. The lack of support in this area may also act as a barrier to the increased involvement of community members from non-English speaking backgrounds.

The move to working groups as the primary means of operation will require skills development for the Council, prospective chairs of working groups and, ideally, members of the ICANN community who might wish to take part in working groups. The higher the skill level of those who take part in the process, the better the outcome is likely to be.

The knowledge and skills that are likely to be useful include:

- ICANN structures and processes
- Details of the technical aspects of the DNS (and the implications of this for policy)
- GNSO structures and processes
- Understanding the working group process
- Negotiation skills for building consensus

- Being an effective chair of a working group
- Project planning methodologies for policy work

Where possible and relevant, the training and development prepared for the GNSO Council members should be available to the broader ICANN community. Some topic areas will only be relevant to smaller group of participants (e.g. those who aspire to being working group chairs), while other topics will have broader relevance. For some topic areas, several levels of materials may be needed (e.g. introductory and advanced). In developing materials, particular thought should be given to ways to make training as relevant and practical as possible. The courses and training should be structured in such a way that they not only build skills within the community, but also benefit participants in their other work. ICANN may want to consider developing a process for accreditation or certification for those who complete certain extensive curriculum.

There must also be ways to acknowledge previous experience of individuals and customize training as appropriate. Given the geographic diversity of the ICANN community, training should be developed using a variety of delivery mechanisms (e.g., face-to-face training at ICANN meetings and e-learning modules that can be downloaded anywhere). Once these training and development structures are in place, ICANN should urge those who wish to hold positions, such as chairs of working groups and members of the Council, to undertake the relevant training (or equivalent training), or to do so upon their appointment.

5.4 Conclusions

Our recommendations and proposed action items for improving the inclusiveness, effectiveness and efficiency of the Council address its role, structure, voting method, coordination with other entities and training. They include:

- The Council should transition from being a legislative body to a strategic manager overseeing policy development. Among the Council's most important functions should be guiding the establishment of working groups and monitoring their progress. The Council should be responsible for launching a working group by deciding upon the appropriate mandate and timeline, and ensuring that it has an experienced and impartial Chair, who performs adequate outreach and has sufficient expertise. The Council should be available to provide guidance on any issues when they arise.
 - A working group should present its report and conclusions, including any minority views, to the Council for review. The Council should ensure that the working group has achieved its goal and acted consistently with its mandate, including with respect to outreach, inclusiveness, effectiveness and efficiency.
 - In forwarding the working group's report to the Board, the Council should indicate whether it agrees that the working group has fulfilled its mandate. The Council can forward a minority report of its own, if appropriate, but it should be wary of trying to reopen the substance of work done by the working group, which would undermine the rationale for and efficacy of that process.

Proposed Action Item: The Board requests the Council, with assistance from the staff, to prepare a set of operating principles for the Council that will allow it to be the strategic manager of the policy development process rather than a legislative body. These operating principles should follow the direction outlined in the discussion above and be presented to the Board within eight months. This allows time for solicitation and consideration of public comments on draft operating principles developed by Council and staff.

- A second important role for the Council is to develop ways to (i) assess and benchmark gTLD policy implementation; and (ii) analyze trends and changes in the gTLD arena. The results of these efforts can enable the GNSO Council to provide meaningful advice on the use of ICANN resources affecting the gTLD name space. As noted above, the Council may wish to establish a committee, modeled after the Board committees, to focus on this area. The GNSO constituencies should be invited to participate, given their significant expertise in this area.

Proposed Action Item: The Board requests the Council and Staff to prepare, within six months, a strategic plan to operationalize work in this area, including by the consideration of a committee structure, along with GNSO constituency participation, to promote effectiveness and efficiency.

- A third important role for the Council is to work with ICANN Staff to (i) align the GNSO Council's work with ICANN's strategic plan, (ii) increase the use of project-management methodologies; and (iii) improve the GNSO's website, document management capacity and ability to solicit meaningful public comments on its work. The Council may wish to establish a committee to coordinate its work in this area too.

Proposed Action Item: The Board requests:

(i) The Council and constituencies to participate fully in the ICANN planning process, including providing a three year view (for the Strategic Plan) and an annual plan (for the Operating Plan) of planned and anticipated policy processes.

(ii) The Council and constituencies provide input to staff on a plan for the implementation of a formal document handling system that will allow easy tracking of all policy development documents, including translations. The plan should be developed within six months.

(iii) The Council and constituencies provide input to Staff to revise the GNSO website in a manner consistent with the principles outlined above. A plan of the intended changes (including an implementation timetable) should be developed within six months. Staff should monitor and report on the effectiveness of the changes that have been implemented using common measures for website use and functionality.

(iv) The Council to work with the staff to prepare a revised process for gathering and addressing public comment on policy issues. The revised process should take into account the needs of stakeholders who prefer to

work in languages other than English. It should also take into account developments in technology that facilitate community interaction. The revised process should be presented to the Board within six months. ICANN Staff should monitor and report on the effectiveness of the changes that have been implemented; and

(v) The Council to work with Staff to prepare a plan for translation of documents associated with policy development. The plan should be consistent with other policies and processes being developed for translation within ICANN. The plan, including budget estimates, should be developed within six months.

- To reach its full potential, the Council should be as inclusive and representative of the broad interests represented in the GNSO as possible, while limiting its size to promote efficiency and effectiveness. We recommend a 19-person Council consisting of 16 elected members, four from each of four stakeholder groups, with two of these groups representing those parties “under contract” with ICANN, namely registries (four seats) and registrars (four seats). These we refer to as “ICANN contracted parties”. The other two stakeholder groups will represent those who are “affected by the contracts” (“ICANN non-contracted parties”), including commercial registrants (four seats) and non-commercial registrants (four seats). In addition, three Councilors would be appointed by the Nominating Committee (pending the outcome of the BGC’s “NomCom Improvement Process”). Under this restructuring plan, there is no longer a justification for weighted voting. In addition, as the Council moves from being a legislative body to a strategic manager overseeing policy development, the current emphasis on formal voting should be significantly reduced if not eliminated altogether, except when necessary to confirm consensus or conduct elections.

Proposed Action Item: The Board requests the Council, with support from Staff, to prepare suggested changes to the Bylaws, within six months, regarding the Council’s structure on the basis of four broad stakeholder groups and voting practices consistent with the principles outlined above. The changes should include details of Council voting on the output of working group processes and the abolition of weighted voting for all Council votes.

- Another way to enhance inclusiveness and enable more people to feel involved in Council activities is to establish term limits for Councilors, thus giving more people an opportunity to serve in these important positions.

Proposed Action Item: The Board requests Staff to include in proposed changes to the Bylaws an amendment supporting a limit of two consecutive terms per Councilor, with an appropriate but limited grandfather clause.

- Council members should provide real-time, updated Statements of Interest similar to what is required for members of the Board in a standardized format that is publicly accessible. ICANN Staff should develop a basic template of information that GNSO Councilors, constituency leaders and others participating in policy development activities must first complete. These Statements should be supplemented by Declarations of Interest that pertain to specific matters under discussion.

Proposed Action Item: The Board instructs Staff, in consultation with the Council, to develop “Statement of Interest” and “Declaration of Interest” forms, within six months, which would be completed by Council members (and participants in working groups). Staff should also implement a mechanism for publishing and updating this information in a manner consistent with protecting the privacy of members.

- The Council should work with Staff to develop a training and development curriculum to promote skills development for the Council, prospective chairs of working groups and, ideally, all members of the ICANN community who might wish to take part in working groups.

Proposed Action Item: The Board instructs Staff, in consultation with the Council, to develop a training and development curriculum for the GNSO consistent with the principles outlined above. A proposed curriculum (including suggested courses, delivery mechanisms and links between positions and training) should be developed within six months and also be made available to others in the ICANN community. This initial training package should be augmented to include training on the operation of working groups and a revised policy development process once that work has been completed.

6. Recommendations re: Constituency Structure

The GNSO, as noted in the Bylaws, includes various constituencies representing particular groups of stakeholders. Our goal is to make the way in which stakeholders interact in the GNSO, whether organized as constituencies, interest groups or another vehicle, as inclusive and representative as possible, without sacrificing effectiveness or efficiency. The constituency structure that has served as the basis for determining membership on the Council and its task forces, as well as for developing and voting on policy advice to the ICANN Board, needs to adapt in light of the move to a working group model, revisions to the PDP, and a restructured Council. It should be noted that we view the new stakeholder structure primarily as a way to organize the Council. While it will also encourage the constituencies to maximize their common interests, it does not on its own change the constituency structure itself.

6.1 Steps to improve inclusiveness

Under the Bylaws, the following “constituencies” are recognized as eligible to elect representatives to the GNSO Council: gTLD Registries (representing all gTLD registries under contract to ICANN); Registrars (representing all registrars accredited by and under contract to ICANN); Internet Service and Connectivity Providers (representing all entities providing Internet service and connectivity to Internet users); Commercial and Business Users (representing both large and small commercial entity users of the Internet); Non-Commercial Users (representing the full range of non-commercial entity users of the Internet); and Intellectual Property Interests (representing the full range of trademark and other intellectual property interests relating to the DNS). Each of these six groups elects three representatives to the Council. The Council also includes three people selected by ICANN’s Nominating Committee, for a total of 21 Councilors.

Any group of individuals or entities may petition the Board for recognition as a new or separate constituency, in accordance with Section 5(4) of Article X. Such a petition must explain (i) why “the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities” and why “the proposed new Constituency would adequately represent, on a global basis, the stakeholders it seeks to represent.” The Board would consider such proposals in light of ICANN’s mission and core values. The six constituencies that are currently recognized as representative of a group of GNSO stakeholders in the ICANN Bylaws thus need not be the same constituencies that will be recognized in the future. Indeed, there is no set number of constituencies that should be represented in the GNSO, and the constituencies created in the late 1990’s do not need to remain static.

It is important that the Board has flexibility to create new constituencies and let older ones merge or lapse as market dynamics evolve. In addition, it has been ICANN’s intention, as reflected in the Bylaws, that constituencies be self-forming. This is consistent with ICANN’s goal to develop policy in a bottom-up process reflective of the diversity of the community and conducted in an inclusive, representative manner. At the same time, there is clear recognition of the need for the GNSO to operate more effectively and efficiently. The challenge is to strike the appropriate balance among these principles in order to permit constituency growth and reorganization, but without making the number of constituencies unwieldy.

We believe ICANN should take steps to clarify and promote the option to self-form a new constituency. The option of forming a new constituency should not be viewed as an impossible task. ICANN should engage in greater outreach to ensure that all parts of the community, particularly where English is not widely spoken, are aware of the option to form new constituencies. The current Bylaws provide that an interested group of stakeholders should provide information on why “the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities” and why “the proposed new Constituency would adequately represent, on a global basis, the stakeholders it seeks to represent.” In addition, the applicant should clarify its

members' stake in the GNSO and how the new constituency might fit within the overall GNSO structure and serve the public interest.

Some have discussed the idea of forming an Individuals Constituency⁷ and a Domainers Constituency. Some view an Individuals Constituency as important because the interests of individual registrants are not currently represented elsewhere in the GNSO. The view is that the Non-Commercial Users Constituency is open only to organizations. The At-Large Advisory Committee (ALAC), an advisory committee to the Board supported by a global network of structures comprising individual Internet users, is mandated to provide advice on all ICANN issues (not just gTLDs) that relate to individual users. Others believe there is no need for such a constituency because the ALAC represents individuals. If there were to be support for an Individuals' Constituency, one solution might be for the ALAC, which is also being reviewed in accordance with the Bylaws, to continue to provide advisory committee input on ICANN-wide matters outside of the GNSO structure. Another issue to consider further is whether, if anyone can join an Individuals Constituency, those with the most resources could dominate that group in addition to participating in other constituencies. Under the new stakeholder structure for the Council, individuals may find a home within either the commercial or non-commercial "demand" group, depending on how they view their registration(s).

A possible Domainers Constituency of individuals and companies investing in and developing domain names, might also be established. A domainers constituency might also include those who hold "portfolios" of domain names, those who focus on the "monetization of numerous domain names," and those who hold a certain number of domain names. Some view domainers as an increasing force in the ICANN community that should have a defined voice. At present, some domainers participate as part of the BC, but it is unclear how well their interests converge with those of other participating businesses. Under the new stakeholder group structure, domainers might be part of the registrars group (if they are also a registrar), or part of the commercial group.

Another important aspect to improving inclusiveness and representativeness in the constituency structure is reducing barriers to participation in individual constituencies. A barrier for some entities – particularly in developing countries – may be the cost of joining a constituency. We expect all ICANN constituencies to do what they can to keep their costs, and hence their membership fees, to a minimum. If, for example, ICANN were to provide more administrative support to constituencies, those groups may be able to reduce the fees they charge members even further. It is worth exploring whether constituencies have, or should have, differentiated fee structures based on ability to pay, in order to encourage increased representation from those living in less developed economies. As noted, a potential barrier may be the difficulty of obtaining information about the GNSO and its constituencies and activities. This could be addressed by more Staff support for constituency outreach and recruitment, as discussed below.

⁷ A formal petition for an "Individual Domain Name Owner's" Constituency (IDNO) was made by Joop Teernstra and others in 1999 (see <http://democracy.org.nz/idno/petition.htm>).

By creating four broad stakeholder groups, the number of constituencies is less important and can change with time. This approach can also encourage the participation of more people in the GNSO. In implementing a stakeholder structure, careful thoughts needs to be given to how – and when – new constituencies or interest groups are added to a stakeholder group, and how – and when – they might lapse, as technology and markets evolve.

6.2 Steps to improve effectiveness

The effective functioning of the GNSO Council relies significantly on the existence of vibrant and active stakeholders. To maintain a healthy policy development process that is respected by all stakeholders, it is critical that ICANN work to increase participation in constituencies and any other entities that want to be part of a stakeholder group, so that policy discussions can take place with all relevant views contributing to the debate. As ICANN continues to become a representative global organization, it will be crucial to reach out to interested parties across the globe and incorporate them into the GNSO policy process through the constituency structure. This will require dedicated outreach and recruitment activities, and ICANN should support these initiatives.

It is also important that ICANN minimize the barriers to entry to constituencies for those interested in policy issues. These barriers to entry fall into three groups: information, processes and cost. The information barrier is perhaps the most significant. Many potential stakeholders in the ICANN policy process simply do not know the role of ICANN and how they can contribute to policy discussions by becoming involved in a constituency . Well-resourced outreach and recruitment efforts are important to remove this barrier.

For many who might be interested in ICANN’s policy discussions, another barrier is the myriad of different ICANN processes which can be hard to understand and follow. At present, each constituency has a different set of membership and operating processes, and it is difficult for an individual to have a quantifiable impact on the policy process other than through a constituency. These problems are magnified for those who are not comfortable working in English. One solution is for each constituency to have a clearly communicated set of participation rules and operating principles that are based on common principles developed by the GNSO. These rules then should be made available in a variety of languages so they can be understood by ICANN’s global audience.

The third barrier is cost. Particularly in developing countries, the cost of joining a constituency can be prohibitive. ICANN must find ways to foster free participation in policy processes for all interested parties and to ensure that cost is not a barrier to constituency entry wherever possible.

ICANN is currently engaged in a series of initiatives aimed at further improving levels of accountability and transparency throughout the organization. The GNSO Council and the GNSO constituencies, like all of ICANN’s structures, need to ensure that all of their processes adhere to the highest standards. The reviews of the GNSO suggest that there is

a need for greater transparency within constituencies and greater consistency across constituency structures. The constituencies should take the lead in formulating common operating principles, with participation from the Council and staff. Within certain broad and important guidelines, there can still be room for innovation and differentiation in the detailed procedures developed by each constituency that best meet the needs of that constituency.

There are a number of specific areas that must be addressed. The first is the need for constituency-developed participation rules for all constituencies that encourage openness, transparency and accountability. The rules must adhere to the following principles:

- The criteria for participation in any ICANN constituency should be objective, standardized and clearly stated.
- Admissions decisions should be transparent, including how these decisions are communicated, and how many applicants are successful.
- General information about each participant application and decisions regarding admissions should be publicly available. Each constituency must keep records of successful and unsuccessful applicants.
- Each constituency should maintain up-to-date records of all current members, and this information must be publicly available.
- There must be a clear avenue of appeal for an applicant a rejection to a neutral third party.

In addition, the GNSO constituencies, with Council and staff participation, should develop clear operating principles for each constituency to ensure that all constituencies function in a representative, open, transparent and democratic manner. Operating procedures adopted by constituencies should reflect common principles and follow these guidelines:

- Mailing and discussion lists should be open and publicly archived (with posting rights limited to members).
- Procedures for developing policy positions should be clear. There should also be publicly available information about how many participants from each constituency were involved in the development of any policy position.
- Constituency processes should encourage participation from stakeholders across the globe. Where possible, relevant documents should be made available in multiple languages.
- There should be term limits for constituency officers, so as to help attract new members and provide everyone with the chance to participate in leadership positions.
- There should be an emphasis on reaching consensus to achieve objectives and closure on issues.

As noted, constituency procedures should establish term limits for constituency officers in order to help attract new participants by providing individuals with more opportunity

to participate in leadership positions. This is similar to the rationale for the GNSO's decision to establish term limits for Councilors. These and other steps can help improve the global distribution of constituency participants and elected GNSO representatives, along with focused, ICANN staff-supported, constituency participation recruitment efforts for officers and GNSO Councilors (see LSE Rec. #5; Sharry Rec. #3).

In addition, there should be a centralized registry of the participants of all constituencies and those involved in policy development work (LSE Rec. #1), which is up-to-date and publicly accessible. There should also be publicly available information about how many participants from each constituency were involved in the development of any constituency policy positions (LSE Rec. #2). In addition, enhancement of the GNSO website will facilitate improved communication to all who are interested in the activities of the GNSO Council and GNSO issues, including notification of new policy activities and the formation of new working groups.

Additionally, communication within the GNSO – among individuals participating in its constituencies, working groups and other processes – should be improved. A “GNSO-discussion list” should be created where participants from constituencies, working groups and other GNSO processes have posting rights, and emails are publicly posted. This list can serve as a much-needed “cross-functional” discussion area, enabling members of constituencies, in particular those who are grappling with the same policy questions, to discuss their positions and perspectives with each other. This list also can serve as an informal mechanism for working groups to keep the GNSO community apprised of discussions and developments.

As these recommendations will put a significant burden on the GNSO and its constituencies, ICANN should provide dedicated Staff support for constituencies to assist with standardization, outreach and their internal work. This should help to lower constituency costs and fees, and increase efficiency and effectiveness. ICANN could offer each constituency a “toolkit” of in-kind assistance. The toolkit could include, for example, assistance with tracking PDP deadlines and summarizing policy debates, supporting websites and mailing lists, scheduling calls and other administrative duties.

6.3 Steps to improve efficiency

There are several steps that can help improve the efficiency of GNSO constituency operations. Recommendations #3 and #4 of the LSE Review suggest that having dedicated Staff support for constituencies could assist with standardization, outreach and the internal work of the constituencies, as well as lower constituency budget needs and reduce membership fees. As noted in the previous Section, these are sound ideas. Staff should be used to facilitate the development of (but not advocate) constituency positions.

LSE recommendations #7 and #8 called for improving the GNSO website and document management. Sharry recommendation #20 called for overhauling the GNSO website to better meet the needs of those interested in its work. It is clearly important for constituency and GNSO documents to be made more broadly accessible, informative and understandable to the global community (LSE Rec. #8). ICANN can help facilitate the ability of constituency members and the broader community to participate in ongoing PDPs by revamping public comment processes and by making translation part of all

PDPs (see Sharry Rec. #4). Constituencies should work with the Council and ICANN to improve the GNSO's website, document management capacity and ability to solicit meaningful public comments on its work.

Recommendation #10 of the LSE Review notes that participation and leadership training and certification is equally important for constituency representatives. As noted above, providing Council, constituency and working group participants with training and education to better equip and motivate them to do policy work, and to help ensure that they have the knowledge and skills needed to be successful, can help increase the effectiveness and efficiency of the GNSO and its constituent bodies.

6.4 Conclusions

Our recommendations and proposed actions regarding the constituency structure include:

- ICANN should clarify and promote the option to self-form a new constituency. It should engage in greater outreach to ensure that all parts of the community, particularly in those areas where English is not widely spoken, are aware of the option to form new constituencies. Together, ICANN Staff and the GNSO constituencies should develop specific recommendations for achieving these goals.

Proposed Action Item: The Board tasks Staff:

(i) To develop and implement a targeted outreach program to explore the formation of new constituency groups. This outreach program should be designed to reach all current members of the ICANN community and potential members, particularly in areas where English is not widely spoken, and should include the ideas and participation of existing constituencies. Staff should provide periodic progress reports; and

(ii) To work with constituencies to develop global outreach programs aimed at increasing participation in constituencies and the GNSO policy process. Staff should provide periodic progress reports.

- The GNSO constituencies, along with the Council and staff, should develop operating principles that will form the basis for consistent participation rules and operating procedures for all constituencies, ensuring that ICANN constituencies function in a representative, open, transparent and democratic manner. The criteria for participation in any ICANN constituency should be objective, standardized and clearly stated.
 - General information about each participant application and the decision should be publicly available.
 - Mailing and discussion lists should be open and publicly archived (with posting rights limited to members).

- There should be term limits for constituency officers, just as for Councilors, so as to help attract new members and provide everyone with the chance to participate in leadership positions.
- There should be an emphasis on reaching consensus and compromising to achieve objectives and closure on issues.
- There should be a centralized registry of the participants of all constituencies and others involved in GNSO policy development work, which is up-to-date and publicly accessible. This can happen by creating a “GNSO-discussion list,” where individuals who participate in constituencies, working groups and other GNSO processes, have posting rights, and their emails are publicly posted.

Proposed Action Item: The Board requests:

(i) The GNSO constituencies, with assistance from Staff as needed, to develop a set of participation rules and operating procedures, consistent with the principles outlined above, which all constituencies should abide by. The ICANN Board should ask the constituencies to develop and publicize common principles within six months; and to implement operating rules and procedures consistent with those principles at that time.

(ii) Staff, in consultation with the Council, to develop within six months, and maintain, a database of all members of all constituencies and others involved in GNSO issues but not formally a part of any constituency. This database will be used for interested parties to communicate on a “GNSO-discussion list” about GNSO issues, and the formation of new working groups in particular. The database needs to be constructed in a manner consistent with privacy considerations of individuals.

- ICANN should provide appropriate Staff support for constituencies to assist with standardization, outreach and administrative work, which can lower constituency costs and fees. ICANN should offer each constituency a “toolkit” of in-kind assistance (as opposed to financial aid). The toolkit should include, for example, assistance with tracking PDP deadlines and summarizing policy debates, supporting websites and mailing lists, scheduling calls and other administrative duties.

Proposed Action Item: The Board tasks Staff with developing, within six months, in consultation with the Council, a “tool kit” of basic services that would be made available to all constituencies.

7. Recommendations re: Relationships with Other ICANN Bodies

7.1 Staff

The ICANN Bylaws provide that a “member of the ICANN staff shall be assigned to support the GNSO, whose work on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager (Staff Manager)” (see Article X(4)). At present, Staff is currently assigned to support the GNSO’s work, including a GNSO Secretariat, and three policy support staff positions. The Bylaws also require ICANN to “provide administrative and operational support necessary for the GNSO to carry out its responsibilities,” although there is a limitation that such “support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose.” It is clear that a close and supportive relationship between Staff and the GNSO Council and constituencies important component of assuring that policy development activities are consistent with, and responsive to, ICANN’s priorities and resources.

7.2 Supporting Organizations and Advisory Committees

The policy work of the GNSO increasingly concerns issues that are also important to other parts of the ICANN community. Issues such as Internationalized Domain Names (IDNs) affect many parts of the ICANN community. It is thus particularly important that the work of the GNSO be informed by the views of other parts of ICANN. Where possible and sensible, there should be an effort to coordinate policy activities.

Indeed, it would also strengthen ICANN if the Supporting Organizations (SOs) and Advisory Committees (ACs) had greater awareness of the issues that the others were dealing with and more closely coordinated their activity, where appropriate. The meeting time that is available to the ICANN community is limited, particularly face-to-face opportunities. Better coordination between the GNSO and other parts of the ICANN community could therefore increase the efficiency and effectiveness of ICANN’s work as a whole.

These needs could be satisfied in a few ways: by arranging meetings between the SOs and ACs in order to better coordinate their activities; arranging conference calls and meetings of the SO and AC chairs for the same purpose; and by ensuring the Board members elected by the GNSO are up-to-date with GNSO issues so that they can help keep the Board fully informed of the work that the GNSO is undertaking.

More frequent and substantive communication, for example, with the Government Advisory Committee (GAC) and with the At-Large Advisory Committee (ALAC) has begun already and could prove extremely useful in terms of reaching realistic policy conclusions. Communication between Chairs of the SOs and ACs also has increased over the years, but more communication would be beneficial.

New steps can also be taken. The Council should consider a coordination call take place at least a month before each ICANN meeting to discuss the upcoming agenda and goals. This call could include the Chairs of the three SOs, the Chairs of the GAC and the ALAC, the Chair of ICANN's Board and ICANN's CEO. If this proves to be a successful coordinating device, then such calls might occur on a monthly basis. Consideration might also be given to developing a more formal process of seeking input from other ICANN organizations on each proposed GNSO policy (see Sharry Rec. #6). The Council and GNSO constituencies should consider additional ways in which it can further enhance coordination with other ICANN structures in the weeks ahead.

7.3 Conclusions

Our recommendations and proposed action items for improving the relationship of the GNSO to other ICANN structures include:

- The Council should propose specific ways in which it can improve communications between it and Board Members elected from the GNSO.

Proposed Action Item: The Board requests the Council to report to the Board within six months on the mechanisms that will be put in place to improve communications between the Council and the Board members elected from the GNSO.

- There should be more frequent contact and communication among the Chairs of the GNSO, GNSO constituencies, other Supporting Organizations (SOs) and Advisory Committees (ACs), especially in advance of each ICANN Meeting. The Council should also consider other ways in which it can further enhance coordination with other ICANN structures, and report to the Board within six months on such steps.

Proposed Action Item: Staff should propose, within six months, specific ways in which the GNSO can improve coordination with, and among, ICANN's other SOs and ACs, in consultation with those bodies. Staff should to work with all SOs and ACs to develop a communications and coordination plan to address this issue more generally.

8. Transitional Arrangements

To carry out recommendations approved by the Board, we recommend that Staff be responsible for creating a proposed "Implementation Plan" in consultation with the community that would (i) address all action items; (ii) recommend any corresponding changes to the ICANN Bylaws, (iii) create a realistic timetable for overall implementation; and (iv) prepare a budget to support the recommended improvements.

This work should include any arrangements that need to be developed on an interim basis in order to ensure a smooth and effective transition to the new elements recommended in this Report.

There are a number of areas where the BGC WG believes it is particularly important for the Council and constituencies to become involved in developing the details of a smooth and successful implementation. These areas include the rules and procedures that will govern establishment and operation of working groups and changes to the policy development process; and participation rules and operating procedures for the Council and all constituencies; and in enhancing communication and coordination with other ICANN structures. We therefore call on Staff to work closely with the GNSO Council and constituencies in preparing the implementation details.

We suggest that the BGC WG transition to an “Implementation Consulting Group” that would provide guidance to the implementation team(s) on the context of recommendations contained in the Report, elaborate on discussions that led to development of specific recommendations, and provide any other background and respond to questions of interpretation that might be helpful throughout the implementation process. This Implementation Consulting Group would work closely with the GNSO Council, GNSO constituencies and the broader ICANN community as a “steward” to help implement the improvements approved by the Board.

9. Overall Conclusions

Our deliberations have achieved near consensus on a comprehensive set of recommendations that addresses five main areas:

- Formalizing a working group model to become the focal point for policy development and enhance the PDP by making it more inclusive and representative, and – ultimately – more effective and efficient.
- Revising the PDP to make it more effective and responsive to ICANN’s policy development needs, bringing it in-line with the time and effort actually required to develop policy, and making it consistent with ICANN’s existing contracts (including, but not limited to, clarifying the appropriate scope of GNSO “consensus policy” development).
- Moving the GNSO Council away from being a legislative body heavily focused on voting towards becoming a smaller, more focused strategic entity, composed of four broad stakeholder groups, with strengthened management and oversight of the policy development process, the elimination of weighted voting and the imposition of term limits.
- Enhancing constituency procedures and operations to become more transparent, accountable and accessible; and
- Improving GNSO coordination with other ICANN bodies.

We believe there is broad and strong support for changes in the functioning of the GNSO, based on input from GNSO participants and other members of the ICANN community. While the need to update and improve the GNSO is not disputed, there is no magical set of proposals that could be received without controversy or opposition. We have therefore balanced, as best we can, different – and sometimes competing – interests in order to formulate recommendations on the basis of what can benefit the ICANN community as a whole. As the community and the Board consider this Report, it is important to keep in mind that this is an evolutionary process intended to reflect the importance of the GNSO to ICANN and to build upon the GNSO’s successes to date.

The primary recommendations and action items that we propose are summarized briefly in the following chart (note that time frames assume budget and resourcing as recommended herein; some tasks may need to be performed consecutively):

Recommendation	Action Item	Responsible	Timeframe
<p>WORKING GROUPS</p> <p>Working groups (WGs) should become the foundation for consensus policy development work in the GNSO. Such an approach tends to be a more constructive way of establishing where agreement might lie than task forces, where discussion can be seen as futile because the prospect of voting can polarize the group. There is value in enabling parties to become a part of the process from the beginning. This inclusiveness can have benefits in terms of being able to develop and then implement policies addressing complex or controversial issues.</p>	<p>Board requests the Council to take steps to move to a WG model, as described above, for all future policy development work, and other aspects of its work as appropriate.</p>	<p>Council, constituencies, staff, working with ICANN community</p>	<p>6-8 months</p>
<p>Council and Staff should work together to develop appropriate operating principles, rules and procedures for the establishment and conduct of GNSO WGs. This effort should draw upon the broad and deep expertise within the ICANN community on how lessons learned in other organizations, including but not limited to the IETF, W3C and the RIRs, might benefit ICANN.</p>	<p>Board tasks the Staff to work with the Council to develop a set of principles, rules and procedures for GNSO WGs, including but not limited to the points above, and to present those principles to the Board.</p>	<p>Council, constituencies, staff, working with ICANN community</p>	<p>6-8 months</p>
<p>ICANN Staff must be ready to provide sufficient support to a WG. This should include the option of recruiting and compensating</p>	<p>Board tasks Staff (i) to prepare a report on budget implications of moving to a WG model, including costs associated with</p>	<p>Staff , working with Council</p>	<p>6 months</p>

outside experts for assistance on particular areas of work, providing translation of relevant documents, and developing relevant training and development programs (see also Section 5.3).

using expert input and professional facilitators, any additional travel costs and translation and/or interpretation costs; and (ii) work with Council to develop training and development programs to create a group of skilled chairs and a pool of facilitators familiar with ICANN issues and able to assist with policy development.

POLICY DEVELOPMENT PROCESS

While the procedure for developing “consensus policies” will need to continue to be established by the Bylaws as long as ICANN’s contracts require, Council and Staff work should together to propose new PDP rules for the Board’s consideration and approval. Once approved, the rules would become part of the GNSO’s operating procedures.

Board requests the Council to work with Staff to develop a draft revised Policy Development Process that incorporates the WG approach and is consistent with the considerations outlined above. The new PDP rules should consider how GNSO operating procedures can contain greater flexibility, consistent with ICANN’s contractual obligations to registries and registrars.

Council, working with Staff, done in conjunction with establishment of WGs

6 months

Periodic assessment of the influence of the GNSO, including the PDP, is another important component of successful policy development. Metrics can help measure the success of policy recommendations.

Board requests the Council, with support of Staff, to implement a self-assessment process for each WG to perform at the end of a PDP, which should contain metrics for evaluating the effectiveness of the policy and any lessons learned from the PDP. In addition, the GNSO Chair should present an annual report on effectiveness of GNSO policies using metrics developed at the end of each PDP and a synthesis of lessons learned.

Council, working with Staff; GNSO Chair

CBC & annual

PDP should be better aligned with ICANN’s strategic plan and operations plan, but at same time sufficiently flexible to accommodate changes in priority.

Board requests (i) Council to execute a more formal “Policy Development Plan” that is linked to ICANN’s overall strategic plan but also sufficiently flexible to

Council/Staff

6 months

accommodate changes in priority; and (ii) Staff to propose metrics that can bring the PDP more in sync with ICANN's planning.

COUNCIL

Council should transition from being a legislative body into its intended role as a strategic manager overseeing policy development. Among the Council's most important functions should be guiding the establishment of WGs and monitoring their progress. Council should be responsible for launching a WG by deciding upon the appropriate mandate and timeline, and ensuring that it has an experienced and impartial Chair, who performs adequate outreach and has sufficient expertise. Council should be available to provide guidance on any issues as soon as they arise.

Board requests Council, with assistance from Staff, to prepare a set of operating principles that will allow it to be the strategic manager of the policy process rather than a legislative body.

Council, working with Staff

6 months

Council should develop ways to (i) assess and benchmark policy implementation; and (ii) analyze trends and changes in the gTLD arena.

Board requests Council and Staff to prepare a strategic plan to operationalize work in this area, including by the consideration of a committee structure to promote effectiveness and efficiency.

Council, constituencies, working with Staff

6 months

Council should work with ICANN Staff to (i) align the GNSO's work with ICANN's strategic plan, (ii) increase the use of project-management methodologies; and (iii) improve the GNSO's website, document management capacity and ability to solicit meaningful public comments on its work.

Board requests Council participate fully in ICANN planning process, including by providing a three year view (for the Strategic Plan) and an annual plan (for the Operating Plan) of planned and anticipated policy processes; prepare a plan for the implementation of a formal document handling system that will allow easy tracking of all policy development documents, including translations; revise the GNSO's website; prepare a revised process for gathering and addressing public comments on policy issues,

Council, constituencies & Staff

6 months

	taking into account the needs of stakeholders who prefer to work in languages other than English; and prepare a plan for translation of documents associated with policy development.		
Council should be restructured to consist of 16 members elected from four stakeholder groups, comprising those parties “under contract” with ICANN, namely registries (4 seats) and registrars (four seats). These we refer to as “ICANN contracted parties.” The other two stakeholder groups will represent those who are “affected by the contracts” (“ICANN non-contracted parties”), including commercial registrants (4 seats) and non-commercial registrants (4 seats). In addition, we recommend that three members be appointed by the NomCom for a total of 19 Councilors (recognizing that number of NomCom could change with that review).	Board requests Council and GNSO constituencies, with support from Staff, to prepare suggested changes to the Bylaws regarding the Council’s structure on the basis of four broad stakeholder groups, with two representing “ICANN contracted parties” and two representing “ICANN non-contracted parties” as described above.	Council, constituencies, working with Staff	6 months
Weighed voting should be abolished. Indeed, as the Council moves from being a legislative body to a strategic manager overseeing policy development, formal voting should be minimized, if not eliminated altogether, except when necessary to confirm consensus or conduct elections.	Board requests Council and constituencies, with support from Staff, to prepare suggested changes to the Bylaws regarding details of Council voting (when necessary), in light of elimination of weighted voting.	Council, working with Staff	6 months
Establish term limits for Councilors, thus giving more people an opportunity to serve in these important positions.	Board requests Council, with support from Staff, propose changes to the Bylaws supporting limit of two terms per Councilor, with an appropriate but limited grandfather clause.	Council, working with Staff	6 months
There should be basic information regarding Statements of Interest and Declarations of Interest (pertaining to specific matters under discussion) that GNSO	Board instructs Staff, in consultation with the Council, to develop “Statement of Interest” and “Declaration of Interest” forms that would be completed by Council members	Staff, working with Council	6 months

Councilors, constituency leaders and others participating in policy development activities must first complete.

(and participants in WGs), which can be published and updated, consistent with privacy issues.

The Council should work with Staff to develop a training and development curriculum to promote skills development for the Council, prospective chairs of WGs and, ideally, all members of the ICANN community who might wish to take part in WGs.

Board instructs Staff, in consultation with the Council, to develop a training and development curriculum for the GNSO consistent with the principles outlined above. A proposed curriculum (including suggested courses, delivery mechanisms and links between positions and training) should be developed and also be made available to others in the ICANN community.

Staff, in consultation with Council

6 months for initial package, to be augmented as described

CONSTITUENCY STRUCTURE

ICANN should take steps to clarify and promote the option to self-form a new constituency. It should engage in greater outreach to ensure that all parts of the community, particularly those areas where English is not widely spoken, are aware of the option to form new constituencies. Together, ICANN Staff and the GNSO should develop specific recommendations for achieving these goals.

Board tasks Staff to (i) develop and implement an outreach program to explore the formation of new constituency groups, particularly in areas where English is not widely spoken; and (ii) to work with constituencies to develop global outreach programs aimed at increasing participation in constituencies and the GNSO policy process.

Staff with support from constituencies

Periodic reporting

Council should develop participation rules and operating procedures for all constituencies for Board approval, ensuring that they function in a representative, open, transparent and democratic manner. Criteria for participation in any ICANN constituency should be objective, standardized and clearly stated, and include general information about each participant application and the decision; mailing and discussion lists should be open and publicly archived (with posting rights limited to members); term limits for constituency officers; emphasis on reaching consensus and compromising to achieve objectives and closure on

Board requests constituencies, with assistance from Staff as needed, to develop a set of participation rules and operating procedures for Board approval, consistent with the principles outlined, which all constituencies should abide by.

GNSO constituencies, working with Staff as needed

6 months

issues.

There should be a centralized registry of the participants of all constituencies and others involved in any policy development work, which is up-to-date and publicly accessible, consistent with individuals' privacy considerations. This can happen by creating a "GNSO-discussion list," where individuals who participate in constituencies, WGs and other GNSO processes have posting rights, and their emails are publicly posted.

Board request Staff, in consultation with the Council, to develop and maintain a database of all members of all constituencies, and others working on GNSO issues but not formally a part of any constituency. This database will be used for interested parties to communicate on "GNSO-discussion list" about GNSO issues and the formation of new WGs.

Staff, in consultation with Council and constituencies

6 months

ICANN should provide dedicated Staff support for constituencies to assist with standardization, outreach and internal work, which can lower constituency costs and fees. ICANN should offer each constituency a "toolkit" of in-kind assistance (as opposed to financial aid) that would include, for example, assistance with tracking PDP deadlines and summarizing policy debates, supporting websites and mailing lists, scheduling calls and other administrative duties.

Board tasks the Staff with developing, in consultation with the GNSO constituencies and Council, a "tool kit" of basic services that would be made available to all constituencies.

Staff, in consultation with Council and constituencies

6 months

RELATIONSHIPS

Council should propose specific ways in which it can improve communications between it and Board Members elected from the GNSO.

Board requests GNSO Council to report to the Board on the mechanisms that will be put in place to improve communications between the Council and the Board Members elected from the GNSO.

Council

6 months

There should be more frequent contact and communication among the Chairs of the GNSO Council, other Supporting Organizations (SOs) and Advisory Committees (ACs), especially in advance of each ICANN Meeting.

Board requests Staff propose specific ways the GNSO can improve coordination with, and among, ICANN's other SOs and ACs, in consultation with those bodies. Staff should to work with all SOs and ACs to develop a communications and coordination plan to address

Staff , with Council and constituencies

6 months

this issue more generally.

10. Annexes (see separate document)

10.1 LSE Recommendations (2006) (“Executive Summary and List of Recommendations”) <http://www.icann.org/announcements/gnso-review-report-sep06.pdf>.

10.2 Summary of Public Comments on LSE Recommendations

10.3 Sharry Recommendations (2004) (“Appendix 5: Summary of recommendations”) <http://gnso.icann.org/announcements/announcement-22dec04.htm>

10.4 GNSO Self Review Recommendations (2004) (“Section 10. Summary and recommendations”) <http://gnso.icann.org/reviews/gnso-review-sec2-22dec04.pdf>

10.5 BGC WG Charter and Board Resolution http://icann.org/minutes/resolutions-30mar07.htm#_Toc36876533

10.6 Summary of Workshops and Public Comments on BGC WG’s preliminary reports