

Staff Recommended Amendments to Bylaws

The Bylaw Amendments (Version 2), posted for public comment, is based upon the [initial version posted by Staff on 30 June 2009](#) (Version 1). Since 30 June 2009, Staff has received guidance from the Structural Improvements Committee and the [ICANN Board](#) and has received public comments on Version 1. In addition, the General Counsel's Office has conducted a comprehensive review of the proposed amendments and identified a number of revisions to address inconsistencies and errors in the proposed Bylaw Amendments.

Some of the proposed amendments are intended to be transitional in nature as they cover topics that are currently under review by the various GNSO Restructuring Work Teams. Even though they are not permanent, these revisions were deemed necessary by the Legal Department to avoid adopting Bylaws that contain errors and internal inconsistencies. Once the Work Teams have completed their deliberations and produced final recommendations, Staff intends to produce additional Bylaws Amendments for Board approval.

Recognizing that some of the proposed amendments may be new to the GNSO community, this document highlights the more substantive changes. Staff welcomes suggestions through the public comment forum to address any concerns raised by these proposed Bylaw amendments.

Article VII, Section 2 - Nominating Committee Appointments

As noted in the public comment forum, the proposed amendments to Article VII reassign the rights to appoint Nominating Committee delegates to the Stakeholder Groups of the Contracted Party House instead of their Constituencies. This change is necessary because the Contracted Party House intends to disband Constituencies as a result of the GNSO restructure. However, the proposed amendments currently maintain the right of the Constituencies in the Commercial Stakeholder Group as well as the Non Commercial Users Constituency to identify their delegates, since they will continue to exist in the new GNSO Council. [Note: this language may undergo further change based upon continuing discussions between the SIC and Nominating Committee].

Recommended language:

Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by [Article X of these Bylaws](#), as follows:

- a. One delegate from the Registries Stakeholder Group;
- b. One delegate from the Registrars Stakeholder Group;
- c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
- d. One delegate from the Internet Service Providers Constituency;
- e. One delegate from the Intellectual Property Constituency; and

- f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

Article X, Section 3 - GNSO Operating Procedures:

Staff proposes the removal of certain sections from the current Bylaws, as discussions conducted by the GNSO Council have suggested that they be addressed in the GNSO Operating Procedures. These include the terms of Section 3(8) and 3(9) dealing with procedural matters such as quorum rules and absentee voting. Removal of these sections eliminates certain inconsistencies in the current Bylaws with the new bicameral house voting structure and allows for new procedures to be developed by the GNSO Restructuring Work Teams.

In addition, the proposed amendment in Paragraph 4 changes the manner in which the GNSO Operating Procedures are to be approved. In order to seat the GNSO council by Seoul, if Board approval were required, the GNSO Operating Procedures would need to be approved at its 3 September 2009 meeting. However, the GNSO Restructuring Work Team tasked with drafting the new GNSO Operating Procedures is unlikely to complete its work in time to meet this deadline. By granting the Board an oversight right instead of a prior approval right, the GNSO Council will have additional time to develop and adopt its Operating Procedures before convening in Seoul.

Recommended Language (Par. 4):

It shall adopt such procedures (the “GNSO Operating Procedures”) as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of twenty-one (21) day public comment period, and shall be subject to Board oversight and review.

Article X Section 4(2) - Travel Funding:

The current Bylaws do not recognize the travel funding provided by ICANN. This proposal clarifies that, although ICANN is not required to provide travel funding to the GNSO Council, it is allowed to do so under the terms of any travel policies or guidelines it may adopt.

Recommended Language:

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. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Article X Section 3(11)(f) – Voting Thresholds Applicable to Certain Contracted Parties

Given the new bicameral house model and the various voting thresholds recommended by the Board-created Working Group on GNSO Council Restructuring (WG-GCR) and approved by the

Board, Staff recommends that a new threshold be drafted to ensure that the new GNSO Council, which in the future will only vote in its bicameral structure, has a defined threshold for establishing a consensus policy to be binding on registrars and certain registries (specifically .pro). Since these parties have contract provisions with ICANN specifying that a “two-thirds vote of council” demonstrates the existence of the consensus to enable ICANN to impose new binding obligations on those parties, this new threshold is intended to clarify how this contract provision could be satisfied once the new GNSO council is seated.

Recommended Language:

- f. Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that “a two-thirds vote of the council” demonstrates the presence of a consensus, the GNSO Super Majority vote threshold will have to be met or exceeded with respect to any contracting party affected by such contract provision;

Staff believes that the community intended for the new Super Majority Vote threshold to apply in these circumstances; however, recognizing that the GNSO has not had the opportunity to evaluate this matter, Staff encourages the community, the GNSO Council, and its applicable Work Team(s) to evaluate and comment on this proposal.

Article XX – Transition: Restructure Implementation Plan

There are a number of transition implementation matters that need to be identified and clarified prior to Seoul. These items are to be included in the Restructure Implementation Plan that the GNSO is tasked with developing (see Resolution 2008.10.01.15 - <http://www.icann.org/en/minutes/minutes-01oct08.htm>). Instead of including the details in the Transition Article XX of the Bylaws, Staff proposes referencing the Plan as an independent document (see Paragraph 6).

Recommended Language:

6. The GNSO Council, as part of its Restructure Implementation Plan, will document:
(a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO Council preserves as much continuity as reasonably possible; (d) the effect of Bylaws term limits on each Council member.

Annex A - PDP Procedures

Staff recognizes that the GNSO Restructuring Work Team is currently undergoing an extensive evaluation of the Policy Development Process and will be producing a new Annex A upon completion of its work. However, certain Bylaws amendments were necessary due to the

establishment of a bicameral house structure with new voting thresholds that are inconsistent with the voting thresholds currently included in Annex A. In preparing these amendments, Staff attempted to preserve the current procedures wherever possible, and to minimize the number of revisions to only those that are necessary to clear up inconsistencies or errors. A more substantive revision to the Annex A will be necessary once the GNSO Work Team has produced its recommendations for a new Policy Development Process.