

NCSG Request for Discussion with ICANN Board RE: Impact on Multi-Stakeholder Internet Governance Model from Rationale Provided in BGC Response to NCSG Reconsideration Request 13-3

17 June 2013

Dear ICANN Board of Directors:

I am writing to you on behalf of the Non-Commercial Stakeholder Group (NCSG) and other concerned members of the ICANN community regarding the harmful implications to the community-led multi-stakeholder policy development model if the ICANN Board decides to adopt the rationale provided in the recommendation of the Board Governance Committee (BGC) in response to the NCSG's Request for Reconsideration (13-3). The rationale provided in the BGC's recommendation, which appears to be drafted by over-reaching lawyers, attempts to set a precedent that ICANN staff can over-rule the GNSO Council on policy decisions at its own discretion. This decision has alarmed community members beyond the NCSG and beyond those who were originally concerned with the underlying issue that NCSG was initially probing of staff's adoption of the "TM+50" policy for the Trademark Clearinghouse.

The GNSO Council expressed concern about the BGC decision rationale at length during council's 13 June meeting; and I encourage all Board Members to listen to audio recording of the GNSO Council discussion or read the attached transcript to get a better understanding the concerns of members of several different GNSO stakeholder groups.

The rationale provided in the BGC decision, if adopted by the entire board, would cement the change in ICANN's policy development model away from the bottom-up community-led governance model to a top-down staff-driven model with no checks on abuses or poor staff decisions. If the rationale provided in this BGC decision is adopted by the Board, which goes well beyond the narrow issue presented to it, ICANN threatens to undermine its own legitimacy as a global governance institution, and it loses the ability to label itself as a community-led bottom-up model for Internet governance.

We understand the BGC's recommendation is on the agenda to be adopted on 25 June 2013 by the Board's New gTLD Program Committee (NGPC). Given the Board's record of adopting all 15 BGC decisions that have come before it in the last ten years, there is concern that this BGC recommendation will be similarly adopted by the Board with little understanding or discussion of the harm to ICANN's legitimacy and the multi-stakeholder model that this precedent threatens. The handling of this reconsideration request has also raised concerns about ICANN's "accountability" mechanism, which appears to allow the same legal team that created and adopted a policy to later evaluate the legitimacy of that policy's adoption.

We therefore respectfully request that the Board meet with concerned members of the community including NCSG to permit a more complete discussion and understanding of the concerns raised by the rationale provided in the BGC decision and to allow for appropriate

adjustments to the decision before it is adopted by the Board. We would gladly meet with the Members of the ICANN Board during the Durban Meeting or before, at the Board's convenience, to discuss this decision and welcome all members of the community to join in the discussion. Please let us know if the Board is available to meet with NCSG and others in the community on this crucial issue at your earliest convenience. Thank you for your consideration. We look forward to fruitful discussions going into Durban and stand ready to provide whatever assistance is needed.

Truly,

Robin Gross

NCSG Chair