



REVIEW OF

GENERIC NAMES SUPPORTING ORGANIZATION

Final Report

Westlake Governance Limited

September 2015

REPORT SUMMARY

SECTION 1:

1.1 Background

This review was initiated in 2014 by ICANN with the assistance of a working party comprised of GNSO community members in accordance with ICANN's bylaws. It follows a series of other reviews, some of the GNSO explicitly and others of ICANN's policy-making structures in general, including a programme of improvement of the GNSO initiated by the ICANN Board after the Board Governance Committee (BGC) considered the recommendations of previous reviews in 2008.

Following more recent changes, the Structural Improvements Committee (SIC)¹ of the ICANN Board is now responsible for review and oversight of policies relating to ICANN's ongoing organizational review process, as mandated by ICANN's Bylaws. In relation to this review, the SIC:

- Confirmed the appointment of Westlake Governance as Independent Examiner,
- Will accept the final report and the implementation plan, and
- Will prepare recommendations for Board action.

The scope of this review is two-fold: to assess the extent to which the improvement programme has been implemented and successful at addressing the concerns that led to it, and to consider the extent to which the GNSO as currently constituted is in a position to respond to its changing environment. The Westlake Review Team has not been asked to assess various options and alternatives pertaining to the structure of the GNSO, but inquiry into the effectiveness of GNSO operations naturally leads to structural considerations. We note also that the existing GNSO structure of two Houses and four Stakeholder Groups (SGs) allows for considerable flexibility.

Input to the review has comprised:

- An online questionnaire (the 360^o) about the GNSO as a whole and its component parts
- A similar questionnaire about specific Working Groups
- Reviewing material about previous reviews, plans and other information, most of which was available on the ICANN website

¹ Name changed to The Organizational Effectiveness Committee (OEC) in July 2015

- Interviews with a range of stakeholders from the GNSO and wider ICANN community
- Feedback on an earlier working text presented in summary at ICANN52 and provided to the GNSO Review Working Party for comment.

As we developed our recommendations, four main themes became evident:

- Participation & Representation
- Continuous Development
- Transparency
- Alignment with ICANN's future

In total, the Westlake Review Team has provided 36 recommendations. To assist understanding of how each recommendation contributes, we have included an Annex to this Summary listing each recommendation under its theme.

1.1.1 BGC Recommendations to the ICANN Board

In its 2008 synthesis of prior reviews, the Board Governance Committee Working Group (BGC WG) made recommendations in the following areas and the Board adopted these recommendations. (We refer to these throughout our report as 'BGC recommendations'. It should be noted that, while referred to as 'recommendations,' they were approved):

- Adopting a Working Group model for policy development
- Revising the policy development process (the PDP)
- Restructuring the GNSO Council
- Enhancing and supporting stakeholder groups and constituencies
- Improving communications and coordination with other ICANN structures

The Review Team has assessed the extent to which the recommendations adopted by the Board have been implemented. The BGC recommendations are listed below in highly summarised form and numbered as BGC1 – BGC18, together with our view on whether they have been implemented, and our recommendations for further work.

1.2 Assessment and Recommendations: The Working Group Model

Westlake's view of the implementation of the BGC recommendations is:

BGC Recommendation	Implemented?
BGC1: Working Groups (WGs) should become the foundation for consensus policy work in the GNSO. WGs should be open to everybody.	Yes
BGC2: Council and Staff should develop operating principles for WGs	Yes
BGC3: ICANN should provide staff support to WGs	Yes

Westlake's view is that these have all been implemented effectively. WGs do exist and they do create policy. In the 360° survey, almost 80% agreed that WGs are effective and that they listen to feedback. Comments about staff support were uniformly positive.

However, there are some negative outcomes in the implementation of WGs:

- Comparatively few volunteers do most of the work
- Volunteers are strongly weighted toward North America and Europe
- Participants are approximately 80% male

We found no evidence that WGs are not open to everyone, but the openness has not resulted in effective involvement of a broad section of the community. We found little deliberate obstruction to broader participation in WGs, but we have identified several unconscious biases that tend to perpetuate the status quo.

Our recommendations are:

- ❖ **Recommendation 1:** That the GNSO develop and monitor metrics to evaluate the ongoing effectiveness of current outreach strategies and pilot programmes with regard to GNSO Working Groups (WGs) (as noted in the WG participation recommendations under section 5.4.5).
- ❖ **Recommendation 2:** That the GNSO develop and fund more targeted programmes to recruit volunteers and broaden participation in PDP WGs, given the vital role volunteers play in Working Groups and policy development.
- ❖ **Recommendation 3:** That the GNSO Council reduce or remove cost barriers to volunteer participation in WGs.
- ❖ **Recommendation 4:** That the GNSO Council introduce non-financial rewards and recognition for volunteers.

- ❖ **Recommendation 5:** That, during each WG self-assessment, new members be asked how their input has been solicited and considered.
- ❖ **Recommendation 6:** That the GNSO record and regularly publish statistics on WG participation (including diversity statistics).
- ❖ **Recommendation 7:** That Stakeholder Groups (SGs) and Constituencies (Cs) engage more deeply with community members whose first language is other than English, as a means to overcoming language barriers.
- ❖ **Recommendation 8:** That WGs should have an explicit role in responding to implementation issues related to policy they have developed.²

1.3 Assessment and Recommendations: The PDP

Westlake’s view of the implementation of the BGC recommendations is:

BGC Recommendation	Implemented?
BGC4: Revise the rules for the PDP to align with contractual requirements	Yes
BGC5: Implement PDP self-assessment	Incomplete
BGC6: Align PDPs with ICANN’s strategic plan	No

The WG PDP is seen as successful if long-winded. About half the 360⁹ respondents agreed that policy recommendations are timely. There were comments about the frustratingly (to some) long time that a PDP can take, and many to the effect that the duration of the PDP may be necessary to achieve consensus.

A Data and Metrics Working Group has been set up as a non-PDP WG to consider how to assess the PDP process itself. However, this does not cover the outcome of the policy, which in our view is essential to inform future policy development.

There is no evidence of a GNSO-wide plan that aligns its policy development work with ICANN’s strategic plan.

² We understand that GNSO Council has now adopted the recommendations of the Working Group under which Implementation Review Teams will become standard practice.

Our recommendations are:

- ❖ **Recommendation 9:** That a formal Working Group leadership assessment programme be developed as part of the overall training and development programme.
- ❖ **Recommendation 10:** That the GNSO Council develop criteria for WGs to engage a professional facilitator/moderator in certain situations.
- ❖ **Recommendation 11:** That the face-to-face PDP WG pilot project be assessed when completed. If the results are beneficial, guidelines should be developed and support funding made available.
- ❖ **Recommendation 12:** That ICANN assess the feasibility of providing a real-time transcribing service in audio conferences for WG meetings.
- ❖ **Recommendation 13:** That the GNSO Council evaluate and, if appropriate, pilot a technology solution (such as Loomio or similar) to facilitate wider participation in WG consensus-based decision making.
- ❖ **Recommendation 14:** That the GNSO further explores PDP 'chunking' and examines each potential PDP as to its feasibility for breaking into discrete stages.
- ❖ **Recommendation 15:** That the GNSO continues current PDP Improvements Project initiatives to address timeliness of the PDP.
- ❖ **Recommendation 16:** That a policy impact assessment (PIA) be included as a standard part of any policy process.
- ❖ **Recommendation 17:** That the practice of Working Group self-evaluation be incorporated into the policy development process; and that these evaluations should be published and used as a basis for continual process improvement in the PDP.
- ❖ **Recommendation 18:** That the GNSO Council evaluate post implementation policy effectiveness on an ongoing basis (rather than periodically as stated in the current GNSO Operating Procedures); and that these evaluations are analysed by the GNSO Council to monitor and improve the drafting and scope of future PDP Charters and facilitate the effectiveness of GNSO policy outcomes over time.

1.4 Assessment and Recommendations: Restructuring GNSO Council

Westlake's view of the implementation of the BGC recommendations is:

BGC Recommendation	Implemented?
BGC7: Council to do strategy and oversight	Yes
BGC8: Council to assess and analyse trends	No
BGC9: Council to improve project and document management	Partial
BGC10: Council membership restructure	Yes
BGC11: Council term limits	Yes
BGC12: Council and GNSO-wide SOIs	Yes
BGC13: Councillor training	Needs improvement

The Council is performing a strategy and oversight role as recommended by the BGC. It publishes a list of projects but there is no evidence of resource planning or management. Term limits and SOIs have been implemented.

Councillor training was highlighted in comments on the 360° survey, in respect of technical expertise, project management and governance. There is no means to measure the level of competence and skills of incumbents, or the effectiveness of the training undertaken.

Our recommendations are:

- ❖ **Recommendation 19:** As strategic manager rather than a policy body the GNSO Council should continue to focus on ensuring that a WG has been properly constituted, has thoroughly fulfilled the terms of its charter and has followed due process.
- ❖ **Recommendation 20:** That the GNSO Council should review annually ICANN's Strategic Objectives with a view to planning future policy development that strikes a balance between ICANN's Strategic Objectives and the GNSO resources available for policy development.
- ❖ **Recommendation 21:** That the GNSO Council should regularly undertake or commission analysis of trends in gTLDs in order to forecast likely requirements for policy and to ensure those affected are well-represented in the policy-making process.

- ❖ **Recommendation 22:** That the GNSO Council develop a competency-based framework, which its members should utilise to identify development needs and opportunities

1.5 Assessment and Recommendations: Enhancing Stakeholder Groups and Constituencies

For the purposes of this subsection, the term “Constituency” is taken to include the RrSG and the RySG, which do not have Constituencies.

The Westlake Review Team’s view of the implementation of the BGC recommendations is:

BGC Recommendation	Implemented?
BGC14: Clarify and promote the option to form new constituencies	Yes but ineffective
BGC15: Constituency operating rules and participation	No
BGC16: Provide dedicated staff support to constituencies	Partial

Action was taken as a result of the BGC recommendation about the formation of new Constituencies, but this has not been effective. Only one new Constituency has been formed, with a great deal of difficulty, and several other groups have tried and failed to create new Constituencies.

In addition, the Review Team notes a view expressed by a former Constituency Chair at ICANN53 that their Constituency rejects the necessity or desirability of multiple Constituencies. This is clearly at odds with previous review recommendations and the ICANN Board’s stated position. This view and the record of unsuccessful applications to date reinforce our observation that BGC14 has not been implemented effectively.

We consider a further barrier to the introduction of new Constituencies in one Stakeholder Group is a lack of equity in the distribution of Council seats within that SG. We believe there should be an equal distribution of Council seats among each Constituency within SGs.

In relation to BGC15, Constituency operating rules exist, but attempts to broaden participation have been ineffective.

ICANN Core Value 4 reads:

Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

The constituency structure is intended to provide functional diversity. ICANN's regional structure provides a way of measuring geographic diversity, but it is not a proxy for cultural diversity, which is not defined by ICANN.

ICANN does not collect the information necessary to measure diversity of participation. Observation, and collecting such information as is available, shows that participation is highly male-dominated and very strongly North American- and European-dominated. There are very few participants from Asia (other than Australia and New Zealand) despite that continent representing a very large and increasing proportion of Internet users. Barriers that are perceived to exist, which constrain participation by under-represented groups, include the exclusive use of English by WGs, being consistently outvoted over time-zones for calls and a predominantly Western-style assertive mode of interpersonal interaction in meetings.

Secretariat support where provided by ICANN is rated to be of high quality, but it is not provided to all constituencies.

Our recommendations are:

- ❖ **Recommendation 23:** In order to support ICANN's multi-stakeholder model, all Cs should have seats on the GNSO Council, allocated equally (as far as numerically practicable) by their SGs.
- ❖ **Recommendation 24:** That the GNSO Council and SGs and Cs adhere to the published process for applications for new Constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed the published process, subject to which the default outcome is that a new Constituency is admitted. That all applications for new Constituencies, including historic applications, be published on the ICANN website with full transparency of decision-making.
- ❖ **Recommendation 25:** That the GNSO Council commission the development of, and implement, guidelines to provide assistance for groups wishing to establish a new Constituency.
- ❖ **Recommendation 26:** That GNSO Council members, Executive Committee members of SGs and Cs and members of WGs complete and maintain a current, comprehensive SOI on the GNSO website. Where individuals represent bodies or clients, this information is to be posted. If not posted because of client confidentiality, the participant's interest or position must be disclosed. Failing either of these, the individual not be permitted to participate.

- ❖ **Recommendation 27:** That the GNSO establish and maintain a centralised publicly available list of members and individual participants of every Constituency and Stakeholder Group (with a link to the individual’s SOI where one is required and posted).
- ❖ **Recommendation 28:** That section 6.1.2 of the GNSO Operating Procedures be revised, as shown in Appendix 6, to clarify that key clauses are mandatory rather than advisory, and to institute meaningful sanctions for non-compliance where appropriate.
- ❖ **Recommendation 29:** That SOIs of GNSO Council Members and Executive Committee members of all SGs and Cs include the total number of years that person has held leadership positions in ICANN.
- ❖ **Recommendation 30:** That the GNSO develop and implement a policy for the provision of administrative support for SGs and Cs; and that SGs and Cs annually review and evaluate the effectiveness of administrative support they receive.

1.6 Assessment and Recommendations: Communications and Coordination

Westlake’s view of the implementation of the BGC recommendations is:

BGC Recommendation	Implemented?
BGC17: Improved Communication with ICANN Board	Yes
BGC18: Improved Communication and Coordination with other ICANN structures	In Progress

The BGC WP recommended that the GNSO Council should improve the level of its communication with its nominee members of the ICANN Board. We received no comment on this from any respondent and have therefore concluded that it is no longer a matter of concern.

In relation to other ICANN structures, several respondents expressed frustration with the relationship between PDP WGs generally and the Governmental Advisory Committee (GAC). The concern was that the GAC appeared not to participate in the full PDP, but was reported to intervene at a very late stage, sometimes disrupting a process that was near to consensus, or even lobbying Board members to make late changes to a finalized new policy. This appeared to compromise the agreed bottom-up consensus-driven approach to developing policy. Against this, we were advised of the difficulty that the GAC faces in that no member can express a binding view on behalf of the others.

To address this we have recommended closer liaison between the GNSO and GAC and that the GAC appoint a non-voting liaison to each relevant PDP WG. In this way, informal GAC input can occur through the PDP, without it being seen as binding commitment on behalf of the GAC members.

Our recommendation is:

- ❖ **Recommendation 31:** That the GAC-GNSO Consultation Group on GAC Early Engagement in the GNSO Policy Development Process continue its two work streams as priority projects. As a part of its work it should consider how the GAC could appoint a non-binding, non-voting liaison to the WG of each relevant GNSO PDP as a means of providing timely input.

1.7 Assessment and Recommendations: Changing Environment

Besides assessing the effectiveness of previous review recommendations, we have considered the changing environment as it affects the GNSO, for instance:

- Demographic structure of the Internet
- Diversity
- IDNs
- gTLD expansion

The Westlake Review Team has assessed the extent to which the GNSO displays the agility to respond to these challenges and new developments.

Among the changes in the GNSO's broader environment, probably the most significant in the last decade is the dramatic shift in the "centre of gravity" of Internet usage – from mainly Anglophone and generally richer economies to non-Anglophone Asian, African and Latin American nations.

The GNSO remains dominated by participants from largely Anglophone, developed nations. The make-up of the current GNSO Council does not demonstrate a focus by SGs or Cs on achieving geographic, gender or cultural diversity. As a result the issues they consider tend to be those of interest to developed wealthy economies.

Because of the imbalance in the GNSO's composition, it was seen by some to be poorly equipped to identify and develop policies or consider issues relating to gTLDs that are of significance to less developed economies. Several obstacles exist that create barriers to participation for a large percentage of Internet users:

- People whose first language is not English, and those from developing regions, find it difficult to engage with the GNSO.
- Richer economies are better able to support a volunteer structure: experienced participants are overwhelmingly North American, Western European or Australian/New Zealanders.
- Complexity deters newcomers.
- “Unconscious biases” that may exacerbate these factors include matters such as language, colloquial usage, use of acronyms and time of day for WG calls. (Recent studies of obstacles to achieving diversity in companies have highlighted the importance of these “unconscious biases” that inhibit changes without people being generally aware that they are having this impact.)

In order to ensure its continuing relevance and ability to identify the policy issues that matter, we consider that the GNSO must address these barriers to participation from developing and non-Anglophone regions. It must ensure that the demographic make-up of the GNSO Council and the GNSO community reflects the demographics of Internet users worldwide far more closely than it does at present.

Many people commented on the GNSO’s structure and complexity and argued that these needed to change. We do not consider that the GNSO’s structure is perfect, or that it cannot be improved, but, having analysed the issues in some detail, our view is that the structure of the GNSO is not the main cause of its most pressing challenges. We consider that if the GNSO collectively decided that structural change was desirable and a priority, it would be within its mandate to agree what changes to make and propose them to the board.

We note that the current structure and processes of the GNSO have been in place for only about three years. From the Westlake Review Team’s professional experience of structural change in many organisations of differing types, this represents only a relatively short time for them to become firmly established and for people to be fully familiar with them.

Our recommendations are:

- ❖ **Recommendation 32:** That ICANN define “cultural diversity” (possibly by using birth language); and regularly publish this along with geographic, gender and age group metrics, at least for the GNSO Council, SGs, Cs and WGs.

- ❖ **Recommendation 33:** That SGs, Cs and the Nominating Committee, in selecting their candidates for appointment to the GNSO Council, should aim to increase the geographic, gender and cultural diversity of its participants, as defined in ICANN Core Value 4.
- ❖ **Recommendation 34:** That PDP WGs rotate the start time of their meetings in order not to disadvantage people who wish to participate from anywhere in the world.
- ❖ **Recommendation 35:** That the GNSO Council establish a WG, whose membership specifically reflects the demographic, cultural, gender and age diversity of the Internet as a whole, to recommend to Council ways to reduce barriers to participation in the GNSO by non- English speakers and those with limited command of English.
- ❖ **Recommendation 36:** That, when approving the formation of a PDP WG, the GNSO Council require that its membership represent as far as reasonably practicable the geographic, cultural and gender diversity of the Internet as a whole. Additionally, that when approving GNSO Policy, the ICANN Board explicitly satisfy itself that the GNSO Council undertook these actions when approving the formation of a PDP WG.

When the GNSO Council has addressed the issues we have identified and our recommendations, it might decide to review its structure, both to assist in effective implementation and in response to the widespread comments around issues associated with the GNSO's current structure.

However, we believe that any future review of structure should be broader than a single Supporting Organisation or Advisory Committee and should include a strategic review of the effectiveness of ICANN as a whole, which the structure should be refined to support.

While a broader review is beyond our scope, we consider it relevant because this issue has been raised previously. In September 2012, the ALAC published its White Paper on Future Challenges – “*Making ICANN Relevant, Responsive and Respected*”.³ Among its recommendations were that ICANN:

Transform the roles of the GAC and the ALAC from purely advisory to involvement in policy. This measure shall not be implemented separately from, nor before, a coordinated reform of structures affecting all Supporting Organisations and Advisory Committees.

³ <http://www.atlarge.icann.org/correspondence/future-challenges-white-paper-17sep12-en.pdf>

Annex: Recommendations Grouped by Theme

Theme 1: Participation and Representation

- ❖ **Recommendation 1:** That the GNSO develop and monitor metrics to evaluate the ongoing effectiveness of current outreach strategies and pilot programmes with regard to GNSO Working Groups (WGs) (as noted in the WG participation recommendations under section 5.4.5).
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Theme 2: Continuous Development

- ❖ **Recommendation 8:** That WGs should have an explicit role in responding to implementation issues related to policy they have developed.⁴

⁴ We understand that GNSO Council has now adopted the recommendations of the Working Group under which Implementation Review Teams will become standard practice.

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Theme 4: Alignment with ICANN's future

- ❖ **Recommendation 20:** That the GNSO Council should review annually ICANN's Strategic Objectives with a view to planning future policy development that strikes a balance between ICANN's Strategic Objectives and the GNSO resources available for policy development.
- ❖ **Recommendation 21:** That the GNSO Council should regularly undertake or commission analysis of trends in gTLDs in order to forecast likely requirements for policy and to ensure those affected are well-represented in the policy-making process.