

15 October 2007

(DRAFT)

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

*****FOR DISCUSSION AND PUBLIC COMMENT ONLY*****

TABLE OF CONTENTS

1. Executive Summary	3
2. Introduction.....	5
2.1 The Generic Names Supporting Organization (GNSO)	6
2.2 GNSO Reviews.....	7
2.2.1 LSE	7
2.2.2 Prior Reviews.....	8
2.3 Board Governance Committee Working Group (BGC WG).....	9
2.4 BGC WG Objectives.....	10
3. Recommendations re: Working Groups.....	12
3.1 Steps to improve inclusiveness	15
3.2 Steps to improve effectiveness.....	15
3.3 Steps to improve efficiency	18
3.4 Conclusions.....	18
4. Recommendations re: Policy Development Process (PDP).....	20
4.1 Steps to improve inclusiveness	21
4.2 Steps to improve effectiveness.....	21
4.3 Steps to improve efficiency	23
4.4 Conclusions.....	24
5. Recommendations re: GNSO Council	25
5.1 Steps to improve inclusiveness	26
5.2 Steps to improve effectiveness.....	27
5.3 Steps to improve efficiency	29
5.4 Conclusions.....	34

6.	Recommendations re: Constituency Structure.....	37
6.1	Steps to improve inclusiveness.....	37
6.2	Steps to improve effectiveness.....	39
6.3	Steps to improve efficiency	42
6.4	Conclusions.....	42
7.	Recommendations re: Relationships with Other ICANN Bodies.....	44
7.1	Staff.....	44
7.2	Supporting Organizations and Advisory Committees	44
7.3	Conclusions.....	45
8.	Transitional Arrangements.....	46
9.	Overall Conclusions.....	46
10.	Annexes (see separate document).....	53
10.1	LSE Recommendations (2006) (“Executive Summary and List of Recommendations”) http://www.icann.org/announcements/gnso-review-report-sep06.pdf	53
10.2	Summary of Public Comments on LSE Recommendations	53
10.3	Sharry Recommendations (2004) (“Appendix 5: Summary of recommendations”) http://gnso.icann.org/announcements/announcement-22dec04.htm	53
10.4	GNSO Self Review Recommendations (2004) (“Section 10. Summary and recommendations”) http://gnso.icann.org/reviews/gnso-review-sec2-22dec04.pdf	53
10.5	BGC WG Charter and Board Resolution http://icann.org/minutes/resolutions-30mar07.htm#_Toc36876533	53
10.6	Summary of Public Comments on BGC WG’s preliminary report	53

1. Executive Summary

The Board Governance Committee (BGC) created a working group, comprising current and former Board members, to oversee improvements to the Generic Supporting Names 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. 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 consensus on a comprehensive set of recommendations that addresses five main areas:

Adopting a Working Group Model: A formalizing working group model should become the focal point for policy development and enhance the process by making it more inclusive and representative, and – ultimately – more effective and efficient. This approach can be a more constructive way of establishing where agreement might lie than task forces, where discussion can be futile because the prospect of voting can polarize the group. It also enables key parties to become involved in the beginning and work together to address complex or controversial issues. 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, 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). 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 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 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, as well as metrics for measuring success.

Restructuring the GNSO Council: The Council needs to be moved 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 and the elimination of weighted voting. We recommend a 19-person Council consisting of 16 members elected from four stakeholder groups, with two of these groups being “suppliers” and two being “users,” as follows: registries, registrars, commercial registrants and non-commercial registrants. In addition, 3 Councilors would be appointed by the Nominating Committee (pending that review). The precise names of the four stakeholder groups, exactly how the two “demand” groups might be defined and other issues regarding this configuration, are questions on which GNSO input will be particularly important before the Board makes a decision. Indeed, the GNSO should have the flexibility to propose an alternative configuration of the stakeholder groups that comprise the “demand” side, but any deviation from the proposal outlined in the Report would have to be approved by the Board. As the Council moves from being a legislative body to a strategic manager overseeing policy development, formal voting should be minimized.

Enhancing Constituencies: Constituency procedures and operations should become more transparent, accountable and accessible. The Council should develop participation rules and operating procedures for all constituencies for Board approval. The criteria for participation in any ICANN constituency should be objective, standardized and clearly stated. In addition, Staff should work with constituencies to develop global outreach programs aimed at increasing participation and interest in the GNSO policy process, including information on the option to self-form new constituencies.

Improving Coordination with ICANN Structures: There should be more frequent contact and communication between the GNSO and the members it 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 should consider additional ways in which it can further improve GNSO 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 Report will be posted for public comment on the ICANN website and discussed at a Public Forum during the ICANN Meeting in Los Angeles before being presented to the Board. As the community and the Board consider the proposals outlined in the 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.

2. Introduction

The Board Governance Committee (BGC) created a working group, comprising current and former Board members, to oversee improvements to the Generic Supporting Names 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 along with the rest of 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. Second, there are areas where we believe it is important for the Council 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; the precise development of stakeholder groups as the foundation of the Council's new structure; and the participation rules and operating procedures for the Council and all constituencies.

To carry the recommendations approved by the Board, we recommend that Staff be responsible for creating a proposed "Implementation Plan" 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. We suggest that the BGC WG transition to an "Implementation Oversight Group" that would oversee and manage the implementation process, working with the GNSO and broader ICANN community to effect 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.

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.

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.
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). A summary of these comments is contained in Appendix 10.2.

2.2.2 Prior Reviews

In 2004, ICANN commissioned Patrick Sharry to conduct a review of the GNSO Council (as opposed to 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 should 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 parts of the ICANN structure; 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://gns0.icann.org/reviews/gns0-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/gns0-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://gns0.icann.org/reviews/gns0-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 recommendations included 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. The BGC WG is assisted by ICANN V.P. for Policy Development, Denise Michel, and supported by the GNSO's Manager of Policy Development Coordination, Olof Nordling, and Miriam Sapiro of Summit Strategies International.

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.) 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.

This Report and its recommendations have been prepared for BGC consideration and public input, including at a Public Forum discussion at the ICANN meeting in Los Angeles and by public comment on the ICANN website. After the public comment period has ended, the Board will consider the Report and the public comments before acting on our recommendations. This process is designed to promote transparency and provide the opportunity for additional input, discussion and feedback on the recommendations and proposed changes.

We look forward to working with the community to move the GNSO forward now along the lines we have suggested, as more than a year has passed since the LSE report was completed. We are certain the community will have questions and comments on our work, and we will be pleased to address them in Los Angeles.

2.4 BGC WG Objectives

The BGC WG has been guided by several objectives in considering possible improvements to the GNSO structure. Two of these objectives relate to the degree to which the GNSO and its processes are inclusive and representative of a broad variety of different actors involved with gTLDs. Three objectives relate to effectiveness, 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 processes;
- Supporting Council efforts to prioritise and benchmark GNSO 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 operations 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’s ability to reach consensus positions that enjoy wide support in the ICANN community.
- GNSO 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 functioning. The recommendations set forth below focus on key elements of the GNSO, including formalizing the **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 **Constituency Structure**, 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. ICANN has 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 competing ones, rather than to explore solutions that can be broadly acceptable and more consistent with the best interests of the Internet community as a whole. 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 itself has already experimented with a working group model in the launch of the recent GNSO IDN Working Group. After a great deal of discussion, the Council allowed the working group to be open 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 suggest certain lessons learned. In the WHOIS WG, only constituency representatives were full "members" and able to vote. The vast majority of participants were called "observers." Approximately 40 out of 70 members of the group were new to the GNSO process. The Chair did his best to determine the same categories of possible consensus, also using the terms "agreement," "support" and "alternatives." With such a large group, however, it was sometimes difficult to record agreement because not everyone attended every meeting.

As a result, one lesson is to consider how mailing lists and online collaboration tools can be used to augment conference calls to ensure that all participants can be involved in decision-making. Another lesson is to take steps to help ensure that participants believe their input 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 be seen as futile because the prospect of voting can polarize the group. In a task force that is part of 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 the Chair 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 achieve agreement on recommendations. In addition, the RIRs formulate their policies on mailing lists before they are presented during a public forum to check consensus. 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. It is only after a thorough and exhaustive process like this that a Chair can legitimately indicate whether agreement or strong support exists.

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>.)

To promote consensus in the W3C,³ the organization requires Chairs of working groups to ensure that they consider all legitimate views and objections, and endeavor to resolve them, whether these views and objections are expressed by active participants or others (e.g., by another W3C group, a group in another organization or the general public). “Consensus” is seen as occurring 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 should set minimum thresholds of active support before a decision can be recorded.”⁴ More information about 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 be fashioned to help improve GNSO decision-making in terms of inclusiveness, effectiveness and efficiency. The goal is not to replicate the processes and

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 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.

procedures developed in other organizations, but to determine what lessons or benefits they might offer the ICANN model. The experience of members of the ICANN community, particularly on the Board and in the GNSO, with these other organizations can help determine which practices might be useful to adapt to an ICANN setting.

We therefore recommend that the Council and Staff work together to develop appropriate operating rules and procedures for the establishment and conduct of GNSO Working Groups. This effort should draw upon the broad and deep expertise within the ICANN community on how lessons learned in other organizations might benefit ICANN. The rules should incorporate the specific suggestions below designed to improve inclusiveness, effectiveness and efficiency of the GNSO with respect to working groups.

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. There is great value to be had in enabling interested persons and organizations to become a part of the process from the beginning. 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. To the extent feasible, proactive outreach – including, if possible, in languages other than English – should be done by Staff and the GNSO 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 Chair appointed by the GNSO 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, refraining from pushing a specific agenda, ensuring fair treatment for all opinions, and guaranteeing 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 live with the 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 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, who in other organizations does not play a role in this part of the process. The drafting group typically includes the most vocal voices, to help ensure that the outcome is a constructive one.

- 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.
- Each participant agrees 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 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. 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 there would be travel support funding available if a face-to-face meeting outside of an ICANN Meeting appears useful. If the answer is affirmative, ICANN should consider the rationale for awarding such funding. For example, 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.

3.3 Steps to improve efficiency

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 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.
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. 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 be useful to 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.
 - 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. 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 even 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 typically includes the most vocal voices, to help ensure that the outcome is a constructive one.
- 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 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 three months.

- 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 three months; and

(ii) Tasks the Staff to work with the Council to put in place, within six months, 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).

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 PDP have found it to be inflexible and not reflective of the requirements of successful policy development. Review of PDPs that have been undertaken 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, particular 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 be clarified in the Bylaws. We therefore recommend that the Council and Staff work 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. 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

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 4, 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 align better with ICANN’s consensus policies as defined in its contracts with registries and registrars, and this consistency should be reflected in the Bylaws. In launching a working group to produce policy development recommendations, or in reviewing whether such a group fulfilled its mandate, 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 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

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.”

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, in the first instance, 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's PDP should be better aligned with the contractual requirements of "consensus policies" and also should be more clearly distinguished from general policy advice the GNSO 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 of the influence of the GNSO 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'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 GNSO policy development 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 and the ICANN planning process. The GNSO 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 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). ICANN Staff is in the best position to propose, within three 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 advisable. 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 Council and Staff work together within the next three months 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 Council and Staff 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. Council and Staff 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’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, Council and Staff 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. Council and Staff 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 the Council to work with Staff to develop a draft revised Policy Development Process within three months that incorporates the working group 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.

- Periodic assessment of the influence of the GNSO, 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 Chair to present an annual report to the community on the effectiveness of 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 practice guidelines. The report should be presented at the ICANN Annual General 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 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; and

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

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 will 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 more pressing issues. Second, there is duplication of effort in that differences that emerge in the work of the task forces are then mirrored in the work of the Council, since in both situations the members vote by constituency. Third, the amount of time and energy that the Council has had to devote 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. As the Bylaws state, the GNSO Council is supposed to be responsible for “managing” the policy development process of the GNSO, and 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 addition, there has been a high level of duplication with the same individuals serving on both the Council and PDP task forces, leading to the conclusion that the GNSO has “recreated” itself on these bodies, particularly in terms of policy positions and voting.

It is important to re-establish the GNSO’s primary mission of managing the policy development process, as well as to open up the process of policy formulation. We would therefore like to see the GNSO move away from a model of policy development based on voting, which can encourage division rather than cooperation, and towards a more collaborative, inclusive approach. The formalization of using 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 focused on voting towards becoming a more strategic body with strengthened management and oversight of the policy development process.

5.1 Steps to improve inclusiveness

One 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. 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, with provides representatives with the incentive to do a good job in order to be reelected. We also believe that a limited “grandfather” clause makes sense.

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

We also note that all of the reviews of the GNSO that have been conducted have 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 these areas. For example, GNSO (and constituency) documents, should be more broadly accessible, informative and understandable by the global community of stakeholders. Most importantly, the GNSO website and online public comment processes should be redesigned and (to the extent possible) made multi-lingual, adhering to the following guidelines:

- The GNSO website should be simple for newcomers to understand and use;
- It should be easy to access 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 activity, including Council minutes;
- There should be links to all constituency websites; and
- There should be links to other relevant ICANN activity.

We also recommend that the Council work with Staff to improve the GNSO’s document management and means to solicit meaningful public comments, as well as the use of project-management methodologies. 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 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 guiding the establishment of working groups and monitoring their progress. The Council should decide whether 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 the working group has completed its work, it would 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, of course, reopen the substance of work done 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.

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 subjects just mentioned – benchmarking and trends analysis – might be a prime candidate for such an approach.⁶

⁶ We would also like to reinforce recommendations in the previous Section on policy development that can help the Council establish a clear strategic dimension for its work. These include concrete measures to help

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 in the GNSO, 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, usually pulling in the opposite direction. 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 propose that the Board designate a restructured Council elected from the following four stakeholder groups: registries, registrars, commercial registrants and non-commercial registrants. The Council would be composed as follows: (i) eight (8) members would be elected from two "supply" groups under contract with ICANN -- four (4) from registries and four (4) from registrars; (ii) eight (8) members would be elected from two "demand" groups -- four (4) from commercial registrants and four (4) from non-commercial registrants; and (iii) three (3) additional members would be appointed by the NomCom (although we understand that this number could change depending on the outcome of the NomCom review). Indeed, we note that the Internet Service and Connectivity Providers (ISP), Commercial and Business Users (BC) and Intellectual Property Interests (IP) constituencies already coordinate in cross-constituency meetings and the development of policy positions, putting them in a strong position to transition easily towards a more formal stakeholder group structure. The 19 Councilors will form a

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 (e.g., the effectiveness of outreach, the inclusiveness of stakeholders, and the effectiveness and efficiency of group processes). The Council should also ask for working group input on metrics that could help measure the success of the policy recommended policy. Afterwards, review by the Council could assess the extent to which the policy adopted has been implemented successfully and proven effective.

slightly smaller Council, which is consistent with LSE Rec. #20 to reduce the size. Under this comprehensive restructuring, there would no longer be a justification for weighted voting.

The precise names of the four stakeholder groups, exactly how the two “demand” groups might be defined and other issues regarding this configuration, are questions on which it is particularly important to receive GNSO input. From our perspective, it makes sense, in the first instance, 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 and other registrants with a non-commercial motive as partners in the non-commercial registrants group. The GNSO should have the flexibility to propose an alternative configuration of the stakeholder groups that comprise the “demand” side, but any deviation from the proposal outlined above would have to be approved by the Board.

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 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. 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. But, generally speaking, moving to a working group model should mean that the Council needs to do little more than assure itself that the appropriate rules have been followed. If the model is working properly, 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, however, be instances where the policy presented to the Council presents a problem. For example, some members of the Council may believe that the working group process had not been followed properly. For example, relevant stakeholders had not been part of the process, or a weak Chair may have allowed the views of one stakeholder group to dominate. The best way of dealing with these kinds of problems is careful monitoring of the working group as it progresses, rather than waiting for the end of the process. However, as a safeguard, the Council should be able to vote (by a supermajority) on whether the rules were followed and, if not, what would be the appropriate remedy.

Under another scenario, some members of the Council may believe that a recommendation presented by the working group could not reasonably be implemented. Again, the best way to address this possibility is to ensure that good working group practices are followed: the issue should have been well scoped, all relevant stakeholders should have been involved 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, it is a key responsibility of the Council to monitor the progress of the working group to ensure that best practices are being followed, and that any problems are addressed as soon as they arise. However, as a safeguard, the Council should 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 run process that includes interim reports and “checkpoints,” it would be odd for the Council to find the result untenable. Careful monitoring of the working group during its deliberations should reduce the risk of this occurrence even further.

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 its views. Alternatively, the Council may consider, by supermajority vote, whether to consider first re-scoping the issue.

In addition to restructuring the Council, there are other steps that can help improve its effectiveness. The first step regards improved communication with other ICANN bodies. This can happen through more frequent contacts between the GNSO and the members of the Board elected from the GNSO. It can also happen through 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 would seem to be the 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 moves to a working group model, there may not be as much need for inter-sessional meetings of the Council. There would, however, remain the question of sufficient support for a working group to ensure that it has the tools necessary to be work efficiently and effectively.

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, and GNSO policy development in particular, often do so because they have an interest in the outcome. Otherwise there is no incentive to participate. Sometimes these interests are based on principles and sometimes these interests are financial (either directly in the sense that the person conducts business which could be effected by GNSO policy decisions or indirectly as a representative of a group that could be effected). 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 take part), what is needed in the first instance is a “Statement of Interest” approach that allows the interests of participants to be declared publicly. In addition to filing “Statements of Interest,” consideration should be given to supplementing these with “Declarations of Interest” that would include whether there are issues that are material and specific to “work under consideration” or where a person’s or company’s “interest” might be a material factor. This may be necessary because it is

not possible to assume that everyone will check or be aware of “Statements of Interest” in all cases.

An additional step to improve efficiency (as well as effectiveness) would be for ICANN to provide the Council and constituency 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. Although the GNSO heavily relies on volunteer participants to fulfil its objectives, no training or skills development is currently available to participants 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 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 skill 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 should be available to the broader ICANN community. Some of areas will be applicable to a smaller group (e.g. those who aspire to being working group chairs), while other subjects will have broader appeal. For some areas, there may be a need to have several levels of courses (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. There should also be a form of accreditation or certification available for those who complete the training.

There must also be ways to acknowledge previous experience of individuals and tailor the training to suit them. Given the geographical 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 chair of a working group or member of Council, to

have undertaken the relevant training (or equivalent training), or agree to take it 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 into its intended role as 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 as soon as 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 six months.

- 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 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.

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 to promote effectiveness and efficiency.

- A third important area where the Council can have a significant impact involves working 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. The Council may wish to establish a committee to coordinate its work in this area too.

Proposed Action Item: The Board requests, within six months:

(i) The Council 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 to work with staff to prepare 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) Staff to work with the Council 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 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. Two major, interrelated steps can help achieve this result. First, the Council should be restructured to consist of 16 members elected from four stakeholder groups, comprising “suppliers” under contract with ICANN and “users,” as follows: registries, registrars, commercial registrants and non-commercial registrants. In addition, we recommend that 3 members be appointed by the NomCom for a total of 19 Councilors, although we

recognize that the number of those appointed could change when the NomCom review is complete. The precise names of the four stakeholder groups, and exactly how the two “user” groups might be defined, are questions on which it will be particularly important to receive GNSO input. Second, 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.

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 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 three 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.

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 in creating new constituencies and letting 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 also important because of the desire to develop policy within the ICANN community 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 proponent 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.

In this context, we are aware that there have been ideas circulating to form both an Individuals Constituency⁷ and a Domainers Constituency. Some members of the community view an Individuals Constituency as an important development 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), which is 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 that there is no clear need for such a constituency because the ALAC was established to represent individuals and should focus on doing that. 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, people with the most resources could end up dominating the group in addition to being members of other constituencies. Under the new stakeholder group structure for the Council, however, individuals may find a home within either the commercial or non-commercial “demand” group, depending on how they view their registration(s).

With respect to a possible Domainers Constituency, such a group might be defined as those individuals and companies investing in and developing domain names. It might also be defined in terms of those who hold “portfolios” of domain names, those who focus on the “monetization of numerous domain names,” or those who hold a certain

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>).

number of domain names. Some view domainers as having become a major force in the ICANN community and thus should have some kind of status; the exact status is not as important as gaining a voice. At present, some domainers are part of the BC, but it is unclear how well their interests converge. Under the new stakeholder group structure, domainers might be part of the registrars section (if they are also a registrar), or part of the commercial group, or both.

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. Additionally, an “information barrier” may be hampering participation. The difficulty in obtaining information about the GNSO and its constituencies and activities has been noted elsewhere. In addition, there should be more Staff support for constituency outreach and recruitment.

It should be pointed out that 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 relies significantly on the existence of vibrant and active stakeholders. To maintain a healthy policy 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 the views of all relevant stakeholders contributing to the debate. As ICANN continues to grow as a truly 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 as an organization needs to 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 people who should be involved as stakeholders in the ICANN policy process simply do not know the role that ICANN plays and how becoming involved in a constituency could

enable them to contribute to policy discussions. Well-resourced outreach and recruitment efforts are important in removing this barrier.

For many who might learn about ICANN and be interested in policy discussions, the next barrier to entry is a myriad of different ICANN processes. 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 need to be made available in a variety of languages to meet the needs of ICANN's global audience.

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

In addition to these barriers, ICANN is currently engaged in a series of initiatives aimed at further improving levels of accountability and transparency within the organization as a whole. The GNSO, like the rest of ICANN, needs to ensure that all of its processes adhere to the highest standards in this regard. The reviews of the GNSO suggest that there is a need for greater transparency within constituencies and greater consistency across the constituency structure. Within certain broad and important guidelines, there can still be room for innovation and differentiation.

Within this context, there are a number of areas that need to be addressed. The first is the need for Council-developed, Board-approved 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.
- It should be known when constituencies accept participant applications and make admission decisions, how these decisions are communicated, and how many applicants are successful.
- General information about each participant application and the decision 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 for an applicant to appeal a rejection to a neutral third party.

In addition, the Council should develop, for Board approval, clear operating procedures for each constituency to ensure that all constituencies function in a representative, open, transparent and democratic manner. The operating procedures should reflect the following 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, these rules should include term limits for constituency officers in order to help attract new participants by providing everyone with more of a chance 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). This database will assist with communication to all who are interested in the GNSO or GNSO issues, including notification of new policy issues 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. This can happen by creating a “GNSO-discussion list,” where the individuals who participate in constituencies, working groups and other GNSO processes have posting rights, and their 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 (as opposed to financial aid) that ICANN is prepared to provide on an “as requested” basis. 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 constituency operations. Recs. #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 recs. #7 and #8 specifically called for improving the GNSO website and document management. Sharry rec. #20 called for overhauling the GNSO website so that it can better meet the needs of those interested in its work. It is clearly important for constituency and GNSO documents to be more broadly accessible, informative and understandable by the global community of stakeholders (LSE Rec. #8). There are certainly steps ICANN can take to facilitate the ability of constituency members and the broader community to participate in ongoing PDPs, including by revamping public comment processes and by making translation part of all PDPs (see Sharry Rec. #4). As foreshadowed in the previous Section, constituencies should join the Council and ICANN in working together to improve the GNSO’s website, document management capacity and ability to solicit meaningful public comments on its work.

Rec. #10 of the LSE Review to institute participation and leadership training and certification as part of well-defined benefits to participating in ICANN is just as important for constituency work. As previously noted, 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 action items regarding the constituency structure include:

- 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.

Proposed Action Item: The Board tasks Staff:

- (i) To develop and implement an 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. 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 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. 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 Council, 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 Council should submit these rules and procedures to the Board within six months for approval; and

(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 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 ICANN is prepared to provide on an “as requested” basis. 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 GNSO participants is an important component of encouraging policy development work that is consistent with, and responsive to, ICANN’s priorities and resources.

7.2 Supporting Organizations and Advisory Committees

The policy work of the GNSO increasingly deals with issues that are also of concern to other parts of the ICANN community. Issues such as Internationalized Domain Names (IDNs), for example, 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 as a whole if the Supporting Organizations (SOs) and Advisory Committees (ACs) had greater awareness of the issues that the others were dealing with and attempted to coordinate 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. Consideration could be given to having 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 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 Chair of the GNSO 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, 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” 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 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; the precise development of the stakeholder group concept; and participation rules and operating procedures for the Council and all constituencies. We therefore call on Staff to work closely with the GNSO, especially the Council, in preparing the implementation details.

We suggest that we, as the BGC WG, transition to an “Implementation Oversight Group” that would oversee and manage the implementation process, working with the GNSO and broader ICANN community to effect the improvements approved by the Board.

9. Overall Conclusions

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

- A formalizing working group model should become the focal point for policy development and enhance the PDP by making it more inclusive and representative, and – ultimately – more effective and efficient.
- The PDP needs to be revised 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).

- The GNSO Council needs to be moved 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 and the elimination of weighted voting.
- Constituency procedures and operations should become more transparent, accountable and accessible; and
- GNSO coordination with other ICANN bodies needs to be improved.

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 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:

Recommendation	Action Item	Responsible	Timeframe
WORKING GROUPS 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.	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.	Council, working with ICANN community	Immediately
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	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.	Staff, working with Council	3 months

RIRs, might benefit ICANN.

ICANN Staff must be ready to provide sufficient support to a WG. 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 (see also Section 5.3).

Board tasks Staff (i) to prepare a report on budget implications of moving to a WG model, including costs associated with 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.

Staff ,
working with
Council

3/6 months

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

3 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

Board requests (i) Council to execute a more formal “Policy Development Plan” that is linked

Council/Staff

6/3 months

sufficiently flexible to accommodate changes in priority.

to ICANN’s overall strategic plan but also sufficiently flexible to 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,
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, taking into account the needs of stakeholders who prefer to work in languages other

Council &
Staff

6 months

	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 “suppliers” under contract with ICANN and “users” as follows: registries, registrars, commercial registrants and non-commercial registrants. In addition, we recommend that 3 members be appointed by the NomCom for a total of 19 Councilors (recognizing that number of NomCom could change with that review). Precise names of the four stakeholder groups, and exactly how the two “user” groups might be defined, are questions on which it will be particularly important to receive GNSO input.	Board requests Council, 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 supply interests and two representing demand interests.	Council, 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, 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 Councilors, constituency leaders and others participating in policy development activities must	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 (and participants in WGs), which can be published and updated,	Staff, working with Council	3 months

first complete.

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

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

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 issues.

Board requests Council, 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.

Council, working with Staff as needed

6 months

There should be a centralized registry

Board request Staff, in

Staff, in

6 months

<p>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.</p>	<p>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.</p>	<p>consultation with Council</p>	
<p>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.</p>	<p>Board tasks the Staff with developing, in consultation with the Council, a "tool kit" of basic services that would be made available to all constituencies.</p>	<p>Staff, in consultation with Council</p>	<p>6 months</p>
<p>RELATIONSHIPS Council should propose specific ways in which it can improve communications between it and Board Members elected from the GNSO.</p>	<p>Board requests the Chair of the 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.</p>	<p>Chair of GNSO Council</p>	<p>6 months</p>
<p>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.</p>	<p>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 this issue more generally.</p>	<p>Staff</p>	<p>6 months</p>

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 Public Comments on BGC WG’s preliminary report