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**DRAFT WORKING DOCUMENT OF THE
BOARD GOVERNANCE COMMITTEE’S GNSO REVIEW
WORKING GROUP**

ON

GNSO IMPROVEMENTS

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

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1. Executive Summary

The Board Governance Committee (BGC) created a working group, comprising current and former Board members, to manage the GNSO improvement process. The purpose of the “BGC GNSO Review Working Group” (hereinafter “BGC WG”) is to consider the work that has been done 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 has asked the BGC WG to recommend to the BGC a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications. This preliminary report presents the BGC WG’s initial thinking on the questions under review, for discussion with the BGC and the Community at the ICANN San Juan Meeting and for public comment via the ICANN website. It includes a discussion of areas of emerging agreement, possible recommendations, and questions that need to be addressed. It does not reach, and should not be interpreted as reaching, any definitive recommendations or conclusions at this time, for there is not yet agreement among all members of the BGC WG.

The BGC WG has examined carefully several aspects of the GNSO's functioning, including the constituency structure, the Council and its working methods, and the PDP process. It has done so with several key objectives in mind, including:

- Maximizing the ability for all relevant and interested stakeholders to participate in the GNSO's processes;
- Ensuring recommendations are developed on gTLD "consensus policies" for Board review, and that the subject matter of "consensus policies" is clearly defined;
- Maximizing the quality of policy outputs, ensuring that policy work receives adequate support and is informed by expert advice and substantive stakeholder input;
- Supporting Council efforts to prioritise and benchmark GNSO objectives and align resources as appropriate;
- 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.

Above all, the BGC WG is looking for ways to improve inclusiveness and representativeness in the GNSO's functioning, while also increasing its effectiveness and efficiency.

In some cases, more flexibility will be helpful, while in other aspects more specific guidelines will be necessary. There is agreement that the constituency structure can benefit from improvements, possibly by the formation of three or four broad new "Stakeholder Groups." Each Stakeholder Group could be composed of existing or new self-forming constituencies. Another new idea that is being explored is formalizing the working group model as the focal point for policy development. This could enhance the policy development process by making it more inclusive and representative and – ultimately – more effective and efficient. These ideas fit well with the belief that the GNSO Council should move away from being a legislative body focused on voting and become a more strategic entity with strengthened management and oversight of the policy development process. These and other possible steps are discussed in the sections that follow.

The BGC WG’s initial recommendations raise a number of questions, which we are looking forward to discussing in San Juan. These questions are listed under each Section for the community to consider, and undoubtedly many more will arise during the next few weeks. The Board has made it clear that it plans to work with the GNSO and the ICANN community in a collaborative process designed to strengthen the GNSO.

The next step in this process is the posting of this preliminary report for public comment and discussion in San Juan and afterwards. There will be a Public Forum devoted exclusively to the subject of improvements to the GNSO that will take place on Monday, 25 June, from 16:00 to 18:00. This preliminary report will be posted for public comment for 30 days. After that time, the BGC WG will consider all of the input received and prepare a final draft for public comment and consideration by the BGC. This is likely to occur in August. The BGC will consider the WG report and public comments, and finalize its recommendations on GNSO improvements for Board action.

As the BGC WG and the rest of the ICANN community work together to recommend the appropriate changes, it is important to keep in mind that this is an evolutionary process that reflects the importance of the GNSO to ICANN and builds upon the GNSO’s successes. gTLD policy development is a core function of ICANN and dependent upon volunteers who have helped build the GNSO into what it is today. Due to those GNSO participants and others in the broader ICANN community who have donated a significant amount of time and effort to create numerous policies, including the [Restored Names Accuracy Policy](#), the [Inter-Registrar Transfer Policy](#), and the nearly completed New gTLDs Policy, among others, the GNSO can point to many achievements. We look forward to working alongside the rest of the ICANN community to help the GNSO evolve into an even more effective instrument of policy development.

2. Introduction

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

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 6.2, below. It remains to be clarified whether the term “substantive policies” in the Bylaws refers only to “consensus policies” relating to gTLDs, or also to other issues.

reviews (including the GNSO review) is “to determine (i) whether that [particular] organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

2.2 GNSO Reviews

2.2.1 LSE

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

1. Establish a centralized register of all GNSO stakeholders, including all members of constituencies and task forces.
2. Indicate how many members participate in development of each constituency’s policy positions.
3. Increase staff support to improve coherence and standardization across constituencies.
4. Appoint a GNSO Constituency Support Officer to help constituencies develop their operations, websites and outreach activity.
5. Increase balanced representation and active participation in constituencies proportional to global distributions.
6. Change GNSO participation from constituency-based to direct stakeholder participation.
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 9.1.

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).

The gTLD Registries Constituency (RyC) indicated that in many areas the LSE recommendations were consistent with its own observations and that in a few cases LSE

did not go far enough. The RyC stated that it found commonality with respect to its concerns in roughly 16 areas, covering representativeness of constituencies; dominance by a small core of people; difficulty for newcomers to penetrate constituencies; an arduous process of reaching consensus with an over reliance on voting and a legislative approach; unrealistic time constraints; limited visibility and transparency to a wide range of stakeholders; limited flexibility and adaptability to respond to a rapidly changing environment; inconsistency of public information, procedures and resources across different constituencies; little incentive to develop trust among opposing constituencies; insufficient in-depth information on levels of participation and agreement with regard to constituency positions; lack of standardization of staff support across constituencies; deficiencies in the design of the ICANN and GNSO websites; poor document management processes; lack of a communications strategy and use of project management methodologies; limited use of collaborative work tools; over-reliance on GNSO Councilors in policy development and limited delegation; dominance of public comments by constituency members and their allies; lack of incentives for constituencies to reach agreement; and lack of follow-up on consensus policies that have been implemented.

The RyC generally disagreed with, or did not fully endorse, 8 recommendations: making the Chair role more visible; more F2F meetings; providing travel funding; forming a single constituency of both registries and registrars; removing weighted voting; changing the way of electing members of the Board; reducing the amount of prescriptive provisions in the Bylaws; and assessing periodically the influence of the GNSO's policy development work (due to a need for flexibility for improvements). In several of these areas, however, the RyC was open to discussion and further analysis.

The RyC acknowledged that many of the recommendations are interrelated, but also indicated that it views several areas as most critical: greater emphasis on collaboration, including eliminating voting in policy development; greater documentation of the PDP, including the levels of representativeness and consensus; spreading the PDP workload over a broader base of participants; utilizing the Council as PDP manager rather than as the policy-making body itself; and re-evaluating the constituency model (which might lead to the conclusion that formal constituency groups are not necessary). The RyC suggested that several recommendations could be implemented now while review of final improvements is ongoing: simplifying the PDP process, improving the GNSO website and document management; establishing Councilor term limits; and identifying project management methodologies.

The Commercial and Business Users Constituency (BC) indicated support for 10 recommendations: improving the GNSO website and GNSO document management and making policy development work more accessible; making the GNSO Chair role more visible and important ; strengthening GNSO conflict of interest policies; increasing use of project-management methodologies; providing travel funding for GNSO Councilors (and, in addition, members of Task Forces); abolishing weighted voting and then considering increasing the threshold for finding consensus to 75%; changing the GNSO's election of two Board members to use a Supplementary Vote system (as long as weighted voting is

abolished); reducing the amount of prescriptive provisions in the Bylaws; and assessing periodically the influence of the GNSO's policy development work. The BC also indicated qualified support to establish a centralized register of all GNSO stakeholders; increase staff support to improve coherence and standardization across constituencies; appoint a GNSO Constituency Support Officer; increase balanced representation; publish annually a two-year GNSO Policy Development Plan; rely on more F2F meetings; make greater use of task forces; and create a pool of available external expertise. The BC rejected the other recommendations.

The Non-Commercial Users Constituency (NCUC) found merit in 13 of the recommendations: appointing a GNSO Constituency Support Officer to help constituencies develop their operations, websites and outreach activity; increasing balanced representation; changing GNSO participation from constituency-based to direct stakeholder participation; improving the GNSO website and document management; publishing annually a two-year GNSO Policy Development Plan; making the GNSO Chair role more visible and important; strengthening GNSO conflict of interest policies; establishing term limits on GNSO Councilors; providing travel funding for GNSO Councilors to attend Council meetings; making greater use of task forces; simplifying the GNSO constituency structure and substituting three larger constituency groups representing Registration interests, Business and Civil Society; and reducing the amount of prescriptive provisions in the Bylaws. The NCUC had concerns or no views on the remaining recommendations.

The Intellectual Property Interests Constituency (IPC) indicated full or qualified support for 15 of the recommendations: growing balanced representation; improving the website and document management; publishing a GNSO Policy Development Plan, providing information-based incentives; reconsidering the role of the GNSO Chair; strengthening GNSO conflict of interest policies; increasing use of project-management methodologies; relying on more F2F meetings; providing travel funding for GNSO Councilors; making greater use of task forces; eliminating weighted voting (although its position on the definition of consensus is unclear); changing the GNSO's system of electing Board members; reducing the amount of prescriptive provisions in the Bylaws; and assessing periodically the influence of the GNSO's policy development work. The IPC expressed concerns or questions about the remaining 9 recommendations.

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 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 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 9.2 of this report and the full review at <http://gns0.icann.org/reviews/gns0-review-sec1-22dec04.pdf>). There were nine comments posted on the Sharry Review, including by the GNSO, the Registry Constituency and Danny Younger, see <http://forum.icann.org/lists/gns0-review>. One point by the RyC 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 9.3 of this report and <http://gns0.icann.org/reviews/gns0-review-sec2-22dec04.pdf>). The GNSO 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 A). The members of the BGC WG 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" (hereinafter "BGC WG") is to consider the work done by the LSE report, by Patrick Sharry, and by the GNSO itself, along with public, constituency and Board reactions to those inputs, 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 BGC WG is charged with recommending to the BGC a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

The BGC WG was asked to develop draft and final comprehensive proposals for BGC consideration and public comment. This preliminary report has been prepared for BGC consideration and public input, including at a public forum discussion at ICANN's San Juan meeting later this month. Proposals are being developed to address the policy development process (PDP), voting and representation on the Council, the constituencies/stakeholder participation structure, staffing and support for the Council and constituencies, the distribution of information and solicitation of public comments (including use of online communication tools), and other operational issues. These proposals are being posted for public comment in order to help ensure transparency, as well as provide the opportunity for input, discussion and advice on any proposed changes.

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 all relevant and interested stakeholders to participate in the GNSO's processes;
- 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 6.2 below);
- Maximizing the quality of policy outputs, ensuring that policy work receives adequate support and is informed by expert advice and substantive stakeholder input;
- Supporting Council efforts to prioritise and benchmark GNSO objectives and align resources as appropriate;
- 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 its objectives and the preliminary ideas that follow, the BGC WG has carefully considered the LSE, Sharry and GNSO Self Review recommendations, public comments and constituency comments on various aspects of the GNSO's functioning. The preliminary ideas set forth below focus on key elements of the GNSO's functioning, including its **Constituency Structure**, the **Council**, formalizing the **Working Group** model, revamping the **PDP Process** and its **Relationship** to other ICANN structures. Each of these elements is discussed in terms of how it can contribute to the critical goals of (1) inclusiveness/representativeness; (2) effectiveness; and (3) efficiency. Each section includes possible recommendations and questions that should be discussed.

3. Constituency Structure

The GNSO, as noted in the Bylaws, includes various constituencies representing particular groups of stakeholders. A logical place to begin consideration of improvements to the GNSO as a whole is the constituency structure, which 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. The constituency structure must be inclusive and representative, and able to operate effectively and efficiently. There is emerging agreement that the structure needs to be changed in order to meet these goals.

3.1 Steps to improve inclusiveness

Under the Bylaws, the following self-organized “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.” It might also be important for the Board to assess whether a proposed constituency in fact consists of GNSO stakeholders.

The six constituencies that are currently recognized as representative of a group of GNSO stakeholders in the ICANN Bylaws need not be the same constituencies that will be recognized in the future. Indeed, there is no “magic 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 /or reorganization but without making the number of constituencies unwieldy.

One possibility for organizing future work is to create three or four broad groups that would serve as the foundation for certain GNSO functions, such as electing representatives to the Council. These could be called “Stakeholder Groups.” Each of these groups would be made up of one or more specific constituencies that have been, or will be, self-formed by a distinct stakeholder group.

To provide an example purely for illustrative purposes, one of the three or four broad new Stakeholder Groups might be called the “Commercial Users Stakeholders Group.” It

could include specific self-formed stakeholder constituency groups, such as “Large Business Constituency,” “Small Business Constituency,” “Internet Service Providers Constituency” “Trademark and IP Constituency,” and any other self-formed constituency made up of commercial users. Or, to provide another example for illustrative purposes, there might be a “Non-Commercial Users Stakeholders Group.” This broad grouping could include several self-formed stakeholder groups, such as “Non-Commercial Organization Constituency,” “Individuals Constituency,” “Academic Institutions Constituency,” or other constituencies. There could also be a “Registry Stakeholders Group” and a “Registrar Stakeholders Group,” possibly with self-formed constituencies under each category.

The proposal to create three or 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.”

The BGC WG is not certain at this point about the wisdom of combining registrar and registry interests in the same Stakeholder Group, although it is interested in public comment on this question. ICANN has created strict separations between registries and registrars, in part so that no registry could give any registrar special access. We also note that the two groups have often been in conflict with each other with respect to their roles in providing new services to registrants.

The number of constituencies within each broad Stakeholder Group upon which the GNSO would be organized will depend on the level of interest in the community, and the way in which stakeholders wish to organize. ICANN should thus take steps to clarify and promote the option to self-form a new constituency. The option of forming a new constituency, which would fall under one of the broad Stakeholder Groups, 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 an official language, are aware of the option to form new constituencies. As noted in the current Bylaws, 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, how the new constituency would fit within the overall GNSO structure, i.e., under which GNSO Stakeholder Group.

We note in this context that there have been ideas circulating to form both an Individuals Constituency and a Domainers Constituency. We have not taken a position on either question, but have gathered some information about both suggestions and are interested in learning more at the ICANN San Juan meeting and through public comments online.

With respect to a possible Individuals Constituency, 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>). Membership might be open to any individual, or to those with rights to at least one registration (as with the IDNO proposal). 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, which is an advisory committee to the Board, is mandated to provide advice on all ICANN issues (not just gTLDs) that relate to individual users, and is supported by a global network of structures comprising individual Internet users. Others feel that there is no clear need for such a constituency because the ALAC was established to represent individuals and should be focused on doing that. The ALAC, which is also being reviewed in accordance with the Bylaws, could 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 would end up dominating the group, in addition to being members of other constituencies.

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 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.

One advantage of a new model for organizing stakeholder participation is to remove concern that the addition of new constituencies could create an internal "imbalance" in the current composition of the Council. By creating three or four broad Stakeholder Groups, the number of constituencies is less important and can change 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 an existing constituency, for example due to a lack of outreach, attractiveness for new members or admission rules. Overall, this approach can encourage the participation of more people in the GNSO. Many details would still need to be worked out about the precise functioning of the new Stakeholder Groups, including the extent of coordination among constituencies within each Stakeholder Group, and the relationship between the Stakeholder Groups and the Council. Mechanisms would also need to be put in place to avoid the creation of duplicative or overlapping constituencies.

The new model described above leaves open several questions, which could usefully be discussed at the Public Forum in San Juan. Some of the key questions for further consideration include:

- Which three or four broad groupings of stakeholders might best balance the objectives of inclusiveness/representation, effectiveness and efficiency?
- Would four broad Stakeholder Groups of “Registries,” “Registrars,” “Commercial Users” and “Non-Commercial Users” be an appropriate way to balance these objectives and organize elements of the GNSO’s work? Why or why not?
- Would creation of a Stakeholder Group for “Non-Commercial Users,” possibly including an Individuals Constituency, overlap with the interests represented by the At-Large Advisory Committee (ALAC) and its supporting structures?
- Is there a reason to consider combining registrar and registry interests in the same Stakeholder Group?
- What should be the extent of coordination among constituencies within each Stakeholder Group?
- What would be the roles and responsibilities of these new Stakeholder Groups? What would be their relationship with the Council?
- Are there specific new constituencies that would enhance the inclusiveness and effectiveness of the GNSO? For example, would the creation of an Individuals Constituency and/or a Domainers Constituency, as some have suggested, be useful?

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. The BGC WG is in the process of exploring the fee structure of the current six constituencies in an effort to see if there are ways to keep costs, and hence fees, to a minimum. If, for example, ICANN were to provide more administrative support to constituencies, they may be able to reduce the fees they charge members. It is also 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, its constituencies and activities, has been noted, as has the lack of professional support for constituency outreach and recruitment, and the varied processes for joining a constituency. Questions that can be considered further at the ICANN San Juan meeting and through online public comments include:

- Has the amount of payment been a barrier to entry for all constituencies, or for just some constituencies? Has it hindered business entities from joining?

- How much would the cost have to be reduced (e.g., by administrative support from ICANN) in order to encourage more entities from developing countries to participate?
- Would the Stakeholder Groups need funding? If so, would it be provided by the constituencies or ICANN?

3.2 Steps to improve effectiveness

There is a need for greater transparency within constituencies and for greater consistency across the constituency structure. The Council should develop participant rules for all constituencies, with Board supervision only to establish principles (e.g., openness, transparency and clarity) in the event of a problem. 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. Each constituency must keep records of successful and unsuccessful applicants for participation; general information about each application and the decision should be publicly available. There must be a clear avenue for an applicant to appeal a rejection to a neutral third party. The ICANN Ombudsman, for example, might be the appropriate entity to review a rejection.

The Council should also develop clear operating procedures for each constituency to ensure that it functions in a representative, open, transparent, and democratic manner. Such rules might, for example, require that all mailing and discussion lists be open and publicly accessible (with posting rights limited to members). They might also specify which constituency documents must be posted, and in what time frame, so as to encourage transparency and foster meaningful discussion.

These rules might include term limits for constituency officers, so as to help attract new participants by providing everyone with more of a chance to participate in leadership positions. 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 policy position (LSE Rec. #2).

Questions that can be considered further include:

- To what extent should the Council require consistent operating procedures among constituencies?
- Are uniform term limits for constituency officers needed?
- Is a centralized registry of constituencies' participants needed and should all constituencies be required to post information about their participants?

- Should constituencies be required to publicly document participation in their policy development efforts?

3.3 Steps to improve efficiency

There are several steps that can help improve the efficiency of constituency operations. Recommendations #3 and #4 of the LSE Review suggest that having dedicated staff support for constituencies could assist with standardization, outreach and the internal work of the constituencies, as well as lower constituency budget needs and reduce membership fees. These are sound ideas, although staff obviously should not be used to advocate constituency positions.

In terms of internal work, ICANN can 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. To support GNSO policy development efforts, ICANN can also recruit and pay external experts, if needed, to provide assistance.

Indeed, LSE recommendations #7 and #8 specifically called for improving the GNSO website and document management. Sharry recommendation #20 too 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). These steps can be agreed among the Council and ICANN Staff.

Recommendation #10 of the LSE Review to institute participation and leadership training and certification as part of well-defined benefits to participating in ICANN warrants further consideration.

Providing Council and constituency participants with training and education to better equip and motivate them to deal with policy work, and to help ensure that they have the knowledge and skills needed to be successful, can help increase effectiveness and efficiency of the GNSO. Although the GNSO heavily relies on its volunteer participants to fulfill its objectives, no training or skill 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 these leaders have been effective to date, the increasingly complex environment and policy challenges facing the GNSO merits 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 more geographically and functionally diverse backgrounds. For example, non-native English speakers and those from less individualist working

cultures may be less likely to be considered for leadership positions. As ICANN becomes more international, it needs to attract and develop talented and committed community members and to provide incentives for participants to continue to volunteer in our work.

It is clear that, at a minimum, there are measures that Staff should take to provide constituency officers and elected representations with some training. These include a basic orientation covering ICANN and important aspects of constituency work, such as the scope and procedures of the policy development process.

Questions that can be considered further include:

- What type of education and training do current Council members and constituency leaders think would be most beneficial?
- Should some minimum training requirements be instituted for Council and task force chairs?

3.4 Preliminary recommendations

Emerging recommendations regarding the constituency structure include:

- Creating three or four broad Stakeholder Groups that would serve as the foundation for certain GNSO functions, such as electing representatives to the Council. Each of these groups would be made up of one or more specific constituencies that have been, or will be, self-formed by a distinct stakeholder group.
- ICANN should take steps to clarify and promote the option to self-form a new constituency as part of a Stakeholder Group. ICANN 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.
- The Council should develop participation rules for all constituencies, with Board supervision only as necessary to establish principles (e.g., openness, transparency and clarity).
 - 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.
- There must be a clear avenue for an applicant to appeal a rejection to a neutral third party.
- The Council should develop clear operating procedures for each constituency to ensure that it functions in a representative, open, transparent, and democratic manner.
 - Mailing and discussion lists should be open and publicly archived (with posting rights limited to members).
 - 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 and comprising to achieve objectives and closure on issues.
- There should be a centralized registry of the participants of all constituencies and those involved in any policy development work, which is up-to-date and publicly accessible.
- ICANN should provide dedicated staff support for constituencies to assist with standardization, outreach and the internal work of the constituencies, which can lower constituency costs and fees.
 - 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.
- Constituency and GNSO documents should be more broadly accessible, informative and understandable by the global community of stakeholders.
- ICANN should revamp public comment processes and make translation part of all PDPs.
- Staff can provide constituency officers and elected representations with some training, including a basic orientation covering ICANN and important aspects of

constituency work, such as the scope and procedures of the policy development process.

3.4 Preliminary questions

Questions for consideration at the ICANN San Juan meeting and for input online include:

- Which three or four broad groupings of stakeholders might best balance the objectives of inclusiveness/representation, effectiveness and efficiency?
- Would four broad Stakeholder Groups of “Registries,” “Registrars,” “Commercial Users” and “Non-Commercial Users” be an appropriate way to balance these objectives and organize elements of the GNSO’s work? Why or why not?
- Would creation of a Stakeholder Group for “Non-Commercial Users,” possibly including an Individuals Constituency, overlap with the interests represented by the At-Large Advisory Committee (ALAC) and its supporting structures?
- Is there a reason to consider combining registrar and registry interests in the same Stakeholder Group?
- What should be the extent of coordination among constituencies within each Stakeholder Group?
- What would be the roles and responsibilities of these new Stakeholder Groups? What would be their relationship with the Council?
- Are there specific new constituencies that would enhance the inclusiveness and effectiveness of the GNSO? For example, would the creation of an Individuals Constituency and/or a Domainers Constituency, as some have suggested, be useful?
- Has the amount of payment been a barrier to entry for all constituencies, or for just some constituencies? Has it hindered business entities from joining?
- How much would the cost have to be reduced (e.g., by administrative support from ICANN) in order to encourage more entities from developing countries to participate?
- Would the Stakeholder Groups need funding? If so, would it be provided by the constituencies or ICANN?

4. GNSO Council

In addition to the constituencies, the GNSO consists of “a GNSO Council responsible for managing the policy development process of the GNSO” (see Bylaws, Article X (2) (ii)). Each of the six constituencies that are currently recognized as representative of a group of GNSO stakeholders in the ICANN Bylaws can elect three representatives to the Council. The Council also includes three people selected by ICANN’s Nominating Committee, for a total of 21 Councilors.

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 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. It does not need to conduct policy development itself. Rather, it is charged with managing and overseeing this process, and ensuring that it can produce useful policy recommendations to the Board. Nonetheless, there has been a high level of duplication with 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 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. We note that other policy development organizations, such as the IETF and W3C, have used the concept of “working groups” to facilitate successful policy development, and that the RIRs use open mailing lists to develop their policies. The formalization of using working groups in the ICANN model will be discussed in the next section. In this section, we will suggest ideas to help the Council move from being a legislative body focused on voting towards a more strategic body with strengthened management and oversight of the policy development process.

4.1 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). Indeed, overall rules for term limits could gradually be synchronized throughout the ICANN system. As an example, the general rule could be to establish a limit of two terms. There might also be an option for a third term in extenuating circumstances, with a higher vote required for that to happen. There might also need to be provisions to address incumbency.

4.2 Steps to improve effectiveness

The GNSO Council should focus more on its strategic role, rather than act as a legislative body. Above all, it should work closely to engage in constructive dialogue with other parts of the ICANN community in order to set the strategic vision for policy development for gTLDs and coordinate the policy development process.

We propose that among the Council’s most important functions should be guiding the establishment of working groups and monitoring their progress. The Council would decide whether to organize a working group (WG), 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 would be responsible for launching a WG by deciding upon the appropriate charter and timeline (including milestones), and ensuring that the WG has an experienced and neutral Chair, performs adequate outreach and has adequate technical expertise. The Council would be available to provide guidance on these issues as needed. Once the WG has completed its work, it would present its conclusions to the Council for review. The Council would then review the results with the possibility of preparing an optional statement to accompany submission of the WG’s conclusions to the Board. Such a statement could provide the Council’s recommendation on how well the WG performed its function under its Charter, including with respect to outreach, inclusiveness, effectiveness and efficiency.

As part of establishing a clear strategic dimension for its work, the Council should be in a position to enact concrete measures to help forge policy development and implementation priorities. The Council could, for example, play an important role in working with ICANN Staff to develop ways to assess and benchmark gTLD policy implementation. It

could perform a similar function with respect to the analysis of 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 should also work with ICANN Staff to improve the GNSO website, document management capacity and means to solicit meaningful public comments.

4.3 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 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.

As the Council becomes a more strategic and supervisory body, the issue of voting will become less important. There will still be issues upon which the Council may need to vote, such as whether to initiate a policy development process on a certain issue, or whom to elect to the ICANN Board and as GNSO officers. While broad agreement might be able to emerge on more operational questions without voting, that may not always be realistic. As a result, while voting issues will become less important, there will still need to be an appropriate mechanism in place for when voting is necessary. Any voting mechanism is of course related to the question of the constituency structure, discussed above and yet to be determined.

The voting structure will also be related to the question of how many councilors there will be. Currently, each constituency elects three members. If there were four Stakeholder Groups, and each one elected three members, it would result in 12 councilors. If the NomCom continued to appoint 3 members, then size of the Council would be 15. This would be consistent with LSE Rec. #20 to reduce the size of the Council.

It will be helpful to discuss at the ICANN San Juan meeting and receive online input on the following questions:

- What should be the voting structure for a revitalized Council?
- Should weighted voting be eliminated? (If, for example, there were to be four broad new Stakeholder Groups, such as (i) "Commercial Users Stakeholders Group," (ii) Non-Commercial Users Stakeholders Group," (iii) "Registry Stakeholders Group," and (iv) "Registrar Stakeholders Group," what would be the rationale for weighted voting?)
- If weighted voted is eliminated, would it be for all decisions, or just for reviewing WG output on policy development (i.e., a recommendation that the Board might adopt as a "consensus policy")?
- Should there be a voting threshold to determine whether a WG has met its mandate and thus its recommendations should be forwarded to the Board for consideration?

- How many councilors should each Stakeholder Group elect?
- Should the NomCom continue to appoint councilors? If so, how many?
- What process should the Council use to select members for the Board?

There are additional steps that can help improve the effectiveness of the GNSO Council. The first regards improved communications. This can happen through more frequent contacts between the GNSO Chair 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, as described in Section 7 below. These steps are consistent with LSE Rec. #11, which questioned the profile of the GNSO Council Chair.

Another step is to increase the use of project-management methodologies, as suggested by LSE Rec. #14 and GNSO Self Review Rec. #10.2.7. ICANN plans to increasingly apply project management methodologies and practices to its policy support activities to: achieve consistent and predictable way in organizing and managing activities to improve quality, transparency, and accountability; introduce and maintain sound and efficient business processes; and align projects and allocation of resources to projects with the strategic objectives of ICANN.

LSE Rec. #15 also suggested that enhanced efficiency could result from more reliance on F2F meetings. In the last few years there have indeed been inter-sessional meetings of the GNSO 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 or effective 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 GNSO Council. There would, however, be a question of sufficient support for a working group to ensure that it has the tools it needs to be effective

A third step to improve efficiency is to tighten the Council's conflict of interest provisions, so that they are consistent with those of the Board, as suggested by LSE Rec. #12. Ensuring that there are strong provisions in place, which are consistent with other parts of the ICANN structure, can help ensure that Councilors and their decisions are not plagued by allegations or suspicions of conflicts of interest.

4.4 Preliminary recommendations

Emerging recommendations regarding the Council include:

- There appears to be significant support for the GNSO moving 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 Council should transition from being a legislative body into a strategic manager overseeing policy development.
- Among the Council's most important functions should be guiding the establishment of WGs and monitoring their progress. The Council would be responsible for launching a WG by deciding upon the appropriate charter and timeline, and ensuring that the WG has an experienced and neutral Chair, performs adequate outreach and has adequate technical expertise. The Council would be available to provide guidance on these issues as needed.
 - Once the WG has completed its work, it would present its conclusions to the Council for review. The Council would then review the results with the possibility of preparing an optional statement to accompany submission of the WG's conclusions to the Board.
 - Such a statement could provide the Council's recommendation on how well the WG performed its function under its Charter, including with respect to outreach, inclusiveness, effectiveness and efficiency.
- The Council could play an important role in working with ICANN Staff to develop ways to assess and benchmark gTLD policy implementation. It could perform a similar function with respect to the analysis of 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 should work with ICANN Staff to improve the GNSO website, document management capacity and means to solicit meaningful public comments.
- Voting should become less important. There will still be issues upon which the Council may need to vote, and so an appropriate mechanism will need to be in place. Any voting mechanism is of course related to the question of the constituency structure that is developed.
- The number of councilors could change depending upon adoption of a new constituency structure.
- 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.
- There should be more frequent contacts between the GNSO Chair and the members of the Board elected from the GNSO. There should also be more frequent contact among the Chairs of the GNSO, other Supporting Organizations and Advisory Committees.
- There should be increased use of project-management methodologies.

- The Council’s conflict of interest provisions should be tightened so that they are consistent with those of the Board.

4.5 Preliminary questions

Questions for consideration at ICANN’s San Juan meeting and for online input include:

- Recognizing the link to the question of constituency structure, what should be the voting structure for a revitalized Council?
- Should weighted voting be eliminated? (If, for example, there were to be four broad new Stakeholder Groups, such as (i) “Commercial Users Stakeholders Group,” (ii) Non-Commercial Users Stakeholders Group,” (iii) “Registry Stakeholders Group,” and (iv) “Registrar Stakeholders Group,” what would be the rationale for weighted voting?)
- If weighted voted is eliminated, would it be for all decisions, or just for reviewing WG output on policy development (i.e., a recommendation that the Board might adopt as a “consensus policy”)?
- Should there be a voting threshold to determine whether a WG has met its mandate and thus its recommendations should be forwarded to the Board for consideration?
- How many councilors should each Stakeholder Group elect?
- Should the NomCom continue to appoint councilors? If so, how many?
- What process should the Council use to select members for the Board?

5. Working Groups

There is significant support in the BGC WG for having a Working Group model become the foundation for consensus policy development work in the GNSO, as well as for other Council activities. This model could constitute an improvement over the current system, in which the GNSO Council essentially replicates itself through the task force structure. As discussed above, the current system can lead to inefficiencies and even deadlock. A policy development process based on voting encourages participants to try and 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 interest of the Internet as a whole. In a more open, inclusive working group setting, participants would 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.

We note that other bottom-up policy development organizations, including the IETF and W3C, have adopted a model of open-ended working groups to achieve agreement on recommendations. In addition, the RIRs formulate their policies on mailing lists before they are presented in a public forum to see if there is consensus.

The IETF, which functions as the protocol engineering, development, and standardization arm of the Internet Architecture Board (IAB), 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>.)

The World Wide Web Consortium (W3C), which is an international consortium that develops protocols and guidelines focusing Web interoperability, also uses open-ended working groups to facilitate its policy development process. 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. It 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.

Consensus is considered a core value of W3C. To promote consensus, the W3C process requires Chairs of the 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 the 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 strives to make consensus decisions where there is significant support and few abstentions. There is no requirement that a particular percentage of eligible participants agree to a motion in order for a decision to be made. To avoid decisions where there is little support and many

abstentions, groups set minimum thresholds of active support before a decision can be recorded.”² 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, see <http://www.arin.net/policy/irpep.html>.

The IETF, W3C and RIR models may 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 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 WG 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 is to examine how task force recommendations might be improved to address concerns that have been raised about them. In the WHOIS WG, however, only constituency representatives are full “members” and able to vote. The vast majority of participants are called “observers.” Approximately 40 members of the latter group are new to the GNSO process.

Preliminary feedback from Staff involved in both of these working groups suggests that this model has potential for the GNSO and ICANN. It is considered 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. In a task force, those who know they have a majority have little incentive to cooperate with the minority or compromise, and the minority is tempted to focus on spoiling activity rather than

² 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.

constructive criticism. The WG model is of course more labor intensive for both Staff and the Chair, including in terms of assisting new participants get up to speed and policing mailing lists.

5.1 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 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.

To promote this 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 constituencies to encourage broad participation.

5.2 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 any successful outcome. Such a person, for example, should be able to distinguish between participants who offer genuine reasons for dissent, and someone who is raising unjustified issues in an effort to block progress. The Chair should have the authority to enforce agreed rules against anyone trying to disrupt discussions, and could exclude people in certain cases. In addition, the Chair should be able to ensure that anyone joining a working group after it has begun agrees not to reopen previously decided questions, and to have reviewed all documents and mailing list postings. 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.

A second aspect of an effective model will be the development of clear internal rules to govern such working groups, including with respect to conflict-of-interest disclosures and protections. The Council should be the appropriate body to develop these operating principles, ensuring that they are responsive to a variety of situations and will lead to sound policy development. The Council may wish to consider the experience of W3C and others, which are outlined above, in developing these rules. This effort might result in the following kinds of principles, provided here for illustrative purposes:

- 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.
- The Chair must work to foster consensus, trying to design and promote proposals that can be acceptable to all participants.
- “Agreement” might be defined as occurring when a substantial number of individuals in the group support the decision.
- Where unanimity is not possible, a group could strive to reach agreement on points where there is significant support and few abstentions. Obviously, decisions where there is widespread apathy should be avoided.
- If, even after careful consideration of all points of view, a group is unable to reach agreement, the Chair may record a decision where there is dissent (i.e., there is at least one formal objection) so that the group may still make progress. (This option should be used only in an extreme case in order to break a deadlock and make progress on other issues, and as long as support for the recorded decision is significant and well documented.)
- 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.
- 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 procedure.

A third component of a successful working group will be the ability of ICANN Staff to provide support to these working groups. One aspect is recruiting (and compensating) outside experts for assistance on particular areas. These decisions will of course be made on a case-by-case basis, depending on the issue under discussion and the expertise of the participants in the working group.

We also note that there are likely to be budget implications in moving to a working group model more frequently, and now is an ideal time in ICANN's development to consider this question. It does appear logical to align ICANN resources with one of its most important functions, namely effective policy development relating to gTLDs. In this regard, it will be important to ensure that the GNSO has the infrastructure and support in place to oversee a successful working group structure.

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.

Should, for example, there be any travel support funds available if a face-to-face meeting outside of an ICANN Meeting appears useful? Would there be sufficient funding to allow at least one participant from each constituency to request travel support? Rather than recreate the problems of the task force structure, might this provide an incentive for people to form and join relevant constituencies?

In assessing whether to adopt fully a working group model, we are guided by acknowledgment that the power to make decisions on policy ultimately lies with the Board. As a result, the community could be better served by policy recommendations that report the complete range of views, including majority and minority views, rather than reflect a watered-down compromise that was necessary to gain enough votes to pass the Council.

5.3 Steps to improve efficiency

As indicated above, both a strong, neutral Chair and clear guidelines are critical components of adopting an effective working group model. The Council thus has a vitally important role to play in terms of both selecting the Chair and developing the operating principles for working groups. As important as is inclusiveness, it cannot be achieved at the expense of efficiency. Thus Council agreement on clear rules of the road for all working groups, and realistic charters and schedules for each working group, will be necessary for this model to work. With these issues properly addressed, a working group model could achieve a number of goals that have so far eluded recent task forces.

5.4 Preliminary recommendations

Emerging recommendations regarding formalizing a working group model include:

- There is significant support in the BGC WG for having a Working Group model become the foundation for consensus policy development work in the GNSO, as well as for other Council activities.
- 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, a reasonable amount of time before work is set to begin.
- A working group should have a strong, experienced, respected and neutral Chair appointed by the GNSO.
- The GNSO should develop operating principles for the working groups to promote the development of sound policies. Possible principles could include:

- The Chair must ensure that the working group considers all legitimate views and objections, and endeavors to resolve them, whether these views and objections are expressed by the active participants or others.
- The Chair must work to foster consensus, trying to design and promote proposals that can be acceptable to all participants.
- “Agreement” might be defined as occurring when a substantial number of individuals in the group support the decision.
- Where unanimity is not possible, a group could strive to reach agreement on points where there is significant support and few abstentions. Decisions where there is widespread apathy should be avoided.
- There should be a minimum threshold for active support before a decision can be considered to have been reached.
- If, even after careful consideration of all points of view, a group is unable to reach agreement, then the Chair may record a decision where there is dissent (i.e., there is at least one formal objection) so that the group may still make progress. (This option, however, should be used only in an extreme case in order to break a deadlock and make progress on other issues, and as long as support for the recorded decision is significant and well documented.)
- 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.
- 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 procedure.
- It will be helpful for ICANN Staff to be able to recruit and pay outside experts for assistance to working groups on particular areas.

5.5 Preliminary questions

Questions for consideration at ICANN’s San Juan meeting and for input online include:

- How would a working group approach be aligned with ICANN’s contractual obligations on development of “consensus policies”?
- Are there other models of an organization using consensus-based working groups and decision-making processes that it would be helpful to learn from?
- What kind of operating principles should the GNSO develop for the working groups to promote the development of sound policies?

- What kind of operating principles should the GNSO develop for the working groups to promote the development of consensus?
- What kinds of conflict-of-interest disclosures or protections are necessary in a working group model?
- What are the budget implications of moving to a working group model?
- What might be the right balance between conducting work on mailing lists and in person?

6. Policy Development Process (PDP)

Changes in the constituency structure, the way in which the Council operates, and the idea of introducing working groups in lieu of task forces, are all designed to improve the most essential task the GNSO is responsible for – policy development. There are also other steps that can be taken to improve what is commonly referred to as the “PDP process.”

6.1 Steps to improve inclusiveness

As described above, using working groups to conduct policy development work can offer significant benefits over a task force model in terms of broadening participation and improving the inclusiveness of the process.

6.2 Steps to improve effectiveness

Periodic assessment of the influence of the GNSO, including its policy development work, will be an important component of success. 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 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.

The Council may wish to ask each working group to include in its report a self-assessment of lessons learned. It may also seek the WG’s input on metrics that could help measure the success of a policy (see GNSO Self Review Rec. #10.3.4). Subsequent review by the Council could discuss the extent to which the policy adopted has been effective and implemented successfully (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 should publish annually a “Policy Development Plan” for current and upcoming work. A Policy Development Plan, to be effective, on the one hand must be linked to ICANN’s overall strategic plan, and on the other hand must be 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). The GNSO, working together with ICANN Staff, would seem to be in the best position to make concrete recommendations on how to align the PDP process with ICANN’s planning. This work would be consistent with the Council’s new focus on developing a strategic vision, rather than functioning as a legislative body.

In addition, it is important that the PDP process align better with ICANN’s consensus policies as defined in its contracts with registries and registrars, and that this consistency also 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.

ICANN’s registry agreements³ 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

³ 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.

related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); (D) maintenance of and access to accurate and up-to-date information concerning domain name registrations; (E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and (F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

Although the contracts suggest that the Bylaws will set forth a specific Consensus Policy development process, at present they contain only a general policy development process. It thus falls to the Council, 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. As suggested above, the GNSO's PDP process should be better aligned with the contractual requirements of "consensus policies" and could also be more clearly distinguished from general policy advice.

The Bylaws might be amended to make clear that "consensus policies" can be created only on a set of defined issues and in accordance with certain procedures, referencing ICANN's contracts. The Bylaws might also note that what is needed to develop a consensus policy is a process for consultation and expression of views, rather than voting by GNSO representatives, and a Board decision.

6.3 Steps to improve efficiency

Recommendation #23 of the LSE Review recommended that the PDP rules should be removed from the Bylaws in order to provide greater flexibility, while recommendation #5 of the Sharry Review suggested that the Council seek approval from the Board for revised PDP rules. 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 10.2 of the GNSO Self Review, such as requiring work to be done prior to launch of a PDP and strong staff and expert support. Recommendation 10.1.2 of the GNSO Self Review 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."

The procedure for developing "consensus policies" will need to continue to be established by the Bylaws because that is what the contracts require. The BGC WG recommends that the Council develop proposed PDP rules for Board approval and that these rules become part of the GNSO's operating procedures. In doing so, the Council should consider emphasizing the importance of the work that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert

research in order to define properly the scope, objective and schedule for a specific policy development goal. The Council should also consider recommending to the Board whether there are certain issues, such as the adjustment of timelines for PDP, where the procedure in the Bylaws should specify that the Council could make the decision.

6.4 Preliminary recommendations

Emerging recommendations regarding the PDP include:

- Self-assessment by the Council and its working groups can be an important component, and lead to direct improvements in the GNSO's ability to make meaningful policy contributions.
- The Council may wish to ask each working group to include in its report a self-assessment of lessons learned. It may also seek WGs input on metrics that could help measure the success of a policy. Subsequent review by the Council could assess the extent to which the policy adopted has been effective and implemented successfully.
- It would be helpful for the PDP process to align better with ICANN's strategic plan and operations plan. The GNSO, working together with ICANN Staff, should make concrete recommendations on how to align the PDP process with ICANN's planning.
- The PDP process should also 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.
- The Council should propose updated draft PDP procedures for the Board to approve, which might be able to include greater flexibility on certain aspects (e.g., establish timelines for working groups).

6.5 Preliminary questions

Questions for consideration at ICANN's San Juan meeting and for input online include:

- What are ways to encourage the PDP process to align better with ICANN's strategic plan and operations plan?
- What are ways to encourage the PDP process to align better with ICANN's consensus policies as defined in its contracts with registries and registrars? Should such consistency also be reflected in the Bylaws?
- How might the GNSO improve the PDP rules? Would it 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? What other issues are important? How much flexibility can

the Council have in adjusting the rules (e.g., with respect to timelines for working groups? Other issues?)

7. Relationship to Other Parts of ICANN

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. 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 ensuring that policy development work is consistent with ICANN’s priorities and resources.

7.2 Supporting Organizations and Advisory Committees

One area not identified in the LSE Review, but which could improve the effectiveness of the GNSO, is to improve coordination with, and among, ICANN’s other supporting organizations (SOs), the ccNSO and the ASO, and other structures. 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. It could also be helpful for the Chairs of the three SOs to engage in more communication. Consideration might be given to having a coordination call take place at least a month before each ICANN meeting to discuss the agenda and goals, which 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. Consideration might also be given to developing a more formal process of seeking input from other ICANN organizations on each proposed GNSO policy (Sharry Rec. #6).

7.3 Preliminary recommendations

Emerging recommendations regarding the relationship of the GNSO to other ICANN structures include:

- Both the GNSO and Staff should take steps to maintain a close and supportive relationship, which is an essential component of ensuring that policy development work is consistent with ICANN's priorities and resources.
- The GNSO should improve coordination with, and among, ICANN's other supporting organizations (SOs), the ccNSO and the ASO, and other structures.
- It might be useful for the Chairs of the three SOs to engage in more communication. Consideration might be given to having a coordination call take place at least a month before each ICANN meeting to discuss the 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.

7.4 Preliminary questions

Questions for consideration at ICANN's San Juan meeting and for input online include:

- Are there steps the GNSO can take to enhance its relationship with Staff and the rest of the ICANN community?
- Are there steps that Staff can take to enhance its relationship with the GNSO?
- Are the Chairs of the other two SOs, the GAC and the ALAC interested in more coordination?

8. Conclusions

TBD

9. Annexes – see separate “Annexes” document containing the following:

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

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

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

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