

GNSO Operating Procedures

GCOT Recommended Additions/Modifications to Chapter 4.0-Voting

4.0 Voting

4.1 Quorum

In order for the GNSO Council to initiate a vote, a quorum must be present. A quorum is a majority of voting members in each House, which must include at least one member of each Stakeholder Group.

4.2 Voting Thresholds

Unless otherwise specified in these procedures or in the ICANN Bylaws, to pass a motion or other action, greater than 50% of the eligible voters in each House must cast affirmative votes. For all votes taken, the number of eligible voters in each House shall be fixed to the number of seats allocated in the Bylaws (a.k.a. the denominator) and is not affected by the number of members present or absent at the meeting in which the motion or other action is initiated. For rules and procedures concerning abstentions and their impact on voting thresholds, refer to Section 4.5 below.

4.3 Motions and Votes

4.3.1 Eligibility: All actions of, or votes by, the GNSO Council are taken or cast only by the members of the GNSO Council. Except as otherwise provided in these procedures, persons who are not Council members may not vote. Acts by the GNSO Council members present at any meeting at which there is a quorum shall be acts of the GNSO Council unless otherwise provided herein.

4.3.2 For each motion or action of the GNSO Council requiring a vote, Councilors may enter either a “No”, “Yes, or “Abstain.” For a vote of “Abstain,” a reason or explanation is required. For votes of “No” or “Yes”, at the discretion of the Councilor, an explanation or reason may be provided which will be recorded in the meeting minutes.

4.4 Absentee Voting

4.4.1 Applicability:

Absentee voting is permitted for the following limited number of Council motions or measures.

- a. Initiate a Policy Development Process (PDP);
- b. Approve a PDP recommendation;

- c. Recommend amendments to the GNSO Operating Procedures (GOP) or ICANN Bylaws;
- d. Fill a Council position open for election.

4.4.2 Absentee ballots, when permitted, must be submitted within the announced time limit, which shall be 72 hours from the meeting's adjournment. In exceptional circumstances, announced at the time of the vote, the Chair may reduce this time to 24 hours or extend the time to 7 calendar days, provided such amendment is verbally confirmed by all Vice-Chairs present.

4.4.3 The GNSO Secretariat will administer, record, and tabulate absentee votes according to these procedures and will provide reasonable means for transmitting and authenticating absentee ballots, which could include voting by telephone, e-mail, web-based interface, or other technologies as may become available.

4.4.4 Absentee balloting does not affect quorum requirements.

4.5 Abstentions

4.5.1 Duty of Councilors, Constituencies, and Stakeholder Groups

The GNSO Council is, by design, a small number of members organized into two voting Houses comprised of 7 and 13 members respectively, representing Stakeholder Groups as prescribed in the ICANN Bylaws (see <http://www.icann.org/en/general/bylaws.htm#X>). If approved within a particular Stakeholder Group Charter, a GNSO Council member may be a representative of a Constituency within that Stakeholder Group. Given the Council's size and the voting thresholds that have been defined, it is important that each Stakeholder Group (or Constituency, where applicable) vote decisively, through its appointed or elected Councilors, on every matter that is before the Council for action.

When exercising his/her voting responsibilities on Council matters, a GNSO Councilor is expected to comply with any obligations prescribed within the applicable Stakeholder Group or Constituency Charter governing Councilor's appointment to the Council. If such Charter procedures are silent with respect to voting guidance, directions, or restrictions, the Councilor may use his/her best informed judgment, unless specifically directed as described in Paragraph 4.5.3-a below.

When circumstances regarding a potential voting abstention occur that would otherwise prevent a Councilor from discharging his/her responsibilities (see Paragraph 4.5.2), the Councilor's appointing organization is provided a set of remedies (see Paragraph 4.5.3) designed to enable its vote to be exercised. For a Nominating Committee Appointee (NCA) assigned to a House (hereinafter House NCA), certain remedies are available and prescribed based upon a set of specific criteria, conditions, and implementation rules without requiring formal action by the Nominating Committee.

Specific Councilor obligations include:

- a. Active participation: a Councilor is expected to actively participate in the regular affairs of the GNSO Council including, *inter alia*, attending its scheduled meetings, staying abreast of the technical and administrative agenda, engaging in relevant email and live discussions, reading minutes, evaluating reports, listening to meeting recordings (in the event of absence), asking questions that foster learning, voting responsibly on all matters before the Council, and periodically reviewing the performance of the Chair and Vice-Chairs.
- b. Reasonable inquiry: Councilors should request and receive sufficient information, including support from their Constituencies or Stakeholder Groups, as appropriate, so Councilors may carry out their responsibilities. When a problem manifests itself or some issue does not make sense, a Councilor has a duty to inquire into the surrounding facts and circumstances and seek guidance.

4.5.2 Abstention Categories

Circumstances leading to a potential voting abstention can arise when a Council member perceives a set of conditions, relative to some action or motion before the Council that warrants his/her recusal from participating and/or voting. For purposes of the Council's operating procedures, abstentions will be grouped into two categories varying by severity and recommended action: "volitional" abstentions and "obligational" abstentions.

a. Volitional Abstentions

Circumstances may occur when a Council member elects to refrain from participating and voting for reasons that may include, but are not limited to:

- o Perception of being inadequately informed
- o Has not participated in relevant discussions or studied available materials
- o Lacks sufficient understanding, expertise, or technical knowledge

The above list itemizes several potential reasons for a volitional abstention; however, as described in Paragraph 4.5.1 above, it is the duty of Council members to remain informed, to exercise their responsibilities to vote, and to take whatever reasonable measures are available so that this category of abstentions is minimized to the greatest extent possible. Appointing organizations are encouraged to provide sufficient guidance, assistance, education, and direction, where applicable, to avoid circumstances that might otherwise result in a volitional abstention.

b. Obligational Abstentions

This category of abstentions results from conditions in which a Councilor may find that he/she is unable to vote on a measure due to a competing personal (e.g. religious), professional, or political interest that interferes with his/her ability to participate in the matter or where participation raises ethical questions.

Disclaimer concerning the term "Conflict of Interest": There are certain financial interests and, possibly, incentives associated with GNSO actions that affect Internet

domain name policies. As they pertain to GNSO Council voting actions, such interests are expected to be documented in a Councilor's required Statement and/or Disclosure of Interest¹ and do not require that the Councilor abstain from participating and voting. GNSO Councilors do not have a fiduciary responsibility to act in the best interests of ICANN in discharging their responsibilities on the Council. While the deliberations and decisions of ICANN are made in the interests of the global Internet community as a whole, GNSO Councilors are understood, in some cases, to represent the views of organizations and interest groups that would materially benefit from policies recommended by the GNSO. It is understood that Councilors are often employed by or represent those affected parties and such relationships could engender subsequent benefit to Councilors as individuals. As a result of these special circumstances and to avoid confusion with ICANN's Conflict of Interest Policy, which does not pertain to GNSO Council matters, the term "Conflict of Interest" will not pertain when a GNSO Councilor argues for and votes "Yes" or "No" on a matter which, by virtue of that action, directly or indirectly benefits that individual financially or economically; however, that interpretation does not imply that circumstances cannot occur in which a Councilor may perceive his/her situation as obligating a formal abstention.

A Councilor who believes that proceeding to vote on a motion or action before the Council not only warrants, but requires, his/her abstention and, thereby, recusal from deliberations, is considered to be facing an obligational abstention. Although it is not possible to draft a set of exhaustive conditions under which obligational abstentions can arise, two examples are provided by way of illustration:

Case 1: a Councilor (attorney by profession) is representing a client in legal action relating to a matter before the Council and, and as required by his/her professional code, must abstain and, furthermore, such abstention should not be counted as a negative vote. [Note: this type of situation requires one of the remedies specified in Paragraph 4.5.3].

Case 2: a Councilor is a paid consultant for a national political body that has a vested interest in a particular motion before the Council. The Councilor is concerned that his/her future income potential and ability to retain a consulting engagement with the national body may be affected if he/she votes on the measure. In such a case, the Councilor believes that the ethical course of action is to abstain.

In the two examples above, personal or professional obligations interfere with the Council member's ability to participate ethically; thus, requiring recusal from deliberations on the matter and abstention from voting.

4.5.3 Remedies

¹ Note: placeholder for a reference to the SOI/DOI procedures tentatively slotted for Chapter 5, once approved by the GNSO Council.

All Council voting thresholds, as described in the GNSO Operating Procedures and the ICANN Bylaws, require a certain number of affirmative votes in each House in order to pass a measure. The voting thresholds are calculated based upon the total membership of each House. According to existing rules, any abstention, regardless of type or category, would not contribute to the passing of a motion; therefore, by default, an abstention functions as a negative (or “No”) vote.

The purpose of the remedial procedures in this section is to minimize the effect of such potential abstentions on Council voting by providing mechanisms that will permit the abstaining Councilor’s vote to be exercised.

The remainder of this paragraph describes a sequence of actions that are designed to remedy those situations in which a Councilor, facing either of the two categories of abstention in Paragraph 4.5.2 above, is not able to perform his/her duties. In general, the remedies proceed from simplest in execution to more logistically complex and should, under most circumstances, be evaluated and selected in the order provided.

a. Voting Direction²

The first remedy to be considered in avoiding the consequences of an abstention is for the Councilor at issue to request specific voting instructions in writing from Councilor’s appointing organization. The Councilor would then be obligated to follow the voting instruction provided. This remedy requires that the appointing organization establish an affirmative or negative voting position, subject to provisions contained in its Charter or Bylaws, on the applicable Council measure/motion.

This remedy is recommended when receipt of specific voting instruction from the Councilor’s appointing organization will obviate the conditions that would otherwise have resulted in an abstention.

b. Proxy Voting

The second method to be considered in avoiding the consequences of an abstention is the use of proxy voting, where the vote of an abstaining Councilor is transferred to another GNSO Councilor.

- i. For abstentions declared by Councilors not appointed by the Nominating Committee and where voting direction is not a viable remedy, the appointing organization may transfer the vote of the abstaining Councilor to: (1) the House Nominating Committee Appointee (NCA), (2) another of its Constituency Councilors (where applicable), or (3) another Councilor within the Stakeholder Group. The appointing organization must be able to establish an affirmative or negative voting position, subject to provisions contained in its Charter or Bylaws, on the applicable measure/motion for which one of its Councilors has declared an intention to abstain.

² The term “appointing organization” (see Section 1.3.1) does not comprise the Nominating Committee; therefore, the Voting Direction remedy does not apply to House NCAs.

The Councilor to whom the vote is transferred shall exercise a vote in line with the appointing organization's stated position.

- ii. If an abstention is declared by a House NCA, once formal notification has occurred pursuant to the procedures in Paragraph 4.5.4-a, a proxy is automatically transferred to the GNSO Council's unaffiliated NCA (hereinafter Council NCA) and any vote cast will be counted within the House to which the abstaining NCA is assigned. The Council NCA may exercise only one proxy at a time; therefore, the first abstention remedy properly transferred to the Council NCA, including all measures/motions specified, takes precedence. It should be noted that, because NCAs do not have an appointing organization, as defined in these procedures (see Section 1.3.1), to provide specific voting direction, the Council NCA may exercise his/her best judgment, including abstaining, on the matter at issue. If the Council NCA abstains or does not cast a vote for any other reason, no further remedies are available and the automatic proxy will be nullified. The original House NCA will be recorded in the minutes as having abstained from the vote.

Proxy votes function as standard Council votes. A Councilor abstaining on a vote, if present at the meeting, does count in quorum calculations; however, the existence of a proxy does not count towards quorum for any action of the GNSO Council. In addition, the existence of a proxy does not count towards quorum calculations for any action of the GNSO Council.

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No GNSO Council member is permitted to exercise more than one proxy vote for any specific action/motion before the Council. If an appointing organization finds itself with more than one abstention situation to be remedied, the appointing organization must allocate its proxy votes to as many other Councilors as required such that no individual Councilor registers more than one proxy vote at a time.

c. Temporary Alternate

The third remedy that may be exercised in avoiding the consequences of an abstention is the naming by the appointing organization of a Temporary Alternate who is empowered to "stand in" for the abstaining Councilor according to the provisions below. For a House NCA, the Temporary Alternate remedy is defined only for certain conditions of absence and vacancy as provided in Section 3.8 of these procedures.

- i. In selecting a Temporary Alternate, the appointing organization shall choose, from within its membership ranks, a responsible individual who is not a current voting GNSO Council member, but is otherwise knowledgeable on the matter at issue and qualified to represent the appointing organization's interests. The Temporary Alternate must meet all criteria (e.g. Term Limits) for GNSO Council membership.
- ii. The GNSO Secretariat will arrange for the named Temporary Alternate to participate in GNSO Council meetings, teleconferences, email list discussions, as appropriate, and will cause such arrangements to be deactivated upon conclusion of the Temporary Alternate's tenure.

- iii. The Temporary Alternate is entitled to participate in Council deliberations and voting only upon the specific matter(s) outlined in the communication submitted to the GNSO Secretariat (see 4.5.4-b). In all other matters, the regular Councilor is expected to function in Councilor's normal capacity. A Temporary Alternate may not be selected to register a proxy vote, as described in 4.5.3-b, except when the Temporary Alternate is named as a result of provisions contained in Section 3.8-Absences and Vacancies.
- iv. The presence of a duly recognized Temporary Alternate at a Council meeting is counted in quorum calculations; however, the regular Councilor, if present, and any Temporary Alternate only contribute a count of one to the meeting quorum.
- v. Only one Temporary Alternate may be named to act for a GNSO Councilor at a time.
- vi. If the Temporary Alternate is named for a Council member who is an elected officer of the GNSO Council, the Temporary Alternate does not assume those officer duties and responsibilities; the Council's leadership succession shall take effect as provided elsewhere in these procedures.

The above remedies are available for the purposes of ensuring that, to the maximum extent possible, each and every GNSO Council vote can be exercised and that conditions otherwise resulting in an abstention can be mitigated. The GNSO Council has not established any provision that would permit the voting thresholds and calculations to be altered, for example, by reducing the denominator due to an abstention.

4.5.4 Procedures

This paragraph outlines the notification and communication steps required when an abstention condition is identified as well as the procedures that must be followed in remedying the abstention.

For the purposes of these procedures, the term "written" or "in writing" shall mean via postal mail or electronic mail (e-mail).

a. Notification by Councilor

A Councilor who believes that he/she should abstain from participation/voting on a measure before the Council is required to provide, at the earliest opportunity, a brief written notification documenting the circumstances to the appointing organization with a copy forwarded to the GNSO Secretariat. For a House NCA, the notification should be sent to the GNSO Secretariat with a copy to the Council NCA who is required to acknowledge receipt to both parties that an automatic proxy is confirmed. If the situation is perceived to be confidential in nature and cannot be disclosed in the notification, a statement to that effect should be included by the Councilor.

b. Communication by Appointing Organization or NCA

To effectuate a remedy described in 4.5.3, the appointing organization or, when applicable, the House or Council NCA must provide a written statement to the GNSO

Secretariat, as early as possible prior to any discussion/voting on the matter at issue, containing the following information:

- Name of the abstaining Councilor.
- Remedy selected (from Paragraph 4.5.3).
- Reason(s) for or condition(s) leading to the remedy.
- Specific subject(s)/measure(s)/motion(s)/action(s) of the Council for which the remedy is being exercised.
- Date upon which the remedy will expire or terminate. No remedy may initially or subsequently extend beyond three (3) months at a time. If the period needs to be extended, a written notice can be provided to the GNSO Secretariat indicating the reason for extension (e.g. Council vote postponed) and a new expiration date. While there is no limit to the number of extensions; “standing” remedies are not allowed under any circumstances.
- For the specific remedies of Voting Direction and Proxy Voting, the communication must include an affirmation that the appointing organization has established a voting position, subject to provisions contained in its Charter or Bylaws, on the matter at issue. For Voting Direction, a statement from the appointing organization shall indicate that the affected Councilor has been instructed how to vote on the matter. Exclusion: these statements are not applicable or required in a remedy applied for a House NCA.
- For Proxy Voting, identification of the GNSO Councilor who will register the vote for the abstaining Councilor.
- For a Temporary Alternate, identification of the individual who will serve as a substitute for the abstaining Councilor. If not already published and available, a short bio and Statement/Disclosure of Interest should be prepared by the Temporary Alternate and delivered to the GNSO Secretariat in advance of any discussion or voting scheduled to take place.

In order for an abstention remedy to be implemented, all required procedures must be completed prior to the start of the GNSO Council meeting in which the vote will be taken; otherwise, the abstention will not be remedied and the provisions of paragraph 4.5.4-c will apply.

c. Effect and Recording of an Abstention Not Otherwise Remedied

If an abstention cannot be avoided after pursuing the remedies provided in Paragraph 4.5.3, then the Councilor may abstain from voting and an “Abstention” will be entered into the record along with a reason. If the reason for the abstention warrants such action (e.g. obligational abstention), the Councilor shall be recused and not participate in discussions on the affected topic(s) or otherwise attempt to influence other Council members nor shall he/she vote on any action attendant to the matter for which the abstention conditions are present. An abstention shall not affect quorum requirements or calculations nor will it reduce the denominator in any vote tabulations for the affected House.