

# **Report To ICANN Board of Directors From Working Group On GNSO Council Restructuring**

**25 July 2008**

On 26 June 2008 the ICANN Board of Directors endorsed the recommendations of the Board Governance Committee's (BGC) GNSO Review Working Group, with the exception of the BGC's recommendation regarding GNSO Council restructuring. The Board asked the GNSO to convene a small working group on Council restructuring and said that the group "should reach consensus and submit a consensus recommendation on Council restructuring by no later than 25 July 2008 for consideration by the ICANN Board as soon as possible." (see ICANN Board Resolution 2008.06.26.13, <http://www.icann.org/en/minutes/resolutions-26jun08.htm - Toc76113182>)

The working group convened on 4 July 2008 and has deliberated exhaustively during seven conference call meetings and extensively via email from that date, through midnight on 25 July and into the next day in an effort to develop a consensus recommendation for Board consideration. As directed by the Board, the group has consisted of one representative from the current NomCom appointees, one member from each GNSO constituency and one member from each liaison-appointing advisory committee. The group members include:

Avri Doria / Nominating Committee Appointee representative  
Chuck Gomes / gTLD Registries Constituency representative  
Alan Greenberg / At-Large Advisory Committee representative  
Tony Holmes / Internet Service and Connection Providers Constituency representative  
Steve Metalitz / Intellectual Property Constituency representative  
Milton Mueller / Non-Commercial Users Constituency representative  
Jonathon Nevett / Registrar Constituency representative  
Philip Sheppard / Commercial and Business Users Constituency representative  
Bertrand de La Chapelle / Governmental Advisory Committee

Three ICANN staff members, Glen De Saint Gery, Robert Hoggarth and Denise Michel also acted as secretariat, moderator and observer to the group respectively during its deliberations.

The group members agreed at their first meeting that the goal of the group effort should be 100% approval or at least acquiescence to any final decision and operated consistently with that goal in mind throughout their deliberations. The deliberations covered a wide range and variety of concepts, ideas and potential sources for compromise and ultimate consensus.

In the end, the group has reached consensus, as defined above, on a number of general concepts and principles regarding the future structure, composition and

operation of the GNSO Council. Where possible, the group also made the effort and achieved agreement on a number of specific voting mechanisms and voting thresholds ranging from Board representatives to specific Policy Development Process (PDP) decision points - including such matters as initiating and approval of a PDP, among others.

There were also a number of areas where the group did not reach consensus because there was not sufficient time to complete the work or because there were fundamental differences in views that could not be overcome. In particular, there was a specific disagreement over the existence of a third nominating committee appointee slot on the Council that prevented consensus on specific aspects of the new Council structure and its composition and ultimately resulted in the Nominating Committee Appointee representative withdrawing support from the general consensus.

A summary of the areas of consensus agreement and areas where fundamental difference still exist are set forth in the attached snapshot summary document (Attachment A). The group agreed that in providing this report that individual members would have the opportunity to provide separate statements to share their views with the Board. Individual statements of various group members are appended to Attachment B of this report.

Because group members spent the extra time necessary to work well into the night of July 25 and the following morning in many areas of the world trying to reach a consensus, the group hopes that in accepting this report the Board will allow individual group members editorial privileges to amend their supplemental statements as multiple comments and drafts have changed hands cross time zones and sleeping schedules. To the extent those are provided I will circulate them to the Board Secretary

Respectfully submitted,

Robert L. Hoggarth  
Senior Policy Director, ICANN

## Attachment A

### **Consensus GNSO Council Restructure Proposal “Snapshot” Drafted To Accompany Report To ICANN Board of Directors From The Working Group On GNSO Council Restructuring**

**25 July 2008**

This “snapshot” document notes areas of significant agreement and, in most cases, consensus among the working group members on specific concepts and principles regarding the future structure, composition and operation of the GNSO Council. There are a few key areas where there is a fundamental disagreement or difference of opinion. It was agreed among the working group members that the Board might benefit from a report that notes those areas where the diverse groups within the GNSO have reached considerable agreement and where their opinions still diverge. Areas where consensus was close but has not been reached are highlighted in **bold bracketed text** below with some explanation of the factors involved in *italic text*.

#### General Principles of Agreement:

- A. No single stakeholder group should have a veto for any policy vote.
- B. Council recommendations of policy requiring 2/3 board vote to reject should have at least one vote of support from at least 3 of the 4 stakeholder groups
- C. Equal number of votes between registries and registrars.
- D. Equal number of votes between commercial and non-commercial users.

#### Specific Proposals:

1. One GNSO Council with two voting “houses” – referred to as bicameral voting – GNSO Council will meet as one, but houses may caucus on their own as they see fit. All voting of the Council will be counted at a house level.
2. Composition – The GNSO Council would be comprised of two voting houses
  - a. A Contracted Party House (descriptive term only) – an equal number of registry and registrar representatives and 1 Nominating Committee appointee. The number of registry and registrar stakeholder representatives will be determined by the ICANN Board based on input from these stakeholder groups, but shall be no fewer than 3 and not exceed 4 representatives for each group.
  - b. A Non-Contracted Party/User House (descriptive term only) – an equal number of commercial and non-commercial user representatives and 1 Nominating Committee appointee. The number

of commercial and non-commercial stakeholder representatives will be determined by the ICANN Board based on input from these stakeholder groups, but shall be no fewer than 5 and not exceed 9 representatives for each group. The composition of this house would be open to membership of all interested parties (subject to section 6) that use or provide services for the Internet, with the obvious exclusion of the contracted parties referenced in 2.a and should explicitly not be restricted to domain registrants as recommended by the BGC. This is in line with the current ICANN By-Laws.

- [c. One (1) Council-level Non-Voting Nominating Committee Appointee]** *On this fundamental point, the Business Constituency (BC) representative and the Nominating Committee Appointee (NCA) representative have completely different positions. The position is objected to by the BC and is a condition precedent for the NCA representative to support the entire consensus proposal. The majority of working group members have been willing to compromise on this point but no consensus agreement (as defined by the operating principle of the group) has been reached.*

### 3. Leadership

- a. One GNSO Council Chair – elected by 60% of both houses. **[If no one is elected Chair, the Council-level Nominating Committee Appointee shall serve as a non-voting Chair of Council.]** *This point is a byproduct of the differences regarding the continued presence of a third nominating committee appointee on the Council. The ISCP Constituency joins the BC in its opposition to this provision.*
- b. Two GNSO Vice Chairs – one elected from each of the voting houses. If the Council Chair is elected from one of the houses, however, then the Council-level Nominating Committee Appointee shall serve as one of the Vice Chairs in lieu of the Vice Chair from the house of the elected Chair. If the Chair is elected from one of the houses, that person shall retain his/her vote in that house.

### 4. Voting Thresholds

- a. Create an Issues Report (currently 25% of vote of Council)– either greater than 25% vote of both houses or simple majority of one house
- b. Initiate a PDP within Scope of the GNSO per ICANN Bylaws and advice of ICANN GC (currently >33% of vote of Council) -- greater than 33% vote of both houses or greater than 66% vote of one house

- c. Initiate a PDP not within Scope of the GNSO per ICANN Bylaws and advice of ICANN GC (currently >66% of vote of Council) – greater than 75% vote of one house and a simple majority of the other
- d. Approval of a PDP without Super-Majority (currently >50% of vote of Council) -- Simple majority of both houses, but requires that at least one representative of at least 3 of the 4 stakeholder groups supports
- e. Super-Majority Approval of a PDP (currently >66% of vote of Council) – Greater than 75% majority in one house and simple majority in the other
- f. Removal of Nominating Committee Appointees for Cause subject to ICANN Board Approval (currently 75% of Council)
  - i. At least 75% of User/NCP House to remove Nominating Committee appointee on User/NCP House
  - ii. At least 75% of Contracted Parties House to remove Nominating Committee appointee on Contracted Parties House
  - iii. **[At least 75% of both voting houses to remove the Council-level Nominating Committee appointee]** *This discussion point is also impacted by the disagreement regarding the third Nominating Committee Appointee opposed by the BC.*
- g. All other GNSO Business (other than Board elections) – simple majority of both voting houses

## 5. Board Elections

Election of Board Seats 13 & 14 at the end of the current terms (currently simple majority vote of Council)

Contracted Parties House elects Seat 13 by a 60% vote and User/Non-Contracted Party House elects Seat 14 by a 60% vote; BUT both seats may not be held by individuals who are employed by, an agent of, or receive any compensation from an ICANN-accredited registry or registrar, nor may they both be held by individuals who are the appointed representatives to one of the GNSO user stakeholder groups.

## 6. Representation

- a. All four stakeholder groups must strive to fulfill pre-established objective criteria regarding broadening outreach and deepening participation from a diverse range of participants.

- b. All stakeholder groups must have rules and processes in place that make it possible for any and all people and organizations eligible for the stakeholder group to join, participate and be heard regardless of their policy viewpoints.

Attachment B

**Separate Statements of Working Group Members Drafted To Accompany  
Report To ICANN Board of Directors  
From The Working Group On GNSO Council Restructuring**

**25 July 2008  
(as revised 27 July 2008)**

Appended to this attachment page are copies of separate statements that various group members have submitted with the understanding that they would be included with the Working Group Report. The individual statements may refer to group deliberations, but their contents were not subject to the working group's deliberations. Statements appended in alphabetical order of the last names of the working group members are from:

Avri Doria / Nominating Committee Appointee representative  
Chuck Gomes / gTLD Registries Constituency representative  
Alan Greenberg / At-Large Advisory Committee representative  
Tony Holmes / Internet Service and Connection Providers Constituency representative  
Steve Metalitz / Intellectual Property Constituency representative  
Milton Mueller / Non-Commercial Users Constituency representative  
Jonathon Nevett / Registrar Constituency representative  
Philip Sheppard / Commercial and Business Users Constituency representative

## **Statement from Avri Doria / Nominating Committee Appointee representative**

I cannot accept any restructuring plan that includes a reduction in Nomcom Committee Appointee (NCA) participation. Not only do I believe it was out of scope for this WG, I believe that doing so would have a deleterious effect for the GNSO council and for ICANN in general and that it would run counter to fulfillment of the core values of ICANN.

On the other hand, I could have supported the rest of the plan though I do have the concerns outlined below. I have reviewed the contents of this note of concerns with my fellow GNSO nomcom appointees and they endorse the viewpoint.

There has been a certain trend by some members of the GNSO Consensus WG to reach agreement between the constituencies in part by denigrating the role of Nomcom appointees and reducing it to at most the role of tie breaker. My feeling is that there are too few members appointed by Nomcom as it is and that any decrease in the number or ratio of Nomcom appointees who can independently influence the policy work is a bad thing. While there is disagreement among the constituency representatives on this issue, the Nomcom appointees in the GNSO, and some others who were consulted, are in strong agreement that the role of a Nomcom appointee is to provide an independent voice and to make sure that the variety and diversity of public interests that goes beyond the sectarian interests of the constituencies is given voice and, when necessary, vote in the deliberations of the policy council. We think this is what is meant in the by-laws where it states:

### **ARTICLE VII: NOMINATING COMMITTEE, Section 5. DIVERSITY**

In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by Section 4 of this Article, make selections guided by Core Value 4 in Article I, Section 2 .

### **ARTICLE I: MISSION AND CORE VALUES, Section 2. CORE VALUES**

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

Some in the WG have argued that Nomcom appointees only serve the purpose of breaking a tie vote, and with votes being de-emphasized, it was time for Nomcom appointees to wither away or at least be minimized and severely circumscribed. Personally I suggested that the council should have a similar proportion of nomcom appointees to constituency representatives as the Board has Nomcom appointees to SO elected board members, though this was not taken seriously by the WG. At least on the Board, even the elected members are expected to support the global public interest as opposed to just the interests of the SO that elected them. In the council, it is clearly the expectation that the primary responsibility of the constituency representative is the constituency's interest. One of the consequences of the unified front policy sometimes adopted by constituencies is seen in the prevalence of voting in constituency blocks. I believe that this is as it should be, for that is what it means to be the representative of a constituency and follows from the definition of constituency:

From Encarta definition

3. politics group with common outlook: a group of people thought to have common objectives or views, and therefore sometimes appealed to for support

From Compact Oxford definition

1. a body of voters in a specified area who elect a representative to a legislative body.

And while it can rightfully be argued that constituencies do represent a particular set of public interests, it is a narrow set of public interests - that is those that pertain to the constituency. It is the role of the Nomcom to appoint members to the council who are capable of broadening the range of public interests that are brought to the table just as they do when they appoint people to the Board. Someday, if and when general public user interests are directly represented by elected representatives in the GNSO this may no longer be necessary, but that day has not yet come and there is currently no view as to how this could realistically be achieved.

It is my belief that any decrease in nomcom appointee participation, at all levels, will translate into less of a focus on global public interests. At the very least I believe that the council must not worsen the 6:1 ratio and should not be allowed to climb to 12:1 or even 18:1 as is possible in the User/NCP house. As the plan is currently written, the Board, depending on how many constituency members are allowed in a house, could choose to set the Contracted Party House at a ratio of 8 constituency to 1 nomcom appointee and the Non-Contracted Party House to as much as a 18:1 ratio. The plan put forward by the BGC WG improved the ratio slightly to 5.3:1 while the Joint Users proposal kept it at 6:1. It is a concern that even calculating in the non voting Council-level Nominating Committee Appointee (which was not agreed to by the BC) the ratio

could end up at 8.6:1. Though, if the 3rd Nomcom Committee Appointee would have been retained and if the Board decides to go with the lowest ranges offered in the proposal it could still have come out as 5.3:1.

Another item of concern involves the election of Board seats 13 and 14. While I very much applaud the creation of a mechanism that allows for Board members to be selected from diverse communities, I believe that Board members should be elected by the entire council and not just by one house in the council. I think the same diversity effect could be achieved by allowing the full council to vote, counting at the house level, for each of the seats and by restricting the nominations to one house for seat 13 and to the other house for seat 14.

The bi-cameral council proposal is a clever solution to a difficult set of conflicting needs. While this proposal shows some interesting features and is worth experimentation, I am concerned that it is too complex. In designing a structure, the value is not in how many exceptions one can add-on to make it workable, but rather in how lean the structure can be and still work properly. There is nothing lean about the solution which is being presented with multiple complex conditions governing most every aspect of the structure. It could have, however, been a worthwhile experiment in creative structuring and thus could have been worth deploying.

To conclude, if the decrease of nomcom participation had not been included in the proposal at the last minute, since no other consensus position is possible at this time and since there is another review in two years to check and see if it all works, I could have agreed to the Consensus Committees WG recommendations despite my misgivings.

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## Statement of Chuck Gomes / gTLD Registries Constituency representative

### Comments from Chuck Gomes regarding the Report To ICANN Board of Directors From Working Group on GNSO Council Restructuring dated 25 July 2008

I want to begin my comments by expressing my compliments to everyone who participated in the work that resulted in the report to the Board. We had lots of disagreements, plenty of emotions and we spent lots of long hours, but in my assessment everyone contributed constructively. We did not achieve 100% consensus on every point but we came awfully close. Moreover, I personally believe that the few areas where there were one or two members who disagreed are areas that are not critical components of the overall solution proposed and they are areas that could still be worked to reach resolution without delaying approval of the GNSO structure recommended.

I want to give special acknowledgement to Rob Hoggarth in his role of leading the group. We definitely made his job challenging but he handled it professionally and helped us stay on track right to the end.

I also want to communicate special thanks to Jon Nevett. As we were getting very close to our deadline, his 'bicameral' idea provided a way forward when it looked very much like there was not much of a chance to reach any broad consensus. Jon also played a key role in preparing several summaries of where we were at during our last few days of work.

On behalf of the gTLD Registry Constituency (RyC) that I was tasked to represent, I support the total package of recommendations. They do not include everything the RyC membership supported but that is true of every group that was represented. Everyone made compromises in the spirit of reaching a solution that could be supported by all or at least a strong majority.

The main body of the report says, "There were also a number of areas where the group did not reach consensus . . ." This is true but I think it is helpful to specifically point out the very limited nature of those. In Attachment A, areas where there was not unanimous support are shown in **bold** font. There are only three items in bold font and they involve only two separate issues:

- Whether or not there should be a third Nominating Committee appointee that serves in a non-voting capacity at the Council level, in addition to one each voting Nominating Committee appointee in each house – In the final analysis, I believe there was only one person who is opposed to having such an appointee.

- Whether or not it should be possible to have the third Nominating Committee appointee that serves in a non-voting capacity at the Council level serve as chair of the Council if the Council does not agree on another chair – my understanding is that there are only two opponents to this idea.

RyC members, like just about all others in the GNSO, expressed serious concerns about excessive complexity of the bicameral model as it was initially proposed. But I sincerely believe that the application of that model to voting only eliminated most of the complexity and provides an approach to Council operations that will be easy to manage and effective.

Consistent with our belief in support of the BGC WG recommendations that policy making should minimize voting and that efforts should be made to reach rough consensus that most can support, the RyC strongly supported high thresholds for policy decisions. But when it became clear that many in the small consensus group would not support thresholds as high as some RyC members wanted, I compromised and accepted thresholds that were as high as possible while at the same time addressing concerns that others had in this regard. This I believe is an excellent example of the 'rough consensus' approach that the BGC WG recommended.

In the case of the proposed Contracted House, I do not believe that it is necessary to have more than four representatives each for Registrars and Registries. In my opinion, three representatives have been able to effectively represent registrars and registries quite well. It may be that as the RyC grows in the next few years, that having four representatives could be useful, but any larger than that would seem to be unnecessary if the Council is a policy management body rather than a legislative body as the BGC WG recommended. Also, it may be that having four representatives could be useful in balancing out the voices of the larger number of representatives proposed for the Non-Contracted Parties House. But I want to point out that having four representatives if each had to be from a different geographical region would exasperate an already existing problem of finding available and qualified Council representatives; therefore, I would support four representatives for each Stakeholder Group in the Contracted House only if they could come from three different geographical regions. The RyC will address this issue in the GNSO comments currently being developed regarding geographical regions.

Having one Council level, non-voting Nominating Committee appointee seemed to me to be a reasonable compromise between those on the consensus group who strongly supported the independent role of Nominating Committee appointees and those who questioned the value. The RyC definitely believes that there is value in having independent participants on the Council. We support the inclusion of one voting Nominating Committee appointee in each House within the Council and also having a non-voting Nominating Committee

appointee at the Council level. We also support the latter as a possible option to serve as Council Chair as needed, but I communicated several times in the consensus group that I believe the issue of Council Chair selection is one that could easily be deferred for 30 days without detracting from the bicameral voting solution proposed. Whatever procedure is adopted for selection of the Council Chair, RyC members strongly emphasize that, to be effective, the Chair must be very familiar with the GNSO and the GNSO Council.

Regarding Section 6 of Attachment A regarding representation, I supported a statement that would require that all stakeholder group and constituency policy statements should include documentation demonstrating what stakeholders participated in preparing and supporting the statements. The consensus group elected not to include my suggestion in the form I presented it and I can live with that. It is indeed an issue more closely related to the PDP revision that will happen in the near future, but community representation is a fundamental value of the bottom-up policy development process within any GNSO structure including the bicameral voting approach proposed.

In conclusion, I want to reiterate that I support the complete set of recommendations presented in Attachment A. At the same time, without suggesting any delay in approval of the bicameral voting approach recommended by the consensus group, I am willing to work with others in the next 30 days or so to further decide how we select a Council Chair.

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## **Statement of Alan Greenberg / At-Large Advisory Committee representative**

**Revised statement presented by the ALAC representative Alan Greenberg, with respect to the Report to ICANN Board of Directors From The Working Group on GNSO Council Restructuring on behalf of the ALAC GNSO advisory sub-committee (Cheryl Langdon-Orr, Sébastien Bachollet, Vanda Scartezini, Izumi Aizu, Alan Greenberg)**

The statement below was written and endorsed prior to the receipt of proposed changes approximately 35 minutes before the final deadline for submitting statements (see Snapshot section 2.c). On the matter of a third Nominating Committee Appointee, the ALAC finds it very disturbing that the presence of one non-voting Council member (equivalent to a Liaison) should be sufficient cause to break the general consensus that had been previously established.

Equally disturbing is that the position presented by the ALAC during Working Group deliberations, developed and supported by a five-person ALAC advisory group, is in at least one constituency statement, characterized as a position taken by a "Nominating Committee Appointee", solely (we assume) because the ALAC representative to the Working Group happens to be such an appointee to the ALAC.

The ALAC stands by the following original statement of support of the Working Group outcomes as they existed prior to the substantive, last-minute change.

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The ALAC is pleased to have been a part of this working group, and particularly pleased that it has proposed a structure that is reasonably satisfactory to all parties. Such an outcome was not at all guaranteed, and all participants and their constituencies and advisors should be complimented for the diligence, flexibility, good faith and fortitude that they have shown. Rob Hoggarth deserves particular credit for his part in this endeavour.

We were included in this working group as a result of the ICANN By-Law mandated ALAC Liaison to the GNSO. However, a prime goal throughout the process has been to ensure that the estimated 1.3 billion Internet users have some measure of formal representation during the gTLD policy development process. Participating in this process is quite a different role than that of the ALAC, which can advise the Board after the fact. To be clear, the ALAC does not see itself involved in the gTLD PDP in any way other than its current Liaison and Board Advisory role. Nor do we see or advocate any formal role for the overall At-Large organization.

Until there is a more representative user-oriented presence in the Non-Commercial Stakeholders Group (NCSG), ALAC will be pleased to work with

ICANN encouraging the user communities around the world to form and participate in new Non-Commercial Constituencies within the NCSG. And until such new Constituencies can speak for themselves, we are willing to play an integral role in the design, structural development and implementation of this Stakeholder Group.

Throughout the Working Group activities, we have supported the effort to maintain the presence of Nominating Committee Appointees (NCAs) in the GNSO. Perhaps in the future, when the NCSG and to some extent the Commercial Stakeholders Group have a diverse and widely representative set of Constituencies, NCAs may no longer be needed, but until that time, their presence is essential to at least partially offset the majority of the councillors who are representing their business interests.

### **Comments on the Working Group Proposal**

ALAC generally supports the outcome of this extensive process, but we wish to make the following specific comments.

1. The Board is encouraged to take a minimalist approach in determining the size of each Stakeholders group. The BGC report rightfully proposed to have the new Council smaller than its predecessor. Particular focus should also be given to ensuring that the lone NCA in each house is not unreasonable overwhelmed or effectively denied speaking rights. The current ratio of 1 NCA for each 6 constituency councillors seems reasonable, but one of the suggested options is a ratio of 1 to 18! Similarly, the number of councillors in each house should not be so unbalanced as to allow the larger one to dominate (in sheer numbers) in discussion.
2. It is troublesome that in the proposal, one of the NCAs has been disenfranchised. Although no solution was found acceptable to all parties, it sets a very unfortunate precedent within ICANN.
3. The process described to name the GNSO Chair is unwieldy and fraught with conflicts. It requires the Nominating Committee to identify an appointee who has the skills and willingness to Chair the GNSO. Such a person may also need to have sufficient experience with the GNSO so as to immediately understand its processes and constraints. Yet it may turn out that this person will not be Chair, but rather a non-voting Council member. As a NCA to the Council, one of the often cited characteristics is that the person be from outside ICANN and not have a history of being associated with GNSO constituencies. It is quite unclear how the Nominating Committee can fulfill all of these requirements in a single person, or that many volunteers will be found willing to volunteer for such a position.

4. To date, no attention has been placed on transition processes, or whether this new council can become active prior to its detailed policies and practices being developed.
5. It is, in our opinion, unfortunate, that Board elections do not include all Councillors (including all NCAs) in each election (presumably with some level of weighted voting to offset the disparate numbers).
6. Regarding a GNSO Council or House vote to remove an NCA, the Board is encourage to change the By-Laws to require that should a Board ever be put in the position of ratifying a removal for cause, that it be required, at the same time, to name a replacement until such a time as a future Nominating Committee can identify a successor through more traditional means. This will ensure that the independent voice is not lost within a House or on Council.

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## **Statement of Tony Holmes / Internet Service and Connection Providers Constituency representative**

### **Statement on behalf of the ISPCP from Tony Holmes, appended to the output report from the GNSO Consensus working Group**

The ISPCP appreciated the opportunity given to the parties directly impacted by the Board Governance Report on GNSO improvements in order to reach a consensus on the way forward.

The timescale set to resolve such a demanding and complex set of issues to everyone's satisfaction was extremely demanding to say the least and many hours of deliberation, conference calls and emails has been expended in pursuit of that goal.

During this effort a multitude of potential scenarios were identified and discarded as each proved to be a show stopper for one party or the other before the bicameral approach, proposed by the registrar constituency, offered a generally acceptable way forward. In particular the representatives of the existing constituencies were then able to find middle ground and reach compromise far easier than some of the other impacted parties. Considering that some constituencies started from a position where they had raised far more problems with the initial proposal than others, that exemplifies the spirit and good will that has underpinned this exercise.

Whilst not reaching full consensus on every point, it's the view of the ISPCP that the efforts expended have resulted in a proposal which provides a solid framework on which to build a successful and accountable GNSO that has the backing of most parties.

Recognising some of the detailed issues still need to be worked through, it should be accepted that was always going to be the case when setting such a tough mandate across a very short period. Particularly with people taking on this task as an addition to their normal roles and working in different time zones.

Prior to the Board Resolution that called for this effort it was apparent that the broader business community were feeling disenfranchised as they saw their existing level of influence being greatly reduced with the approach proposed by the Board Governance Committee. Whilst compromise has been required from most parties in order to develop the new proposal, it is the view of the ISPCP that adoption of this approach would be a positive signal that ICANN wants business to remain fully committed, supportive and engaged within the ICANN community.

The ISPCP would also like to express their thanks to the ICANN staff that have facilitated the work of this group and the excellent support they provided.

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## Steve Metalitz / Intellectual Property Constituency representative

Statement of Steve Metalitz, IPC, appended to report on work of GNSO Consensus Group (submitted in my individual capacity, not a formal position statement of the IPC)

1. Although the group did not reach full consensus on a revised structure for the GNSO Council, it did make considerable progress toward one, as reflected in the documents attached. This reflects lots of hard work from many people, and the excellent support provided by ICANN staff.

2. It is obvious from the documents which interests moved the farthest and were most willing to compromise in search of consensus. The work product of the group far more closely resembles the Board Governance Committee proposal than it does the Joint Users Group proposal that was before the Board. The bicameral approach, which originated from the registrar constituency representative, was a useful and productive effort to reframe the discussion, but it did not fundamentally alter the recurring dynamic: We did not reach full consensus because a few participants drew red lines very close to their initial preferred position, or, in one case, very close to the status quo. Notably, throughout the six meetings of our group, and hundreds of e-mail exchanges, the recurrent pattern was that representatives of the GNSO constituencies were far more willing to make compromises than were the participants not representing constituencies. I believe that the constituency representatives, on their own, might well have achieved consensus.

3. I call the Board's attention to item 6 in the attached document, concerning the need for all stakeholder groups to fulfill pre-established objective criteria for diversity and representativeness. This is an essential pre-requisite to implementation of any new GNSO council structure. While these criteria should apply to all stakeholder groups, special attention must be paid in this regard to the non-commercial stakeholder group, whose role in the decisionmaking process will become much greater under any of the restructuring plans now under consideration. The conclusion of the Board Governance Committee on this topic is worth re-emphasizing, and I hope the Board will re-affirm it:

*We want to emphasize that a new non-commercial Stakeholders Group must go far beyond the membership of the current Non-Commercial Users Constituency (NCUC). We must consider educational, research, and philanthropic organizations, foundations, think tanks, members of academia, individual registrant groups and other non-commercial organizations, as well as individual registrants, as part of a non-commercial registrants Stakeholders Group.*

4. Whatever the Board decides, I urge it to consider the broader context. In the circles in which I am constantly urging greater participation in ICANN, the "institutional confidence" in ICANN, to use the current phrase, is lower than it has

been for years. Private sector leadership of this experiment – or even a meaningful role for the private sector (other than those whose businesses depend on their contracts with ICANN) -- is widely perceived to be at risk. All the alternative GNSO structural proposals before the Board – including the one submitted today -- are viewed as steps in the wrong direction; all diminish the role of the “non-contracted” private sector. The issue of this diminishment is not going away. At this rate, if the issue does go away, it will be because the independent business community has given up on ICANN and is seeking alternatives.

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## **Statement of Milton Mueller / Non-Commercial Users Constituency representative**

### **Statement of the NCUC on the Draft Consensus of the Working Group On GNSO Council Restructuring**

The Noncommercial Users Constituency (NCUC) supports the Consensus Working Group's solution to the voting distribution of the GNSO Council. We feel that the unified Council with bicameral voting, when coupled with the agreed voting thresholds that must be reached by each House to accomplish various objectives, provides a balanced distribution of influence and authority. This balanced model will facilitate the development of better policies with support from both contracting and non-contracting parties. Although there are unknowns associated with the model, based on our experience with the gross representational imbalances and many flaws in the old GNSO, we are confident that it will be an improvement.

We did not enter into these negotiations with high expectations, but we were pleasantly surprised by the conduct of most of our colleagues in the group. Specifically, we commend our co-participants in the commercial user constituencies and the contracting party constituencies for their flexibility and willingness to engage in good faith dialogue and bargaining to find a solution.

Our baseline principle entering into the WG negotiations was that there must be parity between commercial and noncommercial users. That condition is met by this plan. Indeed, the bicameral solution will force commercial and noncommercial users to work more closely together in the "user" side of the house. Given the condition of parity, we think this will work and that it will vastly improve things.

While it may appear as if the bicameral structure creates a divide between suppliers and users (contracting parties/noncontracting parties), it is not really the case. It is simply a way of distributing voting power. We retain a single Council and an integrated deliberative process.

Obviously we did not get exactly what we wanted from this solution. Here are some points where there may or may not be full agreement:

### **Chair of the Council (#3)**

NCUC strongly prefers that the GNSO Council chair be appointed by the Nomcom. We view that as necessary to ensure that the chair is truly independent of all constituencies. We are concerned that an internal, elected Chair could reflect a dominant political coalition within the GNSO, and that such a Chair could be in a position to manipulate the administrative levers of power to achieve certain outcomes.

### **Voting thresholds (#4)**

We need to avoid giving any single constituency a veto over policy. And we need to avoid gridlock. The carefully negotiated voting thresholds in this model were agreed with that in mind, but only time will tell how it works in practice.

### **Representational status of the Stakeholder Groups (#6)**

NCUC, as the core of a future Noncommercial Stakeholder group, is totally committed to getting more noncommercial actors involved in ICANN. But the hard fact – one that no one in ICANN wants to face – is that domain name policy is a very narrow and technical area of public policy, and very few people have the time, expertise, money and the tolerance for bureaucracy and petty politicking required to play a major role in an ICANN PDP. On occasion, there will be issues or problems that spark outrage or widespread concern; but the day to day slog of participating in the GNSO Council is extremely costly and unrewarding, and most noncommercial entities have other priorities. Unlike commercial interests who make money from the Internet in some way and can thus employ workers to look out for their interests in ICANN, most noncommercial organizations cannot sustain the kind of expenses on labor and travel required. Only a few, highly specialized ones can be expected to be regularly active. Thus the inherent limits on the participation of noncommercial actors in ICANN must be understood and not blamed on the people who do get involved in a Noncommercial Stakeholders Group.

### **The special issue of Nomcom appointees**

We would like to alert the Board to the fact that the number of Nominating Committee appointees became one of the sticking points in the negotiations. It should be of great interest to the Board to know that, in the end, commercial and noncommercial users and contracting parties alike had less trouble coming to an agreement than the WG's two Nomcom appointees.

The purpose of the GNSO Council is to provide representation to the many different kinds of interests the Internet-using public has in policy. The basic balance between commercial and noncommercial interests, and between contracting and non-contracting parties, is critical to this representational structure.

In this context, Nomcom appointees can add value, but in a specific and limited way. Nomcom appointees are selected independently of constituencies. Appointment by the Nomcom thus separates the individuals appointed from the organized groups with a stake in public policy regarding domain names. That has its advantages and its disadvantages. The advantage is that if a stakeholder group or constituency becomes too locked in to a particular mindset or ideology, Nomcom appointees can broaden the perspectives present in the policy debate, introducing an independent view. Among the disadvantages, however, is that Nomcom appointees are quite literally unaccountable to any defined social group with a stake in policy. When they take a position on a divisive or important policy issue, no one can call them to account and say, “that policy is not good for us, you should not support/oppose it.” They do not have to seek re-election.

It should also be obvious that appointment by the Nomcom does not give an individual any special ability to identify, understand or promote the broader public interest. Almost all of the active members of NCUC think of themselves as public interest groups. NCUC members are drawn from academia, advocacy groups, nonprofit foundations, associations devoted to specific causes, social welfare groups and so on. It is insulting, and flat wrong, to claim that an individual selected in secret by agreement among a small committee of ICANN insiders has a better ability to grasp the public interest than these NCUC member organizations. The same could be said on the commercial user side of the house. Nomcom appointees will have different perspectives, yes; but they will not have inherently better or less narrow ones. Indeed, in almost all cases the policy positions taken in GNSO debates reflect the interests, needs, costs and problems of registries, registrars, and various types of Internet users. Nomcom appointees will, therefore, simply take sides among the positions defined by the basic stakeholder groups.

Thus, while it can be a good thing to have independently selected “neutrals” placed in a tie-breaking or balancing position on the GNSO Council, it is an abuse of the Nomcom role for Nomcom appointees to begin thinking of themselves as a distinct interest group with the right to insist on a certain number of votes for themselves. Yet, remarkably, that is what seems to have happened

in this WG. Some Nomcom appointees, throughout the process, seemed more concerned with preserving a specific number of Nomcom votes on the Council than in issues far more critical to the public interest, such as the balance of noncommercial and commercial votes, voting thresholds or the independence of the GNSO Chair. (Indeed, both Nomcom advocates initially opposed and eventually offered only lukewarm support for a Nomcom-appointed GNSO Council Chair, a contradiction we still cannot grasp.) Far from introducing an independent perspective, at times it seemed as if Nomcom appointees were participating in this process as a stakeholder group with no larger objective than that of maximizing its own role. We view this as a distortion of Nomcom's role in ICANN and as something that needs to be examined during the Nomcom review. If Nomcom appointees are evolving their own identity and viewing themselves as a stakeholder group with their own representational claim, we think something may be wrong with the way the Nomcom system is functioning.

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## **Statement of Jonathon L. Nevett, Registrar Constituency**

In the spirit of compromise, I endorse the package of recommendations. The group has made extraordinary progress in a very short period of time, and I am very pleasantly surprised of the group's success.

I do not agree with every provision of the proposal – especially regarding certain voting thresholds in the Policy Development Process – but I am cognizant of and appreciate that no specific interest should agree with every provision in a fair and successful multi-party compromise on the kinds of issues with which we were faced.

With regard to one of the recommendations that still might be at issue, I support the compromise position that the GNSO Chair should be elected from among the Councilors by a 60% vote of each house. If no candidate receives a 60% vote of both houses, then the Council-level Nominating Committee appointee shall serve as the Chair by default. This is a compromise between having the Nominating Committee select a GNSO Council Chair and having the Councilors elect a Chair without having a default. The risk of having the Council go “chairless” is real and should be prevented by providing for a default Chair. The Council-level Nominating Committee appointee is the obvious choice as the default Chair.

The ICANN Board also now is in a position to decide the size of the two “Houses” and as such, the GNSO Council. I very much urge the Board to keep the size of the Council to a manageable number. Personally, I think that the Contracted Party House should include 4 registrar and 4 registry representatives (coming from at least 3 different geographic regions). I also think that the Non-Contracted Party/User House should include no more than 6 commercial and 6 non-commercial user representatives, thereby keeping the total GNSO Council to no more than a small increase from its current size. If we were recommending a true bicameral structure, as opposed to a bicameral voting system, I would not have an opinion on the size of the Non-Contracted Party/User House. As we are recommending a combined Council, however, the size of each house has a dramatic impact on the size of the Council as a whole. A Council that is too large would be inefficient, ineffective, and unworkable. Moreover, such a bloated Council would discourage joint interaction, as opposed to just interaction between each house. This joint interaction is an important part of the recommended structure.

I look forward to working with the GNSO community to implement these new recommendations.

Thank you.

## **Statement of Philip Sheppard / Commercial and Business Users Constituency representative**

BC statement.

1. In this whole discussion there has been better dialogue and consensus building between the existing constituencies than with the non voting ALAC and non com representative. This is significant. The constituencies exist as a result of 9 years of structure and consensus building. ALAC and nom com do not share this heritage. This should be noted.

2. The non-contracted parties are strongly committed to the public interest being fundamental to ICANN decision making. Our concern is that the nom com appointment route has been a weak application of the public interest. Our HOPE is that involving at large INSIDE the GNSO will be a better route. Our CONCERN is that at large may yet be too young to carry this burden.

3. The BC believes in an ICANN that exists to support an Internet that is a safe place to do business and communicate. ICANN is not about business opportunity, or market making. The moment ICANN becomes a trade association for those who benefit from its contracts, will be the moment the BC's energies are directed towards government and those who hold the public interest dear.

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