

(DRAFT)

**SUMMARY OF 29 OCTOBER 2007 WORKSHOP ON
GNSO IMPROVEMENTS
ORGANIZED BY THE**

**BOARD GOVERNANCE COMMITTEE
GNSO REVIEW WORKING GROUP**

The ICANN 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.

BACKGROUND

On 15 October 2007, the BGC WG posted a draft report presenting its recommendations to the Board on the questions under review, for discussion with the BGC and the ICANN community at the ICANN Los Angeles Meeting and for public comment via the ICANN website. (Earlier, on 19 June 2007, the BGC WG had posted a preliminary report presenting its initial thinking on the questions under review for discussion at the ICANN San Juan Meeting and for public comment.)

The Workshop in Los Angeles was held on 29 October 2007. The discussion covered all major issues and helped the BGC WG focus its attention on questions and concerns from the ICANN community. A transcript of the discussion is available at <http://losangeles2007.icann.org/files/losangeles/LA-GNSOImprovements-29OCT07.txt> and a webcast may be found at <http://media1.icann.org/ramgen/2007/la/workshop-gnso-improvements-10-29-07.rm>).

KEY POINTS

Roberto Gaetano, Chair of the BGC WG, opened the Workshop by noting that it was the third session to discuss the issue of GNSO improvements during the Los Angeles meeting, after the BGC WG met with different constituencies and the Council. He highlighted the BGC WG’s view that ICANN should put more focus on a Working Group (WG) model that does not replicate the Council, and that is open to all to participate. The Policy Development Process (PDP) should be adapted to the new WG model. He explained that the GNSO’s constituency-based structure has become polarized and it is time to look for a more dynamic model that can foster change. The

idea is to use stakeholder groups (SGs) as the basic concept, which is consistent with ICANN being a community of stakeholders. The idea is to have two broad groups, of suppliers and consumers, or users, represented with equal weight in the GNSO. The supplier group could be organized in terms of registrars and registries, but it may also include ISPs. On the other side, business and non-commercial users could be identified. In addition, room could be made for individuals. There are also other groups of people that the market has produced, which were unknown when the ICANN model was first designed. In addition, it is important to ensure that the current constituency model is transparent, and that overall coordination between the GNSO and other ICANN bodies is strengthened.

Raimundo Beca noted that in the WG context the authors of the outcome document play the most important role in building consensus, with the Chair mainly seeing that all procedures have been followed.

Bruce Tonkin explained that a large company may not fit neatly into one constituency. Hence WGs can become very important tools for policy development, and each participant should state its interest in the issue. The WG model, however, should not throw away the essential concept of balance currently found in task forces. When the Council establishes a WG, it should identify the main stakeholder groups that seem to be part of that issue. Staff should then work proactively to ensure such representation. This can ensure that each WG is balanced and undercut efforts to try and “stack” it.

Steve Metalitz expressed concern that the new model would make it harder to recruit participants for constituencies as well as Council. The current incentive, he said, is the influence they will have, but now the Council will just verify things that a WG does. He did not want to have to recruit people to ensure that another body is following the right procedures because he did not think that people would find the position attractive or that their bosses would agree to devote resources and energy.

Marilyn Cade expressed frustration and disappointment because she felt the Report was not consistent with a bottom-up, consensus-based, private sector-led approach to governance of the unique indicators of the Internet. She agreed there needed to be improvements, such as in the PDP and increased structural support for the Council. She said the Evolution and Reform Committee had rejected the idea that the Board makes policy. Thus, the Board is permitted to reject or remand a policy proposal, but not to edit it. She also expressed concern that the Report was on a fast-track when she believed no one supported it.

Roberto intervened to clarify a misunderstanding: when the BGC WG indicates that the core of the policy-making process should be moved, it is to the WGs, and not to the Board.

Tricia Drakes noted, in response to Steve’s point, that it is from the current leadership that the GNSO will choose the right chair and leadership of the WGs, which are of fundamental importance. If anything, she said, the Report enhances the Council’s role.

Vittorio Bertola intervened to emphasize the importance of measuring the outcome of a WG not in quantitative terms, but in qualitative terms. The role of the Chair will indeed be fundamental.

Chuck Gomes indicated support for the Report and complimented the BGC WG for incorporating a lot of community comment in a bottom-up, not top-down, manner. He understood that additional work still needed to be done. With regard to motives for participating in the Council, he said he thought it was a very important role to be in a position to ensure that processes are being followed and to make sure that consensus is achieved. He added that if that is not enough motivation, then people will want to participate in the WGs where a lot of the things will happen.

Mike Palage said he supported most of the Report and that lots of good work had been done. With respect to the Council, he appreciated the effort to blend users. But he noted that on the suppliers' side the marketplace was changing, and the lines were breaking down between registries and registrars, particularly in regard to applications for new gTLDs. He suggested that "registration authority community" might be a better term. Such a group might, e.g., include Iron Mountain.

Roberto clarified that the Report indicates that the definition of both the supplier and the demand sides must be flexible. He did not support the suggestion of using registration services as the test, because there are different services provided that could be relevant. Most important, he said, is to be open to evolution of the market.

Bret Fausett said that if the Report were adopted, the GNSO would be tremendously improved. He cannot overemphasize how important it is to have good chairs and to give them the tools to succeed. Support from ICANN staff, he said, will be important. He urged the Board at least to adopt open WGs, but also to recognize that the chairs need tools to deal with any people who are disruptive. He also endorsed continuation of the liaison roles, such as ALAC, ccNSO and GAC.

Tony Holmes thanked the BGC WG for the work done, and for acknowledging that there are specific issues to address concerning ISPs and the structure. He noted that there is a lot of work to be done, but incredibly tight timeframes. In addition, some of the early work should inform subsequent efforts. He therefore proposed that the work be done in two phases. This would also allow the GNSO to continue with its current policy development work. This would also enable more discussion of the difficult issues. He said he is not suggesting an open-ended process, with one with a realistic deadline.

Susan Crawford took the floor to note that the BGC WG too is concerned about the timeline and wants it to work smoothly for the people who work so hard inside the GNSO. She said that the BGC WG sees its future role as a committee of stewardship, working with the community and Staff to make a successful transition and understanding the implementation challenges presented by the Report.

Wendy Seltzer thanked the BGC WG for the very good things she found in the Report, especially the introduction and the WG model. She does not think there is any reason to limit the number of participants in a WG because it is not a place for voting or assessing the level of consensus. It is up to the Council to decide what is consensus once the options are presented. In terms of incentives to participate in Council, she said they come from having an impact on the decisions ICANN will make. She is still concerned about user groups because she does not see a home for the individual Internet user who may not be a domain name registrant.

Milton Mueller said he was very supportive of the BGC WG's work and believed that it had made a good-faith effort to implement the LSE recommendations and to modify and adapt them as appropriate. The Report got the stakeholder group structure right, rectifying a major problem that contributed to ineffectiveness of the GNSO. He believes that a sufficiently flexible SG has been defined, and that individuals can play a role in the non-commercial side. He is concerned that the Report overstates the case against voting because it can be helpful. The Council must vote to establish a WG and adopt its reports, which is a significant role. He recommends that the Report identify when voting will be needed. He thinks the Council is still too big and recommends 3 representatives per SG rather than 4.

Matt Hooker suggested that most individual domain name holders do not want to be involved in ICANN, and this should be reflected in the Report. What they do want is a bill of rights describing the rights of a domain name holder. The right to transfer is important, he said, but allowing price increases was a mistake because renewals should occur at the same price as was first paid.

Ute Decker clarified that there is immense motivation from the business community and from IP rights holders to participate actively in policy development regarding gTLDs. She said that the GNSO improvements are overall going in the right direction, with restructuring being one of the more contentious issues. She did not support the Council getting smaller because it is going to be very busy in the next few years. With regard to reshaping the constituencies, she preferred the term "interest" to "registrants" because it is a broader category. She thinks that IP issues are specific and important enough to merit a separate voice.

Cynthia Hagan said that she welcomed the move towards WGs because in her product development role at Microsoft she would be able to participate and be heard.

Philip Corwin said that the Internet Commerce Association, representing professional domain name investors and developers, did not yet have a formal position on the proposal. He noted that they did find the Workshop very useful and commended the BGC WG for its good work. He appreciated the remarks by the Chairman recognizing that the industry had not existed at the advent of ICANN, but that now its members have a large stake in future ICANN policy development and look forward to participating in any WGs.

Thomas Narten said that, like others, he generally supports the direction of the Report. Based on this IETF experience, the chairing of WGs is critically important. Also key is thinking through how one measures consensus. There will always be outliers. So what should constitute “rough consensus?” Determining consensus is not really based on how many people are objecting, or on who is objecting, but on the issue that is the sticking point, and it is hard to define that arbitrarily in advance. He expressed concern that it can be easy to come up with process managers who are good at ensuring that the process was followed, but you can still have very bad results. There should be a way to ensure that the result also looks good in terms of the goal and being good for the Internet community.

Braden Cox said he is from the Association for Competitive Technology and commenting as an outsider. He felt that the Report should consider more who the suppliers here are as it is unclear why ISPs are not part of that group. He also questioned giving voting power to members selected by the Nominating Committee. He concluded by stressing the importance of making ICANN more transparent and accountable to the general public.

Tricia took the floor to address the view that perhaps some of the recommendations could reduce the effectiveness or the work of THE GNSO. She clarified that really what is being suggested is enhancing the responsibility and the coverage of GNSO in many ways.

Roberto wrapped up the Workshop by thanking everyone for their comments and recognition of the BGC WG’s hard work and efforts to incorporate previous public comments. He emphasized the goal of making the Council more efficient and productive, and expressed the hope that there will be many incentives for people to be involved. He encouraged everyone to provide additional written comments during the public comment period on all topics, including the GNSO-Staff relationship and the relationship between the GNSO and other ICANN structures.

Rita Rodin echoed Roberto’s appreciation for the comments and recognition of the work that the BGC WG put into the Report. She reiterated that the goal of the Committee is to make the Council more efficient, effective and productive. Hopefully, she said, this will provide more incentive for people to be on the Council, overseeing and directing policy, and participating in more effective WGs.