PDP Effectiveness Study – Draft

Background

The Internet Corporation for Assigned Names and Numbers, ICANN, is responsible for overseeing a number of core aspects of the Internet. Among them is the responsibility for setting policy related to the use of generic Top Level Domains (gTLDs). gTLDs, along with TLDs operated on behalf of specific countries (ccTLDs) and a few specialized TLDs (.edu, .int, .gov) together comprise the entire Internet domain name space. There are 18 such gTLDs at the moment, but ICANN is currently in the process or evaluating applications for well over 1000 new gTLDs which may be delegated and come online starting within a few months.

ICANN Bylaws explicitly give the responsibility of developing gTLD policy recommendations to the Generic Names Support Organization (GNSO) and overseeing this activity is the responsibility of the GNSO Council. Policy recommendations developed by the GNSO and approved by the GNSO Council must be ratified by the ICANN Board. Although policy may be developed by the GNSO using a variety of mechanisms, the formal Policy Development Process (PDP) must be used for developing policies, often referred to as 'Consensus Policy', which may immediately (i.e. on certain issues – often referred to as picket fence issues, without contract renegotiation) be integrated into the contracts of Registries (those entities that operate gTLDs under contract to ICANN) and Registrars (those entities accredited by ICANN to distribute domain names within gTLDs). The PDP is also used in other cases when the rigor of its methodology is desired due to the complexity of the issue and/or the number of strongly held and conflicting views held on the issue. GNSO Policy recommendations resulting from a PDP are given high significance. Presuming that the recommendations have been approved by a "supermajority" of the GNSO (roughly 2/3), it takes a supermajority of the Board to reject them. Put another way, once recommendations have the overwhelming support of the GNSO, it only takes 1/3 of the ICANN Board to ratify them and put them into effect.

There is no clear Bylaw reference on whether the GNSO is the sole entity within ICANN related to long-term gTLD policy, but the Bylaws do give the Board emergency powers to establish interim policy in certain cases, and to then refer the issue to the GNSO for a longer term solution. The current position held by many stakeholders, and the Board itself based on precedent, is that policy should be decided by the GNSO, but failing its ability to do so, the Board may take appropriate action for which there is no GNSO policy recommendation.

As a Multi-Stakeholder Model (MSM) – based organization, ICANN generally operates by consensus, trying to balance competing interests. However, ICANN is also charged with ensuring that the "public interest" is met. Public Interest is a term for which there are many definitions but no single ICANN definition, and there is no definitive answer to who it is within the MSM that is charged with defending the Global Public Interest. One such entity, but not necessarily the only one, is the Governmental Advisory Committee (GAC), comprised of representatives of many of the world's national governments.

37   With the gTLD space increasing by almost two orders of magnitude, gTLD policy will likely be the subject
38   of increased scrutiny and importance.

PDP Procedures

40   The procedures to be followed in initiating and carrying out a PDP are defined in Annex A of the ICANN
41   Bylaws (http://www.icann.org/en/about/governance/bylaws#AnnexA) and are further specified in the
42   GNSO PDP Manual (http://gnso.icann.org/council/annex-2-pdp-manual-13jun13-en.pdf), an annex of
43   the overall GNSO Operating Procedures (http://gnso.icann.org/en/council/gnso-operating-procedures-
44   16may13-en.pdf).

45   The Bylaws and associated PDP Manual were refined recently [specify when], but the overall process has
46   been unchanged for a number of years [specify how long].

Workgroup Process

48   Currently all PDPs are carried out using a Work Group (WG) as the discussion/decision vehicle.
49   Membership in a WG is open to all. While all GNSO WGs are open to everyone in the community, not all
50   stakeholder groups are able to participate equally. As a result, some stakeholders are well represented,
51   generally driven by a financial stake in the outcome, and some are poorly represented, it at all. The
52   latter tend to be those without a financial stake or those without an economic base that can fund their
53   time and other participation costs.

Does the PDP Meet ICANN's Needs?

55   Some PDPs are charged with answering specific questions or making what amounts to binary or n-
56   outcome decisions. Others are presented with one or more problems and charged with improving a
57   specific situation.

58   The intent of the PDP is to develop sound policy that can be seen as serving the global public interest,
59   factoring in the needs of all stakeholders (and not just the ones that normally attend ICANN meetings),
60   and to do so with sufficient transparency as to not bring into question the legitimacy of the process.

61   The community is divided as to whether the PDP as currently implemented is effective in all cases. To
62   define effectiveness, one must first define success. There are two viewpoints on this:

63   • Some parts of the community define success as the PDP resulting in recommendations which
64   definitively address the original question or aim to solve the original problem. Stalemate or
65   abandoning the PDP is deemed to be failure, since the only route for the issue to be addressed
66   in such a situation is for the Board to take unilateral action, forsaking the bottom-up, multi-
67   stakeholder process. For PDPs charged with addressing problems, partial solutions or weak
68   minimalist recommendations are often considered failures.
69   • Other parts of the community believe that 'stalemate' or a partial recommendation is a
70   legitimate result of a PDP, demonstrating that the community is split on the issues. When this

71 happens an accurate record of the differences is presented to the Board instead of a
72 recommendation. It then becomes the Board's responsibility to take action to address the issue
73 in the context of ICANN's Public Interest obligations.

74 ## Assignment

75 The contractor is expected to:

76 - Thoroughly understand and document the PDP process as practiced;
77 - By studying the records of a number of specific PDPs with various outcomes, analyze the process
78   dynamics;
79   - Records include documents, email archives, transcripts and recordings
80   - Contractor may augment the record with requests for clarification from the participants
81   in the PDP as necessary.
82 - Do a critical analysis of the PDP process, defined and practiced, identifying
83   - the strengths and weaknesses
84   - differences between defined process and actual practice ;
85   - whether the process incorporated the views of all stakeholders, both those active in
86   ICANN and those not typically present for ICANN deliberations;
87   - Whether the process is sufficiently transparent.
88 - Evaluate to what extent the PDP process meets ICANN needs, and to the extent that it does not,
89   recommend issues that need further investigation and change.