Working Groups: Some initial thoughts

This draft is meant as a starting place for conversations involving the formation of GNSO initiated working groups (WGs) as may be mandated by the Board when it decides on the "GNSO Improvements" as documented in the 3 February Report of Board Governance Committee Review Working Group on GNSO Improvements..

As an individual contribution it has no status, official or otherwise.

From the recommendations:

> **Adopting a Working Group Model**: A working group model should become the focal point for policy development and enhance the policy development process by making it more inclusive and representative, and – ultimately – more effective and efficient. This approach can be a more constructive way of establishing areas of agreement than task forces, where membership is limited and discussion can become polarized along constituency lines. It also enables key parties to become involved in the beginning and work together to address complex or controversial issues. Appointing skilled chairs and drafters, as well as proper scoping of the WG's objectives, will be integral parts of development of a successful model. Steps should be taken immediately to move to a working group model for future policy development work, developing appropriate operating principles, rules and procedures that can draw upon expertise gained from policy development in the IETF, W3C, RIRs and other organizations.[1]

Some general rules were set out by the Board Governance Committee GNSO Review Working Group (BGC-GRWG)

- The Chair of a working group must ensure that the group considers all legitimate views and objections, and endeavors to resolve them, whether these views and objections are expressed by active participants or others.

- At the outset, either the working group or the Council should set a minimum threshold for active support before a decision can be considered to have been reached. This may involve balancing numeric and distributional components.

- The Chair must work to foster consensus, trying to design and promote proposals that can be acceptable to as many participants as possible. "Agreement" is reached either when all participants say that they can accept a decision that has been reached or the Chair determines that this is not possible but there is only minor dissent. In the latter case, the minority opinion(s) and their rationale will be recorded.

- Where such agreement is not possible, a group should strive to reach agreement on points where there is significant support and few abstentions. Support for the points should be well-documented and include the positions and reasoning of those who do not agree.

- Decisions where there is widespread apathy should be avoided. On the other hand, dissenters should not stop a group's work simply by saying that they cannot accept a decision. Instead, they should propose an alternative that would be acceptable to them and also meet the needs of other working group members. When the Chair believes that the working group has duly considered the legitimate concerns of dissenters, the group can decide to record the alternate view(s) and end that aspect of the discussion.

- The author(s) of the working group report will play a crucial role in building consensus, and should be distinct from the Chair, who in other organizations does not play a role in this part of the process. The drafting group should ideally comprise a variety of voices, to help ensure that the outcome is constructive and broadly supported.

- There should be a procedure for appealing a decision of the Chair (perhaps to the Council) with respect to the proper application of the agreed rules.

- Participants must agree to openly and honestly express their views, or the views of

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[1] Report of the Board Governance Committee GNSO Review Working Group in GSN Improvements; 3 Feb; Page 3

the stakeholders they represent; to listen to the points of view of others and to focus on the merits of what is being said; and to develop and contribute to options that represent common ground. Participants should be engaged actively in the process and contribute to discussions and drafting activities. An effective process requires that participants take seriously commitments to participate and contribute to assuring a well-considered and thoughtful process.

- Participants have the right to disagree with an option that has been presented but, as noted above, they also have the responsibility to offer reasonable alternatives.

- Each participant who represents a GNSO constituency or another interest group should undertake to keep that group updated on working group progress and to bring the concerns of their constituency or interest group to the table.

- Participants must disclose certain information on standardized Statement of Interest and Declaration of Interest forms, which will be available online for public review.

While these rules are useful they could produce a Working Group that has no accountability or management. These rules also do not specify any guidelines for the relationship between the GNSO, the GNSO Council and the WGs. As it stands, these rules may not be a sufficient recipe for a WG as it can leave a WG either floundering without recourse or subject it to undue influence from the GNSO council. Some additional guidelines to consider include:

1) There needs to be a basis for what level of interest or activity brings a WG into existence. IETF[2] uses Internet-drafts, BOFs and mailing list activity before the Area directors and the IESG decides on whether to create a group. W3C[3] uses member contributions, workshops and mailing list activity. In ICANN will we still use the PDP triggers of Issue reports and council vote? Or do we need to develop new criteria? In addition to requiring a decision for GNSO council for initiating a WG, there should also be a requires set of prior activity that triggers GNSO council consideration of any proposed WG.

2) Council members should, in general, not chair policy working groups though it is reasonable for them to be chair of process oriented working groups (though these may be better characterized as standing groups, they should work on generally the same basis as working groups). As with all guidelines, this does not need to be absolute, and there may be times when the best choice for a particular working group may be a member of the GSNO council. If this happens, it is important that the chair be able to separate the roles of chair and of council member. While this can sometimes be done to good effect, it is not normally a good idea. This same consideration should apply to WG report writers.

3) As mentioned above, chairs should be unbiased. This is a laudable goal, but rarely is a chair completely unbiased especially if experienced in the subject manner. In a controversial setting, this is often a good reason for selecting co-chairs. Whether there is a single chair or co-chairs, however, a chair needs to be explicit about removing him or herself from the fray. This does not mean that a chair experienced in the subject manner cannot express an opinion, but should be explicit about the fact that an opinion is being stated and not a "ruling of the chair." In some groups this is often referred to as "taking off the chair hat." Also, after having stated an opinion and given adequate argument in support of the opinion, a chair must "put the chair's hat back on" and resume an impartial attitude. this is one area where having a co-chair helps.

4) For every work group, there should be at least one GNSO council member to act as a liaison between the council and the WG. Working groups must maintain in close contact with the council to ensure that there are no surprises at the end of the process and to help the GNSO council coordinate the various policy efforts. The liaison should also responsible for knowing when a WG is having problems and be able to either help or to call on assistance from other quarters. In the IETF this role is performed by an Area Director.

5) Working group should work on rough consensus. As there should not be voting in the Working Groups, they have no option but to work on some sort of consensus basis. In the

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[2] http://www.ietf.org/IETF-Standards-Process.html and ftp://ftp.rfc-editor.org/in-notes/bcp/bcp9.txt
[3] http://www.w3.org/2005/10/Process-20051014/groups.html#GAGeneral

ICANN context one needs to be careful how on uses the term consensus, as there is a historical meaning within the GNSO of consensus being signified by a vote with a 2/3 majority.

There has been a fair amount of interest in 'rough consensus' as a practice. What is it and how does one know when it has been reached? The establishment of "rough consensus" does not require that everyone in the working group agree. It does require that an overwhelming majority agree, and that the positions presented by those who do not agree have been completely discussed, with the reasoning of all sides noted. Such a thorough and exhaustive process may provides an effective means of determining whether agreement or strong support can be achieved.[4] This generally means that discussions cannot stop until the work has reached a point where it is obvious to most any observer that there is a clearly dominant position and that further discussion is fruitless. This does not mean that there aren't any disagreements, perhaps even fundamental ones. It does mean that all of the known issues have been examined and discussed fully and fairly and that any unresolved disagreements do not present any known barriers to implementation.

Another method was used to good advantage by the GNSO's IDN WG is to rate all positions as either being agreed if they have rough consensus, supported if there is some substantive agreement, or whether an opinon was offered on an alternative but there was no substantive support.

What is clear is that report writers will need to include all of the options considered and the reasons for either acceptance or non acceptance of all options.

6) There needs to be an appeals systems for Working Group chair. One important aspect of rough consensus is that it requires that there is someone who can determine when rough consensus is reached and someone to whom rough consensus decisions can be appealed. As documented in the Improvement mandate, the roll of calling rough consensus will be up the chair of the WG. The Improvements document , however, does not mandate an appeals process, though it suggests that one might be necessary. In the IETF, while the working group (WG) chair is responsible for calling rough consensus. Anyone who disagrees can appeal[5] to the chair to re-review their decision based on an argument presented by the appellant. If the WG chair[6] does not change the decision regarding rough consensus, it can be appealed to the WG chair's boss, the Area Director (AD). If the AD disagrees, it can be appealed to the full Internet Engineering Steering Group (IESG)[7]. If the IESG does not reverse the decision, it can be appealed to the Internet Architecture board (IAB)[8]. And finally, if the appeal relates to a matter of procedure and is not based on a technical argument, it can be appealed to the Internet Society Board of Trustees. te produces a very clear chain of appeals.

It is my belief that it is the appeals process that makes rough consensus possible. A similar chain of appeals needs to be possible in the ICANN implementation of WGs.

7) All working groups need to have charters that define their scope and give milestones. Charters, as well as any changes or renewals to charters need to be approved by the GNSO council. WGs must also be constrained to working within their charter and as much as possible to their milestones. When this s not possible, the WG must come back, through the liaison, to the GSNO council for updates of milestones or chartered work items.

8) The GNSO council should, on [2/3] vote, be able to replace a WG chair. This should be initiated if a group has become dysfunctional and if replacing the chair seems a viable solution for fixing the group. Such an effort should be considered on the recommendation of the liaison(s) to the group or by appeal of [10] WG participants.

9) The GNSO council should, on [2/3] vote, be able to disband a WG that cannot complete its chartered tasks or that becomes dysfunctional. Such a motion should be brought by the

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4 ibid, Page 14
5 The appeal procedure and other information on the IETF standards process can be found in: http://www.ietf.org/rfc/rfc2026.txt
6 For information on WG chairs: http://www.ietf.org/IESG/wgchairs.html
7 For information on the IESG: http://www.ietf.org/iesg.html
8 For information on the IAB: http://www.iab.org/

liaison to the WG.

10) The role of staff members needs to be understood. In some organizations like W3C staff plays and integral role and often leads. In the IETF on the other, staff is not involved at all in working Groups. I expect that the role in ICANN will fall somewhere in between where staff members will be assigned to a WG as an aide to the chair but will not have any direct influence over the decisions within a working group and must function in a purely secretariat function. It needs to be considered whether Staff membrs can be Working Group Report authors as conceived by the BGC-GRWG

I recommend that a standing committee be constituted by the the GNSO council as soon as possible to consider these issues, and other issues that may come from others, such as the staff. As the WG is the basis on which the rest of the Improvements are built, it is important that all issues regarding WG be considered as early as possible.