MOTION TO ACCEPT THE REPORT FROM THE GNSO BYLAWS IMPLEMENTATION DRAFTING TEAM

**Motion deferred to 7 November 2016**

Made by: James Bladel

Seconded by: Rubens Kuhl

WHEREAS:

1. On 30 June 2016 the GNSO Council approved the creation of a Drafting Team (DT) that was to work with ICANN staff to “fully identify all the new or additional rights and responsibilities that the GNSO has under the revised Bylaws, including but not limited to participation of the GNSO within the Empowered Community, and to develop new or modified structures and procedures (as necessary) to fully implement these new or additional rights and responsibilities”;

2. In creating the DT, the GNSO Council requested that the DT provide the GNSO Council with an implementation plan “which will have the consensus of the Drafting Team, including any recommendations for needed further changes to ICANN Bylaws and/or GNSO Operating Procedures to enable effective GNSO participation in ICANN activities under the revised ICANN Bylaws, not later than 30 September 2016”;

3. The DT submitted its report to the GNSO Council on 12 October 2016 (https://gnso.icann.org/en/drafts/bylaws-drafting-team-final-report-12oct16-en.pdf);

4. The GNSO Council has reviewed the DT’s report;

5. The report and accompanying statements raise significant questions concerning the scope of the Council’s remit under the ICANN Bylaws which require legal advice regarding the proper interpretation of the ICANN Bylaws;

6. The report and accompanying statements also raise significant questions concerning the Council’s relationship to other entities within GNSO in terms of the exercise of the new powers accorded to GNSO under the revised ICANN bylaws, and broader input from those entities, from stakeholders and from the public would benefit the Council’s consideration of the report;

RESOLVED:

1. The GNSO Council accepts the DT’s report, and thanks DT participants for hard work on the report, especially in view of the nature of the limited time frame available to the DT;

2. The GNSO Council directs ICANN staff to seek advice from ICANN’s legal department regarding whether some or all of the new powers fall outside the GNSO Council’s remit as set forth in Bylaw Section 11.2(d) (“A GNSO Council responsible for managing the policy development process of the GNSO”) and 11.3 (“The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "GNSO Operating Procedures") as it sees fit to carry out that responsibility”) and, if so, whether the GNSO Council can take on new powers outside its remit without an amendment to the ICANN Bylaws expanding that remit;

3. The GNSO Council directs ICANN staff to send the report to the leadership of all GNSO Stakeholder Groups and Constituencies, and asks them to consider the issues raised therein and provide their views on them no later than [December 31, 2016);

4. The GNSO Council directs ICANN staff to post the report and accompanying statements for public comment for a period of at least 40 days, specifically asking for public input on the threshold question of whether GNSO Council should speak for GNSO Constituencies and Stakeholder Groups in exercising GNSO’s rights and responsibilities under the new  Bylaws;

5. Following the receipt and analysis of the advice of ICANN’s legal department and the views of the Stakeholder Groups, Constituencies and the public, the GNSO Council will promptly consider whether accepting the recommendations of the Drafting Team is justified and within its remit, and if so, the timetable for next steps.6.Until the steps described under 2. to 5. shall have led to an agreed result, and following the GNSO council motion 20160929-2 (“Interim appointment of the GNSO Representative on the Empowered Community Administration”), the GNSO Chair (currently James Bladel) will represent the GNSO as the Decisional Participant on the Empowered Community Administration on an interim basis.

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