

This is the [first draft] report from the GNSO Bylaws Implementation Drafting Team (DT), responding to Council resolution (link) passed 30-Jun-2016. All background and work is described at the DT wiki page (link).

Council's resolution tasked the Drafting Team to:

1. 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
2. develop new or modified structures and procedures (as necessary) to fully implement these new or additional rights and responsibilities.

ICANN staff worked quickly to create a table of new rights and responsibilities for GNSO. (link) Staff found 101 relevant instances in the new bylaws, and grouped those into three categories:

1. Obligations of the GNSO as a Decisional Participant of the Empowered Community;
2. Engagement in the new Customer Standing Committee; and
3. Processes relating to voting thresholds.

The Drafting Team (DT) held [x] calls, beginning on 22-Aug. The DT analyzed the staff table and suggested a somewhat different categorization of GNSO rights and responsibilities, looking at three types of decisions that GNSO would need to consider:

1. **Nominations** for GNSO representatives on Empowered Community, Customer Standing Committee, IANA Functions Review Team, and other review teams that will become part of the post-transition Bylaws;
2. **Decisions** made by GNSO to initiate or respond to petitions of the Empowered Community; and
3. **Decisions** made by GNSO on its own, to initiate document inspection requests or investigations, per Bylaws Sections 22.7(a), 22.7(e) and 22.8

The DT hoped that that it could find consensus recommendations for how GNSO should make these three types of decisions, so that our recommendation could be applied to all 101 relevant instances in the new Bylaws. This approach was motivated by the realization that it would be difficult to discuss/debate recommendations for over 100 Bylaws instances in the 5 weeks available to deliver an implementation plan to Council. Moreover, the DT was eager to address two major questions inherent in the charge of the Council resolution:

1. **Who** should speak for the GNSO, as a Decisional Participant of the Empowered Community – should it be GNSO Council or the GNSO stakeholder groups and constituencies? and
2. **How** should the GNSO Council or Stakeholder Groups & Constituencies arrive at their decisions – voting thresholds with or without requiring majorities in each house?

Below is how the DT reached consensus on these two general questions.

1. **Who** should speak for the GNSO, as a Decisional Participant of the Empowered Community – should it be GNSO Council or the GNSO stakeholder groups and constituencies?

Some DT members noted that the CWG and CCWG recommendations look to ICANN's Advisory Committees (ACs) and Supporting Organizations (SOs) to make decisions within the Empowered

Community. That opened the discussion of who speaks for GNSO in the Empowered Community -- GNSO Council or the component SGs and Constituencies in GNSO? DT members noted that GNSO Council was created in the Bylaws "for managing the policy development process of the GNSO" which arguably does not cover the non-policy decisions related to exercise of powers of the Empowered Community.

As a first step, the DT chair requested ICANN staff to analyze the new Bylaws to determine whether GNSO or GNSO Council is referenced as the decisional body. Staff responded quickly, showing that among the references of the 17 new references to "GNSO" in the Bylaws, there are :

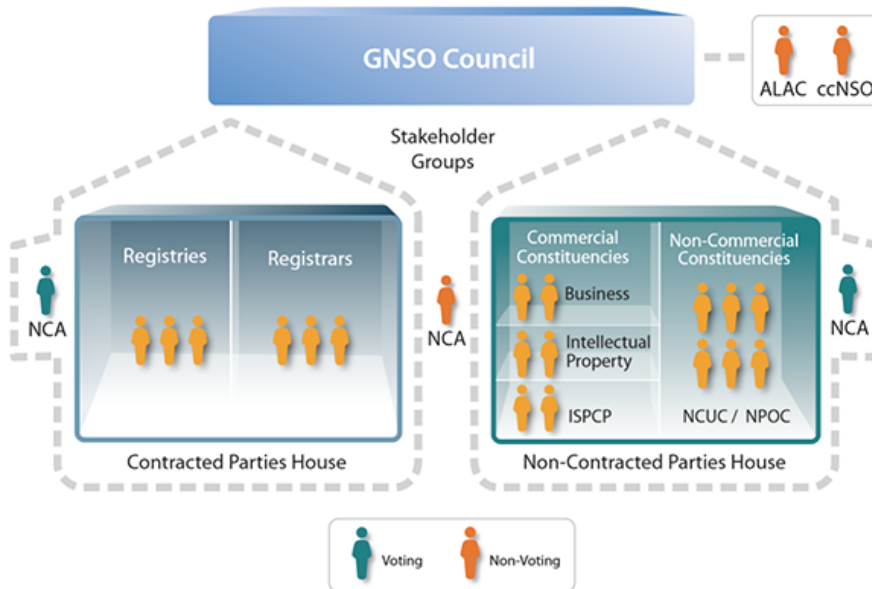
11 uses of the term "GNSO Council"

6 uses of the term "GNSO Supermajority", which was previously defined in the Bylaws at Section 11.3 as "(A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House."

Based on that analysis and a straw-poll of members, the DT decided to assume that, unless the Bylaws are further amended, Council would speak for GNSO in these 17 instances. However, the DT did not reach agreement on how the GNSO would exercise its new authorities in the other 84 instances. ~~and moved on to the second general question.~~

**2. How** should the GNSO Council or Stakeholder Groups & Constituencies arrive at their decisions – voting thresholds with or without requiring majorities in each house?

The DT first looked at existing Bylaws regarding composition of GNSO Council and voting thresholds for matters other than policy development.



Existing ICANN Bylaws describe a "default" voting threshold, at Section 11.3:

Except as otherwise specified in these Bylaws, Annex A, Annex A-1, or Annex A-2 hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House.

Several DT members noted that GNSO Council has used this “default threshold” to make decisions on non-policy matters, such as nominations for review teams, approvals of cross-community charters and working group recommendations not related to GNSO policy. For example, a majority of each house was required to approve the CWG and CCWG proposals and to approve the resolution creating this DT.

Examining the “except as specified” sections, we found no instructions or requirements for how Council should explicitly address non-policy decisions. Staff noted that last year a “GNSO Guidance Process” was added to Section 11.3 of Bylaws, without indicating it was for policy matters:

(xvi) Initiation of a GNSO Guidance Process (“GGP”): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO Supermajority.

Staff confirmed that the GGP has not yet been used. The DT noted that Council requires a GNSO Supermajority to approve GGP recommendations.

Next, the DT considered whether requiring majority (or supermajority) of each house was the appropriate way for GNSO to exercise its rights and responsibilities in the Empowered Community. Advocates for an alternate voting threshold for EC decisions noted that this would not alter the present structure of GNSO Council and would not change the voting thresholds for policy issues.

The DT used the table below to compare the current split-house voting arrangement with an alternative that did not require majorities of each house.

The DT chair suggested that an alternative voting threshold based on a majority of Councilors – regardless of house majorities—would need to maintain balance between Councilors in the Contract Party House (CPH) and the Non-Contract Party House (NCPH). That is reflected in the table with 2x weighting for Councilors in the CPH, giving each house the same number of Council votes.

The discussion also considered whether the two voting Nominating Committee Appointees (NCA) should vote on Empowered Community decisions. The argument against NCA votes was that NCAs are not selected by or accountable to the community defined as the GNSO, and that NCAs were given votes to break ties in each House. The DT has not yet reached consensus about the whether to allow NCAs to vote in a voting threshold of majority of Councilors.

	Today	Weight	Weighted	Test A	Test B	Test C	Test D	Test E
CPH:								
RySG 1	1	2	2	2				2
RySG 2	1	2	2	2				2
RySG 3	1	2	2	2				2
RrSG 1	1	2	2	2		2	2	
RrSG 1	1	2	2	2		2	2	
RrSG 1	1	2	2	2		2	2	
CPH NCA	1	0	0					
Total CPH	7		12	12	0	6	6	6
NCPH:								
CSG:								
BC 1	1	1	1		1			
BC 2	1	1	1		1			
IPC 1	1	1	1		1			1
IPC 2	1	1	1		1			1
ISPCP 1	1	1	1		1		1	1
ISPCP 2	1	1	1		1		1	1
NCSG:								
NCSG 1	1	1	1		1	1	1	1
NCSG 2	1	1	1		1	1	1	1
NCSG 3	1	1	1		1	1	1	1
NCSG 4	1	1	1		1	1	1	1
NCSG 5	1	1	1		1	1	1	1
NCSG 6	1	1	1		1	1	1	1
NCPH NCA	1	0	0					
Total NCPH	13		12	0	12	6	8	10
Total "yes" Votes				12	12	12	14	16
				50.0%	50.0%	50.0%	58.3%	66.7%
Total Votes	20		24	24	24	24	24	24

The table above shows several Test columns where a majority of Council votes would be achieved, without reaching a majority of each house. In Test E, a supermajority of Council votes is shown, without reaching a majority of each house. Test E generated interest from some DT members, since it demonstrated where the “default threshold” would block a supermajority vote of Councilors.

As of 15-Sep, the DT consideration of this alternative voting method was not conclusive, although a straw poll of DT members did not show a majority to recommend this alternative.

[Next step]: Consider the Council voting thresholds to recommend for each of the three GNSO decision categories.

The table below arrays the 3 decision types against two potential Council voting thresholds that are already reflected in current ICANN bylaws for the GNSO. This is intended to facilitate discussion on the DT's next call.

GNSO Decision	Majority of Each House	GNSO Supermajority (2/3 of each House, or ¾ of one House and majority of other House)
<b>Nominations</b> for GNSO representatives on Empowered Community, Customer Standing Committee, IANA Functions Review Team, and other review teams that will become part of the post-transition Bylaws	Appropriate for nominations, and is currently the rule for nominations	
<b>Decisions</b> made by GNSO to initiate or respond to petitions of the Empowered Community	Appropriate for this decision?	Do we need this level of support? For all EC petition decisions?
<b>Decisions</b> made by GNSO on its own, to initiate document inspection requests or investigations, per Bylaws Sections 22.7(a), 22.7(e) and 22.8	Appropriate for this decision, which only initiates action.	