IPC Responses to Staff Paper of 6 March

(3/14/17)

Threshold Issue: More significant Bylaws changes are needed to implement the Drafting Team recommendations.

The staff recommends no changes to the ICANN by-laws other than the specification of certain new voting thresholds within the GNSO council. IPC strongly disagrees. Implementation of the changes reflected in the DT report will constitute a drastic expansion of the role of the GNSO Council, which, under the current by-laws, is confined almost exclusively to management of the policy development process. This drastic expansion, which is complemented by a substantial diminution of the role of other parts of the GNSO, notably the constituencies and stakeholder groups, should be reflected in amendments to the ICANN Bylaws, so that the full procedures for adopting such amendments, including the possibility of community challenges thereto under the recent accountability changes to the Bylaws, are applicable.

Specific Questions Posed in Executive Summary

1. Reconsideration requests: IPC has no position on whether any specific guidance needed for submission of reconsideration requests should be supplied now or at a later date.

4. Specific Reviews: IPC believes that the selection process for reviews not related to the GNSO policy development process (e.g., ATRT) should be determined by the SGs and Cs of the GNSO. Assuming that this role will be assigned to the GNSO Council, as per the DT report, IPC objects to the staff proposal to give the unilateral power to approve review teams to the GNSO Chair. The DT recommendation requiring a majority vote of each House within the GNSO Council is more compliant to subsidiarity principles and provides the SGs and Cs with at least an indirect remnant of the role IPC believes they should be playing in this sphere. IPC would support an appropriate bylaws amendment to specify this role for the GNSO Council.

5. Mediation: No position, see response to item 1.

15. CSC Composition etc.: Yes, the RySG procedure for appointing members should be documented.

26. Inspection: There was strong (perhaps unanimous) support in the DT for the proposition that any single SG or C could invoke the inspection authority. If this “runs afoul of Section 22.7(d),” which accords this right only to Decisional Participants, then either (1) that Bylaws provision should be amended to accord this authority to any SG or C of the GNSO, or (2) the voting threshold within the GNSO Council on invoking inspection requests should be set at the number of votes accorded to any requesting SG or C (e.g., 2 votes for the CSG constituencies; 3 votes for the CPH SGs; 6 votes for NCSG).

27. Inspection Remedies. Because of the strong sentiment within the DT to give individual SGs or Cs control over the inspection power, IPC is inclined to support the DT’s original recommendation that the requesting SG or C may invoke the remedies if ICANN refuses to allow inspection. This could be achieved by either of the mechanisms stated in #26 above. We acknowledge there is a good argument for a higher threshold in this case, but the benefit of empowering the SGs and Cs to invoke the inspection process could be nullified if GNSO can refuse to pursue the remedies for ICANN violations of section 22.7 over the objection of the SG or C that invoked the inspection process.

37. Petition Process. IPC agrees that the procedure for raising a petition in the GNSO in the (very limited) circumstances specified should be spelled out. IPC reserves judgment at this time on what those procedures should be.

44. Nom Comm Director Removal Process. As with #37, IPC agrees that procedures applicable here should be spelled out, and reserves judgment on the specifics.

45. SO/AC Director Removal Process: IPC strongly believes that a 3/4 majority of the House that selected a Director should be able to invoke the removal process. To interpret this as 3/4 of council could lead to a situation in which a director might be removed over the objection of a majority or at least a large minority of the House which selected him/her. Just as the “opposite” House has no role in selection, it should have no role in removal. The citation of the IANA Stewardship Proposal is inapposite, as in every other case the entire SO makes the selection (and should have removal power); the GNSO is sui generis in this regard. IPC rejects the recommendation to the contrary in the second paragraph of the “legal assessment” column.

46. Board Recall Process: The issue identified seems similar to ##37 and 44 so see responses above. The “legal assessment” column is identical to that in #45 so see our response to #45 to extent applicable.