| **Item Number** | **Questions Identified / Legal Assessment** | **DT Input** | **DT Response** |
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|  |  | **IPC**: 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. |  |
| **1 Reconsideration requests; (IRP) for covered ICANN actions** | Should any specific guidance, for example in the form of a template, be provided for the submission of such a request? If yes, can this be developed at a later date? | **BC**: Don’t require a template for this motion to be approved at this time. ICANN Legal and Staff are invited to draft text for such a motion so that it would be ready if/when needed.  **ISPCP**: No.  **IPC**: 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)** | The Drafting Team proposes that “decisions to approve the 21 total review team members shall be presented to Council for approval by a majority of each House.” We note that the Bylaws do not grant SO/ACs any special approval rights over the entire slate of review team members. If the Drafting Team’s concern is to guide who the GNSO Chair selects for the remaining slots in the review teams (in collaboration with the other SO/AC Chairs), the Drafting Team could consider providing interim decisional guidance to the GNSO Chair when participating in the process (e.g. criteria, ranking, etc.). | **BC**: Per experience with SSRT2 and the Legal Assessment (at right), our DT recommendation may not be practical, since the AC/SO chairs jointly select nominees for open slots. Noting this is not an EC power, we could change our Recommendation to:  **Council may provide guidance to GNSO Chair for priorities and criteria in selecting from nominees to fill open review team slots. If done via a Council motion, this resolution must be approved by a majority of each House.**  **IPC**: 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 (Community Mediation)** | Should any specific guidance, for example in the form of a template, be provided for the submission of such a request? If yes, can this be developed at a later date? | BC: Don’t require a template for this motion to be approved at this time. ICANN Legal and Staff are invited to draft text for such a motion so that it would be ready if/when needed.  ISPCP: Yes  IPC: No position, see response to item 1. |  |
| **15 (CSC Composition, Appointment, Term and removal)** | Should the RySG procedure for appointing members be documented in the same way in the GNSO Operating Procedures as the Board member selection process is? | **BC**: Recommend, but do not require that the RySG document its selection procedure in advance.  **ISPCP**: yes, it should be documented.  **IPC**: Yes, the RySG procedure for appointing members should be documented. |  |
| **26 (Inspection)** | For subpart (a), the Drafting Team’s recommended is that “Any GNSO Stakeholder Group or Constituency may request ICANN document inspection. This request would be automatically communicated by the GNSO’s Decisional Participant representative, and would not require action by GNSO Council. In addition, GNSO Council may request ICANN document inspection, with approval by 1/4 of each House or majority of one House.”  We note that granting of an inspection right directly to a Stakeholder Group or Constituency, without any requirement that it pass through the Decisional Participant (here, the GNSO) seems to run afoul of Section 22.7(d), which specifically limits this right: “The inspection rights provided to the Decisional Participants are granted to the Decisional Participants and are not granted or available to any other person or entity.” We advise that action be required at the GNSO level to confirm that any request issued in the GNSO name meets the specific form and requirements set out in Section 22.7 as a whole. While the low approval threshold may not be optimal, it is better to have a low threshold than no threshold at all to demonstrate an action taken in the name of the full GNSO. | **BC**: per the Legal Assessment (at right), suggest we change our recommendation to say:  “Any GNSO Stakeholder Group or Constituency may request ICANN document inspection. **This request shall be deemed as approved by GNSO Council as a consent agenda item.”**  **IPC**: 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)** | For subpart (e) regarding remedies for Decisional Participants who believe that ICANN has violated Section 22.7, the Drafting Team’s recommendation is that the “**requesting Constituency or SG may decide whether to seek the remedy.** If Council was the requesting entity, Council may seek review with approval by 1/4 of each House or majority of one House.”  Please take note our comments for Item 26 as this recommendation is related. Whichever portion of the GNSO is seeking to challenge the response will still be doing so in the GNSO’s name. There should be some process for indicating the GNSO’s agreement with using this escalation method, even if by a low threshold. Because of the potential for use of ICANN’s other accountability mechanisms, up to Board recall, there should be some checks that the broader GNSO is aligned with in escalating the matter. | **BC**: per the Legal Assessment (at right), we could change our recommendation to say:  **“The requesting GNSO Stakeholder Group or Constituency may decide whether to seek the remedy, and Council must approve this decision by ¼ of each House or majority of one House.** If Council was the requesting entity, Council may seek review with approval by 1/4 of each House or majority of one House.**”**  **IPC**: 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)** | standards that should be developed for how a petition is raised in the GNSO do not seem to have been addressed by the Drafting Team. Is it simply by motion, as other things would get on the Council agenda? Who can raise? What about special timing considerations to meet the timing of the EC process? | **BC**: the bylaws say “subject to the procedures and requirements developed by the applicable Decisional Participant”, and this does not seem to require “standards”.  We could recommend process and requirements for individual to submit a petition request to GNSO, which if properly submitted would then be considered by Council.  As for timing, how does Council now deliver motions that are needed on very short notice?  And we could change the procedure we recommended to say:  GNSO representative on the EC will act in accord with instructions **included in a motion** approved by majority of each house.  **ISPCP**: Is this drafting team the right body to address this? Or shouldn't these procedural items been elaborated by the GNSO RT which took over similar tasks from the SCI? Who's the addressee of a petition in this context? A petition in principle could be filed from anyone within the GNSO community. Criteria should be developed with respect to the specific character of a petition in order to avoid that it just circumvents the GNSO's working process.  **IPC**: 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 (Nominating Director Committee Removal Process)** | The standards that should be developed for how a petition/issue is raised in the GNSO do not seem to have been addressed by the Drafting Team. How can people raise any of these petition/initiation issues? Will individuals be allowed? Must it be through Councilors? Should there be processes within the SGs or Constituencies on how to escalate to a petition? | **BC**: see response to Item 37 above, regarding standards and timing.  **ISPCP**: Maybe a Petition Development Process: Raising an issue, preliminary evaluation by (legal?) staff, council decision...  **IPC**: 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)** | Further guidance is needed before a recommendation can be made, namely:  How to apply the ¾ threshold (which would be added to section 11.3.i of the ICANN Bylaws) – is this ¾ of Council members, ¾ of each house or ¾ of the House that appointed the Board member in question?  As with #44 above, the standards that should be developed for how a petition/issue is raised in the GNSO do not seem to have been addressed by the Drafting Team. How can people raise any of these petition/initiation issues? Will individuals be allowed? Must it be through councilors? Should there be processes within the SGs or Constituencies on how to escalate to a petition?  The discussion of whether the ¾ threshold required in Bylaws Annex D, Section 3.2(f) should be applied across the GNSO Council or only in the House that nominated the Director seems to be a bit vague. However, we want to highlight the language of the IANA Stewardship Proposal, which says, “If a three-quarters majority within the nominated SO or AC supports using the power… the EC will use its power. The SO or AC will also publish and explanation of why it has chosen to do so.”  Therefore, the Proposal supports that the use of this power should be at the SO/AC level, and not a subcomponent, and the reference to internal procedures is about how each SO/AC might demonstrate ¾ support. | **BC**: The DT noted in our report that this was a split decision:  **Five DT members believe that voting would occur only in the House that nominated the director, while other DT members said the entire GNSO should vote on this decision.**  We should try again to find agreement on the DT, and deliver unambiguous language.  **ISPCP**: leave this decision with the body which appointed the board member (house). On the other hand each board member is accountable to the entire (SO?) community. This should be taken into consideration as well.  **BC**: see response to item 37 above, regarding standards and timing.  ISPCP: Maybe a Petition Development Process: Raising an issue, preliminary evaluation by (legal?) staff, council decision...  **IPC**: 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)** | As with #44 and 45, the standards that should be developed for how a petition/issue is raised in the GNSO do not seem to have been addressed by the Drafting Team. How can people raise any of these petition/initiation issues? Will individuals be allowed? Must it be through councilors? Should there be processes within the SGs or Constituencies on how to escalate to a petition?  The discussion of whether the ¾ threshold required in Bylaws Annex D, Section 3.2(f) should be applied across the GNSO Council or only in the House that nominated the director seems to be a bit vague. However, we want to highlight the language of the IANA Stewardship Proposal, which says, “If a three-quarters majority within the nominated SO or AC supports using the power… the EC will use its power. The SO or AC will also publish and explanation of why it has chosen to do so.”  Therefore, the Proposal supports that the use of this power should be at the SO/AC level, and not a subcomponent, and the reference to internal procedures is about how each SO/AC might demonstrate ¾ support. | **BC**: see response to item 37 above, regarding standards and timing.  This is for full board recall, not for a single director, so not understanding the first part of the legal assessment (at right).  **ISPCP**: Maybe a Petition Development Process: Raising an issue, preliminary evaluation by (legal?) staff, council decision...  **IPC**: 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. |  |