



REVIEW OF GENERIC NAMES

SUPPORTING ORGANIZATION

*[Working Text for*

*GNSO Review Working Party Members*

*and ICANN Staff Only]*

Westlake Governance Limited

January 2015

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## SECTION 1 - EXECUTIVE SUMMARY

**Note: The Westlake Review Team continues to refine the text, the analysis and the recommendations to be included by the time the Draft Report is prepared. We have highlighted these areas by the following notation:**

**[Text/recommendation in development]**

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**[Text in development]**

This document (the working text) represents a work in progress.

A collaborative review process has been designed to accommodate numerous exchanges of ideas and iterations to ensure that community views are fully reflected in the GNSO Review. The next steps are:

1. GNSO Review Working Party provides feedback on the working text
2. Westlake develops a Draft Report for public comment, considering feedback on working text and additional research and analysis in process, considering feedback on working text and additional research and analysis in process, considering feedback on working text and additional research and analysis in process.
3. Westlake develops Final Report, considering feedback received via public comment

## SECTION 2 - LIST OF RECOMMENDATIONS

**[Text in development]**

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## SECTION 3 - CONTEXT FOR THIS REVIEW

**[Text in development]**

Draft Working Text for WP and ICANN Staff only

## SECTION 4 - REVIEW METHODOLOGY

### **Previous Review**

*The last review of the GNSO took place in 2006, with the report issued ... in September 2006. The work of the independent reviewer was then considered by the Board Governance Committee, which issued its report on 3 February 2008. It included five target areas for improvement:*

- 1. Adopt a working group model*
- 2. Revise the Policy Development Process (PDP)*
- 3. Restructure of the GNSO Council*
- 4. Enhance constituencies*
- 5. Improve communication and coordination with ICANN structures*

*The Board endorsed the recommendations of the Board Governance Committee in June 2008, which led to the formation of various GNSO committees to address implementation ... The improvement implementation work continued through 2012.<sup>1</sup>*

### **Scope of the Westlake Review Team work**

The RFP described the proposed scope of work for the review as follows:<sup>2</sup>

*... An independent reviewer to conduct an examination of the GNSO's organizational effectiveness in accordance with the ICANN-provided objective and quantifiable criteria ...*

*Note that the assessment of whether or not the GNSO has an ongoing purpose will not be considered as part of the current review.*

*The work methods are expected to include the following:*

- Examination of documentation, records and reports.*
- Outcomes from the 360 Assessment, an online mechanism to collect and summarize feedback from members of the GNSO structure, interested*

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<sup>1</sup> <https://www.icann.org/news/announcement-6b-2014-04-23-en>

<sup>2</sup> Ibid.

*members from ICANN community and other structures, members of the Board and staff.*

- *Integration of Assessments of the Second Accountability and Transparency Review Team [ATRT2] – see Appendix A of the Second Accountability and Transparency Review Team Report and Recommendations*
- *Limited interviews, if needed.*

In the event, our actual methodology expanded well beyond this published scope:

#### *1. Examination of documentation, records and reports*

We have conducted an extensive examination of documentation, records and reports, including some material that had been withdrawn from the ICANN website but to which ICANN staff drew our attention and made it available to us.

- One of the challenges the Westlake Review Team encountered is the lack of quantitative data, or measures that allow for the assessment of effectiveness, such as the participation rates from each constituency in a WG, the number of new volunteers, retention rates, diversity and gender of participants. While little quantitative data was available in these areas, consistency in survey responses and interviews, and the Westlake Review Team's observations supported some of our findings.

#### *2. Outcomes from the 360° Assessment*

We understood that the proposed 360° Assessment was envisaged as the primary means for gathering community input and feedback into the Review. The community response to the 360° Assessment was positive with 250 individuals accessing the survey and 152 completing it. This provided a wide and representative sample. Aggregate quantitative responses to the survey are contained in Appendix 2 of this document. Where possible we tested survey responses during our in depth interviews, see *4. Limited interviews, if needed, below.*



Considerable resources were applied in developing the 360° Assessment at the start of our assignment, seeking input and comment from members of the GNSO Review Working Party (Working Party), which met at frequent intervals in the early stages of the review.

### 3. *Integration of Assessments of ATRT2*

In addition to commenting on the implementation and effectiveness of the outcomes from the BGC WG's 2008 Review, we have where possible cross-referred to the Assessments of ATRT2 throughout our report.

### 4. *Limited interviews, if needed*

As the review progressed, new issues emerged through both the 360°s and as we began our 'limited interviews.' We carried out about 20 interviews during ICANN 51 in Los Angeles, and it became evident to us that we needed to conduct significantly more if we were to gain a comprehensive range of views and insights. In addition, several people whom we had tried unsuccessfully to contact early in the review (some of whom had not completed the 360° Assessments, despite multiple communications from ICANN staff to the community), made it known later that they did wish to be interviewed. As a result, we have interviewed about 40 people either face-to-face or by telephone/Skype and the interviews extended into early January 2015.

The interviews allowed us to go into considerable depth about some matters, while the 360°s provided a greater breadth of comment, in most cases without the depth.

We consider in retrospect that this approach was less than ideally efficient:

- a. It is almost axiomatic that members of the Working Party are currently active in the GNSO and a significant number of its members have significant experience with ICANN over many years. Not surprisingly, the composition of the Working Party largely reflects ICANN's and the GNSO's demographic make-up – most of them would likely be viewed

as GNSO ‘insiders’. As a result, issues of concern to ‘outsiders’ and those with little experience in ICANN did not emerge as clearly in the early stages as they did later.

- b. As a result of feedback we received after the launch of the 360° Assessment, we were made aware that we needed to examine the role of GNSO Working Groups in more detail than the 360° Assessment had provided. We therefore developed and launched a Supplementary Working Group survey that was posted after the close of the main 360° Assessment. This Supplementary survey gathered some useful information, from a small number of people who completed it, but the number of responses was small (25 responses – including multiple responses from a small number of people who commented on more than one Working Group). The actual number of individuals responding was fewer than 20 so we attempted where possible to cross-check comments against those from people we later interviewed.
- c. The 360° Assessment and the Working Group surveys for this review were initially published in English, and ICANN translated both surveys into the five other United Nations languages, posting invitations in all of these languages on the GNSO website. Despite these efforts and significant promotion of both surveys, we did not receive a single request to send a copy of the survey in any language other than English. We did receive two sets of responses in French, but these were posted to the English language version of the 360° Assessment. We might conclude from this that even those respondents had at least a working knowledge of English, in order to understand the statements they were responding to.

### **Structure of our Report**

For ease of cross-checking, we have prepared our report so that it follows largely the sequence indicated in the BGC WG’s summary of the main issues. Under each of the BGC WG’s main recommendations, we have reported as follows:

- Our assessment of whether the BGC WG’s recommendation has been implemented effectively.

- Our observations, analysis and conclusions providing support for our assessment (whether evidence-based, anecdotal, the results of our own observations, or based on our own professional experience).
- Our further recommendations, where we have considered it appropriate.

In this Working Text, we have included an additional part, Section 10 – GNSO Structure, where we have noted the extensive comments from survey respondents and interviewees on the current structure of the GNSO.

### **Interaction with ICANN staff and the Working Party**

Throughout the review, the Westlake Review Team has kept in close contact with ICANN staff responsible for administering the review. In most cases formal contact has been at least weekly and informal discussions have often occurred on a daily basis. We acknowledge the assistance of ICANN staff, who have willingly and proactively provided guidance and introductions, and on several occasions have directed us to information that we might not otherwise have been aware of or otherwise been able to find.

Similarly, the input from and liaison with the Working Party and its members has proved very helpful in identifying many of the key matters, providing well informed insights and in ‘peer reviewing’ the 360° surveys before they were launched. We note our comment above regarding the ‘ICANN insider’ status of several WP members, but this is in no way a reflection on the individual members, or their willingness (with few exceptions) to engage with us and provide us with outstandingly useful information – some on several occasions.

## SECTION 5: ADOPT A WORKING GROUP MODEL

### 5.1 BGC WG Recommendations

1. *Working Groups (WGs) should become the foundation for consensus policy development work in the GNSO. Such an approach tends to be a more constructive way of establishing where agreement might lie than task forces, where discussion can be seen as futile because the prospect of voting can polarize the group. There is value in enabling parties to become a part of the process from the beginning. This inclusiveness can have benefits in terms of being able to develop and then implement policies addressing complex or controversial issues.*
2. *Council and Staff should work together to develop appropriate operating principles, rules and procedures for the establishment and conduct of GNSO WG as the primary vehicle for policy development. This effort should draw upon the broad and deep expertise within the ICANN community on how lessons learned in other organizations, including but not limited to the IETF, W3C and the RIRs, might benefit ICANN. These rules and procedures should include:*
  - *WGs should be open to everyone . . .*
  - *Notices about the creation of working groups should be posted clearly and as broadly as possible, both inside and outside of the ICANN community . . .*
  - *A strong, experienced and respected chair is essential . . .*
  - *At the outset, the working group or the Council should set a minimum threshold for active support established before a decision can be considered to have been reached. . .*
  - *Where such agreement is not possible, a group should strive to reach agreement on points where there is significant support and few abstentions. .*
  - *Decisions where there is widespread apathy should be avoided. On the other hand, dissenters should not be able to stop a group's work simply by saying that they cannot live with a decision. . .*

- *The author(s) of the working group report will play a crucial role in building consensus, and should be distinct from the Chair. . .*
  - *There should be a procedure for appealing a decision of the Chair. . .*
  - *Anyone joining a working group after it has begun must review all documents and mailing list postings . . .*
  - *Members of working groups must disclose certain information on standardized Statement of Interest and Declaration of Interest forms, which will be available online for public review.*
3. *ICANN Staff must be ready to provide sufficient support to a working group. This should include the option of recruiting and compensating outside experts for assistance on particular areas of work, providing translation of relevant documents, and developing relevant training and development programs. Most important, the budget implications of additional resources for working groups should be factored into the planning cycle to the extent that has not already happened.*

## 5.2 Major accomplishments and milestones

(as noted on the GNSO website<sup>3</sup>):

GNSO Council approved a new set of Working Group Guidelines (March 2011):

- *Developed by the Working Group Model Work Team (WG-WT) over the course of two years and approved by the Policy Process Steering Committee (PPSC), the new guidelines feature a thorough review of every aspect of the Working Group process from its first meeting through and including the final outputs of the group.*
- *The new guidelines are incorporated within the GNSO Operating Procedures as Annex 1. At the Council's direction, Staff prepared a Summary of the new guidelines that is available for all current and future Working Group volunteers.*

<sup>3</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/accomplishments-en.htm>

## 5.3 Summary of the Westlake Review Team's assessment of implementation effectiveness

### **BGC WG Recommendations 1 and 2 (WG model and WG Operating Procedures)**

The Westlake Review Team considers that the BGC WG recommendations have been implemented effectively. A WG model has been adopted for consensus policy development. The Council approved new Working Group guidelines<sup>4</sup> in March 2011<sup>5</sup> that reflect the requirement of BGC WG recommendations for the establishment and conduct of GNSO WGs as the primary vehicle for policy development. All Working Groups are formed, chartered, operated and closed in accordance with the GNSO's Working Group Guidelines. The GNSO is responsible for managing the policy development process and recommending substantive gTLD policies to the ICANN Board for approval. Working Groups are also used for non-PDP activities (for example, the Policy & Implementation WG).

The Westlake Review Team considers that implementation of the WG model has been effective and that the result is a marked improvement on the previous task force model. The new model meets the intent of the BGC WG recommendation in that it involves wider participation than just the members from existing constituencies. It is much more open, inclusive and transparent than previously. However, as we show later in this section, there are areas where improvements can still be made.

### **BGC WG Recommendation 3 (Staff Support for WGs)**

Westlake Review Team considers that the BGC WG recommendation has been implemented effectively. With few exceptions, survey respondents and interviewees noted the strong support ICANN staff provide to Working Groups.

## 5.4 Basis for Westlake's assessment

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<sup>4</sup> <http://gns0.icann.org/council/annex-1-gns0-wg-guidelines-26mar14-en.pdf>

<sup>5</sup> <http://gns0.icann.org/en/council/annex-1-gns0-wg-guidelines-07apr11-en.pdf>

In general, survey respondents and interviewees highlighted the positive improvements made in the policy development area, following the changes adopted by the GNSO Council and ICANN Board in 2011. The detailed quantitative results of the 360° and Working Group surveys are shown in Appendix 2.

The key observations (which we discuss in greater detail under subsequent headings) that contribute to our assessment of implementation effectiveness are as follows:

1. The WG model is effective
2. Staff support for WGs is rated very highly

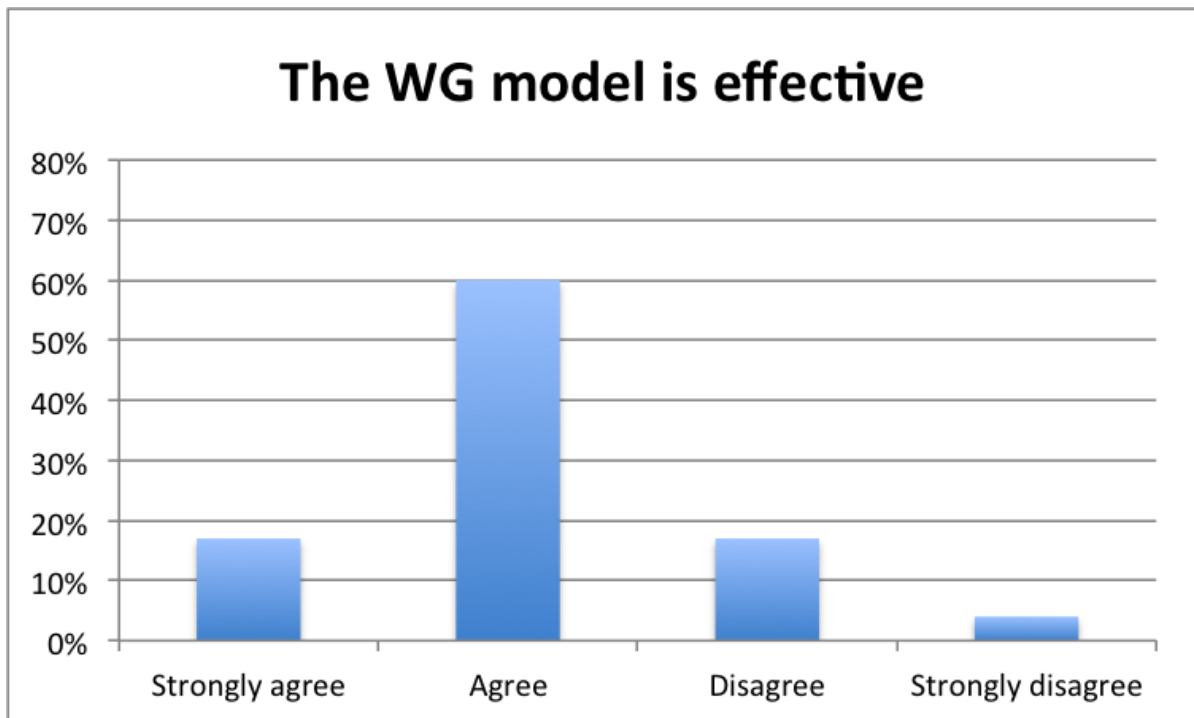
Despite the overall view that the Working Group concept is effective, many respondents noted material concerns:

3. A relatively small group of volunteers does the majority of the work
4. Working Groups are dominated by English speakers from NA/EU
5. Working Group involvement in policy implementation is limited

#### 5.4.1 The WG model is effective

##### **Observations**

The following chart shows a significant majority (77%) of survey respondents hold a positive view regarding the survey statement: *“The Working Group model is effective in dealing with specific policy issues.”* (148 respondents).



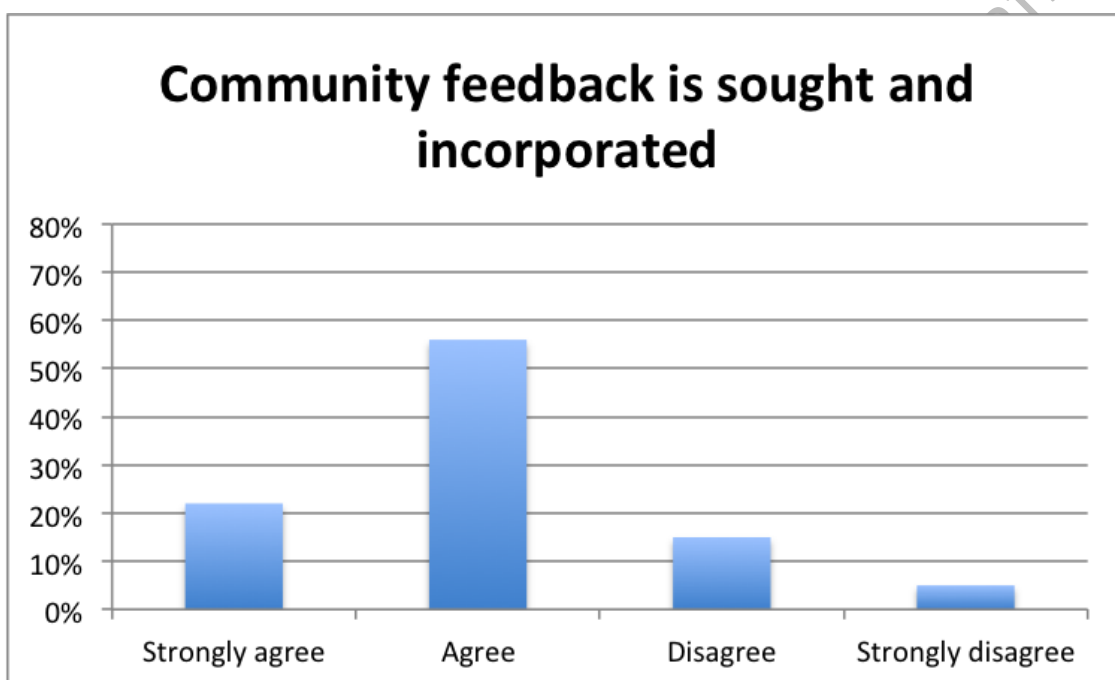
Typical comments specifically supporting the Policy Development Process and the Working Group model from survey respondents and interviewees included:

- *“The WG was very effective despite a lot of different views and interests represented and a highly complex subject.”*
- *“I believe that the WG was very thorough in evaluating all issues and providing appropriate recommendations.”*
- *“Very good transparency (all meetings recorded and transcribed and information is provided to the community in a timely manor)”*
- *“... I found this group worked well and delivered a good output. This was due, in large part, to the effective and capable chairing ...”*
- *“Community feedback is sought and incorporated.”*
- *“There is room for improvement but overall the working group model has been effective. It is fully open, inclusive and transparent. Minority opinions are reported. It is not always possible to reach consensus but that should be expected in an extremely diverse, global community with lots of controversial issues.”*
- *“... the Policy Development Process/Working Group model has produced and continues to produce effective and successful gTLD policy within the bottom-up multi-stakeholder system of ICANN.”*



The supplementary Working Group survey had a limited response rate (quantitative statement response rate varied from 18 to 24 respondents). All the quantitative statements received strongly positive responses as shown below (further detail is available in Appendix 2 - Survey statistics). These include:

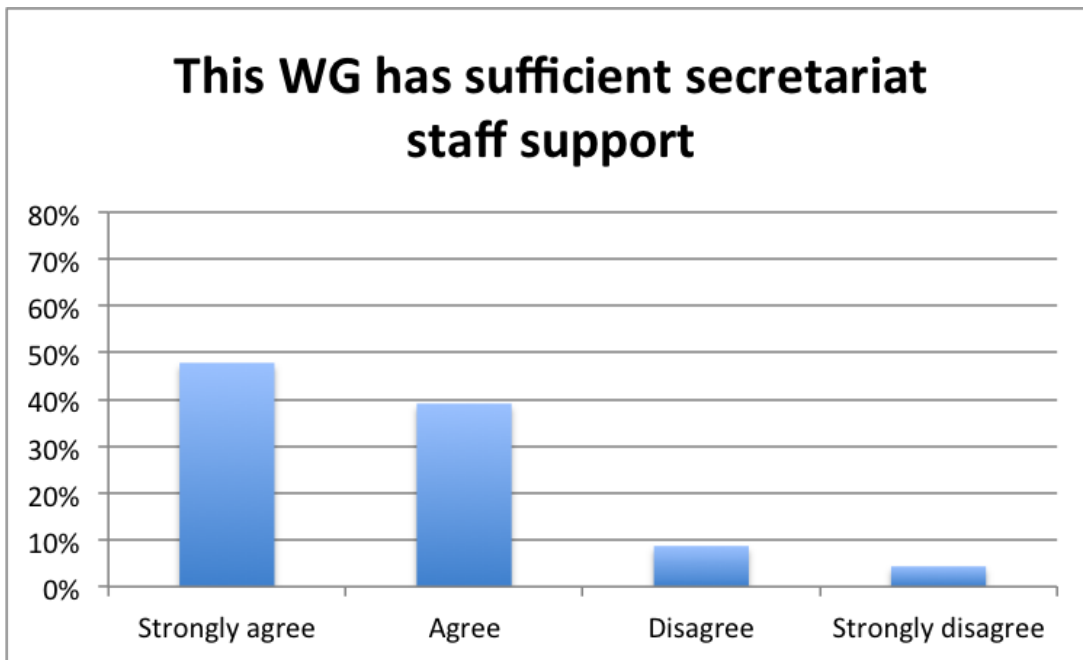
- This WG welcomes and includes all interested stakeholders (84% positive, N = 25)
- This WG has an appropriate balance of views & affiliations (72% positive, N = 25)



#### 5.4.2 Staff support for WG's is rated very highly

##### Observations

The following chart shows results from the supplementary 360° survey. It reflects very positive views (although from a small sample) about the support for WGs provided by ICANN staff. Supplementary comments suggested a few areas in which respondents considered this could be enhanced further.



The following comment is typical of those made in the survey regarding staff support for Working Groups:

- *“Staff support for GNSO Working Groups has improved dramatically over last 5 years. Staff is presently doing an excellent job organizing calls and documenting outcomes. . .”*

#### 5.4.3 A relatively small group of volunteers does the majority of the work.

##### Observations

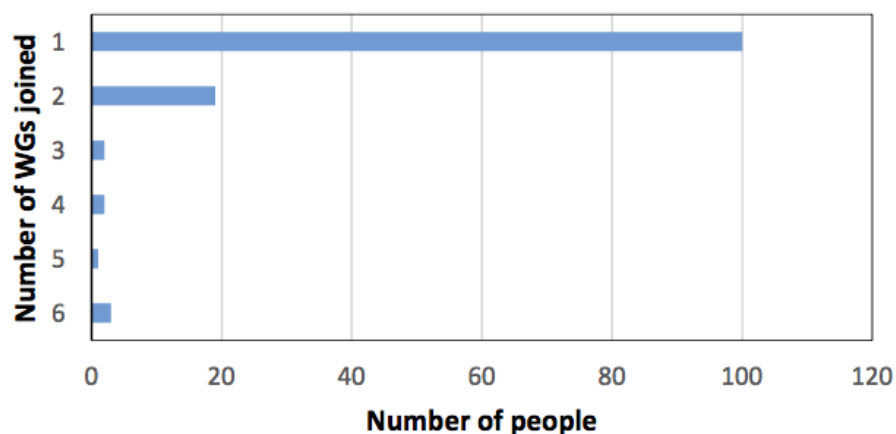
One of concerns raised about the effectiveness of the WG implementation related to the concentration of work among a small cadre of volunteers. This concentration is exacerbated, because not only has a very small number of people worked on more than two WGs, but a significant number of volunteers have worked on only one (see graph below). Typical survey and interview responses, included:

- *“There are too many WGs, not enough volunteers, have to get the same people all the time. Hard to find people who are prepared to do this”*
- *“The Working Group model is fantastic, but when you look at who is involved in Working Groups it's too few technical minds and too dominated by lawyers who can bill hours to large corporations. There are too few people engaged in the process of developing answers to issues. The model itself is sound, but*

*we need to do something around outreach because the engagement levels are all out of whack.”*

- *“The GNSO is beset by a number of issues that hamper its effectiveness: - Overloaded and dispirited volunteer pool - A very small group of people who do the bulk of the work . . .”*

These comments are supported by the graph below (from the ATRT2 GNSO PDR Evaluation Study report pg 35)<sup>6</sup> showing that by far the majority of Working Group members are only ever involved in one Working Group. The dramatic ‘fall off’ in participants in their second, third and more Working Groups shows a limited talent pool.



One respondent highlighted two particular issues regarding the difficulties of participating in Working Groups:

- *“It is very difficult for anyone new to the GNSO to get up to speed quickly and be a productive member of the Working Group”* (acronyms and technical issues were highlighted as issues that took time to understand. Likewise language can be a significant barrier for some).
- *“For Working Group volunteer members, there is little economic reward or acknowledgement of their time and effort”* (however this is difficult to address consistently as not all members of WGs are volunteers; some are there as part of their paid employment).

<sup>6</sup> <https://www.icann.org/en/system/files/files/gns0-evaluation-21nov13-en.pdf>

Suggestions to address the situation included strategies to attract a larger pool of volunteers to avoid “burn-out” and to get “new blood and ideas.” Some respondents also believed that travel support would facilitate increased participation.

## Analysis

Any organisation that relies on volunteers must carefully manage volunteer recruitment, retention, performance, training/development and rewards. This is true for the ICANN community - the issues raised by respondents and prior reviews in relation to volunteers include the number of volunteers available, the skills required, their diversity (for example geography, ethnicity and gender), and financial assistance.

The BGC WG commented that “*The effective functioning of the GNSO Council relies significantly on the existence of vibrant and active stakeholders,*” and recommended the development of a global outreach programme aimed at increasing participation in constituencies and the GNSO policy process. As a follow up to this, in 2011 the Operations Steering Committee Constituency & Stakeholder Group (OSC CSG) Work Team made a set of recommendations to broaden participation in GNSO.<sup>7</sup>

The core of these recommendations was to form a GNSO Global Outreach Task Force (OTF) to co-ordinate with existing groups and committees in ICANN that are engaged in outreach activities to develop an outreach strategy; including the identification of potential participants and target populations and the development of a plan to reach them; and the identification of programmes and resources to execute the strategy.

An OTF drafting team was formed to develop a charter which was provided to the GNSO Council on 18th October 2011. However the Council was unable agree on the charter for the group. In response to a question asked by the Westlake Review Team, staff responded “*It appears the reason it [GNSO Council] did not take further action is that the overall ICANN organization started its own outreach efforts to engage members of the GNSO community. That effort appears to have superseded the GNSO activity, or at least caused the GNSO Council to assume that it no longer*

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<sup>7</sup> <http://gns0.icann.org/drafts/global-outreach-recommendations-21jan11-en.pdf>

*needed to take action since several constituencies/SGs were involved in the ICANN outreach efforts.”*

Current ICANN outreach efforts include:

- The Community Regional Outreach Pilot Programme (CROPP)<sup>8</sup> - listed under ATRT2 implementation updates.<sup>9</sup>  
CROPP<sup>10</sup> provides a framework in which each of the At-Large, RALOs and GNSO Non-Contracted Constituencies are allocated 5 regional (3-day) outreach trips. This pilot programme aims to resource individual trips to specific events for the purposes of conducting regional outreach. Trips are subject to criteria and operating guidelines. CROPP began in 2013-2014 (fiscal year) and will also run in 2015 to “*continue implementation and rigorous evaluation in order to assist in determining whether such resourced outreach merits support in future fiscal cycles.*” CROPP is overseen by ICANN’s Global Stakeholder Engagement Team (GSE).<sup>11</sup>
- The Global Stakeholder Engagement Team is “a team of people appointed to demonstrate ICANN's commitment to international participation and the efficacy of its multi-stakeholder environment. The GSE network works with the community and organization's staff to achieve the strategic goal of better representing the regions in ICANN and facilitating ICANN's engagement with and responsiveness to the regions.” There are 23 staff in the GSE who are responsible for various regions - Africa, Asia, Australasia/Pacific Islands, Europe, Latin America & Caribbean, Middle East., North America, and Russia, Commonwealth of Independent States & Eastern Europe.
- Volunteer Engagement Project<sup>12</sup>  
Following a meeting between a number of leaders from ICANN constituent bodies (SOs/ACs/SGs/Cs) and ICANN’s Global Stakeholder Engagement

8

<https://community.icann.org/display/croppfy15/Community+Regional+Outreach+Pilot+Program+%28CROPP%29-FY15+Home>

<sup>9</sup> <https://community.icann.org/display/prgrmatrt2impl/ATRT2+Implementation+Program+Home>

10

<https://community.icann.org/display/croppfy15/Community+Regional+Outreach+Pilot+Program+%28CROPP%29-FY15+Home>

<sup>11</sup> <https://community.icann.org/pages/viewpage.action?pageId=35521555>

<sup>12</sup> <https://community.icann.org/display/gsenorthamwkspc/Volunteer+Engagement+Project>

team at ICANN 51, a project team was initiated to address the question of “How can ICANN get more volunteers to be more meaningfully involved?” The project team consists of:

- Tony Holmes (Internet Services Connectivity Providers Constituency);
  - Rudi Vansnick: (Not for Profit Operational Concerns Chair);
  - Bill Drake: (Non Commercial User Constituency Chair);
  - Chris Mondini (Vice President Stakeholder Engagement North America and Global Business Engagement); and
  - Sally Costerton (senior advisor to President GSE).
- Community Special Budget Request

Staff also advised that “. . . In recent years, as part of the annual Community Special Budget Request effort, individual communities have pursued specific requests for outreach funding and support.” According to the ICANN website, these funds pertain to a dedicated part of the overall ICANN annual budget that is set aside to take into account specific requests from the community for activities that are not already included in the recurring ICANN budget.

- Fellowship Programme<sup>13</sup>

The ICANN website states: “*The Fellowship program seeks to create a broader and more regionally diverse base of knowledgeable constituents by reaching out to the less developed regions of the world to build capacity within the ICANN Multi-stakeholder Model. Participation in the program at an ICANN Meeting is a ‘fast-track’ experience of engagement into that community model, with presentations designed to facilitate understanding of the many pieces and parts of ICANN while providing opportunities to network and promoting interaction with staff and community leaders.*”

*“The expectation is that recipients will ‘graduate’ from the program to participate in ICANN in a more visible manner, through outreach in their region, as a member of a working group, or as an active participant and potentially leader within an ICANN SO, AC, constituency or stakeholder group. Recipients of the program’s support are now engaged members of the GAC, ccNSO, ALAC, SSAC, and the gNSO, with representation in its various stakeholder groups, constituencies and councils.”*

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<sup>13</sup> <https://www.icann.org/resources/pages/fellowships-2012-02-25-en>

*“50 fellows from 37 countries have been selected to participate at the 52nd ICANN meeting.”*

- Increasing the pool of PDP WG volunteers

One of the ongoing GNSO PDP Improvement activities is to increase the pool of PDP WG volunteers. A PDP Improvements Discussion Group,<sup>14</sup> made up of a committee of interested GNSO Councillors was formed in January 2014 to work with staff on improvement initiatives. An update at ICANN 51 noted the following progress:

- Monthly open house newcomer WG webinars co-hosted with GNSO Council members (RSVPs have increased threefold),
- Implementation of PDP WG Member Onboarding Program, and
- Exploring other tools to facilitate sign-up and induction.

Staff also implemented a change that allows for interested parties to partially join a WG as a ‘mailing list observer’ with the aim that volunteers can *“watch a little bit for a while until you feel comfortable to actually join as a full member.”*

These actions aim to reduce the barriers for newcomers, such as the widespread use of acronyms and the complexity of ICANN (how it works, its structures, and rules and processes).

The various initiatives above highlight that there are a number of programmes that aim to increase volunteer participation and engagement. Apart from *“Increasing the pool of PDP WG volunteers,”* the initiatives relate to ICANN in general, rather than specifically addressing the limited PDP volunteer pool and WG workload issue in the GNSO. It is clear from our survey responses and interviewees and the ATRT2 review (see details below) that the availability of appropriate volunteers for the PDP process remains an issue.

The ATRT2 GNSO PDP Evaluation Study<sup>15</sup> concluded that:

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<sup>14</sup> <http://gns0.icann.org/en/meetings/projects-list.pdf>

<sup>15</sup> <https://community.icann.org/download/attachments/41898277/Final%20Report%20-%20ATRT2%20GNSO%20PDP%20Review.pdf?version=1&modificationDate=1380909881000&api=v2>

*“...fully engaged participation in PDPs requires an extraordinary set of demands on participants. In the last five years: The vast majority of people who participate in Working Groups participate only once, and a small number of participants who have economic and other support for their ongoing engagement have dominated Working Group attendance records.”*

*“Having such a small pool poses accountability, credibility, and resource risks for the policy development process. It also results in very few participants who have the experience to lead, moderate and bring to completion the difficult work of guiding participants and policy through the PDP.”*

*“There is clear statistical evidence that three of ICANN’s [five] regions play no meaningful part in the PDP. The research conducted for this report identified two key factors in producing this geographic imbalance:*

- Language is a genuine barrier to participation in PDPs.*
- The collaboration and discourse model built into the current PDP has a distinctly Western approach and does not take into account other cultural approaches to developing and building consensus policies.*

*The GNSO [puts at risk its] global legitimacy—a core value of the policy that comes out of the PDPs—when it does not include viewpoints from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.”*

Two ATRT2 recommendations relate to the limited volunteer pool issue:

- 1. The Board and the GNSO should charter a strategic initiative addressing the need for ensuring more global participation in GNSO policy development processes, as well as other GNSO processes. The focus should be on the viability and methodology of having the opportunity for equitable, substantive and robust participation from and representing:*
  - a. All ICANN communities with an interest in gTLD policy and in particular, those represented within the GNSO,*
  - b. Under-represented geographical regions,*
  - c. Non-English speaking linguistic groups,*
  - d. Those with non-Western cultural traditions, and*



- e. *Those with a vital interest in gTLD policy issues but who lack the financial support of industry players.*
2. *The Board must facilitate the equitable participation in applicable ICANN activities, of those ICANN stakeholders who lack the financial support of industry players.*

The Westlake Review Team received many comments consistent with the above points, especially – as might be expected – from survey respondents and interviewees located outside NA and EU and whose first language was not English. A different perspective presented by a number of English speakers was the difficulty they had in understanding participants for whom English was not their first language.

#### **Westlake Review Team Recommendations**

- Continue to pursue current outreach strategies and pilot programmes. Ensure metrics are developed and monitored to evaluate the ongoing effectiveness of these programmes (as noted in the WG participation recommendations under section 5.4.5)
- Develop and fund a more targeted programme to recruit volunteers and broaden global participation in PDP WGs (given the vital role volunteers play in Working Groups and policy development).
- Review the level, scope and targeting of financial assistance to ensure volunteers are able to participate on a footing comparable with those who participate in GNSO as part of their profession.
- Explore a tailored incentive system to increase the motivation of volunteers. (For example this may include training & development opportunities, greater recognition of individuals and financial assistance).
- Continue initiatives that aim to reduce the barriers to newcomers.

#### **5.4.4 Working Groups are dominated by English speakers from NA/EU.**

#### **Observations**

Section 3.2 of Annex 1 to GNSO Operating Procedures<sup>16</sup> (the GNSO Working Group Guidelines) on Representativeness stated that *“Ideally, a Working Group should mirror the diversity and representativeness of the community by having representatives from most, if not all, Chartering Organization (CO), Stakeholder Groups and/or Constituencies. It should be noted that certain issues might be more of interest to one part of the community than others. The Chair, in cooperation with the Secretariat and ICANN Staff, is continually expected to assess whether the WG has sufficiently broad representation, and if not, which groups should be approached to encourage participation. Similarly, if the Chair is of the opinion that there is over-representation to the point of capture, he/she should inform the Chartering Organization.”*

While, it is recognised that it is not mandatory to have representatives from most, if not all, COs, Stakeholder Groups and/or Constituencies in the WG, one of the GNSO PDP improvement projects is to look at *“requiring WG representative from each SG/C to participate including as a silent observer.”* To-date not much progress has been made on this initiative. As GNSO does not collect WG members’ representation data, it is difficult to assess the size of this problem, however we received many comments and saw significant anecdotal evidence of the lack of progress in this area. At the ICANN 51 meeting, it was reported that staff will review data to identify the make up of recent WGs<sup>17</sup>.

The Westlake Review Team believes that reflecting the diversity of the community in GNSO WGs is important in respect of ICANN Core Value 4 - Functional Diversity, and of the efficient two way flow of information.

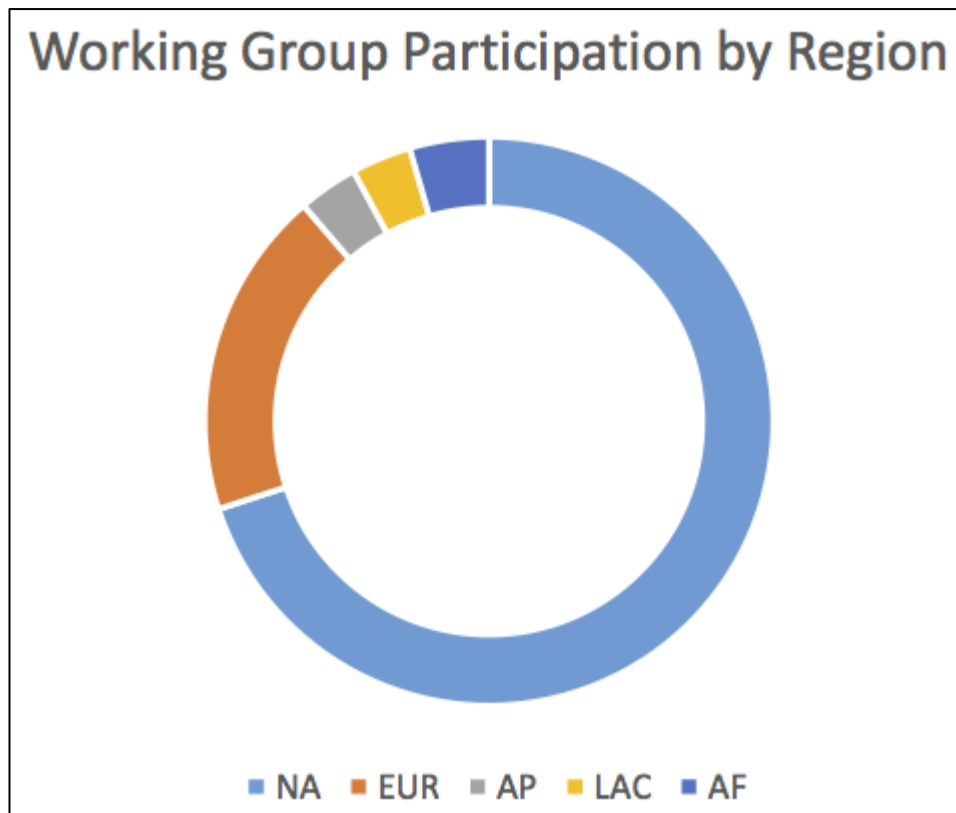
ICANN’s Core Value 4 states *“Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.”* However it appears that GNSO Working Group Guidelines cover the need to have SG/C representation but are silent on geographic and cultural diversity as required under ICANN’s Core Value 4. As we discuss in Section 8 - Enhance Constituencies, many respondents commented that

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<sup>16</sup> <http://gnso.icann.org/en/council/op-procedures-13nov14-en.pdf>

<sup>17</sup> <http://la51.icann.org/en/schedule/sat-gnso-working/transcript-pdp-improvements-11oct14-en>

diversity and representation are issues for the GNSO and its WGs. The following two graphs extracted from the ATRT2 GNSO PDP Evaluation Study<sup>18</sup> highlight the issue.

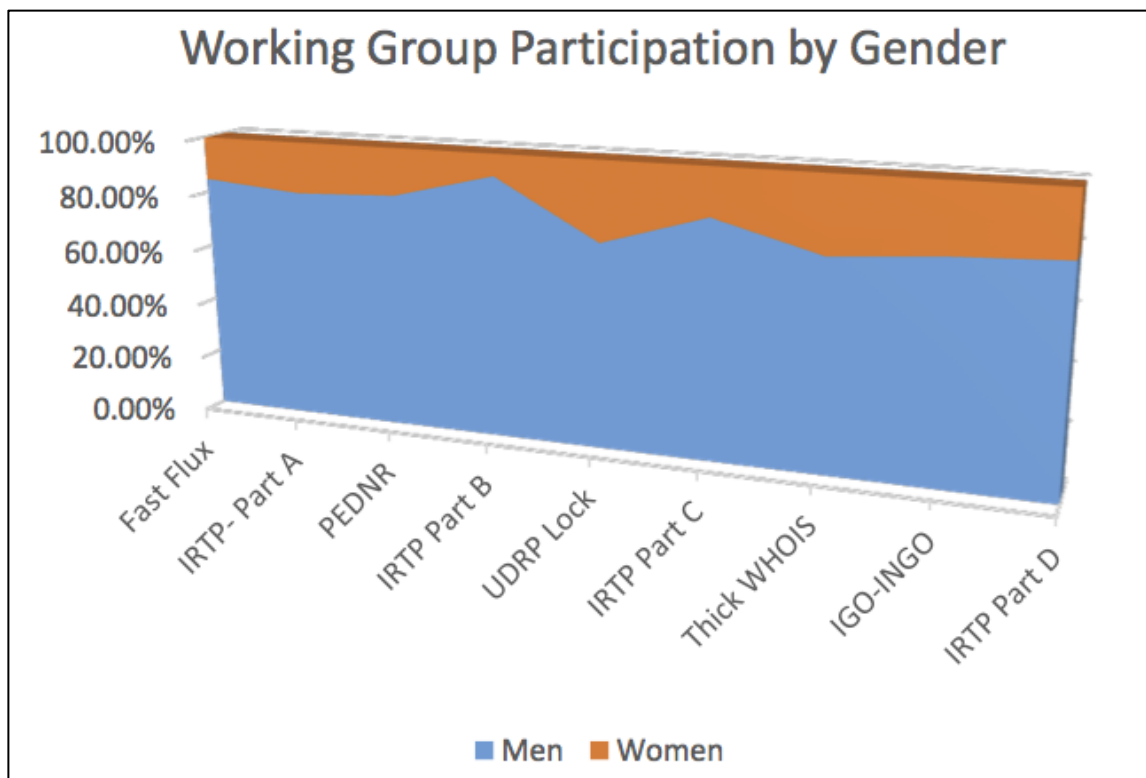


Data for the graph above was extracted from the geographic location specified by Working Group participants in their answers to the ICANN Statement of Interest. North American participants account for 70% of participation in Working Groups. Europe provides 18.7% of Working Group members in recent PDPs. Together, Africa, Asia/Australia/Pacific and Latin America/Caribbean account for 13.3% of Working Group members.

The following comments from the 360<sup>0</sup> Assessment support these observations:

- *“Stop discussing in a language only them understand.”*
- *“Language is a real barrier. The English-only culture is exclusive ...”*
- *“It is hard to participate in ICANN if English is not your first language .... Native English speakers do not need to make the effort that non-English speakers do.”*

<sup>18</sup> <https://www.icann.org/en/system/files/files/gns0-evaluation-21nov13-en.pdf>



The ATRT2 GNSO PDP Evaluation study identified that: *“two issues stand out immediately: first, participation in WG is dominated by men; and second, participation by women is increasing. It appears that while women participation may be less, the effort to pursue gender diversity may be working.”*

The Westlake Review Team supports the ATRT2 recommendations on representation and diversity as set out in the section relating to increasing the pool of volunteers (noted above in section 5.4.3 - *A relatively small number of volunteers do the majority of the work*).

Based on survey comments, interviews and the difficulty we had in obtaining current data on participation and diversity, we consider that the GNSO should record and make public this information. We were asked what number of volunteers would make up an appropriate PDP volunteer pool. This is almost impossible to assess given the varying number of participants in WGs and varying number of WGs running at any one time.

### **Westlake Review Team Recommendations**

- That the GNSO record and publish statistics on WG participation (including diversity statistics).
- That the GNSO engage more deeply with community members whose first language is other than English, to develop ways of overcoming the perceived language barrier.

#### 5.4.5 Working Group involvement in policy implementation is limited.

##### **Observations**

A number of survey respondents and interviewees commented on the distinction between Policy [Development] and Implementation [of Policy]. Below are a range of typical comments:

- *“While the GNSO has been effective at developing initial policies - it has often not been engaged in the ongoing evolution of those policies.”*
- *“Responsible for [policy development], yes; but [GNSO] also has allowed other portions of ICANN to steer policy -- including ICANN staff in implementation of policy.”*
- *“While the GNSO process is effective in producing policy recommendations in a bottom-up process, there are a few gaps in following through with more interactive processes through to the implementation and execution phases of policies.*
  - *1. Ability to guard against top-down policies driven by the staff in the name of practice/precedence or interpretation thereof.*
  - *2. Ability to follow through from policy development to policy implementation and operational execution to ensure the integrity of the policy and the interpretation of which remains in the public interest and considered in a multi-stakeholder model*
  - *3. Ability to interactively work with 1&2 above especially when further advice is received after policy recommendations are submitted (e.g. advices from GAC, ALAC, SSAC, etc.)”*

ATRT2 believed that while ICANN had undertaken significant work, *“A continuing lack of clarity about ‘policy versus implementation’ causes uncertainty at best and distrust at worst about whether ICANN Board or staff is acting within its proper scope or whether ICANN is acting in a ‘top-down’ as opposed to a ‘bottom-up’ manner.”*

The Policy & Implementation Working Group was initiated in August 2013 as a result of increased focus on which topics call for policy and which call for implementation work. This WG was to provide the GNSO Council with recommendations on:

- A set of principles that would underpin any GNSO policy and implementation related discussions.
- A process for developing gTLD policy, perhaps in the form of "Policy Guidance", including criteria for when it would be appropriate to use such a process (for developing policy other than "Consensus Policy") instead of a GNSO Policy Development Process.
- A framework for implementation related discussions associated with GNSO Policy Recommendations.
- Criteria to be used to determine when an action should be addressed by a policy process and when it should be considered implementation, and
- Further guidance on how GNSO Implementation Review Teams are expected to function and operate.

The Westlake Review Team considers that the recommendations from this working group have the potential to enhance the efficiency and effectiveness of the policy development process. This could result in fewer discussions within the WG about what is policy and what is implementation, and also improve transparency and role clarity between staff and WG participants.

A further issue raised by survey respondents and interviewees was that WGs were not called upon to respond to or provide input to questions raised when policy developed by the WG was being implemented. For example:

- *“. . . [WGs] be able, and asked to, provide implementation guidance to its policies.”*

- *“GNSO WGs should not disband after recommendations are made. They need to come back together to address implementation questions.”*

The Westlake Review Team notes that the issue of WGs providing implementation guidance is being considered by the Policy and Implementation Working Group. We consider that this Working Group’s output should include specific recommendations regarding the WGs having a role in responding to issues related to policy implementation.

#### **Westlake Review Team Recommendations**

- That WGs should have an explicit role in responding to implementation issues related to policy they have developed.
- That the current Policy and Implementation Working Group specifically address WGs having a role in responding to policy implementation issues.
  - (We understand that this is being addressed in the preliminary recommendations of the Policy and Implementation Working Group)

## SECTION 6 – REVISE THE POLICY DEVELOPMENT PROCESS (PDP)

### 6.1 BGC WG Recommendations

4. *While the procedure for developing “consensus policies” will need to continue to be established by the Bylaws as long as required by ICANN’s contracts, Council and Staff should work together to propose new PDP rules for the Board’s consideration and approval. Once approved, the rules would become part of the GNSO Council’s operating procedures. They should be subject to periodic review by the Council, which may come back to the Board to recommend changes. The rules should better align the PDP with the contractual requirements of “consensus policies,” as that term is used in ICANN’s contracts with registries and registrars, and distinguish that procedure more clearly from general policy advice the GNSO may wish to provide the Board. In addition, the Bylaws should clarify that only a GNSO recommendation on a consensus policy can, depending on the breadth of support, be considered binding on the Board, unless it is rejected by a supermajority vote.*

*In preparing the new PDP proposal, the implementation team should emphasize the importance of the work that must be done before launch of a working group . . .*

5. *Periodic assessment of the influence of the GNSO Council, including the PDP, is another important component of successful policy development. Metrics can help measure the success of the policy recommendation. Frequent self-assessment by the Council and its working groups can lead to immediate improvements in the GNSO’s ability to make meaningful policy contributions. The Council should ask each working group to include in its report a self-assessment of any lessons learned, as well as input on metrics that could help measure the success of the policy recommendation.*

6. *The PDP should be better aligned with ICANN’s strategic plan and operations plan. A formal Policy Development Plan should be linked to ICANN’s overall*



*strategic plan, but at the same time should be sufficiently flexible to accommodate changes in priority.*

## 6.2 Major accomplishments and milestones

(as noted on the GNSO website<sup>19</sup>):

The ICANN Board adopted revised Annex A and the new GNSO Policy Development Process (8 December 2011) containing 48 improvement recommendations crafted over the course of two years by the Policy Development Process Work Team (PDP-WT). A Policy Development Process Model has also been developed which documents the following major improvements:

- Standardized Request for an Issue Report Template;
- Introduction of a Preliminary Issues Report which shall be published for public comment prior to the creation of a Final Issues Report to be acted upon by the GNSO Council;
- Requirement that each PDP Working Group operate under a Charter;
- Bylaws amended such that upon initiation of a PDP, public comment periods are optional rather than mandatory, at the discretion of the PDP Working Group;
- Public Comment timeframes include: (i) a required open period of no less than 30 days on a PDP Working Group's Initial Report; and (ii) a minimum of 21 days for any non-required Public Comment periods the PDP WG might choose to initiate at its discretion;
- Requirement of PDP WG to produce both an Initial Report and Final Report, but giving the WG discretion to produce additional outputs;
- Provision to allow the termination of a PDP prior to delivery of the Final Report;
- New procedures on the delivery of recommendations to the Board including a requirement that all are reviewed by either the PDP Working Group or the GNSO Council and made publicly available; and
- Use of Implementation Review Teams.

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<sup>19</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/accomplishments-en.htm>

## 6.3 Summary of the Westlake Review Team's assessment of implementation effectiveness

### **BGC WG Recommendation 4 (PDP Rules/Operating Procedures)**

The Westlake Review Team considers that Recommendation 4 has been implemented. The ICANN Board adopted revised Annex A and the new GNSO Policy Development Process (8 December 2011), which fulfils the requirements of the BGC WG recommendations.

In respect of effectiveness, survey respondents and interviewees considered that the Policy Development Process in general works well. However, they considered that improvements could be made in the following areas:

1. Experienced and skilled WG leadership (including educating and training chairs and co-chairs).
2. Having more face-to-face meetings (including support on travel costs) to make better use of time and improve effectiveness.
3. Alternatives to the full PDP to be available in certain circumstances.

These are discussed in the section below "6.4 Basis for Westlake's Assessment."

### **BGC WG Recommendation 5 (Self Assessment)**

The Westlake Review Team is of the view that implementation of Recommendation 5 is incomplete.

A WG self-assessment questionnaire is available.<sup>20</sup> We understand that no WG had completed a questionnaire as at the end of 2014, however we have been advised that the IRTP-D WG has completed a self assessment in early 2015.

The GNSO Operating Procedures (Annex 1: Section 7 – Working Group Self-Assessment) states "A *WG Self-Assessment instrument has been developed as a means for Chartering Organizations to formally request feedback from a WG as part of its closure process. WG members are asked a series of questions about the*

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<sup>20</sup> <http://forum.icann.org/lists/gns0-reviewdt/msg00214.html>

*team’s inputs, processes (e.g., norms, decision-making, logistics), and outputs as well as other relevant dimensions and participant experiences.”*

We note that under the current GNSO Operating Procedures, the evaluations should occur following a request from the WG’s Chartering Organization. The Westlake Review Team was also unable to find any evidence of COs having requested a WG self-evaluation, but understands that the ability for a WG to complete a self assessment was only recently included (March 2014) in an update to the GNSO Operating Procedures<sup>21</sup>. We support the BGC WG’s recommendation and consider such evaluations should be undertaken as part of the standard WG closure process. WG self-evaluations can provide valuable information for monitoring process effectiveness and improving the process over time.

### **BGC WG Recommendation 6 (Link to ICANN’s Strategic Plan)**

The Westlake Review Team was unable to locate any evidence of links between ICANN’s overall Strategic Plan and the GNSO’s policy development work plan. Staff advised that there is no formal linkage. We support the BGC WG’s recommendation and conclude that Recommendation 6 has not been implemented.

## **6.4 Basis for Westlake’s assessment**

### **6.4.1 BGC WG Recommendation 4 (PDP Rules/Operating Procedures)**

#### **Observations**

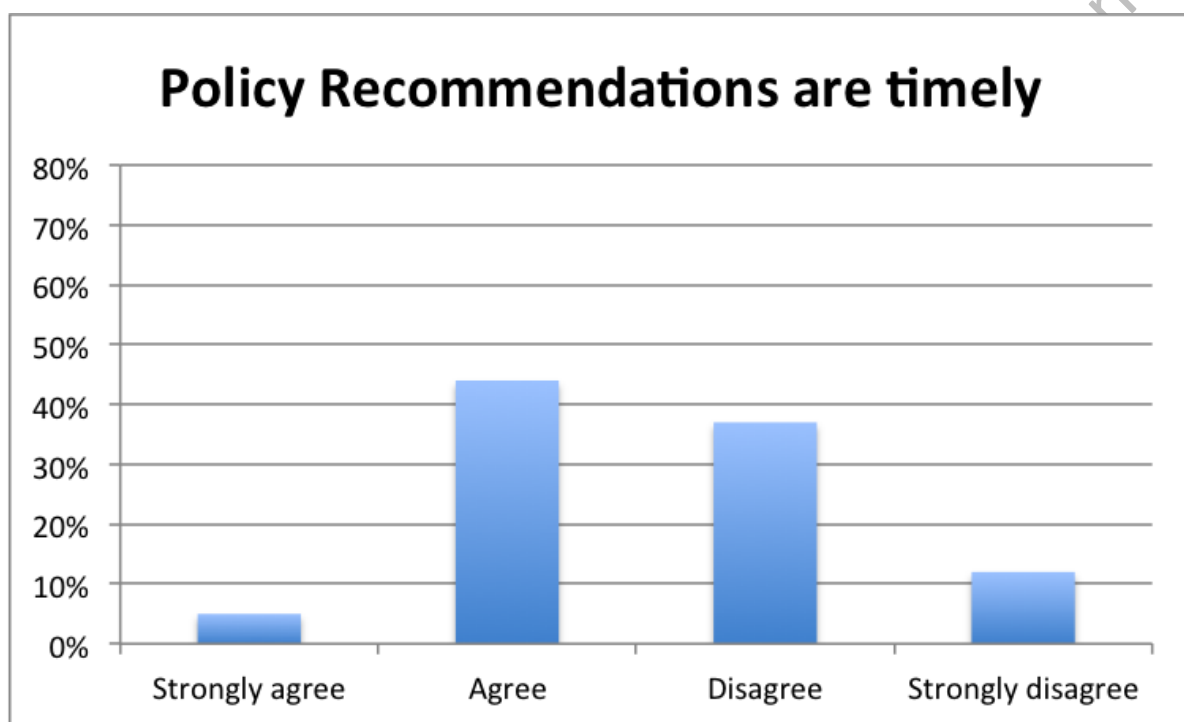
Many comments from the surveys and interviews suggest that the length of time it takes to complete a PDP is excessive, however a roughly similar number expressed the following counter view:

- *“While it may be slower-moving than top-down decisions, it takes into account the entire community and allows them to discuss matters of import to the*

<sup>21</sup> <https://community.icann.org/display/gnsoworkgroupres/GNSO+Council+Resolution%3A+WG+Self-Assessments>

*Internet—arguably the most powerful technology in the world, affecting nearly everyone on the globe.”*

The following graph from the 360° Assessment shows that respondents are almost equally divided in relation to the statement “GNSO’s policy recommendations are timely.” 50% of responses Strongly agreed or Agreed, from a total of 137 respondents.



Survey respondents and interviewees made the following typical comments:

- *“The multi-stakeholder model is by design a slow and deliberative process, and this is how it should be. A truly bottom-up process requires this. It can sometimes be frustrating that progress is slow, but progress is only ever quick in a top-down model and that isn’t how the Internet can or should work.”*
- *“I think that the current process is very thorough and very complete. there is community involvement at several moments in the life of a PDP. but this has of course an impact on the timeliness.”*
- *“It takes far too long to develop recommendations.”*

- *“Although I support the GNSO's policy development process, I have to admit that the process takes more time than desired by the community. I wish there were methods [to] expedite the PDP process.”*
- *“Recommendations are not timely but it will not be easy to make them timely except on very simple issues. Steps should be taken to make them more timely but not by risking the fundamental principle of bottom-up multi-stakeholder policy development.”*
- *“The GNSO does need to develop processes that allow it to more quickly identify issues, alternative solutions to those issues, and then move forward.”*
- *“While the GNSO process seems long, it is relatively reasonable compared to equivalent processes.”*

## Analysis

The ATRT2 GNSO PDP Evaluation Study<sup>22</sup> noted *“... it is very difficult to determine what the right time would be for any issue where a PDP successfully passes each stage of the PDP, through to implementation.”* The variation in the overall duration of PDPs could be caused by the complexity of the policy or the inefficiencies of the process, or both. The survey responses and interviews suggest it is a mixture of both.

Staff provided the Westlake Review Team with a table of PDP timelines<sup>23</sup> - measuring the time from the “Request for an Issues Report” to the “Council Vote” stage of the process. The average length of a PDP is between 2 and 3 years, the shortest was 343 days (Inter-Registrar Transfer Policy (IRTP) - Part A), and the longest 1,005 days (Post Expiration Domain Name Recovery (PEDNR)).

A number of respondents cautioned against the potential consequences of shortening the Policy Development Process. These included:

- The balance between speed and thoroughness.

<sup>22</sup> <https://www.icann.org/en/system/files/files/gns0-evaluation-21nov13-en.pdf>

<sup>23</sup> See Appendix 5 – PDP Timelines

- Increasing speed could further reduce participation rates, as volunteers may be unable to meet tighter deadlines/milestones.
- With potentially lower participation rates comes the possibility of reduced stakeholder 'buy in' and consequently less effective implementation of developed policy.

Notwithstanding these points of caution, survey respondents and interviewees suggested a number of ways to shorten or improve the effectiveness of the PDP, including:

1. Experienced and skilled WG leadership (including educating and training chairs and co-chairs).
2. Having more face-to-face meetings (including support on travel costs) to make better use of time and improve effectiveness.
3. Alternative processes:
  - a. Fast track process for policy enhancement (as distinct from Policy Development).
  - b. Chunking – breaking policy development into smaller (discrete) pieces.
  - c. Including the Proposed Charter as part of the Preliminary Issues Report.
  - d. Intensity of PDP WG meetings
  - e. Exploring flexibility in relation to public comment forum duration

These are addressed in more detail below.

## **1. Experienced and skilled Working Group leadership**

### **Observations**

The BGC WG recognised that the move to Working Groups as the primary means of policy development would require both skilled chairs and training for the members of the ICANN community who might wish to participate in Working Groups.

Survey respondents and interviewees made consistent comments about the benefit of experienced and skilled leadership of Working Groups. Many respondents suggested paid facilitation as a way to improve leadership while others suggested training and development for WG Chairs (and potential Chairs). For example:

- *“Process is good, depends on chair skills. Often a subject matter expert is a poor chair ...”*
- *“If a PDP is run professionally, it works really well ...”*

A trained and experienced chair is a commonly accepted means of managing a diverse group of participants, in a complex policy development environment, in order to ensure focus and overcome political agendas. Some respondents also suggested the use of experts (who might include staff, where appropriate) for PDP preparatory work.

The use of facilitators was also suggested in the earlier Patrick Sharry report<sup>24</sup>. The BGC WG also suggested *“The Council and Staff might consider using a professional facilitator to help a chair ensure neutrality and promote consensus, or to provide other expertise.”*

This recommendation is supported by the following comment, which was typical of the feedback we received:

- *“Provide expert facilitation for working groups to avoid political agendas diverting time and attention away from the real work.”*

The Westlake Review Team considers that an experienced independent chair is the preferred option because, as a full member of the WG, they will be seen to be working within the WG and have incentives to complete the process in a timely manner. An independent paid facilitator may have no such incentive – indeed they may benefit personally from prolonging the process.

To achieve skilled leadership, the BGC WG recommended that *“The [GNSO] Council should work with Staff to develop a training and development curriculum to promote skills development for the Council, prospective chairs of working groups and, ideally, all members of the ICANN community who might wish to take part in working groups;*

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<sup>24</sup> <http://gns0.icann.org/en/reviews/gns0-review-sec1-22dec04.pdf>

*and ...to put in place.. an initial package of training and development programs and other systems to create a group of skilled chairs and a pool of facilitators familiar with ICANN issues...” It also suggested that “ICANN may want to consider developing a process for accreditation or certification for those who complete certain extensive curriculum ... Once these training and development structures are in place, ICANN should urge those who wish to hold positions, such as chairs of working groups and members of the Council, to undertake the relevant training (or equivalent training) or to do so upon their appointment.”*

## **Analysis**

Our analysis shows that progress has been made in respect of skilled leadership and facilitators.

- The development of the ICANN Leadership Training Programme as one module of the ICANN Academy.

This programme was run in 2013 and 2014. It is supplemented by online training tools and is for both new and existing community leaders. It is an intensive on-boarding and facilitation skills training programme with key elements such as facilitation, conflict, mediation and communication skills. Community leaders are urged to attend the programme, but this is not compulsory. In addition, while feedback is required from all participants, there does not appear to be any assessment system in place to measure the effectiveness of the programme and/or the skill sets of community leaders. A well tailored training and development programme could be an incentive for personal development and therefore be attractive for both new and existing volunteers (see more in the volunteer section below).

The Westlake Review Team considers that the implementation of the BGC WG recommendation in respect of training and development has not yet achieved the desired results:

- Leadership accreditation/certification as suggested by the BGC WG has not been implemented



- Survey respondents and interviewees identified that leadership skills remain an issue.

The ATRT2 recommended that the Board should develop funded services to provide *“training to enhance work group leaders' and participants' ability to address difficult problems and situations.”*

In addition we note that it is difficult to identify and address training and development needs when there are no objective measures.

- Use of professional facilitator/moderator

Professional facilitation/moderation is one of the suggested GNSO PDP Improvement topics initiated by staff in 2013. Survey respondents and interviewees generally supported the ATRT2 recommendation that *“the Board should develop funded options for professional services to assist GNSO policy development WGs. Such services could include training to enhance work group leaders' and participants' ability to address difficult problems and situations, professional facilitation, mediation, negotiation. The GNSO should develop guidelines for when such options may be invoked.”*

The Westlake Review Team considers that the use of a professional facilitator/moderator, who is well versed in the subject matter of the WG, is helpful in certain situations (for example, when policy issues are complex, where members of the WG are generally inexperienced and/or where WG members have interests that conflict).

We note that the first pilot of a facilitated face-to-face WG meeting<sup>25</sup> occurred at ICANN 51 in October 2014. This pilot is specifically focused on assessing the impact of professional facilitation as well as face-to-face time for PDP WGs. We regard this as a positive development.

#### Westlake Review Team Recommendations

- That a formal WG leadership assessment programme be developed as part of

<sup>25</sup> <http://gns0.icann.org/en/announcements/announcement-2-03oct14-en.htm>

the overall training and development programme.

- That a professional facilitator/moderator is used in certain situations (for example, when policy issues are complex, where members of the WG are generally inexperienced and/or where WG members have interests that conflict), and that the GNSO develop guidelines for the circumstances in which professional facilitators/moderators are used for Working Groups.

## 2. Face-to-face meetings

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding email, online conferencing and other tools besides face-to-face.

### Observations

Most Working Group meetings are currently one to two hours long and conducted via teleconference. Many survey respondents and interviewees commented that this approach to WG meetings often makes it difficult to communicate, especially on complex issues. Using face-to-face meetings to improve Working Group meetings was a commonly suggested improvement from survey respondents and interviewees. They also felt that travel support would be required for participants (especially volunteers) to attend face-to-face meetings. We note however that a smaller number of respondents expressed concern that the resulting increase in the travel required could present significant challenges for volunteer participants in particular and would of course impact on ICANN's budget.

### Analysis

The Westlake Review Team has reviewed recordings and transcripts of a number of working group teleconferences. From these reviews it is clear that significant time is lost due to the 'roll call,' repeated need for clarification due to poor sound quality and language difficulties for some and the nature of managing remote discussions. These issues are often exacerbated when policy development is more complex. There is also the disadvantage of not seeing body language as an aid to interpretation. Nonetheless, we recognise that teleconference is a key communication tool given the globally dispersed location of various participants.

The Westlake Review Team believes that in some situations it will be more effective and efficient to conduct discussions face-to-face. Where possible, face-to-face meetings should be appended (pre or post) to ICANN meetings. We acknowledge that GNSO has utilised the ICANN meetings as an opportunity to conduct some face-to-face meetings, but increased and targeted use of face-to-face meetings would be beneficial and could enhance both decision making and efficiencies. We support the ATRT2 recommendation that *“The Board should provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO policy development processes. Such face-to-face meeting must also accommodate remote participation, and consideration should also be given to using regional ICANN facilities (regional hubs and engagement centers) to support intersessional meetings. Moreover, the possibility of meetings added on to the start or end of ICANN meetings could also be considered.”*

#### **Westlake Review Team Recommendations**

- That the face-to-face PDP WG pilot project (scheduled to be run at ICANN 52) be assessed when completed. If the results are beneficial, guidelines should be developed and support funding made available.
- **[Recommendations in development]**

### **3. Alternative policy development processes**

#### **Observations**

Several survey respondents and interviewees suggested ways to streamline the Policy Development Process. These include adopting a fast-track process for policy enhancements (in contrast to development of new policy) and ‘chunking’ or breaking one complex PDP into several smaller discrete PDPs. It was also suggested that the working group itself should decide how the ‘chunking’ is to be carried out before the PDP is initiated.

In addition three current initiatives from the GNSO PDP Improvements Project propose reviewing several components of PDP:

- Inclusion of the Proposed Charter as part of the Preliminary Issues Report,
- The intensity of PDP WG meetings, and
- Flexibility in relation to public comment forum duration.

## Analysis

### Fast-track Process

A 'Fast-track' process was discussed in 2011. The Policy Development Process Working Team (PDP WT), part of the Policy Process Steering Committee, discussed a fast-track procedure extensively and did not reach agreement on whether such a process was needed. It recommended *"that the GNSO re-evaluate the need for a fast-track procedure in due time as part of the review of the new PDP, as it is of the view that the new PDP will offer additional flexibility and would allow for faster PDPs provided that the necessary resources are available without the need for a formal fast-track process."*

The Policy and Implementation Working Group is currently reviewing recommendations to address various issues relating to policy and implementation. We have been advised that this WG has recently published its Initial Recommendations Report for public comment, including a proposed Expedited Policy Development Process.

### 'Chunking'/Breaking PDP into smaller discrete PDPs

Adopting different process for different PDPs could reduce a WG's workload and hence reduce barriers to volunteer recruitment.

In the case of the Inter-Registrar Transfer Policy (IRTP) for example, it was broken down into four PDPs and appears to have worked well.

	IRTP Part A	IRTP Part B	IRTP Part C	IRTP Part D
Start Date	May 2008	April 2009	June 2011	Oct 2012

Close Date	April 2009	June 2012	Dec 2012	Not yet finished
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Three members (including the chair) participated in all four Parts of this PDP. Other members participated in one or more. Based on this information, it appears that breaking down the PDP has allowed increased flexibility for people to participate in the 'chunks' that are of more interest to them, rather than participating in the entire PDP. 'Chunking' could therefore reduce the time demand on some volunteers which has been highlighted as one of the barriers to volunteer participation in WGs. The disadvantage of such an approach could be the lack of continuity of knowledge of interconnected topics for those who join only parts of the series. However, no evidence of this was noted by survey respondents and interviewees.

The Westlake Review Team considers on the limited evidence to date that there are circumstances in which breaking PDP into discrete 'chunks' may be beneficial.

#### Include Proposed Charter as part of the Preliminary Issues Report

Staff noted that Charter Development took approximately 150 to 250 days following the initiation of a PDP because it required a specific and additional call for drafting team volunteers and sometimes lengthy discussions. The inclusion of a draft charter (as part of the Preliminary and Final Issues Report) has been suggested as a way to reduce this time. It would allow the draft charter to be considered during the public comment period. The Council could then approve the charter at the same time as part of the initiation of the PDP.

At the time of writing the GNSO Council is conducting a pilot process for the Curative Rights Preliminary Issues Report.

#### Intensity of PDP WG meetings

Staff have suggested that they may be able to shorten the PDP process by extending the current one hour long weekly meetings, spread over a year and a half. Some of these longer meetings could be face-to-face (see above).

Given our earlier comment about meeting administration (following review of WG transcripts), we consider increasing the length of individual WG meetings is likely to increase efficiency and shorten the overall process.

Explore flexibility in relation to public comment forum duration

A small number of survey respondents and interviewees noted that little substantive policy change ever resulted from the public comment period. The following points were noted:

- *“It seems public comments have NEVER affected change to a policy outside of a minor tweak in wording.”*
- *“Public comment system doesn’t work well.”*
- *“. . . Multiple public consultations, rationale is comment then people may want to comment on comments. Should change.”*

However the issue did not appear to be a concern for the majority of respondents.

ATRT2 made the following recommendations in relation to the public comment phases of the PDP:

- *The Board should explore mechanisms to improve Public Comment through adjusted time allotments, forward planning regarding the number of consultations given anticipated growth in participation, and new tools that facilitate participation.*
- *The Board should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the staff incorrectly summarized their comment(s)<sup>26</sup>.*

The Westlake Review Team notes that the PDP manual requires WGs to review and analyse comments and demonstrate how these were considered. A number of improvements have been made already to the public comment process and

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<sup>26</sup> The Westlake Review Team note that this recommendation is being implemented in February 2015

specifically that the public comment period has been changed to require a minimum of 40 days<sup>27</sup>. Further improvements are under consideration and development.<sup>28</sup>

#### **Westlake Review Team Recommendations**

- That GNSO further explores PDP ‘chunking’ and examines each potential PDP as to its feasibility for breaking into discrete stages.
- That GNSO continues ongoing initiatives to address timeliness of PDP
- **[Recommendations in development]**

#### 6.4.2 BGC WG Recommendation 5 (Self Assessment)

##### **Observations**

A number of survey respondents and interviewees commented on measures and metrics in relation to policy development. For example:

- *“More transparent measurement and evaluation would assist both the work of the GNSO, and as assessment of its impact on policy outcomes....and on implementation.”*
- *“Need more dialogue with regard to what is measured w/r to impact of outputs, and how that can be understood by the wider constituency communities.”*
- *“Very little measurement of public needs, or the public consequences of its policies.”*
- *“More needs to be done to measure the impact of its [GNSO] output. This is a huge challenge but it has become better with an active action item and project list. Still a lot could be done but volunteer burn out is important.”*

The Westlake Review Team notes that Data & Metrics for Policy Making WG (non PDP) has been initiated to review data and metrics in relation to policy

<sup>27</sup> <https://www.icann.org/news/announcement-2015-01-16-en>

<sup>28</sup> <http://www.icann.org/news/blog/sharing-a-plan-for-public-comment-improvements>.

development<sup>29</sup>. This WG is tasked to provide the GNSO Council with recommendations on:

- A set of principles that may complement any GNSO policy efforts related to metric/data requirements to better inform the policy development process.
- A process for requesting metrics and reports both internal to ICANN or external, including GNSO contracted parties.
- A framework for distributing metrics and reports to Working Groups, the GNSO Council and the GNSO as a whole.
- Changes, if any, to existing Working Group Guidelines and work product templates.

In relation to the final point above, the Westlake Review Team considers that the WG should address measures of effectiveness at two levels:

- The effectiveness of the policy development process, and
- The effectiveness of the policy once it has been implemented.

#### Policy Development Effectiveness

The GNSO Operating Procedures (Annex 1: Section 7 – Working Group Self Assessment) states “A *WG Self-Assessment instrument has been developed as a means for Chartering Organizations to formally request feedback from a WG as part of its closure process. WG members are asked a series of questions about the team’s inputs, processes (e.g., norms, decision-making, logistics), and outputs as well as other relevant dimensions and participant experiences.*”

We have commented above (Section 6.3) on WG self-assessments.

#### Policy Effectiveness

The BGC WG noted<sup>30</sup> “*Subsequent review by Council should discuss the extent to which policy adopted has been implemented successfully and proven effective,*” and “*The GNSO Council Chair to present an annual report to the ICANN community on*

<sup>29</sup> <http://gns0.icann.org/en/group-activities/active/dmpm>

<sup>30</sup> <http://archive.icann.org/en/topics/gns0-improvements/gns0-improvements-report-03feb08.pdf>



*the effectiveness of new GNSO policies using the metrics developed at the end of each PDP”.*

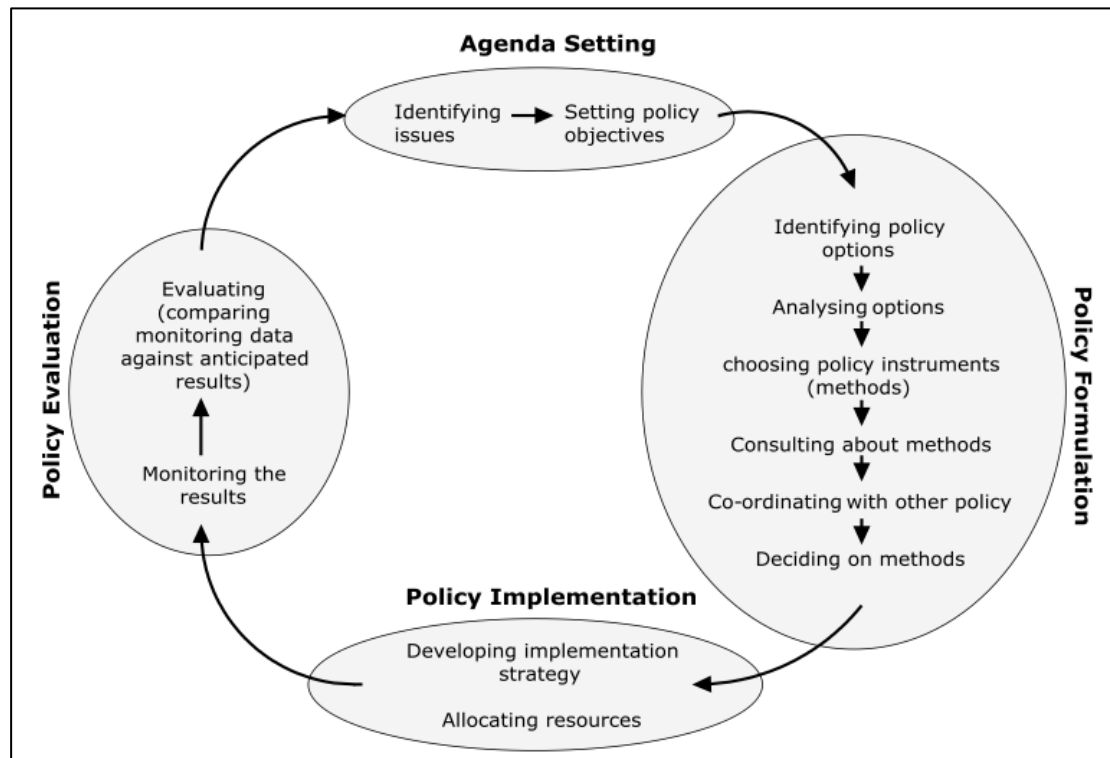
We note also that the GNSO Operating Procedures (Annex 2: Policy Development Process Manual, item 17 - Periodic Assessments of Approved Policies), state *“Periodic assessment of PDP recommendations and policies is an important tool to guard against unexpected results or inefficient processes arising from GNSO policies. PDP Teams are encouraged to include proposed timing, assessment tools, and metrics for review as part of their Final Report. In addition, the GNSO Council may at any time initiate reviews of past policy recommendations.”*

The diagram below - A Generic Policy Development Process<sup>31</sup> - identifies the four commonly accepted stages of a generic process for developing policies:

- Agenda setting, identifies the issues and defines policy objectives that define the expected outcomes;
- Policy formulation/development, defines and analyses the range of policy instruments that could be applied to achieve the objectives.
- Policy implementation, takes these methods and allocates resources to applying them;
- Policy evaluation, the final process in the cycle monitors the results of implementing the methods and evaluates the results against anticipated results of the policy.

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<sup>31</sup> <http://www.creatingfutures.org.nz/assets/CF-Uploads/Publications/Creating-Futures/Regional-Policy-Development-Processes-Opportunities-for-use-of-Creating-Futures-tools.pdf>



The Westlake Review Team considers the PDP as currently practised encompasses the first three stages. However it has been deficient in evaluating the effectiveness of the policy against the original PDP charter (as distinct from the self assessment of the WG itself), as the final stage. Such evaluations should provide valuable information for monitoring the effectiveness of policy, and over time, improving the effectiveness of GNSO gTLD policy.

### **Westlake Review Team Recommendations**

- That the WG self-evaluation becomes standard, following the completion of the work of the WG.
- That the WG self-evaluations are used to monitor and improve process effectiveness over time.
- That the GNSO Council evaluate post implementation policy effectiveness on an ongoing basis (rather than periodically as stated in the current GNSO Operating Procedures).
- That the post implementation policy effectiveness evaluations are analysed by GNSO Council to monitor and improve PDP Charters and the effectiveness of GNSO policy outcomes over time.

### 6.4.3 BGC WG Recommendation 6 (Link to ICANN’s Strategic Plan)

#### Observations

Responses to the 360° survey statement “Council’s planned objectives align with the planned objectives of ICANN as a whole”, are shown in the table below.

	Strongly disagree	Disagree	Agree	Strongly agree	Total +ve	N
	3%	32%	54%	9%	63%	61

Note: ‘Total +ve’ equals the percentage of respondents that Agreed or Strongly agreed. ‘N’ equals the number of respondents.

Specific comments include:

- *“If the GNSO Council (a) plans for the future and uses objectives to guide its activities, (b) aligns its objectives with the planned objectives of ICANN as a whole; or (c) applies metrics to its outputs, it doesn’t communicate those efforts - at all.”*
- *“Dedicate more time to strategic planning and consideration of higher level issues.”*
- *“GNSO Council is planning but improvements could be made to integration with overall ICANN objectives. This needs to be handled carefully since GNSO Council is community driven and, if anything, the movement needs to be as much on the part of “ICANN as a whole” as it does of the GNSO Council.”*
- *“... work is often is often event or situation driven and is not in line with planned objectives but is aligned with Bylaw mandate for ICANN.”*
- *“... GNSO objectives do not align with those of ICANN as a whole . . .”*

#### Analysis

The Westlake Review Team was unable to find evidence of a GNSO Strategic or Annual Plan. The GNSO does not have a formal Policy Development Plan which

links to ICANN's overall Strategic Plan. However, the GNSO does have a Project List<sup>32</sup> and a Policy Activities<sup>33</sup> section on its website

Based on this and comments by survey respondents and interviewees, the Westlake Review Team concluded that BGC WG Recommendation 6 has not been implemented.

We do however note that the GNSO Council has run "Induction and Development Sessions" in 2013 and 2014. These sessions developed planning objectives for the coming year and reviewed prior year outcomes.

The Westlake Review Team considers that planning and measurement are vital management tools. In addition, as the GNSO is a component part of ICANN, it is important that GNSO strategies and activities are linked to and align with ICANN's Strategic Plan.

#### **Westlake Review Team Recommendations**

- **[Recommendations in development]**

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<sup>32</sup> <http://gnso.icann.org/en/council/project>

<sup>33</sup> <http://gnso.icann.org/en/council/policy>

## SECTION 7 - RESTRUCTURE THE GNSO COUNCIL

### 7.1 BGC WG Recommendations

7. *The Council should transition from being a legislative body to a strategic manager overseeing policy development. Among the Council's most important functions should be guiding the establishment of working groups and monitoring their progress. The Council should be responsible for launching a working group by deciding upon the appropriate mandate and timeline, and ensuring that it has an experienced and impartial Chair, who performs adequate outreach and has sufficient expertise. The Council should be available to provide guidance on any issues when they arise.*

*A working group should present its report and conclusions, including any minority views, to the Council for review. . . .*

*In forwarding the working group's report to the Board, the Council should indicate whether it agrees that the working group has fulfilled its mandate . . . .*

8. *A second important role for the Council is to develop ways to (i) assess and benchmark gTLD policy implementation; and (ii) analyze trends and changes in the gTLD arena. . . .*

9. *A third important role for the Council is to work with ICANN Staff to (i) align the GNSO Council's work with ICANN's strategic plan, (ii) increase the use of project-management methodologies; and (iii) improve the GNSO's website, document management capacity and ability to solicit meaningful public comments on its work.*

10. *To reach its full potential, the Council should be as inclusive and representative of the broad interests represented in the GNSO as possible, while limiting its size to promote efficiency and effectiveness. We recommend a 19-person Council consisting of 16 elected members, four from each of four stakeholder groups, with two of these groups representing those parties "under contract" with ICANN, namely registries (four seats) and registrars (four seats). These we refer to as "ICANN contracted parties". The other two stakeholder groups will represent those who are "affected by the contracts" ("ICANN non-contracted parties"),*

*including commercial registrants (four seats) and non-commercial registrants (four seats). In addition, three Councilors would be appointed by the Nominating Committee (pending the outcome of the BGC's "NomCom Improvement Process"). Under this restructuring plan, there is no longer a justification for weighted voting. . .*

11. *Another way to enhance inclusiveness and enable more people to feel involved in Council activities is to establish term limits for Councilors, thus giving more people an opportunity to serve in these important positions.*

12. *Council members should provide real-time, updated Statements of Interest similar to what is required for members of the Board in a standardized format that is publicly accessible. ICANN Staff should develop a basic template of information that GNSO Councilors, constituency leaders and others participating in policy development activities must first complete. These Statements should be supplemented by Declarations of Interest that pertain to specific matters under discussion.*

13. *The Council should work with Staff to develop a training and development curriculum to promote skills development for the Council, prospective chairs of working groups and, ideally, all members of the ICANN community who might wish to take part in working groups.*

## 7.2 Major accomplishments and milestones

(as noted on the GNSO website<sup>34</sup>):

- Board approved revised Article X (GNSO) Bylaws (September 2009)
- Stakeholder Groups/Constituencies (SG/C)
  - Board approved four new Stakeholder Groups (28 August 2009)
  - Board approved permanent Charters for Registries and Registrars Stakeholder Groups (30 July 2009)
  - Board approved permanent Charters for Non-Commercial and Commercial Stakeholder Groups (24 June 2011)
  - Board recognized the Not-for-Profit Operational Concerns (NPOC) Constituency in the Non-Commercial Stakeholder Group (June 2011).

<sup>34</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/accomplishments-en.htm>

- Board approved a new Process for Recognition of New GNSO Constituencies (24 June 2011)
- GNSO/Council
  - Bicameral Council established with two voting Houses (Seoul, Q4 2009)
  - Substantially enhanced GNSO Operating Procedures (currently v2.4) including new voting remedies (proxy/abstentions), statements of interest, SG/Constituency operating principles and participation guidelines, Working Group guidelines (Annex 1), and a Policy Development Process manual (Annex 2).
  - Approved the Charter for a new Standing Committee on Improvement Implementation (SCI) to review and assess the ongoing functioning of recommendations accepted by the two Steering Committees and the Council (7 April 2011).

### 7.3 Summary of the Westlake Review Team's assessment of implementation effectiveness

#### **BGC WG Recommendation 7 (Council as strategic manager of policy development)**

The Westlake Review Team considers that BGC WG Recommendation 7 has been implemented. However, the role of the GNSO Council and ICANN Board in gTLD Policy Development should be clarified.

#### **BGC WG Recommendation 8 (Assess policy implementation and analyze trends in the gTLD arena)**

The Westlake Review Team has commented above (Section 6.4.2) on assessment of policy implementation.

**[Text in development]:** comments to come on trends in the gTLD arena

### **BGC WG Recommendation 9 (Align Council’s work with ICANN’s strategic plan, increase project management methodologies and improve GNSO’s website and document management).**

The Westlake Review Team has commented above (Section 6.4.3) on links to ICANN’s Strategic Plan, noting that the GNSO does not have plans that link to ICANN’s Strategic Plan.

Project information showing stages of activity for each current project is shown on the GNSO website (Projects List<sup>35</sup>). However we were unable to locate the type of information that would normally be expected with a ‘project management’ approach to operating WGs, for example resource planning and management.

We received no comments or suggestions regarding improvements to the GNSO website, but several people commented that so much information is available that it can be difficult to find what one is looking for. However the Westlake Review Team notes that staff have recently launched a one-stop web-page to assist<sup>36</sup>.

The Westlake Review Team considers that Recommendation 9 has been partially implemented.

### **BGC WG Recommendation 10, 11, 12 (Restructure Council membership, councillor term limits and Council member statements of interest)**

The Westlake Review Team considers that Recommendations 10 and 11 12 have been implemented effectively and have commented elsewhere on Council Member Statements of Interest (Section 8 – Enhance Constituencies). However the Westlake Review Team considers that there are some areas where improvements could be made.

### **BGC WG Recommendation 13 (Council training and development)**

In 2013 the GNSO implemented the ICANN Leadership Training Programme as one module of the ICANN Academy. It also ran the first Council Induction and Development Session at ICANN 48 in Buenos Aires and again at ICANN 51 in Los

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<sup>35</sup> <http://gns0.icann.org/en/meetings/projects-list.pdf>

<sup>36</sup> <http://gns0.icann.org/sites/gns0.icann.org/files/gns0/presentations/policy-efforts.htm>



Angeles. While this BGC WG recommendation has been implemented, the Westlake Review Team believes that actions could be taken to improve its effectiveness.

## 7.4 Basis for Westlake's assessment

### 7.4.1 BGC WG Recommendation 7 (Council as strategic manager of policy development)

#### Observations/Analysis

In its 2008 review, the BGC recommended<sup>37</sup> that *“The Council should transition from being a legislative body to a strategic manager overseeing policy development. Among the Council’s most important functions should be guiding the establishment of Working Groups and monitoring their progress.”*

Most survey respondents and interviewees consider that this recommendation has been implemented effectively – see comments in section 5.4.1 - The WG model is effective.

The Westlake Review Team considers that one of the principles of good policy is that it be developed in an open and transparent way, by a Working Group drawn from a diverse range of informed and committed stakeholders. This is the intention of the PDP that has been developed in recent years.

The key steps for the GNSO Council in the PDP process are

- The Council should decide whether and when to charter a working group, based on the Issue Report.
- The Council should be responsible for launching a working group by deciding upon the appropriate mandate and timeline (including milestones).
- The Council should ensure that the working group has an experienced and neutral Chair, performs adequate outreach and has sufficient technical expertise and knowledge of ICANN.

<sup>37</sup> <http://archive.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>

- The Council should monitor the progress of each working group. In doing so, the Council should offer guidance and support to assist the working group in reaching a satisfactory conclusion, with the participation of all relevant stakeholders.

In practice, there is potential for this process to be compromised by inputs from other parties or groups, and several survey respondents and interviewees referred to three of these in various ways as unhelpful to the development of timely and carefully-crafted policy:

1. The GAC.

Several respondents noted that the GAC had sometimes provided input to Policy Development Processes at a very late stage in the process. While these respondents did not question the right of the GAC to offer input, there was concern that it came so late in the process, and that in some cases GAC had not participated at an earlier stage. The response we have heard from some members of the GAC is that they cannot generally participate earlier because that would require their nominee to act on behalf of all GAC members, and no GAC member is authorized to state a position that would bind all members (GAC members represent sovereign governments and therefore cannot be bound by others).

We understand that GNSO has recently appointed a Liaison to work with the GAC to facilitate information sharing and early engagement of the GAC in Policy Development. The GAC-GNSO Consultation Group is working on additional mechanisms for early engagement of the GAC in policy development. We believe these are constructive steps; as noted above, we recommend further that the GAC consider appointing a liaison to every PDP Working Group, to provide a channel of communication and offer guidance which, although not binding on the GAC, might help to identify issues of potential concern to the GAC and reduce delays later in the process.

2. The GNSO Council.

Several survey respondents and interviewees commented that there appears to be some confusion around the role of the Council in relation to policy development. Under certain circumstances, the GNSO Council is currently able to draft an amendment to a policy recommended by a WG.

In our view, this practice is inappropriate, because it compromises the multi-stakeholder Working Party, consensus-driven, Policy Development Process that has been carefully developed. The process also underpins the credible functioning of the GNSO in developing policy that is legally binding on many of its members. In our view, and as the BGC noted, the Council should not be a 'legislative body,' but a strategic manager of the policy setting process.

The role of the Council is to satisfy itself that Working Group has followed the correct process in reaching its recommendations, and to ensure (as the BGC recommended) that:

- The scoping of the issue remains valid
- All relevant stakeholders are aware of, and involved, in the process.
- No one stakeholder group is dominating the process.
- Any necessary expert opinion has been provided.
- Data has been provided and used where appropriate.
- The proposed policy can be implemented.

The Westlake Review Team considers that, if these conditions have been satisfied, the Council should forward the policy to the Board for final approval. Any concerns should be limited to matters of the process, not the substance of the policy.

If the Council cannot reach agreement, it should articulate the reasons why the policy could not be recommended in its existing format and refer the matter back to the WG for possible amendment.

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding GNSO Council and ICANN Board role in policy development.

### 3. The Board.

Several survey respondents and interviewees noted that the Board had overruled policy developed through a PDP and recommended by the GNSO Council. There was a view that in at least one recent case the Board had

yielded to late a submission from the GAC and on that basis had referred the proposed policy back to the GNSO Council. As one respondent noted:

- “. . . a recent example is that the Board, instead of acting on the recommendation of the GNSO, allowed the GAC to derail a recommendation regarding rights protection mechanisms for IGOs and NGO's. The Board sent the issue back to the GNSO for consideration. One comment I heard was, ‘at least they sent it back, normally they would ignore us all together’.”

We acknowledge that the Board is the peak governing body of ICANN, so it would be inappropriate to limit its authority. However, we consider that this power should be used only in cases where the Board:<sup>38</sup>

- Identified a significant risk raised by the recommended policy, or
- Considered that the recommended policy would compromise or conflict with ICANN's strategy, values or existing legal obligations, or with other existing ICANN policy/-ies, or
- Believed that the recommended policy went beyond ICANN's limited technical mandate.

As noted above in relation to the GNSO Council, we consider that the role of the Board should not be to re-litigate or amend policy itself, but to articulate its reasons for rejection and refer the policy back to the GNSO PDP WG for re-consideration and re-submission.

Besides ensuring that a balance of stakeholders will be involved throughout, the amendment we recommend should mitigate the risk of compromising the PDP through the lobbying of the GNSO Council or Board members in favour of a particular policy line. It would also reduce the ability of other arms of ICANN to determine policy without regard (whether actual or perceived) for the full Policy Development Process.

**Westlake Review Team recommendations:**

- **[Recommendations in development]**

<sup>38</sup> <https://www.icann.org/resources/pages/governance/bylaws-en> - refer Annex A - GNSO Policy Development Process

#### 7.4.2 BGC WG Recommendation 8. (Assess policy implementation and analyze trends in the gTLD arena)

We have discussed the issue of policy implementation assessment in section 6.4.2 BGC Recommendation 5 (Self Assessment)

**[Text in development]:** more to come in relation to Observations and Analysis on trends in the gTLD arena]

#### 7.4.3 BGC WG Recommendation 9. (Align Council’s work with ICANN’s strategic plan, increase project management methodologies and improve GNSO’s website and document management).

We have discussed the issue of aligning the GNSO Council’s work with the ICANN Strategic Plan in section 6.4.3 BGC Recommendation 6 (Link to ICANN’s Strategic Plan).

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding the link to ICANN’s Strategic Plan.

### **Prioritization of GNSO Projects**

As noted elsewhere in this review, volunteer time is a limited resource. Prioritization is one management tool that assists in making the most effective use of limited resources. The Communications and Coordination Work Team<sup>39</sup> recommended that “*work prioritisation so as not to overwhelm the community and unintentionally hinder active participation*”.

### **Observations**

A number of survey respondents and interviewees commented that except in urgent cases, the number of PDPs running concurrently should be limited, allowing for resources (particularly volunteer time) to be prioritized. For example:

<sup>39</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/osc-en.htm>

- *“There are too many WGs, not enough volunteers, have to get the same people all the time. Hard to find people who are prepared to do this.”*
- *“Limit the number of working groups that can be in existence at any one time.”*
- *“Planning and prioritizing efforts. Volunteers are being spread too thin and having too many issues bubbling along at any one point in time is going to lead to poor outcomes.”*
- *“Focus on less issues at one time”*

Survey respondents and interviewees also noted that PDPs should be focused on generic names policy development (as required under Article X of the ICANN Bylaws) rather than other topics such as governance, administration and budget. For example:

- *“[GNSO should] stick to its remit of producing policy related to gTLDs - nothing more”*
- *“There should be a distinction between policies related to ICANN governance, administration, budget, etc and generic names policy. Also broader Internet Governance policy issues should be relegated to committees. These are three distinct buckets of work that should be treated separately. They do not all directly impinge on generic names policy development.”*
- *“Stop creating too many WGs that aren't sure if they will end in PDP”*
- *“Stop performing PDPs on subjects that may be duplicative of, or mooted by, other ongoing work within ICANN (e.g. the PPSAI PDP WG vis-a-vis the EWG RDS system) before the outcomes of the other work are finalized.”*
- *“CONCENTRATE ON GNSO (gTLD) POLICY AND ALLOW REPRESENTATION ON BROADER ISSUES TO BE DRIVEN BY CONSTITUENCIES e.g. participation in Cross Community WGs should be at the Constituency level.” [participant emphasis – upper case]*

## **Analysis**

The prioritization issues raised by survey respondents and interviewees relate to both policy development and other GNSO projects. As with a number of issues identified throughout this review, prioritization of resources is not new. During 2010, the GNSO Council convened the Work Prioritization Model Drafting Team (WPM-DT)

to develop procedures to categorise and rank/prioritize each project (PDPs and others)<sup>40</sup>. The goals of the WPM-DT are:

- *Education and Transparency: to establish organisational awareness and understanding of the [GNSO] Council's priorities.*
- *Resource Allocation: to assist the [GNSO] Council in managing limited resources among the organisation's prioritised projects.*
- *Strategic Management: to inform [GNSO] Councillors so that the GNSO's prioritization is considered when discussing issues and voting on related motions.*

A list of eligible projects was adopted by the Council effective 20 May 2010 and Value Ratings approved 23 June 2010 in Brussels<sup>41</sup>.

We have been advised by staff that the prioritization procedures were too complex and the project was seen as a failure. The Westlake Review Team has been unable to locate GNSO Council resolutions related to abandoning this project, but a poll was conducted which resulted in further discussions taking place via email, with no specific actions resulting<sup>42</sup>.

#### **Westlake Review Team Recommendations**

- That the GNSO Council should develop and follow simple and transparent prioritization processes for planning of policy development and that this process should begin with an annual review of ICANN's strategic priorities.
- **[Recommendations in development]**

#### 7.4.4 BGC WG Recommendations 10 and 11. (Restructure Council membership and councillor term limits)

<sup>40</sup> <http://gnso.icann.org/drafts/wpmg-section-6-and-annex-09apr10-en.pdf>

<sup>41</sup> <http://gnso.icann.org/drafts/draft-work-prioritization-project-list-value-ratings-23jun10-en.pdf>

<sup>42</sup> <http://sel.icann.org/mailling-lists/archives/council/msg09519.html>

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding GNSO Council Restructure and councillor term limits.

#### 7.4.5 BGC WG Recommendation 12. (Council member statements of interest)

Statements of Interest are discussed in section 8.4.2 BGC WG Recommendation 15 (Constituency operating rules and participation)

#### 7.4.6 BGC WG Recommendation 13 (Council training and development)

### Observations

Various comments were made in the 360° survey and interviews relating to this area, including the variability of the performance of Council members, Council member's selection process is not geared to deliver people with the appropriate skills (planning), technical training and measures. For example:

- *“The GNSO would benefit from actively encouraging technical/operational expertise on the part of councillors.”*
- *“Provide technical training to counsellors without technical background”*
- *“. . . the GNSO Council; Not much PM experience. Little use of the word 'governance.' . . .”*

### Analysis

As discussed above, Section 6 – Revise the PDP, staff introduced the ICANN Leadership Training Programme in 2013. This programme is for both new and existing community leaders and is an intensive on-boarding and facilitation skills training programme with key elements such as facilitation, conflict, mediation and communication skills.

In addition to the ICANN Leadership Training Programme, GNSO Council Induction and Development Sessions were run in 2013 and 2014.<sup>43</sup> The objectives of these

<sup>43</sup> <https://gns0.icann.org/en/correspondence/council-development-notes-17oct14-en.pdf>



sessions are to allow for the Council members to get to know each other better, provide information on the functioning and operations of the GNSO Council and to allow for planning for upcoming projects and activities, in order to further enhance the co-operation within and effectiveness of the GNSO Council. The Westlake Review Team considers that these sessions are an important part of the on-going development programme for Council members.

However we consider the effectiveness of BGC WG Recommendation 13 could be improved:

1. The BGC WG proposed action under this recommendation anticipated “A *proposed curriculum (including suggested courses, delivery mechanisms and links between positions and training) should be developed.*” This meant that training should be relevant to the positions. The Westlake Review Team was unable to locate any training and development specifically linked to the skills and competencies required for GNSO Council members. The ICANN Leadership Training Programme is a positive step to provide training for incoming and existing leaders in general, but Council members have other needs such as governance and technical skills (for example, project management).
2. As discussed in Section 6 - Revise the PDP, there is no formal skills assessment system in place. The training programme is optional and generic, and does not address identified individual needs. There is no means to measure the level of competence and skills of incumbents, or the effectiveness of the training undertaken.

ATRT<sup>44</sup> Recommendations 1, 2, 3 provided recommendations in the area of Board performance and work practices as follows:

*Recommendation 1: The Board should develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyse those findings over time.*

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<sup>44</sup> <https://www.icann.org/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf>

*Recommendation 2: The Board should develop metrics to measure the effectiveness of the Board's functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement.*

*Recommendation No 3: The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time.....”*

While the above recommendations relate to the ICANN Board, we consider the principles underlying these recommendations are equally applicable to the GNSO Council and should be considered in its training and development programme.

The Westlake Review Team considers that a robust training and development programme is a critical element in maintaining the effectiveness of the GNSO Council.

#### **Westlake Review Team Recommendations**

That the GNSO should :

- Review and implement a revised training and development programme encompassing the following:
  - Skills and competencies for each position
  - Training and development needs identified
  - Training and development linked to positions
  - Formal assessment system with objective measures
  - Continual assessment and review

## SECTION 8 – ENHANCE CONSTITUENCIES

### 8.1 BGC WG Recommendations

14. *ICANN should take steps to clarify and promote the option to self-form a new constituency. It should engage in greater outreach to ensure that all parts of the community, particularly in those areas where English is not widely spoken, are aware of the option to form new constituencies. Together, ICANN Staff and the GNSO constituencies should develop specific recommendations for achieving these goals.*

15. *The GNSO constituencies, along with the Council and staff, should develop operating principles that will form the basis for consistent participation rules and operating procedures for all constituencies, ensuring that ICANN constituencies function in a representative, open, transparent and democratic manner. The criteria for participation in any ICANN constituency should be objective, standardized and clearly stated.*

*General information about each participant application and the decision should be publicly available.*

*Mailing and discussion lists should be open and publicly archived. . .*

*There should be term limits for constituency officers, just as for Councilors . . .*

*There should be an emphasis on reaching consensus. . .*

*There should be a centralized registry of the participants of all constituencies and others involved in GNSO policy development work, which is up-to-date and publicly accessible. . .*

16. *ICANN should provide dedicated Staff support for constituencies to assist with standardization, outreach and administrative work, which can lower constituency costs and fees. ICANN should offer each constituency a “toolkit” of in-kind assistance (as opposed to financial aid). The toolkit should include, for example, assistance with tracking PDP deadlines and summarizing policy debates, supporting websites and mailing lists, scheduling calls and other administrative duties.*

## 8.2 Major accomplishments and milestones

(as noted on the GNSO website<sup>45</sup>):

- GNSO Council approved “Stakeholder Group/Constituency Operating Principles and Participation Guidelines” which were developed over two years and incorporated into the GNSO Operating Procedures as Chapter 7 (5 August 2010).
- Global Outreach: Significant progress has been made in developing recommendations concerning outreach:
  - Developed a set of Recommendations to develop a Global Outreach Program to Broaden Participation in the GNSO (21 January 2011) containing a recommendation that the Council “manage the development of the OTF (Outreach Task Force) through the creation of a Drafting Team to develop the OTF’s Charter.”
  - The OTF-DT was formed and it provided to the GNSO Council a Draft Charter on 18 October 2011.
- “Toolkit” of GNSO Services:
  - Utilizing the results of a GNSO Constituency Survey conducted by Staff in October 2008, the Constituency and Stakeholder Group Operations Work Team (CSG-WT) analyzed the results, conducted a follow-up survey, and recommended a prioritized list of eleven (11) services in its final report (25 October 2009).
  - The Operations Steering Committee (OSC) forwarded the recommendations to the GNSO Council (4 December 2009), which approved them by Resolution (17 December 2009) directing Staff to develop costs, funding, specifications, requirements, and procedures as well as notify the GNSO Communities of the “Toolkit” and the process for requesting services.
    - Seven (7) of the eleven (11) services are currently being provided to

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<sup>45</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/accomplishments-en.htm>

the GNSO community.

- One service, #7-Provide Grants/Funding Directly to Constituencies, has been deferred.

-Three (3) services are in varying states of analysis, development, and implementation

### 8.3 Summary of Westlake Review Team's assessment of implementation effectiveness

#### **BGC WG Recommendation 14 (New Constituencies)**

This recommendation has been implemented but Westlake Review Team is of the view that it has not been entirely effective. Since 2011, when the rules for new constituencies were approved, only one new constituency has been added to the GNSO.

#### **BGC WG Recommendation 15 (Constituency operating rules and participation)**

This recommendation has been implemented however Westlake Review Team is of the view that it has not been entirely effective in respect of representation and diversity.

Westlake Review Team is of the view that this recommendation has not been implemented. There is no centralised registry of constituency membership.

#### **BGC WG Recommendation 16 (Constituency administration support)**

**[Text in development]: more to come in relation to Observations, Analysis and Recommendations regarding Constituency administration support**

- *“Staff support (one staffer) for each stakeholder group to coordinate and collect comments and papers would be a welcome addition.”*
- *“More support from ICANN staff”*
- *“Insist that all SGs and Constituencies have adequate secretariat support.”*

- “Recieve increased support from ICANN to assist volunteers in each constituency vis-a-vis dedicated secretariat and parliamentarian positions.”
- “More staff resources to help the NCPH accomplish and enhance its work.”

## 8.4 Basis for Westlake’s assessment

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding New Constituencies, Constituency Rules and Participation and Constituency Administration Support. This section (from here to page 90) needs refining and further comments and recommendations arising from our final round of interviews.

### 8.4.1 BGC WG Recommendation 14 (New Constituencies)

#### Observations

Some survey respondents and interviewees noted that the BGC WG had envisaged new constituencies being admitted to the GNSO. The BGC WG states<sup>46</sup> “*We believe ICANN should take steps to clarify and promote the option to self-form a new constituency. The option of forming a new constituency should not be viewed as an impossible task. ICANN should engage in greater outreach to ensure that all parts of the community, particularly where English is not widely spoken, are aware of the option to form new constituencies.*”

To date only one, the NPOC, has come into existence and it has, by its own admission, had difficulties in establishing and building its membership.

#### Demographic structure / barriers to entry

Several people noted, as we have commented elsewhere, that the GNSO is dominated by participants from developed nations. As a result the issues considered tended to be those of interest to developed wealthy economies. In addition to factors

<sup>46</sup> <http://archive.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>

discussed earlier, the Westlake Review Team considered several others posed potential barriers:

- Richer economies are better able to support a volunteer structure.
- Complexity deters newcomers: experienced participants are overwhelmingly North American, Western European or Australian/New Zealanders.
- Because of the imbalance in the GNSO's composition, it was seen by some to be poorly equipped to identify and develop policies or consider issues relating to gTLDs that are of significance to less developed economies.

Among suggestions of means to encourage more diverse participation were the concept of enforced term limits for incumbents, formal induction and training for newcomers (including new chairs of WGs), and staff providing support and ready advice on process. We have covered most of these matters through recommendations in previous sections.

### **New gTLDs**

Some respondents expressed the view that the introduction of a large numbers of new gTLDs will upset the existing balance in the GNSO, in particular the CPH. As a side observation, the Westlake Review Team was surprised at how few people even raised the topic of new gTLDs, or the potential impact on the GNSO of introducing hundreds/thousands of new TLDs, after several years of relative stability when the number of gTLDs remained in the low 20s. However, a small number of survey respondents and interviewees did comment on these issues, some at considerable length.

A view expressed by a few was that the CPH has been quite successful in accommodating the large number of new gTLDs within existing structures – especially noting the substantial growth in Registry Stakeholder Group membership – from the low 20s to more than 100. Against this, we comment below on the difficulties experienced by at least one group associated with new gTLDs in formalizing a community of their own interests into a board-recognized constituency.

**[Text in development]:** more to come in relation to the changing environment, demographic structure / barriers to entry and new gTLDs.

### **Options considered**

We consider that some changes are desirable. As we discuss elsewhere, the emergence of new constituencies and possible winding up and disappearance of others, as the BGC WG foresaw<sup>47</sup>, has not occurred: in the years since the new structure was introduced, only one new Constituency has formed and become a formal member of the GNSO structure.

Much of the comment we received about structure concerned the perceived barriers to entry for a new Constituence: few of these are formalised, but we received consistent views from several parties that the GNSO and ICANN as an institution have developed, or allowed to develop, significant informal barriers that include, among others, the following:

- The process for admitting new Constituences has in the experience of applicants been less than transparent and is understood to have been subject to direct lobbying by current GNSO parties (Constituences and individuals) to Council and Board members, aimed at delaying/denying the new Constituency's application. We spoke to several people who had been involved in applying for a new Constituency to be admitted. All of them expressed extreme frustration. Their main theme concerned the lack of clear process or interpretation of the requirements for setting up a new Constituency. In most cases we were told about, the application process had become a prolonged 'battle of attrition' in which new objections or questions were raised at every step in the process, until, in two cases, the applicants (volunteers) finally gave up because the personal and professional cost had become excessive and they could see no end.
- The other key concern, also discussed elsewhere, is the strongly defensive position adopted by some incumbents that has the effect, deliberate or otherwise, of deterring all but the most determined newcomer from becoming involved in the GNSO. The reasons appear varied but range from:
  - (In our view, valid) concerns about a newcomer's ability to contribute or understanding of the GNSO, to
  - Less 'pure' or altruistic motives, such as protecting one's own position, status in the GNSO/ICANN community (or with an employer), or,

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<sup>47</sup> <http://archive.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>



- In the most venal cases, individual concerns that if someone new comes in, the replaced incumbent will lose their own travel funding, regardless of the GNSO's greater interest of having the most appropriate people for the role – rather than just those who can defend their positions the most effectively.

Accounts shared with us by some newer participants referred to verbal abuse and active discouragement, from a few entrenched individuals who appeared determined to 'protect their patch' in ICANN/GNSO. We believe strongly that such experiences and behaviour are inconsistent with ICANN core values.

The BGC WG foresaw the creation of new constituencies and considered this desirable. We consider that the barriers to entry for new Constituencies (evidenced by the creation of only one new Constituency since the structure was adopted) must be lowered if the GNSO structure is to remain relevant and adaptable to new developments and evolving interests.

We consider that if the Board adopts and applies some of our other recommendations, particularly those relating to the Operating Procedures, this will go some way to lowering the barriers to entry. On its own, however, this is unlikely to be sufficient. We consider that two more factors are essential:

- The Board/GNSO Council must have and adhere to a clear, transparent process for new Constituencies to apply for membership of a Stakeholder Group. Subject to meeting the conditions, and to operating within ICANN's core values, the default outcome should be for a new Constituency to be admitted. It should not be the business of another Constituency to obstruct the application process.
- Secondly, we consider that a culture change, driven by the 'tone at the top', is essential if ICANN is to admit and welcome new participants. We note many efforts by ICANN over the years to be more inclusive, such as extensive translation services, but the real change required is in the attitude of some incumbent participants – some of them of long-standing. We are aware that such change does not occur quickly, and it is essential that Board members, leaders in the GNSO and in the existing structures take leadership and demonstrate greater openness and positive acceptance of newcomers and

those seeking to become involved. Many people already demonstrate this, but this is far from universal. We believe that this culture change is essential not only for welcoming newcomers, but also for ensuring that the GNSO evolves over time to meet needs – many of which have possibly not been identified yet.

#### **Westlake Review Team Recommendations**

- **[Recommendations in development]:**

#### 8.4.2 BGC WG Recommendation 15 (Constituency operating rules and participation)

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding Constituency operating rules and participation.

#### **Context**

ICANN is often described as being a multi-stakeholder bottom-up consensus-driven organisation. Core Value 4 reads: *Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*

We have set out below our understanding of the concepts, commonly-used within ICANN, of diversity, accountability and transparency, and a subsection noting the changing operational environment for the Domain Name System (DNS).

#### **Diversity**

Achieving real diversity means involving the widest practicable community of stakeholders – specifically:

- *Functional diversity* includes representation from people and organisations with a range of relationships with gTLDs. Achieving functional diversity requires that stakeholders with differing interests and skills can participate in

the GNSO, i.e. they can find and be admitted to an appropriate existing constituency, or form a new constituency.

- *Geographic diversity* refers to seeking stakeholder input from around the globe. ICANN has a definition of regions that is partly helpful to assess diversity.
- *Cultural diversity* is not defined in the Bylaws or in other ICANN material that we have reviewed. However, it is something that can be obvious by its absence and includes matters such as ethnicity, age, language, and socio-economic factors. In a broader context, gender diversity is a visible measure of demographic diversity. Gender diversity relating to participants in GNSO PDP Working Groups has been measured and commented on in previous reviews<sup>48</sup>.

## Transparency and Accountability

ICANN is committed to maintaining and improving robust mechanisms for public input, accountability and transparency. This is shown by, inter alia, the Board's adoption of the ICANN Accountability & Transparency Frameworks and Principles<sup>49</sup> in 2008, and the subsequent commissioning of the Accountability and Transparency Review Team (ATRT) reports 1<sup>50</sup> and 2<sup>51</sup> and the Board's commitment to implementing the resulting recommendations.

In the context of GNSO activities, ICANN's commitment to accountability, transparency and multi-stakeholderism requires:

- Involvement of the widest practicable community of stakeholders.
- Decision-making and policy development processes that are open and transparent to the community.
- Openness regarding who is contributing to decision-making and gTLD policy development, and who or what interests they represent.

<sup>48</sup> <https://www.icann.org/en/system/files/files/gnso-evaluation-21nov13-en.pdf>

<sup>49</sup> <https://www.icann.org/en/system/files/files/acct-trans-frameworks-principles-10jan08-en.pdf>

<sup>50</sup> <https://www.icann.org/en/system/files/files/final-recommendations-31dec10-en.pdf>

<sup>51</sup> <https://www.icann.org/public-comments/atrt2-recommendations-2014-01-09-en>

- Participants in GNSO's processes to adhere to ICANN's Expected Standards of Behaviour<sup>52</sup>.

## **Changing Operational Environment for the DNS**

Until relatively recently, the GNSO had operated in a rapidly-growing but comparatively stable environment. However, both the introduction of Internationalised Domain Names (IDNs) and the massive expansion in the number of gTLDs available are significant changes to the way in which the DNS is used. They create a range of issues that must be addressed by development of new policy. In addition, the proposed Internet Assigned Numbers Authority Functions' Stewardship Transition (IANA Transition) will lead to further changes in the operating environment for the DNS. In turn this will likely require either development of new GNSO policies or amendments to existing policies.

A further, perhaps deeper, change in the use of the domain name system may arise from the shift in the "centre of gravity" of the user base of the Internet from mostly anglophone developed economies to an Internet that is numerically dominated by people from Asian countries, with diverse languages, scripts and cultures.

These changes may lead beyond the requirement to develop or amend GNSO policy. They may stimulate the initiation of new, and/or the amalgamation of existing, GNSO constituencies.

## **Observations**

We discuss below our observations under the headings of:

- Functional Diversity
- Geographic Diversity
- Cultural Diversity
- Transparency and Accountability
- Resourcing
- Volunteers

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<sup>52</sup> <https://www.icann.org/en/system/files/files/acct-trans-frameworks-principles-10jan08-en.pdf>

The observations in this section focus on participation in Council, Stakeholder Groups and Constituencies. Observations on participation in Working Groups have been provided in Section 5 – Adopt a Working Group Model.

### Functional Diversity

The GNSO is organised into stakeholder groups and constituencies to address the varying needs of its broad range of stakeholders. Its structure is intended to produce a situation where no one set of interests can outvote the others, and all points of view can be heard. Seats on the GNSO Council are carefully allocated to different groups in an attempt to achieve this balance. The GNSO Operating Procedures<sup>53</sup> state that, ideally, all working groups, especially those conducting a PDP, should be similarly balanced.

The main 360° survey invited respondents to agree or disagree with the assertion that various groups are adequately represented in the GNSO. The results are presented below.

The following group is adequately represented in GNSO:	Strongly agree	Agree	Disagree	Strongly disagree	Total positive	N
Commercial	28%	41%	15%	14%	70%	137
Non-Commercial	16%	42%	22%	18%	59%	130
Registrars	38%	52%	6%	2%	91%	135
Registries	37%	51%	7%	3%	88%	135
ALAC (through liaison)	17%	62%	13%	5%	80%	124
ccNSO (through liaison)	17%	56%	20%	5%	73%	115

(The final column labeled 'N' is the number of respondents answering the question. Note 'N' represents the total number of respondents, regardless of affiliation).

<sup>53</sup> <http://gns0.icann.org/en/council/op-procedures-13nov14-en.pdf>

The results show that the majority of respondents consider that most of these groups in the GNSO are adequately represented, with the exception of Non-Commercial Stakeholders, where just over half of respondents agreed. These findings are consistent with our observations from interviews.

The following table shows numeric results of selected questions (the percentage agreeing or strongly agreeing with the proposition) from the 360° survey for the Stakeholder Groups and Constituencies.

This table shows the extent to which:

- The executive committee of the group is balanced and appropriately representative
- The group is effective in encouraging new participants to become involved in the group to avoid volunteer burnout
- The group encourages participation from all geographic regions
- The group manages workload issues effectively
- The group applies appropriate metrics to determine the impact of its outputs
- The group uses community feedback to improve its effectiveness

	Exec cttee balanced	Encourage s new people	Geographi c diversity	Manages workload	Applies metrics	Accepts feedback	N
RySG	57%	74%	52%	70%	39%	65%	23
RRSG	75%	67%	75%	67%	50%	67%	12
NCSG	48%	40%	62%	31%	26%	57%	42
NCUC	52%	41%	59%	37%	33%	44%	27
NPOC	47%	35%	59%	35%	35%	53%	17
CSG	n/a	35%	56%	n/a			43
CBUC	50%	50%	54%	46%	46%	50%	28

IPC	66%	38%	63%	50%	31%	66%	32
ISCPC	53%	47%	53%	53%	53%	53%	17
Average	56%	47%	59%	50%	43%	56%	

(The 'average' row is a mean of the numbers above so that groups may be compared).

Unlike other stakeholder groups, the CSG does not have an executive committee and does little at the stakeholder group level so answers to most of these questions are not presented.

Specific observations are made below about representation by the stakeholder groups and constituencies.

#### Contracted Parties

The contracted parties (registries and registrars) have well-represented groups, as might be expected because they are contractually bound to adhere to consensus policies so GNSO policy-making can directly affect their businesses. We found no evidence that either group of stakeholders has difficulty accessing its constituency. The Registries' Stakeholder Group is considered to have a low geographic diversity at 52%, probably representing the domination of large US-based registries.

Some comments were made to the effect that larger registrars are more likely to be represented than smaller ones. The numbers of responses about the Registrars' Stakeholder Group were insufficient to draw quantitative conclusions. This group does not currently have staff support and this may exacerbate volunteer burnout.

A case was put to us that the existing division of constituencies does not well serve "brands" that are, increasingly, acquiring their own TLDs in which they can be registries, registrars and business users, and within which policy rules may be different from open TLDs.

#### Commercial Stakeholders

The Commercial Stakeholders Group is a mix of diverse and divergent interests. The Stakeholder Group itself (i.e. the structure in the GNSO) is very “thin” in that it does little more than serve as a point of aggregation for voting and feedback to Council.

A number of interviewees expressed concerns that, at the Stakeholder Group level, a joint view in the CSG was impossible or so generalised as to become meaningless, because the constituent parts sometimes held widely divergent views. In turn this raised significant concern among some constituencies who noted that the constituencies were established to allow decision-making at the appropriate level, yet the ICANN board required their disparate views and interests to be amalgamated artificially into a ‘common’ stakeholder group position. Similarly, in cross-community working groups, the participation of only one member per stakeholder group led to the inevitable imbalance of understanding and views at the constituency level.

This was highlighted in the discussion at ICANN 51 between the CSG constituency chairs and the ICANN Board<sup>54</sup>.

The Commercial Business Users’ Constituency is intended to offer a representative function for businesses that use the Internet as registrants or end users. Quantitative survey results show that the CBUC’s executive committee is thought to be less representative than average and that its geographic diversity is perceived to be less than average across the GNSO. Comments indicate a degree of self-perpetuation of the leadership of this group. The Westlake Review Team also received a few comments about the CBUC’s lack of transparency in not publishing its membership or making its email lists available.

Relatively few Internet Service Providers (ISPs) are active in the Internet Service and Connection Providers Constituency (ISCPC). This may be because ISPs do not generally think domain name policy is sufficiently important to their businesses to justify the time input required. Some respondents noted also that the ISCPC’s membership was shrinking and, as noted above, that desired outcomes were only achieved when views between constituencies were not combined at the CSG level.

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<sup>54</sup> <http://la51.icann.org/en/schedule/tue-board-csg/transcript-board-csg-14oct14-en.pdf>



The Intellectual Property Constituency does not appear to be successful in attracting new members. Some respondents also noted the IPC's lack of transparency about its membership and about whose interests its members represent.

In relation to the CSG generally, but most notably the IPC, it was argued that, while legal privilege might prevent disclosure of a client or sponsor's name, ICANN's values of openness and transparency should require participants to disclose at least their underlying interests.

### Non-Commercial Stakeholders

The Non-Commercial Stakeholders' Group, unlike its commercial counterpart, has an Executive Committee. Some survey respondents considered this was lacking in balance and resisted new members. Several survey respondents and interviewees noted that leadership positions remain in the hands of only a few people. For example:

- *"It [the NCSG] seems to actively discourage new leadership for fear of existing leaders losing their place on the totem pole."*
- *"Very little diversity in the leadership, resistance to new blood, leads to bad morale."*

The NCSG is perceived by some as actively obstructing membership applications for the NPOC.

There has also been at least one unsuccessful attempt to form a constituency under the NCSG, and the one that has formed (NPOC) has had and is still having a difficult relationship with NCSG. For example:

- *"The membership application process is not transparent or thorough. The applications are on a server that only 1 member can access."*
- *"NCUC is a self perpetuating elite that uses the NCUC constituency as a basis for the realization of self interests. A small group does everything in their power to capture power and resources."*
- *"The constituency [NPOC] is very new and still finding its legs. We have been hampered by leadership changes, failure to have members timely approved by NCSG-EC and our own recruitment efforts."*

- *“The badly designed membership process between NCUC and NPOC further complicates things, placing organizations in NCUC when they should be in NPOC.”*

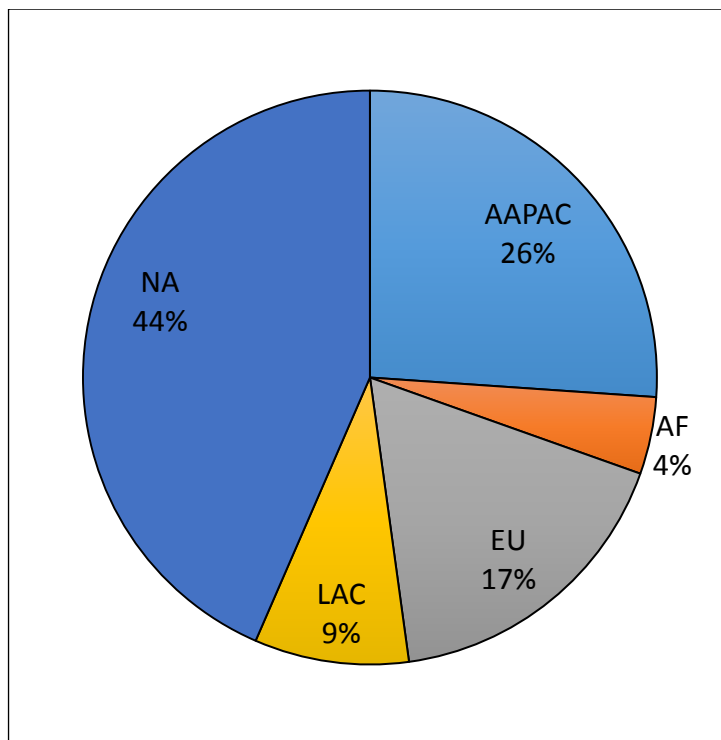
There is a perception among some that the membership and Executive Committee of the NCUC has an element of self-perpetuation and that some of the NGOs represented in the NCUC are very small and may exist only for the purpose of ICANN participation.

The NPOC’s difficulties in starting up and growing its membership has fed the perception that the NCUC sees it as competition for funding and travel support from ICANN. There was a view from some that the NCUC even questions the right of the NPOC to exist. We were advised that Not-for-Profit Organisations often struggle to resource NPOC, from their own budgets, particularly in comparison with commercially funded groups, such as the CSG and the two contracted stakeholder groups.

### **Geographic Diversity**

Without a complete list of constituency membership categorised by geographic region it is not possible to be definitive about the geographic diversity of the membership of the GNSO. We understand that ICANN staff do not collect comprehensive statistics on geographic (or gender and cultural) diversity. It is therefore not possible to draw definite conclusions about the extent to which diversity has been achieved.

Details of geographic diversity on the GNSO Council itself are easier to obtain because its membership is a matter of public record. The chart below shows that North America is the most represented region at 44%, Asia Pacific is second at 26% with Europe third at 17%. The Latin America and Caribbean, and African, regions make up less than 15%. It was also noted that these figures can be distorted through individuals holding multiple citizenships.



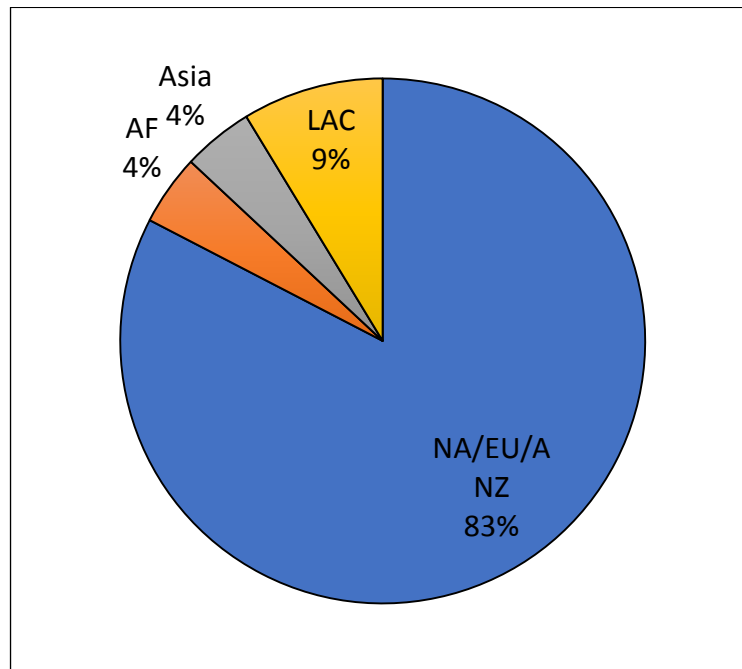
To address geographic diversity, attempts are made to balance leadership structures by appointing candidates from different geographic regions. It is not clear that any consideration of cultural diversity is made in addition to geographic diversity.

Our observation of ICANN meetings (ICANN 51 and earlier) suggests that North Americans and Europeans comprised the vast majority of those present and active. At ICANN 50 (London) and 51 (Los Angeles), this may have been due partly to the location of the meetings. However, this predominance has been evident at other recent ICANN meetings Westlake representatives have attended in Singapore, Beijing and elsewhere. Leadership positions in GNSO structures also show a heavy weighting of EU and NA nationals.

### **Cultural Diversity**

The chart of Council's geographic diversity presented under *Geographic Diversity* above shows that nearly half of all Council positions are held by people from North America, and a quarter by people from Asia Pacific. Under ICANN's current definition, Asia Pacific includes Australia and New Zealand which are in general culturally more similar to North America and parts of Europe than to most Asian cultures.

If the chart is re-cast to show Australia and New Zealand as part of a group including North America and Europe, it shows that only 17% of Council membership falls outside this group.



As at July 2013, people from Asia (not including Australia or New Zealand) made up 48% of total Internet users.<sup>55</sup> The chart above shows that people from Anglophone and European cultures are heavily over-represented on Council, and in our observation, in the GNSO as a whole.

Several survey respondents and interviewees noted a number of factors as presenting barriers to culturally broader participation in the GNSO:

1. GNSO's working language is English. Despite extensive translation services provided by ICANN there is limited opportunity to participate effectively without a reasonable level of English language fluency.
2. In North America and to a lesser degree much of Europe, a robust confrontational style of debate is often regarded as acceptable in a business context. Such a style is less acceptable and often seen as distasteful in some other cultures. Several respondents referred negatively to the tone of some debates within the GNSO. In contrast other respondents commented that

<sup>55</sup> Internet Live Statistics, <http://internetlivestats.com>, viewed 15 December 2014

under the current leadership of the GNSO Council it had become more inclusive and less confrontational than previously.

We note that the ICANN Board's Nominating Committee (NomCom) appoints three members to the GNSO Council. ICANN's Bylaws refer specifically to the NomCom's responsibility *"to ensure that the persons selected to fill vacancies ... shall, to the extent feasible and consistent with the other criteria required to be applied ... make selections guided by Core Value 4."*

The make-up of the current GNSO Council does not demonstrate a focus on achieving geographic, gender or cultural diversity – all three NomCom appointees are male, two are from North and Latin America and the other is from Europe.

An observation made to us more than once during the course of our interviews was that the GNSO and/or ICANN often refers to the principles of diversity as set out in Core Value 4, but there is little evidence of substantial change to the demographic and gender mix of participants and office holders over the last few years.

Several respondents also commented on the issue of 'leadership recycling'. While there are term limits in some parts of ICANN including the GNSO, we received many comments to the effect that the same people remain in leadership positions by trading places. One specific feature identified was that some people had served in various roles on the ALAC and had subsequently moved into leadership roles in the GNSO. This accords with our own observations, during our involvement with ICANN over many years. We were also given several anecdotal but credible instances of active resistance to new members becoming involved in leadership.

As we have noted above in Section 4 – Review Methodology, the 360° survey and the Working Group surveys for this review were initially published in English, and ICANN translated both surveys into the five other United Nations languages, posting invitations in all of these languages on the GNSO website. Despite these efforts and significant promotion of both surveys, we did not receive a single request to send a copy of the survey in any language other than English. We did receive two sets of responses in French, but these were posted to the English language version of the 360° survey. We might conclude from this that even those respondents had at least a working knowledge of English, in order to understand the statements they were responding to.

## Conclusions

The current structure of two Houses, four Stakeholder Groups, and multiple Constituencies, allows for functional diversity while maintaining the balance of voting power between the Contracted and Non-Contracted Parties' Houses.

The structure is designed to be adaptable and 'future-proofed' by allowing for the creation of new constituencies as needs arise, within the four stakeholder groups. According to the Board Governance Committee: "*Making it easier to form a new constituency can also address any obstacles people perceive in joining existing constituencies. Overall, this approach can encourage the participation of more people in the GNSO.*"<sup>56</sup> We concur with this intent, but on its own this does not overcome the issue raised above about constituencies being forced to express a single stakeholder group position when in reality no such common view may exist.

In practice, forming a new constituency has proved to be extremely difficult. Many respondents have commented on this.

We conclude that, by any measure, there is a significant absence of geographic diversity in the make-up of most GNSO structures, and of the Council. Part of this may be explained by the longevity of many of the participants and office holders: when they first became involved with the GNSO (or ICANN), often ten or more years ago, developed western economies dominated the use of the Internet. This has changed significantly in the last decade: for example, China and India together now have more than three times the number of Internet users as does the United States, and this ratio will only increase as penetration continues to grow in China and India – refer table below<sup>57</sup>.

Country	Internet Penetration as % of population	Number of Internet Users
China	46.0%	641,601,070

<sup>56</sup> <http://archive.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>

<sup>57</sup> [www.internetlive.com](http://www.internetlive.com) (2014)

<b>United States</b>	86.8%	279,834,232
<b>India</b>	19.2%	243,198,922

The make-up of the GNSO Council and office holders has not kept pace with these changes.

The ICANN Geographic Regions Working Group<sup>58</sup> recommended, amongst other things, that “*the general principle of geographic diversity is valuable and should be preserved,*” and “*application of the geographic diversity principles must be more rigorous, clear and consistent.*”

### **Accountability and Transparency**

Three areas of particular concern were raised: Statements of Interest (Sols), Membership Lists and Constituency membership fees.

#### **Statements of Interest and Membership Lists**

The Westlake Review Team considers that an open, transparent, bottom-up and multi-stakeholder organization requires the ability to identify who is making policy. If this is not clear, it is difficult to determine whether the policy has been developed through a genuinely multi-stakeholder process and certainly it is hard to argue that the process has achieved the goal of transparency.

We note that GNSO’s Operating Procedures<sup>59</sup> set out in some detail the requirements for completing Statements of Interest for publication on the ICANN website. Under the Procedures, an interest is defined as a matter that “*may affect the Relevant Party’s judgment, on any matters to be considered by the GNSO Group.*” Some respondents have noted that observance of this provision is unsatisfactory, because while someone may declare that they are connected with ‘XYZ Corporation’, this may not give full information for an independent objective observer to determine whether conflicts of interest exist.

<sup>58</sup> <https://www.icann.org/en/system/files/files/geo-regions-final-report-22jun13-en.pdf>

<sup>59</sup> <http://gnso.icann.org/en/council/op-procedures-13nov14-en.pdf>

In addition to the Sol issue, the Westlake Review Team notes that membership in stakeholder groups, constituencies and working groups is not made publicly available on a consistent basis and individuals' affiliations and interests are not consistently disclosed. This is a problem because it does not support the ICANN principle of transparency and accountability. We recommend that this situation be remedied. One way of doing this is to make the guidelines already provided in the Operating Procedures enforceable, as appropriate.

From our research, we understand the NCUC, NPOC and NCSG membership lists are publicly available. The following SGs/Cs do not make membership information publicly available:

- The RrSG and RySG
- IPC
- ISCPC and BC

We note that there is provision in the Operating Procedures for contact details to be withheld for privacy reasons, but we consider that publication of a full list of members is fundamental to ICANN's principles of openness and transparency.

In our view, full compliance with section 5.3.3, especially subsection 6, of the Operating Procedures would ensure adequate transparency:

- 5.3.3.(6).i ... *describe the material interest in ICANN GNSO policy development processes and outcomes.*
- 5.3.3.(6).ii ... *describe the arrangements/agreements and the name of the group, constituency or person(s).*

The Bylaws state that "*ICANN and its constituents shall operate to the maximum extent feasible in an open and transparent manner ...*" We consider that the GNSO's Participation Rules and Operating Procedures fall short of this requirement, because they may be interpreted as being guidelines, rather than mandated procedures.

For ICANN to uphold its commitment to openness and transparency, it should require all participants to be clear about their affiliations, and if they are acting for others, the identity of their principals. If potential participants are unwilling to do this, for reasons of legal privilege or otherwise, they should at least be able to identify the



position(s) they are representing. Failing such disclosure (as a minimum level of compliance with ICANN requirements), they should not be able to participate.

We also consider that this observation is consistent with and reiterates the BGC WG's earlier recommendation *"that Groups shall establish and abide by a set of participation rules and operating procedures."*<sup>60</sup>

### **Constituency Membership Fees**

We have discussed above the NPOC's difficulties in achieving membership growth. Another perceived membership barrier is that some constituencies and stakeholder groups require subscriptions that are used to fund support services.

From our research, we understand:

- The RrSG has a paid up membership system. It is not transparent (there is no public rate card) – non-paid up groups can observe but not participate.
- The RySG [we do not have this information]
- The IPC raises funds by getting members to sponsor specific things such as attendance at related conferences and governance groups
- The ISPCP tries to collect funds from its members, but is not that successful.
- The BC has a rate card based on business size
- The NCUC, NPOC and NCSG all struggle to raise money. Sometimes they seek funding from external agencies.

Some of the stakeholder groups/constituencies have treasurers who manage the funds, but we have not been able to verify the type of controls in place for those SGs/Cs that have a treasury function.

The fact that some SGs/Cs charge membership subscriptions appears to be discriminatory because it disadvantages those cannot or are not willing to pay for access to policy-making, and because it may lead to differential levels of support being offered to those who can afford to pay.

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<sup>60</sup> GNSO Operating Procedures, v2.9, Section 6.1

The effect of this is to further reduce accessibility and participation. We consider membership should not depend on the approval of a Stakeholder Group or the participant's ability to pay.

## Volunteers

Volunteers from the community have various incentives to participate in GNSO activities:

1. To manage the impact on a contracted party's business
2. To represent a paying client or generate clients for themselves
3. Out of a sense of service
4. As a means of participating in ICANN processes and meetings

Many participants will have a mix of these. Those whose businesses or clients pay them to attend may have less of an incentive to conclude processes quickly than those who are contributing their time, and sometimes their travel costs. This leads to two often-described issues:

- *Volunteer burnout* – in common with many voluntary group activities, there is a tendency for a few individuals to undertake most of the work, leading to stress and burnout. This is despite groups apparently being well-resourced; one working group was said to have more than 50 members.
- *Consensus by exhaustion* – this phrase was used by more than one respondent to describe how they saw decisions being reached. It reflects the differing incentives on volunteers discussed above – non-commercial representatives generally have limits to the time they can spend on what, to them, is a public-good issue, so they can effectively be “waited out” by people who are paid to attend. Some respondents suggested that lawyers acting for clients may even have an incentive to protract processes for their own gain.

A further point that was raised in respect of volunteers was a pronounced tendency to ‘recycle leaders’ (as discussed above). There is an often-expressed view that the same people remain in charge but swap positions periodically to overcome term limits. This accords with our own observations over several years.

We also encountered active hostility to new leadership from a few participants of long standing. There is a perception that some volunteers remain involved primarily

to avail themselves of the travel support that comes with their position and they are reluctant to allow others to participate for fear of losing that support. The following survey comments were typical:

- *“Develop succession planning for outreach and leadership roles.”*
- *“Strict term limits for all leadership positions and a cap on the number of times any individual can hold leadership positions.”*
- *“Stop recirculating the leadership spots among the same basic group of insiders.”*
- *“Stop rotating leaders from one position to the next to provide fresh thinking.”*
- *“Recycling leadership is a problem. Intimidating. Experience talks, trumps new people. . .”*

These comments show that the perception of incumbency exists and this reduces the incentive for new participants to become involved. It is seen as fundamentally inconsistent with the multi-stakeholder model. One way of dealing with this might be to limit travel support for any given individual to attend meetings in connection with the GNSO.

### **Staff Support for SGs and Cs**

ICANN Staff provide support for most but not all Stakeholder Groups and Constituencies. Quantitative feedback on ICANN staff resourcing is variable. In contrast, feedback from interviewees and others spoken to informally was overwhelmingly positive.

### **Changing Operational Environment**

The changing environment drives a requirement for flexibility in policy-making and representative structures. An example of this is the interest of brands in new gTLDs – brand owners potentially become registries, registrars and users of domains, as well as maintaining their obvious interests in intellectual property.

In theory the current GNSO structure provides for the creation of new constituencies so that a wider range of views can be represented.

**Westlake Review Team Recommendations**

- That “cultural diversity” be defined and that relevant diversity metrics (encompassing geographic, gender and cultural) be monitored and published.
- That the GNSO and NomCom (in selecting its candidates for appointment to the GNSO Council) should take active steps to increase the geographic, gender and cultural diversity of its participants, as defined in ICANN Core Value 4.
- That, where an individual’s participation would require an Sol to be completed, if members represent bodies or clients, this information is to be posted. If not posted because of client confidentiality, the participant’s interest or position must be disclosed. Failing either of these, the individual not be permitted to participate.
- That the GNSO maintain a publicly available list of members of each Constituency (including diversity data, as recommended above) and of the Registry and Registrar Stakeholder Groups.
- That section 6.1.2 of the GNSO Operating Procedures be revised<sup>61</sup>,
  - With a view to ensuring that key clauses are mandatory and cannot be interpreted as being only guidelines. This will generally be achieved by replacing “should” with “will” or “must”, where appropriate.
  - Institute meaningful sanctions for non-compliance where appropriate.
- That travel support should be prioritized to individuals who satisfy ICANN that their participation would be valuable but that they would not otherwise be able to attend.
- That term limits to travel support for individuals be instituted.
- That the requirement for subscriptions to Stakeholder Groups and Constituencies be removed.
- That all Stakeholder Groups and Constituencies are appropriately resourced with ICANN staff support.
- That Constituencies are able to admit new members and clarify that Stakeholder Groups do not have a role in deciding Constituency membership.

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<sup>61</sup> Refer Appendix 6 – GNSO Operating Procedures – proposed revision of section 6

### 8.4.3 BGC WG Recommendation 16 (Constituency administration support)

#### Observations

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding Constituency administration support.

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## SECTION 9 - IMPROVING COMMUNICATION AND COORDINATION WITH ICANN STRUCTURES

### 9.1 BGC WG Recommendations

17. *The Council should propose specific ways in which it can improve communications between it and Board Members elected from the GNSO.*

18. *There should be more frequent contact and communication among the Chairs of the GNSO, GNSO constituencies, other Supporting Organizations (SOs) and Advisory Committees (ACs), especially in advance of each ICANN Meeting. The Council should also consider other ways in which it can further enhance coordination with other ICANN structures, and report to the Board within six months on such steps.*

### 9.2 Major accomplishments and milestones

(as noted on the GNSO website<sup>62</sup>):

- The Communications and Coordination Work Team (CCT) submitted its Final Consolidated Report to the Operations Steering Committee (OSC) and was approved by the GNSO Council (23 June 2010, Brussels), after a Public Comment period (23 April 2010 – 16 May 2010). The Council directed Staff to begin implementation focusing on the CCT's three major recommendations:
  - Developing new GNSO website requirements including document management and collaboration tools;
  - Improving the GNSO's ability to solicit meaningful feedback; and
  - Improving the GNSO's coordination with other ICANN structures.
- Website Design and Development:
  - During September-October 2009, utilizing the CCT's foundational work, members of the ICANN Policy Staff and the CCT sub-team developed a framework/layout for a new GNSO website and conducted several presentations during the Seoul ICANN meeting to show various GNSO groups the "wireframes" and obtain feedback.

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<sup>62</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/accomplishments-en.htm>

- Two Requests for Proposals were published (February, April 2010) culminating in a contract award and delivery of a re-themed site in September 2010.
- Extensive content development ensued in the intervening period and the new GNSO site became operational effective 24 May 2012: Major improvements include: complete site reorganization and content presentation; implementation of taxonomy and extensive document tagging; conversion to database for improved efficiencies; new browse (library) and search capability; modern theming/navigation; and a focus on new user education (podcasts, webinars).

### 9.3 Summary of Westlake Review Team's assessment of implementation effectiveness

#### **BGC WG Recommendation 17 (Improved communication with ICANN Board)**

We received no comment of any kind on the issue of communication between the GNSO Council and Board members elected from the GNSO. Based on this, we conclude that it is no longer a significant issue.

#### **BGC WG Recommendation 18 (Improved communication and coordination with other ICANN structures)**

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding improved communication and coordination with other ICANN structures

### 9.4 Basis for Westlake's assessment

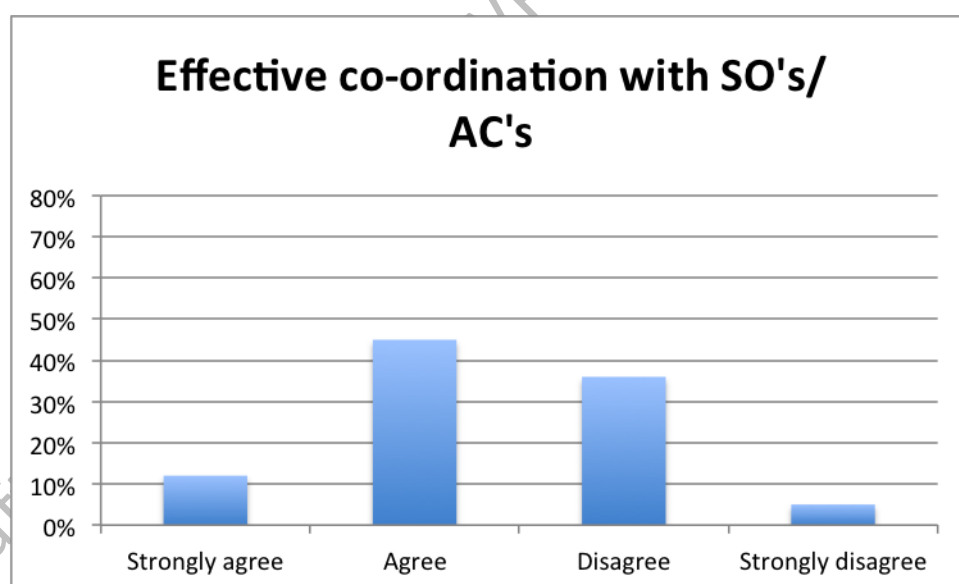
#### 9.4.1 BGC WG Recommendation 17 (Improved communication with ICANN Board)

#### 9.4.2 BGC WG Recommendation 18 (Improved communication and coordination with other ICANN structures)

**[Text in development]:** more to come in relation to Observations, Analysis and Recommendations regarding improved communication and coordination with other ICANN structures

##### Observations

A number of survey respondents and interviewees commented on the need to improve the interaction between the GNSO and other SOs and ACs. The following graph shows positive responses (57%) only slightly outweigh the negative (43%) in relation to the survey statement “The GNSO is effective in coordinating its work with other SOs and ACs.” (N=129)



Below are a range of comments from survey respondents and interviewees:

- *“Focus on co-operation, collaboration and productive work with others in the ICANN SO & AC structures.”*
- *“Siloization, needs better mechanisms for interacting with SOs/ACs outside the GNSO silo.”*



- *“While there has been substantial improvement over the past few years, more and better liaison work needs to be done to communicate GNSO work with other SOs and ACs”*
- *“GNSO should always make a formal decision to ask SSAC (or not) at some stage in a PDP”.<sup>63</sup>*
- *“There is a longstanding problem with GAC - no one member can represent GAC. Hence no liaison from GAC to SO’s. Process in GNSO is so onerous that GAC members (who have day jobs) can’t stay in touch with PDPs. Has been tried, (e.g. by US GAC rep). GAC waits until they see the policy proposition, looks to GNSO that they are blocking, not entirely fair view.”*
- *“GAC prefers to only comment once policy becomes clear toward the end of the policy development process”*
- *“A closer coordination between the GNSO and the GAC will improve efficiencies, reduce differences of opinion, and add much value to the entire organization and community.”*
- *“[the GNSO should] see the GAC and all other SOs and ACs as family members with whom we must work out our differences, preferably BEFORE policy recommendations get to the ICANN Board.”*
- *“The GNSO is heavily involved in coordination efforts with other SOs and ACs as well as the GAC and the board. The weekend sessions of the council provide an informative means of communications for all ongoing work.”*

## **Analysis**

Improved co-ordination with SOs/ACs was one of the recommendations of BGC WG. The following recommendations arose from the two work teams of the Policy Steering Committee.

1. *The PDP Process Work Team recommended that input from other SOs and ACs must be sought . . .*
2. *The Communications and Coordination Work Team (CCT) recommended the following regarding cross SO/AC communications in section 5.3 of their report. “. . .that more formal processes be developed for seeking input from other ICANN organizations on proposed GNSO policies when working groups*

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<sup>63</sup> We note this is a mandated requirement of the GNSO Operating Procedures

*are underway. The GNSO Council has been very well served by the non-voting ALAC liaison who participates actively on Council calls and in various policy working groups. The CCT also recommends that the active engagement of liaison be encouraged along these lines, recognising that it may be more difficult for some ACs, such as GAC, to participate in such a manner.”*

“Seeking Input from other SOs and ACs” is included in Section 9 of the Policy Development Process Manual (Annex 2 of the GNSO Operating Procedures):

*“The PDP Team is also encouraged to formally seek the opinion of other ICANN Advisory*

*Committees and Supporting Organizations, as appropriate that may have expertise, experience, or an interest in the PDP issue. Solicitation of opinions should be done during the early stages of the PDP. In addition, the PDP Team should seek input from other SOs and ACs. Such input should be treated with the same due diligence as other comments and input processes. In addition, comments from ACs and SOs should receive a response from the PDP Team. This may include, for example, direct reference in the applicable Report or embedded in other responsive documentation or a direct response. The PDP Team is expected to detail in its report how input was sought from other SOs and ACs.”*

PDP WGs formally seek input from SOs and ACs using a standard template “Community Input Statement Request Template”. In reviewing a number of PDPs, the Westlake Review Team found few comments provided by SOs and ACs other than the ALAC. This was also the finding of the ATRT2 GNSO PDP Evaluation Study<sup>64</sup>.

The Westlake Review Team understands that there is a current GNSO Council action item to establish an SSAC liaison to GNSO or vice versa.

<sup>64</sup> <https://www.icann.org/en/system/files/files/gns0-evaluation-21nov13-en.pdf>

The ATRT2 GNSO PDP Evaluation Study<sup>65</sup> commented that “GAC rarely participates in any PDP. The consequences of the GAC not participating in GNSO PDPs is that the GAC may only raise concerns after lengthy processes have been completed, and negotiations and agreements reached. This report also shows that while there are several windows of opportunities for GAC to provide advice during PDPs, those opportunities are not taken.” Concerns were also raised that the provision of GAC advice can provide an opportunity for the GAC to be used by other players in the community as an alternative vehicle for policy changes.

The ATRT2 report was completed in late 2013, so it is not surprising that feedback from survey respondents and interviewees mirrored the comments in that report.

In response to ATRT1 & ATRT2 Reviews and the work of the GAC-Board Joint Working Group (JWG), the GAC and GNSO have established a consultation group (GAC-GNSO Consultation Group on Early Engagement)<sup>66</sup> to “explore ways for the GAC to engage early in the GNSO Policy Development Process and to improve overall cooperation between the two bodies.”

We note that the ccNSO and GNSO come together during each ICANN meeting, to co-ordinate joint CWGs and exchange views on topics of common interest. The GAC and GNSO also have a joint session during ICANN meetings, while the ALAC has a liaison to the GNSO Council.

To-date progress includes the appointment of a GNSO Liaison to the GAC as a pilot project for 2015, and a survey of GAC members to evaluate communication mechanisms for awareness, usefulness and possible improvements.

#### **Westlake Review Team Recommendations**

- That the GAC-GNSO Consultation Group on Early Engagement continue its two work streams as priority projects. As a part of its work it should consider how the GAC could appoint a liaison (non-voting) to each GNSO PDP WG as

<sup>65</sup> <https://www.icann.org/en/system/files/files/gns0-evaluation-21nov13-en.pdf>

<sup>66</sup> <https://community.icann.org/display/gnsogcgogeeipdp/3.+Charter>

a means of providing timely non-binding input.

- **[Recommendations in development]**

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## SECTION 10 – GNSO STRUCTURE

### **Observations**

We received more than 120 comments on structure in the 360° Survey and in our interviews.

Of those respondents who commented on structure, the majority expressed the view that it was overly complex, and the most common solution offered was to abolish the two-House structure. Against this, several respondents considered either that the GNSO's two-House structure was largely immaterial to its effectiveness, and a smaller number noted that the GNSO structure had been designed and built carefully over several years and that it was now able to focus more effectively than before on its core purpose – to develop and recommend to the Board substantive policies relating to gTLDs.<sup>67</sup>

The GNSO's structure is complex – two Houses, four Stakeholder Groups and numerous Constituencies and we have observed that GNSO processes are lengthy and by many measures inefficient. It is notable however that much of the complexity relates to achieving a balance in voting between different groups: Contracted/Non-Contracted Parties, Registries/Registrars and Commercial/Non-Commercial Stakeholders. In practice some of the constructs, notably the two Houses, appear to be little more than vehicles for voting and generally do not have a separate 'life' of their own.

Views on the structure of the GNSO that we received through the 360° Survey and our interviews, ranged across a full spectrum:

- *“[The GNSO is] a dysfunctional structure created by the last review, which creates procedural, numeric and behavioral barriers to cooperation.”*
- *“... unwieldy, unbalanced and doesn't work.”*
- *“While it may be slower-moving than top-down decisions, it takes into account the entire community and allows them to discuss matters of import to the internet.”*

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<sup>67</sup> <https://www.icann.org/resources/pages/bylaws-2012-02-25-en - X>

- *“It is a carefully crafted construct, which permits a sensible balance of power between those with a (contractual) interest in the outcomes and those who seek to influence outcomes for other reasons.”*
- *“Make absolutely NO changes to the structure of the GNSO right now. GNSO is completely overloaded with other issues that are of far greater importance.”*

Some considered that the Contracted Parties had conceded too much voting power in the transition to the two House structure to parties who were not contractually bound by policy. As far as we were able to identify, people holding this view were not surprisingly affiliated largely to the CPH.

In contrast, other respondents argued that the Contracted Parties retained too much power (some identified the CPH’s ‘double vote’ that in aggregate gives it a voice equal to that of the NCPH), while some argued further that members of the CPH had a conflict of interests in their dual roles of participating in the development of policy and being contractually bound by such policies. A few of these respondents considered that the Contracted Parties should not participate directly in the decisions of PDP Working Groups, but should have only an advisory, non-voting role.

A small number of respondents argued that membership of the GNSO should be restricted to Contracted Parties only. Other stakeholders should be able to express their views through another arm of ICANN; one suggestion, from a few people, was to merge the whole NCPH into the ALAC.

While survey participants were not asked directly about structural improvements, we received a range of suggested “solutions” to perceived structural weaknesses:

- Do nothing.
- Abolish the two-House structure.
- Extend the structure to three Houses (under this option, a formal voice for Registrants and Users would be created).
- Remove all or part of the Non-Commercial Stakeholders Group from the GNSO and merge the NCSG into the ALAC.
- Abolish the GNSO completely and restructure the whole of ICANN (we considered that this went beyond our current Terms of Reference).

However, noting again that respondents were not asked for 'solutions,' none of them offered detailed alternatives or addressed the consequences of suggested changes, or indeed the potential risks and costs/opportunity cost.

### **Structural Complexity**

One of the bigger concerns, expressed by a number of survey respondents and interviewees, related to the perceived complexity of the structure and processes. This was considered to be one of several significant barriers for a newcomer wishing to be involved and participate effectively. As a result, some roles in the GNSO are perceived by many to be protected as "an insider's game," with high barriers to entry.

### **Respondent comments on the current structure**

Views varied about the effectiveness of the current structure of the GNSO. These included the following as some of the key themes:

- Two Houses are needed in order to give a voice to Contracted Parties.
- General view that the CPH is reasonably effective: participants in the CPH are often professionals whose participation in GNSO business is a part of their job.
- A few concerns were raised that the NCPH is dominated by the IPC, which was considered to be well resourced, and not transparent about its members' interests or their sponsors (as discussed in more detail in Section 6).
- Concerns were raised over the lack of transparency in some Constituencies: membership, email lists, for whom/in whose interests some members were acting, and who was paying.
- It was widely commented by survey respondents and interviewees that the NCSG has issues that inhibit its effectiveness. Essentially the NCUC, dominated by small or single person groups, is always likely to have the numbers to out-vote NPOC, which represents often larger but fewer NPOs. All four NCSG members recently elected to the GNSO Council have come from the NCUC because it has a far greater number of members than the NPOC, and voting is 'first past the post', rather than a form of proportional representation. Most of those who commented on these issues would prefer NCSG to work out their own solution, rather than having one imposed.

## **Silo-focused structure**

One unique aspect of the GNSO, compared with all other ICANN SOs and ACs is that the GNSO is in practice largely an abstract construct. At an ICANN meeting it is possible to attend a meeting of the ALAC or the ccNSO, while the GAC and the RSSAC also meet in various forms. The GNSO as a single SO does not meet in the way that other SOs and ACs do. At other times, the GNSO Council meets; Constituencies and some SGs meet; and Working Groups convene. As a result, the proceedings of the various parts of the GNSO naturally take place in disparate 'silos'.

Several people highlighted this 'silo' nature of the GNSO. In addition, and possibly related, several people – mainly from other than North America – commented on the GNSO's apparent 'obsession with voting.' Together, as noted in Section 6, these two factors contributed to what several survey respondents and interviewees described as a 'confrontational approach to decision-making', where the key requirement was to assemble sufficient voting support, rather than striving for a genuine consensus of views.

## **Stakeholder Groups x 4**

The current structure provides for a balance of voting between the CPH and the NCPH, while allowing considerable flexibility within each SG, with or without individual Constituencies. It allows new Constituencies to form (at least in policy and theory) without changing the voting balance between the four SGs/two Houses. The intention in setting up the four SGs is that any stakeholder community should fit into one of the four SGs. In addition, some organisations may naturally join more than one SG – for example a complex commercial organization that also operated a gTLD Registry might validly be a member of both the RySG (an SG in the CPH), and the CBUC within the CSG (an SG in the NCPH).

## **ccNSO / GNSO**

We received a small number of suggestions to align (or re-merge – as in ICANN's pre-2003 structure) the ccNSO and GNSO: although their roles are similar in that both SOs develop policy relating to TLDs, they are fundamentally different in that most ccNSO members are not contractually bound to ICANN. They also all operate



within the framework of their own sovereign state's legal and regulatory environment. With the expansion in the number and scope of gTLDs, we observe that some ccTLD operators have become operators of one or more new gTLDs and others are likely to follow. As an example, Nominet has been the ccTLD manager for .uk for many years. In 2014, it launched two new gTLDs, .wales and .cymru (the Welsh language name for Wales) to operate as quasi country-codes for Wales, which has no two-character country code separate from .uk. As a result, Nominet may now play a valid role in both the ccNSO and the GNSO.

### **Options considered**

In conducting our review, we were told many times about how divisive and distracting the last round of structural changes had been, and how long they had diverted attention from the process of developing substantive gTLD policy.

We heard many suggestions for structural change, largely involving abolition of the Two-House structure, or reversion to the voting system that prevailed before the 2011 changes. We were not convinced that these proposals offered sufficient benefit (if any) to warrant another round of material changes to the structure of the GNSO at this stage – and consequently to the carefully-constructed balance of voting powers.

The current structure of the GNSO has been in place for only about three years. From the Review Team's professional experience of structural change in many organisations of differing types, this represents only a relatively short time for it to become firmly established and for people to be fully familiar with it. This is especially true in an organisation such as ICANN, where a large proportion of the community is involved only part time. We were advised that the structure had been developed with considerable care to provide a balance of voting across a broad range of interests and to give adequate but not excessive voice to those parties that are legally bound by GNSO policy. While complex and the object of much comment and criticism, we consider that the framework of GNSO Council / two Houses / four Stakeholder Groups and multiple Constituencies should continue.

As we discuss above, the emergence of new constituencies and possible winding up and disappearance of others, as the BGC foresaw<sup>68</sup>, has not occurred.

## Conclusions

Our view is that structure should not lead but result from strategy ('form follows function'). In addition, we are aware from past experience, and from several comments during this review specifically, of the time and energy consumed and the distraction from core activities that structural changes require.

Changes to structure may be among the most visible of changes to an organization, but amending the structure should not be confused with addressing core issues. Our view has been that the GNSO faces many challenges and we have addressed those we have identified in other sections of our report – matters relating to Policy Development Processes, and to Accountability, Representation and Transparency. We consider that the higher priority should be to consider and, if thought appropriate, implement our recommendations in these areas, rather than focusing again on the GNSO's structure.

We do not consider that the GNSO's structure is perfect, or that it cannot be improved, but we do not consider that the structure is either the main cause of or currently offers the solution to its most pressing challenges.

We also note that the current structure has only been completed in the relatively recent past and our wider experience indicates that certainty and increasing familiarity with the structure are likely to contribute more to improving the GNSO's effectiveness in the near future than marginal benefits that might be gained from further changes. In most organizations, new structures and processes typically require several years to become fully understood and accepted, and for the real benefits and any major issues to emerge.

If a full review of the GNSO's structure was to take place, we would recommend that it should be broader than a review of any single Supporting Organisation and should be underpinned by a more extensive strategic review of the effectiveness of ICANN as a whole, which the structure could be refined to support.

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<sup>68</sup> <http://archive.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>

Therefore, our overall recommendation is to maintain the current structure and voting balance of the GNSO, and to address the other underlying issues that we have identified. The Westlake Review Team consider that the main structural change, if our recommendations are adopted successfully, will be to see the emergence of one or more new Constituencies in the near term.

To paraphrase Sir Winston Churchill's description of democracy<sup>69</sup>, following the changes that have resulted in the last few years, *the GNSO structure may be the worst form of structure, except for all those other forms that have been tried from time to time.*

#### **Westlake Review Team Recommendations**

- **[Recommendations in development]**

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<sup>69</sup> Speech in the British House of Commons, November 1947

## Appendices

Appendix 1: Acknowledgments

Appendix 2: Survey Statistics

Appendix 3: Interviewees

Appendix 4: Recommendations From Prior Reviews

Appendix 5: PDP Timelines

Appendix 6: GNSO Operating Procedures – proposed revision of section 6

Appendix 7: Terms of Reference for this review

Appendix 8: Cross reference to Terms of Reference

Appendix 9: About Westlake Governance Limited

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## Appendix 1: Acknowledgements

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## Appendix 2: Survey quantitative summary results

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## Appendix 3: Interviewees

	<b>Name</b>	<b>Role</b>
1.	Alan Greenberg	
2.	Avri Doria	
3.	Bill Drake	
4.	Bill Graham	
5.	Chris LaHatte (twice)	
6.	Chuck Gomes	
7.	Danny McPherson	
8.	David Cake	
9.	Debra Hughes	
10.	Denise Michel	
11.	Elisa Cooper/Steve DelBianco	
12.	Evan Liebovitch	
13.	Jen Wolfe	
14.	Jonathan Robinson	
15.	Klaus Stoll	
16.	Kristina Rosette	
17.	Larisa Gurnick	
18.	Marika Konings	
19.	Marilyn Cade	
20.	Mary Wong	
21.	Matt Ashtiani	
22.	Naresh Ajwani	
23.	Nick Ashton-Hart	
24.	Oswaldo Novoa	
25.	Patrick Myles	
26.	Patrik Fältström	
27.	Philip Sheppard/Martin Sutton	
28.	Rafik Dammak	
29.	Ray Plzak	
30.	Roberto Gaetano	
31.	Ron Andruff	
32.	Rudi Vansnick	
33.	Sébastien Bachollet	
34.	Thomas Rickert	
35.	Wendy Seltzer	
36 -38	(Anonymous x 4)	Four individuals asked specifically not to be identified

## Appendix 4: Recommendations from prior reviews

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## Attachment 1 - Patrick Sharry Review Recommendations

Recommendation 1: The Council has made a significant contribution to other ICANN core values such as outreach, bottom-up consensus based policy development, geographical diversity and transparency. It has endeavoured to make good use of the ICANN meetings to conduct outreach activities with other ICANN organizations and with the broader internet community. The Council should plan to expand and enhance these activities

Recommendation 2: The appointment of liaisons is a good step in building links with other parts of the ICANN structure. Again consideration needs to be given to the best way that these liaisons can be used to raise awareness of Council issues. The crafting of a “role description” or “partnership agreement” may assist with setting clear expectations and maximizing outcomes.

Recommendation 3: While it is healthy that the Council has representation from four of the ICANN regions, the Council should develop a plan for increasing representation so that all regions are covered.

Recommendation 4: Furthermore, consideration needs to be given to ways in which people from non-English speaking backgrounds can participate more actively in Council. This may involve making greater use of face-to-face time at ICANN meetings (where communication is easier) in addition to telephone conferences. The availability of translations of key documents would also assist, but this would need careful consideration as it could easily become a very expensive exercise.

Recommendation 5: The Council should seek approval from the Board for a revised policy Development Process. The alternative process should have the following elements:

- Scoping phase (history of the issue, key questions, contractual issues, terms of reference, timelines, milestones including deliverables and check points for legal opinion) which should be done as quickly as feasible, probably within the timeframe of the current issues report
- Policy work (including research, consultation with constituencies, periods for public comment) with timelines set in the scoping phase according to the complexity of the task

<ul style="list-style-type: none"> <li>• Regular reporting to Council on milestones as established in the scoping phase</li> <li>• A final report and public comment period as in the current PDP</li> <li>• A Council vote as in the current PDP</li> </ul>
<p>Recommendation 6: The Council should develop a formal process for seeking input from other ICANN organizations for each of the policies it is developing.</p>
<p>Recommendation 7: In addition to these changes, the Council should consider other measures to speed up the consensus process, including the greater use of time at ICANN meetings to discuss issues face to face, and possibly the use of facilitators to move more quickly to understanding of issues and building of consensus.</p>
<p>Recommendation 8: ICANN should move to put in place a high calibre staff policy support person at the earliest possible opportunity.</p>
<p>Recommendation 9: The Chair of the GNSO Council and VP Supporting Organizations should oversee an effective handover from the current staff support person to ensure that lessons learnt over the past year are not lost</p>
<p>Recommendation 10: The Chair of the GNSO Council and the VP Supporting Organizations should establish a service level agreement between the GNSO Council and ICANN management that specifies the amount and type of support that is to be provided. Where possible, this should include measures (eg turnaround times for legal opinion, delivery of reports by agreed dates, minutes posted within a certain number of days) The Chair should consult the Council to ensure the targets meet the needs of the Council and its taskforces. The VP Supporting Organizations and Chair of GNSO Council should meet quarterly to review performance measures and report these to the President.</p>
<p>Recommendation 11: The Council should work with the ICANN General Counsel to establish clear communication channels for the request for and provision of legal opinion. At a minimum this should include detailed legal input at the scoping phase of each PDP. Wherever possible, “check points” for further legal input should be established as part of the scoping study.</p>
<p>Recommendation 12: The Council needs to ensure the viability of</p>

implementation of each of the policy recommendations that it makes to the Board
Recommendation 13: ICANN needs to put in place a compliance function to monitor compliance with policies.
Recommendation 14: The Council needs to work with ICANN operational staff to develop a compliance policy with graded penalties
Recommendation 15: Council needs to have a built in review of the effectiveness of policies in the policy recommendations that it makes to the Board
Recommendation 16: The GNSO Council should utilize the Ombudsman and any reports produced by the Ombudsman as source of systematic analysis of complaints and therefore of issues that may need to be addressed through the PDP.
Recommendation 17: The Council should continue to explore ways in which the Nominating Committee members can add value to the Council process.
Recommendation 18: The Council should draft "role descriptions" for the Nominating Committee which describe the skills, expertise (especially technical expertise) and attributes that are needed for the Nominating Committee members to be optimally effective members of the Council.
Recommendation 19: The Council is working well with three representatives from each constituency. No one who is involved with the Council perceives that having three representatives hinders the workings of the Council. The Board should change the bylaws to put in place three representatives from each constituency
Recommendation 20: The GNSO Council should overhaul the website so that it better meets the needs of all who are interested in the work of the GNSO.

## Attachment 2 - Council Self Review Recommendations

### Required changes to ICANN bylaws

#### Recommendations:

1. Maintain the present 3 representatives per constituency
2. Adjust the bylaws to specify that the timelines in the policy development process are guidelines, and allow the GNSO Council to set and revise timelines according to the level of consensus on a particular issue and the amount of volunteer and staff resources available for the specific issue.

### Additional ICANN staff resources required

#### Recommendations:

1. Prior to the commencement of policy development on a particular issue, ensure that ICANN staff provide an analysis and Issues Paper that provides sufficient background and information to support the development of the Terms of Reference and statement of work for a Task Force. The issue report should indicate how the issue is currently handled within the existing contractual and policy framework. In some instances, it may be necessary for Council to agree to commission an independent expert to analyse an issue (which may include interviewing affected parties within the GNSO) and propose options for policy recommendations that may address the issue.
2. During the public comment process on a proposed policy recommendation, an independent expert may need to be commissioned to produce a report on the views of the GNSO community in relation to a proposed policy recommendation.
3. Provide staff support to the task forces and GNSO Council sub-committees that are skilled in creating reports that reflect the input provided by members of Council, and clearly identify where the areas of disagreement exist.
4. Provide staff support to the Task Forces and to the GNSO Council subcommittees that familiarize themselves with the bylaws and the policy development processes, as well as the relevant previous work of the Council.

5. Ensure that legal counsel is available for all GNSO Council calls, and ensure that legal counsel is available to task forces and subcommittees as required. With respect to policy development activity, ensure that the legal counsel is fully briefed on the existing contractual arrangements with registries and registrars that relate to the particular issue under discussion.
6. Prior to the development of a final policy recommendation for the GNSO Council, ICANN staff should ensure that the recommendation has been reviewed by legal counsel to ensure that the recommendation can be implemented and enforced via the relevant contracts.
7. Establish a project management process within ICANN that defines a plan and expected dates for implementation of a policy once it is approved by the ICANN Board
8. Ensure that the mechanisms are established for monitoring and enforcing compliance with the new policy. This is particularly important in the first 6 months of a new policy, when registry and registrars systems are being modified to support a new policy.
9. ICANN staff develop a complaints handling process that is capable of logging complaints regarding gTLD domain name registration practices, and capable of producing data on a trend basis. This data reporting would be useful on a monthly basis

#### Actions required by the GNSO Council

##### Recommendations

1. During the early public comment process, encourage members of the ICANN community to submit proposals for solutions to a particular issue.
2. Given that legal contracts between ICANN and registries and registrars may be open to different interpretation by the contracted parties. Ensure that legal advice from ICANN legal counsel (or external counsel to ICANN) is in writing, and allow affected parties (such as registrars and registries) to submit their own written legal advice for consideration by the GNSO community.
3. Ensure that the policy is ready for implementation after approval by the GNSO Council and ICANN Board.
4. As part of the Council report at the end of the policy development process,

establish key metrics for measuring the success of the policy, and ensure that appropriate measurement and reporting systems are put in place.

5. To the extent that the lack of intermediate sanctions for non-compliance with contractual obligations presents a significant impediment to compliance activities, the GNSO should, without prejudice to efforts to enforce existing contractual obligations, develop recommendations for a system of graduated or intermediate sanctions for incorporation in revised contracts. As an initial step, ICANN legal counsel should brief GNSO Council (or a relevant subgroup/task force) on ICANN's current plans to correct ongoing harm and provide greater flexibility and legitimacy for the compliance function.

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### Attachment 3 - LSE Recommendations

Establish a centralized register of all GNSO stakeholders, including all members of constituencies and task forces
Indicate how many members participate in development of each constituency's policy positions.
Increase staff support to improve coherence and standardization across constituencies
Appoint a GNSO Constituency Support Officer to help constituencies develop their operations, websites and outreach activity
Increase balanced representation and active participation in constituencies proportional to global distributions
Change GNSO participation from constituency-based to direct stakeholder participation.
Improve the GNSO website and monitor traffic to understand better the external audience
Improve GNSO document management and make policy development work more accessible
Develop and publish annually a two-year GNSO Policy Development Plan that dovetails with ICANN's budget and strategic planning.
Provide (information-based) incentives to encourage stakeholder organisations to participate.
Make the GNSO Chair role more visible and important.
Strengthen GNSO conflict of interest policies, such as by permitting no-confidence votes in Councilors
Establish term limits for GNSO Councilors
Increase use of project-management methodologies in PDP work
Rely on more F2F meetings for the GNSO Council
Provide travel funding for GNSO Councilors to attend Council meetings.
Make greater use of task forces (described in Annex A of the Bylaws on GNSO Policy-Development Process).
Create a category of "Associate Stakeholder" to establish a pool of available external expertise.

Simplify the GNSO constituency structure in order to respond to rapid changes in the Internet, including by substituting 3 larger constituency groups representing Registration interests, Business and Civil Society.
Reduce the size of the GNSO Council (which can result from restructuring the constituency groupings).
Increase the threshold for establishing consensus to 75% and abolish weighted voting
Change the GNSO's election of two Board members to use a Supplementary Vote system (in which Councilors vote for 2 candidates at the same time).
Reduce the amount of prescriptive provisions in the Bylaws about GNSO operations and instead develop GNSO Rules of Procedure.
Assess periodically the influence of the GNSO's policy development work, e.g., once every five years

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## Attachment 4 - SUMMARY of ATRT2 REVIEW 2013

### Background

The Affirmation of Commitments (AoC) provides for periodic reviews of four key ICANN objectives:

1. Commitment to accountability & transparency
2. DNS security and stability
3. Promoting competition and consumer trust & choice and
4. WHOIS policy.

Three reviews were set up to address objectives 1, 2, and 4 above. Accountability and Transparency Review Team 1 (ATRT1) was set up to address the first objective and was completed in 2010. This review includes:

- the governance and performance of the Board,
- the role and effectiveness of the Governmental Advisory Committee,
- public input and public policy processes, and
- review mechanisms for Board decisions.

All ATRT1 recommendations were accepted by the ICANN Board and directed to be implemented.

ATRT2 was initiated in 2013. Two of its tasks were:

- to assess ICANN's implementation of Recommendations of previous three AOC reviews including ATRT1 and
- to offer new Recommendations to the ICANN Board to further improve ICANN's accountability and transparency.

In conducting its review, ATRT2 has sought input from various stakeholders and the community, and also engaged an Independent Expert, InterConnect Communications (ICC), to provide analysis and recommendations concerning the Generic Names Supporting Organization (GNSO) Policy Development Process (PDP).

The Board accepts all ATRT2 Recommendations and directed to proceed with implementation.

ATRT2 provides **eleven** recommendations relating to Accountability and Transparency. Of these, Recommendations No 1 to No 9 arose out of reviewing implementation of ATRT1 recommendations. Recommendation 10 and Recommendation No 12 are new. The former specifically relates to the PDP process and the latter relates to Financial Accountability and Transparency.

The first ten recommendations are listed below together with some explanation (the eleventh one – Recommendation No 12 has not been included in this write up). The most relevant recommendation is ATRT2 Recommendation No 10 as it specifically relates to GNSO. All other recommendations directly and indirectly affect GNSO, but some are more relevant than others.

### **ATRT2 Recommendation No 10 – Cross Community Deliberations**

1. The Board should improve the effectiveness of cross-community deliberations.

1.1 To enhance GNSO policy development processes and methodologies to better meet community needs and be more suitable for addressing complex problems, ICANN should:

- a. In line with ongoing discussions within the GNSO, the Board should develop funded options for professional services to assist GNSO policy development WGs. Such services could include training to enhance work group leaders' and participants' ability to address difficult problems and situations, professional facilitation, mediation, negotiation. The GNSO should develop guidelines for when such options may be invoked.
- b. The Board should provide adequate funding for face-to-face meetings to augment e-mail, wiki and teleconferences for GNSO policy development processes. Such face-to-face meeting must also accommodate remote participation, and consideration should also be given to using regional ICANN facilities (regional hubs and engagement centers) to support intersessional meetings. Moreover, the possibility of meetings added on to the start or end of ICANN meetings could also be considered. The GNSO must develop guidelines for when such meetings are required and justified, and who should participate in such meetings.

- c. The Board should work with the GNSO and the wider ICANN community to develop methodologies and tools to allow the GNSO policy development processes to utilize volunteer time more effectively, increasing the ability to attract busy community participants into the process and also resulting in quicker policy development.

1.2 The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the AoC.

1.3 The Board and the GNSO should charter a strategic initiative addressing the need for ensuring more global participation in GNSO policy development processes, as well as other GNSO processes. The focus should be on the viability and methodology of having the opportunity for equitable, substantive and robust participation from and representing:

- a. All ICANN communities with an interest in gTLD policy and in particular, those represented within the GNSO;
- b. Under-represented geographical regions;
- c. Non-English speaking linguistic groups;
- d. Those with non-Western cultural traditions; and
- e. Those with a vital interest in gTLD policy issues but who lack the financial support of industry players.

1.4 To improve the transparency and predictability of the policy development process the Board should clearly state to what degree it believes that it may establish gTLD policy (not referring to Temporary Policies established on an emergency basis to address security or stability issues, a right that the Board has under ICANN agreements with contracted parties) in the event that the GNSO

cannot come to closure on a specific issue, in a specified time-frame if applicable, and to the extent that it may do so, the process for establishing such gTLD policies. This statement should also note under what conditions the Board believes it may alter GNSO Policy Recommendations, either before or after formal Board acceptance.

1.5 The Board must facilitate the equitable participation in applicable ICANN activities, of those ICANN stakeholders who lack the financial support of industry players.

#### Findings from ATRT2

“There appears to be a growing sense that professional facilitation of PDPs would contribute to the proper addressing of complicated policy issues. Although such support will incur costs, many stakeholders have expressed doubt that the more difficult and contentious problems will be satisfactorily addressed without such support. That would result in either poor policy or a situation where the ICANN Board must intervene and set policy itself. Even that, however, would be inadequate in cases where formal Consensus Policy – which can only be developed by the GNSO PDP – is required.

The current PDP WG model also presumes that virtually all of the work can be done via e-mail and conference calls. Experience within ICANN indicates that face-to-face meetings are extremely beneficial. Of course, this too will require increased budget support.

It is unclear how one provides the incentive to negotiate in good faith and make concessions when stakes are high. In the ICANN context, this has at times involved a Board-imposed deadline with the potential for indeterminate Board action if agreement cannot be reached. This has been effective in achieving an outcome at times, but it is less clear the outcomes achieved have been good ones. In some instances, the Board has given instructions regarding timeframes for which a PDP should provide guidance, and then altered that position before the deadline has past, significantly perturbing the PDP process. Such lack of certainty must be avoided. Similarly, the potential for Board action nullifying outcomes of a PDP is one of the

issues that impact the viability of the PDP. If such intervention is viewed as possible or even likely, it impacts the need for good-faith negotiations and for participation in general.

As noted by many observers, the time and effort necessary to effectively participate in a PDP often is too great for many potential volunteers. As a result, many PDPs end up relying on the same handful of active participants. Even then, many of these workers believe that their time is not being well spent due to lack of organization, good methodologies, and effective leadership. While some report that this situation is improving due to the development of new processes that will be available to successive PDPs, it seems clear that more needs to be done.”

#### Public Comment on ATRT2 Recommendations

In general there was strong support throughout the community for the recommendations:

- There was some concern with the term “facilitators,” and poor experiences with facilitators in other venues. Other methodologies may be of benefit.
- Strong support for wider and more balanced participation in the GNSO policy development processes.
- There was support in At-Large, NCSG and SSAC for generalizing the recommendation on support for those who do not have industry financial backing. The rationale is that many segments of the ICANN community have business activities in the ICANN-related ecosystem, and it is thus to their business and financial advantage to have employees and associates participate in ICANN activities. Those with a strong interest in ICANN, but who lack business-related funding opportunities, are at a distinct disadvantage, and this has the potential to negatively impact the ICANN multi-equal stakeholder model. ICANN currently funds travel costs for many (but not all) AC and SO members, for selected Regional At Large Organization (RALO) leaders, and more recently, for GNSO Constituency and Stakeholder Group leaders.

- Poor participation in policy development processes is not just the lack of participation noted by the independent expert report, but a lack of participation from within the communities that are well represented within ICANN and the GNSO. PDPs rely far too much on a very small and possibly shrinking group of volunteers.

### **ATRT2 Recommendation No 1 - Board performance and work practices**

#### Recommendation

The board should develop objective measures for determining the quality of ICANN board members and the success of Board improvement efforts, and analyze those findings over time.

### **ATRT2 Recommendation No 2 - Board performance and work practices**

#### Recommendation

The Board should develop metrics to measure the effectiveness of the Board's functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement.

### **ATRT2 Recommendation No 3- Board performance and work practices**

#### Recommendation

The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time, and should regularly assess Director's compensation levels against prevailing standards.

### **ATR2 Recommendation No 4 – Policy/Implementation/Executive Function Distinction**

#### Recommendation

The Board should continue supporting cross-community engagement aimed at developing an understanding of the distinction between policy development and

policy implementation. Develop complementary mechanisms whereby the Supporting Organizations and Advisory Committees (SO/AC) can consult with the Board on matters, including but not limited to policy, implementation and administrative matters, on which the Board makes decisions.

### **ATRT2 Recommendation No 5 - Decision making transparency and appeals processes**

#### Recommendation

The Board should review redaction standards for Board documents, Document Information Disclosure Policy (DIDP) and any other ICANN documents to create a single published redaction policy. Institute a process to regularly evaluate redacted material to determine if redactions are still required and if not, ensure that redactions are removed.

### **ATRT2 Recommendation No 6 - GAC operations and interactions**

#### Recommendation

##### Increasing transparency of GAC-related activities

6.1. ATRT2 recommends that the Board work jointly with the GAC, through the Board-GAC Recommendation Implementation Working Group (BGRI working group), to consider a number of actions to make its deliberations more transparent and better understood to the ICANN community. Where appropriate, ICANN should provide the necessary resources to facilitate the implementation of specific activities in this regard. Examples of activities that the GAC could consider to improve transparency and understanding include:

- a. Convening “GAC 101” or information sessions for the ICANN community, to provide greater insight into how individual GAC members prepare for ICANN meetings in national capitals, how the GAC agenda and work priorities are established, and how GAC members interact intersessionally and during GAC

meetings to arrive at consensus GAC positions that ultimately are forwarded to the ICANN Board as advice;

b. Publishing agendas for GAC meetings, conference calls, etc., on the GAC website seven days in advance of the meetings and publishing meeting minutes on the GAC website within seven days after each meeting or conference call;

c. Updating and improving the GAC website to more accurately describe GAC activities, including intersessional activities, as well as publishing all relevant GAC transcripts, positions and correspondence;

d. Considering whether and how to open GAC conference calls to other stakeholders to observe and participate, as appropriate. This could possibly be accomplished through the participation of liaisons from other ACs and SOs to the GAC, once that mechanism has been agreed upon and implemented;

e. Considering how to structure GAC meetings and work intersessionally so that during the three public ICANN meetings a year the GAC is engaging with the community and not sitting in a room debating itself;

f. Establishing as a routine practice agenda setting calls for the next meeting at the conclusion of the previous meeting;

g. Providing clarity regarding the role of the leadership of the GAC; and,

h. When deliberating on matters affecting particular entities, to the extent reasonable and practical, give those entities the opportunity to present to the GAC as a whole prior to its deliberations.

6.2. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC formally adopting a policy of open meetings to increase transparency into GAC deliberations and to establish and publish clear criteria for closed sessions.

6.3. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI, to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided. Such rationales should be recorded in the GAC register. The register should also include a record of how the ICANN Board responded to each item of advice.



6.4. The Board, working through the BGRI working group, should develop and document a formal process for notifying and requesting GAC advice.

6.5. The Board should propose and vote on appropriate bylaw changes to formally implement the documented process for Board-GAC bylaws consultation as developed by the BGRI working group as soon as practicable.

Increase support and resource commitments of government to the GAC

6.6. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to identify and implement initiatives that can remove barriers for participation, including language barriers, and improve understanding of the ICANN model and access to relevant ICANN information for GAC members. The BGRI working group should consider how the GAC can improve its procedures to ensure more efficient, transparent and inclusive decision-making. The BGRI working group should develop GAC engagement best practices for its members that could include issues such as: conflict of interest; transparency and accountability; adequate domestic resource commitments; routine consultation with local Domain Name System (DNS) stakeholder and interest groups; and an expectation that positions taken within the GAC reflect the fully coordinated domestic government position and are consistent with existing relevant national and international laws.

6.7. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to regularize senior officials' meetings by asking the GAC to convene a High Level meeting on a regular basis, preferably at least once every two years. Countries and territories that do not currently have GAC representatives should also be invited and a stock-taking after each High Level meeting should occur.

6.8. ATRT2 recommends that the Board work jointly with the GAC, through the BGRI working group, to work with ICANN's Global Stakeholder Engagement group (GSE) to develop guidelines for engaging governments, both current and non-GAC members, to ensure coordination and synergy of efforts.

6.9. The Board should instruct the GSE group to develop, with community input, a baseline and set of measurable goals for stakeholder engagement that addresses the following:

- a. Relationships with GAC and non-GAC member countries, including the development of a database of contact information for relevant government ministers;
- b. Tools to summarize and communicate in a more structured manner government involvement in ICANN, via the GAC, as a way to increase the transparency on how ICANN reacts to GAC advice (e.g. by using information in the GAC advice register);
- c. Making ICANN's work relevant for stakeholders in those parts of the world with limited participation; and,
- d. Develop and execute for each region of the world a plan to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN's services including new gTLD's.

### **ATR2 Recommendation No 7 - Decision-making, transparency and appeals processes**

Recommendation

Public Comment Process

1. The Board should explore mechanisms to improve Public Comment through adjusted time allotments, forward planning regarding the number of consultations given anticipated growth in participation, and new tools that facilitate participation.
2. The Board should establish a process under the Public Comment Process where those who commented or replied during the Public Comment and/or Reply Comment period(s) can request changes to the synthesis reports in cases where they believe the staff incorrectly summarized their comment(s).

### **ATR2 Recommendation No 8 - Multilingualism**

Recommendation

To support public participation, the Board should review the capacity of the language services department versus the community need for the service using Key Performance Indicators (KPIs) and make relevant adjustments such as improving translation quality and timeliness and interpretation quality. ICANN should implement continuous improvement of translation and interpretation services including

benchmarking of procedures used by international organizations such as the United Nations.

## **ATR2 Recommendation No 9 - Decision-making, transparency and appeals processes**

### Recommendation

#### 1. Consideration of decision-making inputs and appeals processes

1.1 ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice:

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.

#### 1.2 Explore Options for Restructuring Current Review Mechanisms

The ICANN Board should convene a Special Community Group, which should also include governance and dispute resolution expertise, to discuss options for improving Board accountability with regard to restructuring of the Independent Review Process (IRP) and the Reconsideration Process. The Special Community Group will use the 2012 Report of the Accountability Structures Expert Panel (ASEP) as one basis for its discussions. All recommendations of this Special Community Group would be subject to full community participation, consultation and review, and must take into account any limitations that may be imposed by ICANN's structure, including the degree to which the ICANN Board cannot legally cede its decision-making to, or otherwise be bound by, a third party.

#### 1.3 Review Ombudsman Role

The Board should review the Ombudsman role as defined in the bylaws to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

a. A role in the continued process of review and reporting on Board and staff transparency.

b. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and administration related to policy and operational matters.

c. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

#### 1.4 Develop Transparency Metrics and Reporting

The Board should ensure that as part of its yearly report, ICANN include, among other things, but not be limited to:

a. A report on the broad range of Transparency issues with supporting metrics to facilitate accountability.

b. A discussion of the degree to which ICANN, both staff and community, are adhering to a default standard of transparency in all policy, implementation and administrative actions; as well as the degree to which all narratives, redaction, or other practices used to not disclose information to the ICANN community are documented in a transparent manner.

c. Statistical reporting to include at least the following elements:

i. requests of the Documentary Information Disclosure Policy (DIDP) process and the disposition of requests.

ii. percentage of redacted-to-unredacted Board briefing materials released to the general public.

iii. number and nature of issues that the Board determined should be treated confidentially.

iv. other ICANN usage of redaction and other methods to not disclose information to the community and statistics on reasons given for usage of such methods.

d. A section on employee “Anonymous Hotline” and/or other whistleblowing activity, to include metrics on:

i. Reports submitted.

ii. Reports verified as containing issues requiring action.

iii. Reports that resulted in change to ICANN practices.

- e. An analysis of the continued relevance and usefulness of existing transparency metrics, including
  - i. Considerations on whether activities are being geared toward the metrics (i.e. “teaching to the test”) without contributing toward the goal of genuine transparency.
  - ii. Recommendations for new metrics.

1.5 The Board should arrange an audit to determine the viability of the ICANN Anonymous Hotline as a whistleblowing mechanism and implement any necessary improvements.

The professional external audit should be based on the Section 7.1 and Appendix 5 - Whistleblower Policy of the One World Trust Independent Review of 20076 recommendations to establish a viable whistleblower program, including protections for employees who use such a program, and any recent developments in areas of support and protection for the whistleblower. The professional audit should be done on a recurring basis, with the period (annual or bi-annual, for example) determined upon recommendation by the professional audit.

The processes for ICANN employee transparency and whistleblowing should be made public.

## Appendix 5: PDP Timelines

Draft Working Text for WP and ICANN Staff only

Appendix 6: GNSO Operating Procedures – proposed revision of section  
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Draft Working Text for WP and ICANN Staff only

## Appendix 7: Terms of Reference for this Review

Draft Working Text for WP and ICANN Staff only



## Appendix 8: Cross reference to Terms of Reference

Draft Working Text for WP and ICANN Staff only

## Appendix 9: About Westlake Governance

Draft Working Text for WP and ICANN Staff only