

Feedback on the GNSO Review Initial Report by Westlake Submitted by Amr Elsadr

Before beginning to reflect on the recommendations provided in this report, I find it my duty to note that the Westlake team attempted on several occasions to interview me in preparation for their report. The fact that I was not interviewed was in no way a fault of theirs. I thank the Westlake team for making a sincere effort in getting my input, and apologize for not doing so earlier.

Theme Topic 1: Participation and Representation

Recommendation 1: Develop and monitor metrics to evaluate the ongoing effectiveness of current outreach strategies and pilot programmes with regard to GNSO Working Groups (WGs) (as noted in the WG participation recommendations under section 5.4.5)

Comment: This seems, in principle, to be a good recommendation. It may be possible to refine it slightly by clarifying (1) the purposes of some of the outreach mechanisms mentioned in the report, and (2) to not limit the recommendation to participation in GNSO working groups.

1. The ICANN Fellowship program could potentially benefit a great deal from some form of introduction to or overview of the GNSO's PDP. This might be especially helpful for returning Fellows who have already become members of GNSO stakeholder groups, the At-Large community or the GAC. This, however, may not be true of the CROPP program, in which outreach will likely be performed outside of the traditional ICANN meetings. Other indicators may be more helpful in measuring outreach success in those. The monthly (now quarterly) GNSO open house newcomer WG webinar was not primarily designed to be an outreach activity aiming to recruit new WG members. Rather, its purpose is to target community members who have already decided to join WGs for the first time, and would like to learn more about what to expect from a process perspective. Measuring its success according to how many volunteers it can recruit would be inappropriate, as it was not designed to serve that purpose. Other indicators of success would likely be more constructive.
2. It may be helpful when developing and monitoring metrics to evaluate the ongoing effectiveness of outreach strategies, to not limit them to increased participation in GNSO WGs, but overall engagement to the GNSO PDP. Participation in GNSO working groups is not the only method to provide input for consideration in gTLD policy development as there are several rounds of public comment periods at multiple stages of the PDP. Measurement of how often engagement with the PDP via submission of public comments could also reflect well (although in a different manner) on outreach initiatives.
3. Recently, a survey was conducted among Fellowship alumni members with the results being documented and published (<https://www.icann.org/en/system/files/files/fellowship-alumni-survey-results-28may15-en.pdf>). It may be helpful for some of these observations be included as part of that survey, as well as differentiating between Fellowship Alumni members participating in GNSO WGs as opposed to WGs in other SOs/ACs.

Note: It is unclear to which section 5.4.5 this recommendation is referring to. In the report, the last subsection under section 5 is 5.4.4.

Recommendation 2: Develop and fund more targeted programmes to recruit volunteers and broaden participation in PDP WGs, given the vital role volunteers play in Working Groups and policy development.

Comment: This is a tricky recommendation, and seems to be made without enough consideration of the potentially dangerous implications that may arise during its implementation.

It is vital that if funding is provided for “more targeted programmes to recruit volunteers”, that the beneficiaries of this program not be selected by ICANN (the corporation), but rather by the different groups within the community. This is important to both ensure equal benefit to the different stakeholder groups, as well as protecting ICANN from perceived ill intentions in its selection of who is recruited to participate in the policy development process.

Furthermore, it is equally as vital that none of this funding become in any way part of some sort of reward system in return for participation in PDP WGs. If PDP WG participants are rewarded by ICANN for their participation, this will very likely make the reward the whole incentive of participation. This could, very realistically, change the nature of the motives of volunteer participation -- pleasing the corporation that pays for participation rather than representing the interests of a group that has an interest in gTLD policy development.

Recommendation 3: 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.

Comment: Similar concern to the second one raised in response to recommendation 2. Reward systems for PDP WG participation should not, in any way, include financial remuneration or even travel support to ICANN meetings. Remote participation is a perfectly adequate means of participation in ICANN meetings, and if financial assistance is warranted, perhaps it can be invested in ensuring effective remote participation for participants with limited ability to engage remotely due to poor local connectivity.

Recommendation 4: Explore a tailored incentive system to increase the motivation of volunteers. (For example, this may include training & development opportunities or greater recognition of individuals).

Comment: Similar concerns as above should again be noted. However, the two examples provided seem reasonable. Training and development (theoretically) would also benefit from community participation in the details of what is required, as may be the terms and conditions of greater recognition.

Recommendation 5: Continue initiatives that aim to reduce the barriers to newcomers.

Comment: Full agreement. The quarterly open house newcomer WG webinars are particularly valuable.

Recommendation 6: That the GNSO record and regularly publish statistics on WG participation (including diversity statistics).

Comment: This may indeed be helpful. The raw data required to create these statistics already exists.

Section 4.4.4 on page 44 of the report says: *“While, it is recognised that it is not mandatory to have representatives from most if not all Stakeholder Groups and/or Constituencies in a WG, one of the GNSO PDP improvement proposals is to look at “requiring a WG representative from each SG/C to participate including as a silent observer.” To-date little progress has been made on this initiative. As the 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.”*

This statement is inaccurate. All GNSO working group members and their affiliations to SGs/constituencies/ACs/SOs are published on the WG wiki pages with links to their Sols.

Recommendation 7: That Stakeholder Groups (SGs) and Constituencies (Cs) explore and implement ways to engage more deeply with community members whose first language is other than English, as a means to overcoming language barriers.

Comment: This is indeed a challenge that needs to be overcome if true global multi-cultural representation on GNSO WGs is to be achieved.

Recommendation 12: That ICANN assess the feasibility of providing a real-time transcribing service in audio conferences for prioritised PDP WGs.

Comment: I have no objection to this recommendation.

Recommendation 19: As strategic manager rather than a policy body the GNSO Council should continue to focus on ensuring that a WG has been properly constituted, has thoroughly fulfilled the terms of its charter and has followed due process.

Comment: This recommendation, and the context in which it was developed in the Westlake report is misleading in some ways. First, The GNSO Council is not a legislative body, and does not act as such as described in the report. The GNSO Council does manage the process by which the GNSO develops gTLD policies. However, in this role, the council could on occasion have reason to reject or propose amendments to policy recommendations from PDP WGs. These circumstances may include when consensus is not achieved within the PDP WG, or in the event that there is incomplete representation within the PDP WG’s membership involved in the consensus call. In all events, the GNSO council does not make changes to policy recommendations as insinuated by the Westlake report. This might not have been the intent of the report, but the language used to discuss this seems vague, which is not very helpful. The GNSO operating procedures allow for the the council to propose changes to policy recommendations, which need to be considered by the PDP WG. This is, on occasion, very much be consistent with its management role, and does not indicate any legislative role.

In addition, the GNSO Council should always attempt to ensure that gTLD policy is developed through the GNSO process, and not outside of it via board resolutions in response to Advice from ACs, other groups (such as the BRG, which is becoming a repetitively problematic development) or on the ICANN board’s own initiative.

Developing gTLD policy is the primary function of the GNSO. In the event that gTLD policy recommendations from the GNSO Council to the ICANN board result in conflicting advice from ACs (such as GAC or ALAC), any desire to amend the policy

recommendations should be sent back to the GNSO to go through the appropriate process (new processes may become viable options should the board adopt the policy and implementation WG recommendations). This is consistent with the Westlake report's text in section 3.6.1 on page 77 (*"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"*).

Recommendation 23: That the GNSO Council and SGs and Cs adhere to the published process for applications for new constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed due process. Subject to the application meeting the conditions, the default outcome should be that a new Constituency is admitted.

Comment: I could not agree less with this recommendation, or the rationale provided both in the Westlake report as well as during discussions at ICANN 53 in Buenos Aires to support it.

The Westlake report, for no apparent reason and with no empirical evidence in support, associates an increase in constituencies within the GNSO with increased representation and participation. The report goes further to admonish the NCSG and the ICANN board for rejecting the application of the Public Internet Access/Cybercafe Ecosystem Constituency (PIA/CC), and not supporting the Consumer Constituency.

In contrast to Westlake's assumptions, it is evident following the creation of the Not-For-Profit Operational Concerns Constituency (NPOC), that the growth in NCSG participation is still largely due to an increase in the number of members of the Non-Commercial Users Constituency (NCUC), which has attracted a larger number of new members than NPOC has since NPOC's creation. This is not to say that NPOC's members are in any way irrelevant. The point is that Westlake hasn't even bothered to attempt to evaluate how the creation of the only new constituency has contributed constructively to representation and participation in the GNSO.

Furthermore, during the GNSO weekend session, and in response to a question regarding whether or not Westlake conducted an analysis to evaluate the merit in the decision to reject the new constituency referred to in the report, the answer was a blatant no. Colin Jackson proceeded to explain that the only reasoning on which the Westlake recommendation was based was that there had been multiple attempts to create new constituencies, but only one new one was created. This, in his opinion, represented a failure of the process. In my opinion, it was Westlake that failed to evaluate whether the applicants met the criteria that would enable them to use the process to create a constituency or not.

The report went further to cite and one of several reasons the NCSG rejected the PIA/CC application (that the applicant should first join the NCSG to determine whether its needs are being represented or not) as a conflict with BGC recommendations and a board resolution. The report also conveniently left out other reasons for the rejected application including the commercial nature of the applicant (which conflicts with the NCSG charter), as well as not fulfilling requirements in the application process regarding diversity of membership -- the very purpose Westlake believes constituencies serve.

More feedback was provided to Westlake during constituency day at the ICANN 53 meeting in Buenos Aires, when the Westlake team met with the NCUC. The fact that the study failed to analyse whether or not more constituencies was in any way

associated with broader representation and participation was pointed out. Additionally, several other concerns with the constituency model, as experience within the NCSG suggests, including an increase in unnecessary executive overhead, encouragement of competitive behavior within the stakeholder group, and the development of policy in fragmented silos rather than a collaborative manner. None of these concerns made their way in to the final Westlake report or recommendations.

Unfortunately, although these positions have been repetitively communicated to the Westlake team, they remain unaddressed.

Recommendation 25: That the GNSO Council commission the development of, and implement, guidelines to provide assistance for groups wishing to establish a new Constituency.

Comment: The GNSO Council is not responsible for supporting the development of new constituencies. As discussed in other sections of the Westlake report, it is responsible for management of the GNSO's primary purpose; the process used to develop gTLD policies.

Recommendation 32: That ICANN define "cultural diversity" and that relevant metrics (encompassing geographic, gender, age group and cultural, possibly by using birth language) be monitored and published.

Comment: If by ICANN, the recommendation is referring to the ICANN community, then I have no objection to this recommendation.

Recommendation 33: That SGs, Cs and the Nominating Committee, in selecting their candidates for appointment to the GNSO Council, should aim to increase the geographic, gender and cultural diversity of its participants, as defined in ICANN Core Value 4.

Comment: The NCSG already has rules regarding geographic and gender diversity in its election of GNSO councillors. The NCUC's executive officers are regional representatives on the executive committee, so also support diversity by default. Beyond that, I see no need to impose rules of diversity on groups that I am not a member of.

Recommendation 34: That PDP WGs rotate the start time of their meetings in order not to disadvantage people who wish to participate from anywhere in the world. This should be the norm for PDP WG meetings even if at first all the WG's members come from the "traditional" regions of North America and Europe.

Comment: This, in my opinion, is a bad idea. As a participant of several working groups, it is easier for me to manage my schedule if my weekly calls are at consistent times. Even if those times are inconvenient. Rotating times on a regular basis would make my schedule far too chaotic to manage.

Recommendation 35: That the GNSO Council establish a WG, whose membership specifically reflects the demographic, cultural and gender diversity of the Internet as a whole, to identify and develop ways to reduce barriers to participation in the GNSO by non-English speakers and those with limited command of English.

Comment: I have no objection to this recommendation, but am not sure how to go about accurately reflecting "the demographic, cultural and gender diversity of the Internet as a whole". The details of this would need to be worked out by the GNSO.

Recommendation 36: That, when approving the formation of a PDP WG, the GNSO Council require that its membership represent as far as reasonably practicable the geographic, cultural and gender diversity of the Internet as a whole. Additionally, that when approving GNSO Policy, the ICANN Board explicitly satisfy itself that the GNSO Council undertook these actions when approving the formation of a PDP WG.

Comment: I am not fond of subjective criteria such as “geographic, cultural and gender diversity of the Internet as a whole”. They create more problems than they solve. I would not be opposed to the GNSO establishing criteria of diversity that should be aspirational in GNSO working groups. This is already included in the GNSO operating procedures.

Theme Topic 2: Continuous Development

Recommendation 8: That WGs should have an explicit role in responding to implementation issues related to policy they have developed, and that the current Policy and Implementation Working Group specifically address the role of WGs in responding to policy implementation issues

Comment: As noted by the Westlake report, this was a charter question that was addressed by the GNSO Policy and Implementation Working Group. The GNSO Council has already adopted a recommendation by this WG to make IRTs a standard practice, except in limited situations where it may not be deemed necessary or desirable. This has resulted in an update to section 14 of the PDP Manual. The creation of IRTs is still subject to the ICANN board instructing GDD staff to work with the GNSO on implementation of policies. It would be helpful if this report would recommend that the ICANN board instruct GDD staff to work with the GNSO as a standard practice, and leave the decision of whether or not an IRT is desirable to the discretion of the GNSO Council.

Recommendation 9: That a formal Working Group leadership assessment programme be developed as part of the overall training and development programme.

Comment: Agree with this recommendation. May also be worth considering adding questions to the working group self-assessment survey regarding the effectiveness of the WG leadership team.

Note: Section 5.3, page 53 of the Westlake report states that: *“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.”*

I have filled in one such survey prior to the publication of this report for the GNSO “thick” WHOIS PDP WG. The fact that the Westlake review team failed to identify this may indicate that more thorough research of this should have been conducted. I have also filled in two surveys following the publication of this report for each of the following WGs.

GNSO Translation and Transliteration of Contact Information PDP WG
GNSO Policy and Implementation WG

Recommendation 10: 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.

Comment: I have not had first-hand experience with a professional facilitator/moderator, but find that the Westlake concern stated in section 5.4.1 on page 57: *“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 be a reasonable concern. In my limited experience, I have never believed that a facilitator would be of much benefit in a PDP that involves a contentious issue. Conflicting interests of the various stakeholders involved in PDP discussions are inevitable, and should be addressed by PDP WG members with the assistance of PDP WG chairs and GNSO council liaisons to the WGs.

Recommendation 11: That the face-to-face PDP WG pilot project be assessed when completed. If the results are beneficial, guidelines should be developed and support funding made available.

Comment: I find it difficult to agree that this would be a significantly productive or efficient project. The volume of work conducted remotely far outweighs the work conducted during ICANN meetings. PDP face-to-face meetings are far more effective at getting input from non-WG members present at ICANN meetings, than resolving issues by the WG members.

Furthermore, making a recommendation to increase the frequency and role of face-to-face meetings is in direct conflict with other more appealing recommendations in this report, particularly those involving increasing geographic representation and perspectives in PDP WG memberships and discussions. The target community members in those recommendations face great difficulties in obtaining visas to travel to meetings on a regular basis. Increasing the role of face-to-face meetings only limits those community members from participating on an equal par with those from North America and Europe.

Recommendation 13: That ICANN evaluate one or more alternative decision support systems and experiment with these for supporting WGs.

Comment: Regarding the criticism of email volumes on PDP WGs being large and difficult to follow, it is important to note that all emails are also publicly archived. So even if some emails seem to be lost, they are easily recoverable.

It is also important to note that there are multiple studies of the ethnography of workplaces, and the complexities involved in the introduction of new information systems meant to improve collaborative work. These include studies such as Harper’s *The Organisation in Ethnography: A Discussion of Ethnographic Fieldwork Programs in CSCW*), Star and Ruhleder’s *Steps Toward an Ecology of Infrastructure: Design and Access for Large Information Spaces*, Orlikowski’s *Learning From Notes: Organizational Issues in Groupware Implementation*, and many others.

It is advisable to practice caution in any decisions involving replacement of systems that support the ICANN community in its collaborative work.

Recommendation 14: That the GNSO further explores PDP ‘chunking’ and examines each potential PDP as to its feasibility for breaking into discrete stages.

Comment: No objection to exploring this method of going through PDPs. Some concerns have been raised on this in the Westlake report (such as difficulties in continuity of PDP WG participants across the “chunks”). Other considerations could include how implementation of policies being developed in “chunks” is performed.

Recommendation 15: That the GNSO continues current PDP Improvements Project initiatives to address timeliness of the PDP.

Comment: The GNSO Policy and Implementation WG has already recommended the creation of three new processes including the GNSO Guidance Process and Expedited PDP (currently under board review and consideration) as well as the GNSO Input Process, which has been included in the updated GNSO Operating Procedures.

Recommendation 16: That a policy impact assessment (PIA) be included as a standard part of any policy process.

Comment: No objection to PIAs being a standard inclusion to PDPs, however, the terms of reference for these should be based on a consensus among the PDP WG members, and approved by the GNSO Council.

Recommendation 17: That the practice of Working Group self-evaluation becomes standard at the completion of the WG’s work; and that these evaluations should be published and used as a basis for continual process improvement in the PDP.

Comment: This is already a standard practice, however, I am not familiar with the evaluations having been previously published. If they are not, they should be.

Recommendation 18: That the GNSO Council evaluate post implementation policy effectiveness on an ongoing basis (rather than periodically as stated in the current GNSO Operating Procedures); and that these evaluations are analysed by the GNSO Council to monitor and improve the drafting and scope of future PDP Charters and facilitate the effectiveness of GNSO policy outcomes over time.

Comment: Not certain that this recommendation would be of any real value. The Westlake report does not offer any evidence to support that it would. If the WHOIS reviews are an indicator, they may suggest that periodic reviews are preferable to ongoing ones. The evaluation of the effectiveness of policies post-implementation on a periodic basis will likely provide more data for more objective consideration, as well as not impose a burden on a limited number of volunteers to manage continuous ongoing reviews.

Recommendation 22: That the GNSO should review and implement a revised training and development programme encompassing:

- Skills and competencies for each Council member
- Training and development needs identified
- Training and development relevant to each Council member
- Formal assessment system with objective measures
- Continual assessment and review.

Comment: Agree with the first three bullets. Disagree with the last two. It is not clear from this recommendation, who would be performing the assessment and review of

councillors/the council. Ultimately, the only assessment that should matter is that of those who select/elect the councillors to represent them.

Recommendation 29: That new members of WGs and newcomers at ICANN meetings be surveyed to determine how well their input is solicited and accepted by the community, and that the results be published and considered by the GNSO Council at its next meeting.

Comment: I agree with this recommendation.

Recommendation 30: That the GNSO develop and implement a policy for the provision of administrative support for SGs and Cs; and that SGs and Cs annually review and evaluate the effectiveness of administrative support they receive.

Comment: At first glance, I agree with this recommendation, however this should be a decision of the GNSO.

Recommendation 31: That the GAC-GNSO Consultation Group on GAC Early Engagement in the GNSO Policy Development Process continue its two work streams as priority projects. As a part of its work it should consider how the GAC could appoint a non-binding, non-voting liaison to the WG of each relevant GNSO PDP as a means of providing timely input.

Comment: Agree that exploring the possibility of a GAC liaison to GNSO WG's should be a topic of discussion, once the GAC/GNSO CG begins to address that phase of the GNSO's PDP.

Theme Topic 3: Transparency

Recommendation 24: That all applications for new constituencies, including historic applications, be published on the ICANN website with full transparency of decision-making.

Comment: This should certainly be the default practice.

Recommendation 26: That GNSO Council members, Executive Committee members of SGs and Cs and members of WGs complete and maintain a current, comprehensive Sol. Where individuals 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.

Comment: I agree.

Recommendation 27: That the GNSO establish and maintain a centralised publicly available list of members and individual participants of every Constituency and Stakeholder Group (with a link to the individual's SOI where one is required and posted).

Comment: There is no reason to require Sols of members who are not elected/selected representatives of their groups, or members of GNSO WGs.

Recommendation 28: That section 6.1.2 of the GNSO Operating Procedures be revised, as shown in Appendix 6, to clarify that key clauses are mandatory rather

than advisory, and to institute meaningful sanctions for non-compliance where appropriate.

Comment: I agree with this recommendation, however, this should not be implemented as a result of a Westlake recommendation to the board SIC. The GNSO Council should discuss this recommendation, and perhaps request that the GNSO SCI take this up as a project.

Theme Topic 4: Alignment with ICANN's future

Recommendation 20: That the GNSO Council should review annually ICANN's Strategic Objectives with a view to planning future policy development that strikes a balance between ICANN's Strategic Objectives and the GNSO resources available for policy development.

Comment: I have no objection to the GNSO Council reviewing ICANN's strategic objectives on an annual basis, however, ultimately, the Council should maintain a healthy level of flexibility regarding policy development projects. PDPs are initiated by requests for issue reports that are submitted by GNSO Councillors on behalf of their stakeholder groups/constituencies, by the ALAC or by the ICANN board. Alignment of GNSO activities with ICANN strategic goals should not be strictly required, and not always desirable. An example when this was apparent was when many within the GNSO community found the ICANN strategy panels launched at ICANN 47 in Durban to be an unnecessary distraction from the GNSO's work imposed from the top-down. GNSO processes should remain bottom-up to the extent possible.

Recommendation 21: The GNSO Council should regularly undertake or commission analysis of trends in gTLDs in order to forecast their likely requirements for policy and to ensure those affected are well-represented in the policy-making process.

Comment: I agree. My personal thoughts on this is that studies that provide useful insight to policy development should be conducted to support the PDP. However, this should not happen without the GNSO Council having a decision-making capacity in the terms of reference of any study, as well as the ability to provide critical appraisal of any of the conclusions or methodology used to provide them.