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Etienne Sanz de Acedo
Chief Executive Officer

Via email: comments-gnso-review-01jun15@icann.org

July 24, 2015

Ms. Larisa Gurnick
Director, Strategic Initiatives
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Comments on Draft Report: Review of Generic Names Supporting Organization (GNSO)

Dear Ms. Gurnick:

INTA is pleased to submit the attached comments regarding the Draft Report: Review of the Generic Names Supporting Organization ("GNSO Review").

INTA supports continuous assessment and evaluation of ICANN's structures and policies in order to ensure ICANN's accountability and transparency as it carries out it critical mission to support the security, stability and reliability of the domain name system. INTA generally supports the recommendations in the GNSO Review and highlights our support of diversity, leadership development, improved forms for statements of interest and looking to working groups for guidance when questions arise in connection with implementation, interpretation and enforcement after policy recommendations are made.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at lschulman@inta.org.

Sincerely,

Etienne Sanz De Acedo

INTA Comment on Draft Report: Review of Generic Names Supporting Organization

INTA is pleased to submit comments regarding the Draft Report: Review of Generic Names Supporting Organization ("GNSO Review") prepared by Westlake Governance Limited and published on June 1, 2015

 Brief Background

Initiated in 2014, the ICANN Board's Structural Improvements Committee (SIC) oversees the review, which consists of: (1) assessment of the implementation of the improvement process, and (2) consideration of how the GNSO is positioned to respond to its changing environment. Input has included, among other things, 360° questionnaires, interviews with stakeholders, and feedback on the working text presented at ICANN52.

There are four themes in the GNSO Review:

1. Participation & Representation
2. Continuous Development
3. Transparency
4. Alignment with ICANN's future

Westlake provided 36 recommendations within 6 subject areas: (1) the Working Group Model, (2) the Policy Development Process, (3) Restructuring GNSO Council, (4) Enhancing Stakeholder Groups and Constituencies, (5) Communication and Coordination, and (6) Changing Environment. INTA provides its comments within each of these six subject areas below.

1. The Working Group Model

In 2008, the Board Governance Committee Working Group ("BGC Working Group") recommended a Working Group model for policy development, revising the policy development process (the "PDP"), restructuring the GNSO Council, enhancing/supporting stakeholder groups and constituencies, and improving communication with other ICANN structures. Westlake believes these recommendations have all been implemented effectively and there is a marked improvement on the previous task force model. However, negative outcomes in the implementation of Working Groups are:

- Comparatively few volunteers do most of the work
- Volunteers are strongly weighted toward North America and Europe
- Participants are approximately 80% male

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Eight recommendations are provided to address three material concerns with the Working Group concept. In summary, these recommendations include (1) developing metrics to evaluate effectiveness of outreach, (2) fund more recruitment programs, (3) review financial assistance to increase volunteer participation from non-GNSO practitioners, (4) explore incentives, such as training and recognition of individuals, (5) continue initiatives that reduce barriers to newcomers, (6) regularly publish Working Groups participation statistics (including diversity numbers), (7) explore and implement ways to engage members whose first language is not English, and (8) Working Groups should have explicit role in responding to implementation issues related to developed policy.

Comment: The outreach efforts by ICANN to engage members of the GNSO community have not been sufficient to ensure availability of diverse and motivated volunteers. The Working Groups as currently implemented do not correspond to ICANN's Core Value 4 on broad, informed participation reflecting the functional, geographic and cultural diversity of the Internet. INTA agrees that the current strategies and programs should be developed to provide a more effective recruitment and training of volunteers from truly diverse backgrounds. The monitor of such metrics should be part of the ongoing efforts of the GNSO Council and not of other ICANN constituencies/SGs.

INTA suggests that recruiting programs should focus on volunteers with traditional business, legal and marketing expertise as these skill-sets are woefully under-represented in the ICANN community, which is dominated by technical and domain name industry participants. INTA also supports providing financial assistance to volunteers with such expertise and also to increase volunteer participation in more than one applicable Working Group.

INTA agrees that incentives to increase volunteer participation should include increased training and development opportunities, including greater recognition of project leaders and volunteers. For instance, greater acknowledgment could be provided for those volunteers who develop key initiatives further implemented and recognized by the GNSO and ICANN Board.

INTA acknowledges that extra efforts are required for inclusion of non-English speaker participation and more affirmative methods should be implemented, such as programs targeted for community members from outside North America and Europe. Overcoming language barriers, such as through translation and transcription services can assist in overcoming language barriers.

INTA also agrees that the GNSO Working Groups role is not completed after recommendations are made, but should continue with follow-up on policy implementation issues. Working Group deliberative history (like legislative history) should be maintained and Working Group members should also be asked to provide guidance on questions that

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arise from policy implementation and how policies are interpreted and enforced after implementation.

2. The Policy Development Process

The GNSO review indicates that, while the Working Group PDP is successful, it is considered too slow. There should be a Working Group to consider the outcome of policies and there is no GNSO-wide plan that aligns its policy development work with ICANN's strategic plan.

The following recommendations are provided in this section: (9)[1] A formal Working Group leadership assessment program should be part of an overall training/development program, (10) create guidelines for a professional facilitator where policy issues are complex or where Working Group members may be inexperienced, (11) review the face-to-face PDP Working Group pilot project when complete and possibly develop guidelines and support funding, (12) consider feasibility of providing a real-time transcripting service in audio conferences for prioritized PDP Working Groups, (13) consider alternative decision support systems, (14) explore PDP "chunking" (breaking into stages), (15) continue PDP Improvement Project initiatives, (16) include policy impact assessment ("PIA") as any policy process, (17) publish Working Group self-evaluation, and (18) GNSO Council should evaluate post implementation policy effectiveness.

Comments: INTA agrees that there should be a Working Group to consider the outcome of policy development and there should be a GNSO-wide plan that aligns its policy development work with ICANN's strategic plan.

INTA also agrees with all of the recommendations for the PDP and specifically supports the creation of a formal Working Group leadership assessment program as part of an overall training/development program. The creation of guidelines for a professional facilitator or moderator where policy issues are complex or where Working Group members may be inexperienced would be particularly helpful in furthering the efficiency and effectiveness of the PDP. Evaluation by the GNSO Council of post implementation policy effectiveness is also very helpful in assessing whether goals have been reached, modifying the current implementation in order to meet unanticipated changes and new challenges, and to improve the process in future PDPs.

3. Restructuring GNSO Council

While the Council is performing strategy and oversight, there is no evidence of resource planning or management. Recommendations for the GNSO Council are: (19) continue to focus on ensuring that a Working Group has been properly constituted, fulfilled the terms of its charter

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[1] Recommendation numbers continue from prior sections.

and followed due process, (20) annually review ICANN's Strategic Objectives to plan future policy development balanced between strategy and resources available, (21) regularly analyze trends in gTLDs to forecast future policy needs to ensure that likely-to-be affected are represented in the policy-making process, and (22) implement a training and competency measurement program for Council members.

Comment: INTA agrees with the recommendations for restructuring the GNSO Council. In particular, INTA believes the GNSO structure has marginalized non-contracted parties' interests. This imbalance must be remedied to achieve business participation, trust and support of the ICANN multistakeholder model process and important policies that are being developed such as the ICANN accountability and the approval of the IANA transition.

ICANN should regularly analyze trends in gTLDs and review ICANN's strategic objectives to predict policy needs and implement a training and competency measurement program for council members. All of these measures should be transparent and published and INTA suggests that ICANN have a mechanism where trainees can evaluate the training and provide feedback to ICANN related to their training.

4. **Enhancing Stakeholder Groups and Constituencies[2]**

With great difficulty, only one new Constituency was formed as a result of the BGC recommendation and several other groups tried and failed to create new Constituencies.

The following recommendations are: (23) adhere to the published process for new constituent applications and following due process with admission of a new Constituency as the default outcome, (24) publish all new constituency applications, including historic applications on the ICANN website with transparent decision-making, (25) the GNSO Council should create guidelines to assist groups establishing a new constituency, (26) members of the GNSO Council, Executive Committee members of SGs and Cs and Working Groups keep statement of interest ("SOI"). If individuals represent bodies or clients, this information should be posted. If client confidentiality is an issue, the participant's interest or position must be disclosed, (27) publish member list of Constituency and Stakeholder Group participants with link to SOIs, (28) revise GNSO Operating Procedure section 6.1.2 to clarify that key clauses are mandatory, not advisory and sanction for non-compliance where appropriate, (29) survey newcomers to Working Groups and ICANN meetings to determine how well their input is solicited & accepted and publish and consider the results at the next GNSO Council meeting, and (30) develop and implement a policy to provide administrative support for Stakeholder Groups and Constituencies with annual review.

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[2] "Constituency" includes the Registrar Stakeholder Group ("RrSG") and Registry Stakeholder Group ("RySG").

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Comment: INTA agrees with the Westlake recommendations to enhance stakeholder groups and constituencies. In particular, the creation of guidelines by the GNSO Council to assist groups establishing a new constituency will be helpful for less experienced participants. INTA also supports the transparency of SOIs and the clarification of the GNSO Operating Procedure section 6.1.2.

With regard to the recommendation dealing with SOI's however, INTA considers that this does not go far enough in order to address the identified concern over a lack of transparency of the interests of those participating within the GNSO. Westlake's recommendation 26 relates to members of the GNSO Council, Executive Committee members of Stakeholder Groups, Constituencies and Working Group members. Within Stakeholder Groups and Constituencies themselves a great deal of work is done which is not as part of a GNSO working group, for example in the preparation of public comments. INTA considers that anyone who is actively participating on an issue should be required to identify their "interest". In doing so, merely identifying the "bodies or clients" represented is not sufficient for transparency, unless that body or client's "interest" is also identified.

In their Report at page 92 Westlake says that the GNSO Participation Rules and Operating Procedures fall short of the requirements of openness and transparency because they may be interpreted as being guidelines rather than mandated procedures. INTA agrees that there is an issue with interpretation, but considers that this stems, at least in part, from the wording of the current SOI Form rather than a belief that the GNSO Participation Rules and Operating Procedures are merely guidelines. It is possible to answer the questions in the SOI Form in such a way as to comply with the letter but not the spirit, either deliberately or due to a genuine misunderstanding of what is required. INTA considers, therefore, that the current SOI Form should be redrafted to be clearer about what is required. Guidance on what information must be provided in completing the form would also be very beneficial.

Finally, the current SOI system is not really flexible enough to deal with the fact that due to the expansion caused by the new gTLD Program the same person or company may now, quite legitimately, participate in more than one Stakeholder Group or Constituencies. For example a representative of a Brand TLD may participate in both the Business Constituency (BC) and/or Intellectual Property Constituency (IPC) and the Registry Stakeholder Group (RySG). The SOI Form and/or procedures should be revised in order to better accommodate this, and the fact that someone may participate on different issues in different capacities.

INTA also notes that at page 98 Westlake highlights a concern with "leadership recycling" but, rather than making recommendations on this issue, states that culture change must be driven by "tone at the top". The GNSO Operating Procedures do prohibit someone from

occupying the same officer position for more than 4 years. Leadership recycling has been identified by a number of respondents as a concern and a disincentive to new participants. INTA recommends that consideration is given to requiring a waiver to occupy <u>any</u> leadership position <u>within ICANN</u> for more than 4 years in a row.

5. Communication and Coordination

Respondents to the surveys expressed frustration in that the Governmental Advisory Committee ("GAC") sometimes intervenes in the PDP at a late stage, sometimes disrupting a process that was near to consensus or lobbying Board members to make late changes to a finalized new policy, which compromises the bottom-up consensus-driven approach. Westlake recommends closer liaison between the GNSO and GAC and GAC appoint a non-voting liaison to each relevant PDP Working Group, allowing for informal GAC input without binding commitment.

Recommendations: (31) the GAC-GNSO Consultation Group on GAC Early Engagement in the GNSO Policy Development Process continue its two work streams as priority projects, taking into account how GAC could appoint a non-binding, non-voting liaison to the Working Group of each relevant GNSO PDP for providing timely input.

Comment: INTA agrees with the appointment of a liaison between the GNSO and GAC and that GAC appoint a non-voting liaison to each relevant PDP Working Group, allowing for informal GAC input without binding commitment.

6. Changing Environment

ICANN should consider cultural diversity in decision-making and keep track of diversity-related metrics. The most significant change in the last decade is the shift of the majority of Internet usage from Anglophone and generally richer economies to non-Anglophone Asian, African and Latin American nations. However, there is an imbalance between this shift and GNSO participation.

Recommendations are: (32) define "cultural diversity" and monitor and publish these metrics, (33) increase geographic, gender and cultural diversity in selection of candidates for appointment to the GNSO Council, (34) rate meeting start times for PDP Working Groups to increase participation from around the world, (35) establish a GNSO Council Working Group whose membership specifically reflects the demographic, cultural and gender diversity of the Internet and to develop ways to reduce participation barriers by non-English speakers, and (36) when approving formation of a PDP Working Group and when approving GNSO Policy, the GNSO Council require geographic, cultural and gender diversity in the membership which reflects the Internet as a whole.

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Comment: INTA believes that ICANN should consider cultural diversity in decision-making, and keep track of diversity-related metrics. ICANN should establish a Working Group to encourage GNSO participation of under-represented groups.

<u>**About INTA and the Internet Committee**</u>

INTA is a 136 year-old global not-for-profit association with more than 5,700 member organizations from over 190 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). INTA's Internet Committee is a group of over 200 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.