**Intellectual Property Constituency Comment on the
Final Report of the Geographic Regions Review Working Group**

The GNSO Intellectual Property Constituency ("IPC") appreciates this opportunity to comment on the Final Report of the Geographic Regions Review Working Group ("GRWG").[1] While the IPC fully supports efforts to broaden the geographical diversity of the ICANN community and increase the effectiveness of global participants, we have certain concerns and questions about the GRWG's Final Report and how its recommendations will be implemented in light of other ongoing ICANN initiatives.

A. The Timeline and Timeliness of the GRWG Final Report

As an initial matter, the IPC wishes to comment on the timeline and timeliness of the GRWG Final Report. The IPC understands from the GRWG's Final Report that the program of work of this WG has its origins in a 2007 Board request to the ICANN community[2] to provide ICANN staff with input on concerns raised earlier that year by the ccNSO about the current definition and use of Geographic Regions within ICANN.[3]

The IPC notes that the GRWG's Initial Report was published in 2009 and only one comment, advocating an Arab region, was submitted in response to that report.[4] The GRWG's Intermediate Report was published at the end of 2010, with four comments submitted in response.[5] A considerable amount of time has passed since the GRWG's last substantive engagement in 2011, with a draft Final Report having been published on September 30, 2011.[6] The IPC notes the significant amendments that were made to the Final Report following public comments on that draft.

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[1] https://www.icann.org/public-comments/geo-regions-2015-12-23-en.

[2] https://www.icann.org/resources/board-material/resolutions-2007-11-02-en#_Toc55609368.

[3] http://ccnso.icann.org/workinggroups/ccnso-final-report-regions-wg-240907.pdf.

[4] https://www.icann.org/resources/pages/geo-regions-review-2009-07-31-en.

[5] http://forum.icann.org/lists/geo-regions-interim-report/.

[6] https://www.icann.org/resources/pages/geo-regions-draft-final-report-2011-09-30-en.

The IPC is concerned by the protracted timeline of GRWG and the impact that this may have had on the GRWG's work. The GRWG's work has overlapped several major ICANN initiatives, including the development and implementation of GNSO policy on the introduction of new gTLDs and the development and implementation of policy on the introduction of Fast Track IDN ccTLDs. The sporadic nature of the GRWG's work could be interpreted as suggesting that insufficient attention was given to the GRWG's work while these other major initiatives were underway. Further, the DNS landscape and indeed the ICANN community have changed significantly since 2007. The IPC believes that cross-community initiatives such as the GRWG should be undertaken in a timelier manner; if sufficient attention cannot be given to important work such as this while other major initiatives are underway, then it should be delayed until such time as appropriate attention can be given.

B. Overlap of GRWG and GNSO Review by Westlake

The IPC notes that the general theme of Recommendations A through F is that "for the time being"[7] the existing methodology of ICANN geographic region designation should be maintained and continue to be applied, in particular to the selection of members of the Board (which the Final Report identifies as being the original purpose of the concept of geographic diversity within ICANN, dating back to the US Government's Green Paper leading to the formation of ICANN[8]). Recommendations H and I provide that communities within ICANN have the option of following that methodology or adopting some other Board-approved methodology for ensuring geographical diversity. The Final Report notes that individual communities should have time for and flexibility in ensuring how best they deal with diversity, but also notes that it is desirable that current inconsistencies across communities (SOs, ACs, SGs, Cs, etc.) are minimized.

The IPC notes that these recommendations overlap with the ongoing work by external consultancy Westlake Governance Limited ("Westlake") to review the GNSO,[9] and questions whether the GRWG and Westlake were aware of each other's efforts in relation to geographic diversity. As a general principle, the IPC believes that overlapping efforts within the community are an inefficient use of ICANN funds and scarce volunteer time resources, and further believes that the risk of potentially conflicting outcomes from overlapping initiatives should be avoided. The IPC notes that the GRWG Final Report "is NOT suggesting that each SO or AC be

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[7] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 23, ¶ 83.

[8] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at pages 7-8, ¶¶ 23-24.

[9] Review of Generic Names Supporting Organization: Final Report, https://www.icann.org/en/system/files/files/gnso-review-final-15sep15-en.pdf.

permitted to create its own regional framework",[10] and questions whether this was taken into consideration by Westlake in its recent review of the GNSO.

C. Respecting Sovereignty

The IPC notes that Recommendation G of the GRWG provides: "ICANN must acknowledge the sovereignty and right of self-determination of States to let them choose their region of allocation."[11] The GRWG Final Report further recommends that "countries or territories should be given the opportunity to seek reassignment from one region to another",[12] and that ICANN staff should "develop a self-selection process".[13] The IPC notes that while these recommendations potentially create a risk of provoking international conflict, this position is prudently consistent with the longstanding IANA/ICANN policy of avoiding making determinations as to what is or is not a country.[14]

By contrast, Recommendation I recommends mechanisms for "special interest groups" to self-designate and participate through those groups within the ICANN environment. These groups, which "might restrict their interest to a single SO or AC, while others might span all of ICANN's communities",[15] would not be formally recognized within or replace the ICANN structure, but rather "would be complementary"[16] to it. Further, it is not clear how such groupings will interact with the formally recognized ICANN structures: will the Board, SOs and ACs be required to interact in a consistent way with these groupings? If so, how will this procedurally be achieved?

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[10] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 20, ¶ 67.

[11] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 18.

[12] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 19, ¶ 63.

[13] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 22, ¶ 79.

[14] J. Postel, RFC 1591: Domain Name System Structure and Delegation (March 1994), https://www.ietf.org/rfc/rfc1591.txt ("The IANA is not in the business of deciding what is and what is not a country.").

[15] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 22, ¶ 77.

[16] Final Report of the Geographic Regions Review Working Group, https://www.icann.org/public-comments/geo-regions-2015-12-23-en, at page 22, ¶ 78.

The IPC notes that such an approach potentially risks contravening the longstanding IANA/ICANN policy of avoiding making determinations as to what is or is not a country.[17]

D. IANA Transition Activities

Finally, the IPC questions how this (and indeed all of the WG's recommendations) will be impacted by changes to ICANN structure, governance rules and procedures through IANA transition activity. Will these questions be addressed in the next phase of IANA transition work, and if not, why not?

Respectfully submitted,

Intellectual Property Constituency

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[17] *See* footnote 14, above.