

Potential Additions/Modifications to GNSO Operating Procedures: Section 4-Voting

Note: For the sake of completeness and overall integrity within the GNSO Operating Procedures, the entire Section 4-Voting has been included below along with a newly drafted Section 4.5-Abstentions. Track changes are shown for Sections 4.1-4.4, which have been edited to be compliant with the new provisions in Section 4.5.

4. Voting

4.1 Quorum

In order for the GNSO Council to initiate a vote, a quorum must be present. A quorum is a majority of voting members in each House, which must include at least one member of each Stakeholder Group.

4.2 Voting Thresholds

Unless otherwise specified in these procedures or in the ICANN Bylaws, to pass a motion or other action, greater than 50% of the eligible voters in each House must cast affirmative votes. For all votes taken, the number of eligible voters in each House shall be fixed to the number of seats allocated in the Bylaws (a.k.a. the denominator) and is not affected by the number of members present or absent at the meeting in which the motion or other action is initiated. For rules and procedures concerning abstentions and their impact on voting thresholds, refer to 4.5 below.

Deleted: Council members are permitted to abstain in any vote, but must provide a reason which shall be recorded in the minutes along with the abstention.

4.3 Eligibility to Make Motions or Cast Votes

All actions of, or votes by, the GNSO Council are taken or cast only by the members of the GNSO Council. Persons who are not Council members may not vote; however, an approved Temporary Alternate, as prescribed in 4.5.3 is considered to be a Council member during his/her specified tenure. Acts by the GNSO Council members present at any meeting at which there is a quorum shall be acts of the GNSO Council, unless otherwise provided herein.

4.4 Absentee Voting

Members that are absent from a meeting at the time of a vote on the following items may vote by absentee ballot:

- a. Initiate a policy development process;
- b. Forward a policy recommendation to the Board;
- c. Recommend amendments to the ICANN Bylaws;
- d. Fill a position open for election.

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Comment: Is this a complete list?

The GNSO Secretariat will provide reasonable means for transmitting and authenticating absentee ballots, which could include voting by telephone, e-mail, or web-based interface. Absentee ballots must be submitted within 72 hours following the start of the meeting in which a vote is initiated, except that, in exceptional circumstances announced at the time of the vote, the Chair may reduce this time to 24 hours or extend the time to 7 days. There must be a quorum for the meeting in which the vote is initiated.

4.5 Abstentions

Comment: NEW SECTION

4.5.1 Duty of Councilors, Constituencies, and Stakeholder Groups

The GNSO Council is, by design, a small number of members organized into two voting Houses comprised of 7 and 13 members representing Constituencies and Stakeholder Groups as prescribed in the ICANN Bylaws (see <http://www.icann.org/en/general/bylaws.htm#X>). Given the Council's size and the voting thresholds that have been defined, it is extremely important that each Constituency and/or Stakeholder Group vote decisively, through its appointed or elected Councilors, on every matter that is before the Council for action.

When circumstances regarding a potential voting abstention occur that would otherwise prevent a Councilor from discharging his/her responsibilities (see Paragraph 4.5.2 below), Constituencies and Stakeholder Groups are provided a sequence of remedies (see Paragraph 4.5.3 below) designed to enable that Councilor position to continue acting on behalf of its organization and its vote to be exercised when required.

Specific Councilor obligations include:

- a. **Active participation:** a Councilor must actively participate in the activities of the Council including, *inter alia*, attending its scheduled meetings, staying abreast of the technical and administrative agenda, engaging in relevant email and live discussions, reading minutes, evaluating reports, listening to meeting recordings (in the event of absence), asking questions that foster learning, voting responsibly on all matters before the Council, and periodically reviewing the performance of the Chair and Vice-Chairs.
- b. **Reasonable inquiry:** Councilors should request and receive sufficient information, including support from their Constituencies and/or Stakeholder Groups, so that they may carry out their responsibilities. When a problem manifests itself or some issue does not make sense, a Councilor has a duty to inquire into the surrounding facts and circumstances and seek guidance.

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4.5.2 Abstention Categories

Circumstances leading to a potential voting abstention can arise when a Council Member perceives a set of conditions, relative to some action or motion before the Council that, if left unremedied, warrants his/her recusal from participating and/or voting. For purposes of the Council's operating procedures, abstentions will be classified into two categories varying by severity and potential remedy: "volitional" abstentions and "obligational" abstentions.

- a. **Volitional Abstentions**

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Circumstances may occur, from time to time, when a Council Member may elect to refrain from participating and/or voting for reasons that may include, but are not limited to:

- Perception of being inadequately informed
- Has not participated in relevant discussions or studied available materials
- Lacks sufficient understanding, expertise, or technical knowledge
- Unavoidable absence beyond the period allowed for absentee voting

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The above list itemizes several potential reasons for a volitional abstention; however, as described in Paragraph 4.5.1 above, it is the duty of Council Representatives to remain informed, to exercise their responsibilities to vote, and to take whatever reasonable measures are available so that abstentions are minimized to the greatest extent possible. Constituencies and Stakeholder Groups are encouraged to provide sufficient guidance, assistance, education, and direction, where applicable, to avoid circumstances that might otherwise result in a volitional abstention.

b. Obligational Abstentions

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This class of abstentions results from conditions in which a Councilor may find that he/she is unable to act and/or vote on a measure due to a personal (e.g. religious), professional, or political interest that interferes with his/her ability to maintain objectivity in the matter and/or raises internal ethical questions.

Disclaimer: ICANN understands and accepts that there are certain financial interests and, possibly, incentives associated with actions that affect Domain Name Policy on the Internet. Under most circumstances related to GNSO voting actions, such interests may simply be disclosed in each Councilor's required Statement and/or Declaration of Interest and do not require that the Councilor abstain from participating and/or voting. It is important to recognize that GNSO Councilors, unlike ICANN Board Members, do not have a fiduciary responsibility to ICANN in discharging their responsibilities on the Council. They are expected to represent the views of organizations and interest groups who would materially benefit from policies that are recommended by the GNSO. It is understood that Councilors are often employed members of those affected parties or may represent them in other ways that could engender subsequent benefit to them as individuals. No ICANN "Conflict of Interest" arises when a GNSO Councilor argues for and votes "Yes" or "No" on a matter which, by virtue of that action, directly or indirectly benefits that individual financially or economically. As a result, the term "Conflict of Interest," in this context, does not pertain to actions of GNSO Councilors; however, that interpretation does not imply that circumstances cannot occur in which a Councilor may perceive his/her situation as obligating a formal abstention.

Given the above disclaimer, a Councilor who believes that continuing to interact and/or vote on a motion or action before the Council not only warrants, but requires, his/her recusal, is considered to be facing an "obligational abstention." Although it is not

possible to write a set of exhaustive rules under which obligational abstentions can arise, two examples are provided by way of illustration:

Case 1: a Councilor (attorney by profession) is representing a client in legal action relating to a matter before the Council and, and as required by his/her professional code, must abstain and, furthermore, such abstention must not be counted as a negative vote. *[Note: this type of situation requires one of the remedies specified in Paragraph 4.5.3].*

Case 2: a Councilor is a paid consultant for a national political body that has a vested interest in a particular motion before the Council. The Councilor is concerned that his/her future income potential and ability to retain a consulting engagement with the national body may be affected if he/she votes on the measure. In such a case, the Councilor believes that the ethical course of action is to abstain.

In both of the above examples, neither Councilor has an ICANN Conflict of Interest; however, personal and/or professional obligations are interfering with the Council Member's ability to vote objectively; thus, requiring abstention and recusal.

4.5.3 Remedies

All Council voting thresholds, as described in the GNSO Operating Procedures and the ICANN Bylaws, require a certain number of affirmative votes in each House (all eligible members) in order to pass a measure. According to existing policies, any abstention allowed to persist, by virtue of its being a non-vote, would not contribute to the passing of a motion; therefore, by default, it functions as a negative (or "No") vote. The purpose of these procedures is to minimize the occurrences of such potential abstentions and, when they do arise, to provide remedies that will enable the functions of that Council position to be exercised and any attendant votes to be registered on behalf of the applicable Constituency and/or Stakeholder Group.

The remainder of this paragraph describes a sequence of actions that are designed to remedy those situations in which a Councilor, facing either of the two categories of abstention in Paragraph 4.5.2 above, is not able to perform his/her duties. In general, the remedies proceed from simplest in execution to more complex and should, under most circumstances, be evaluated in the order provided.

a. Voting Direction

The first method to be considered in avoiding an abstention is to request specific voting instructions in writing from the applicable Constituency and/or Stakeholder Group. This remedy requires that the organization be able to establish a consensus position on the applicable measure/motion before the Council. This action is recommended when receipt of specific direction from the Councilor's organization will obviate the conditions that would otherwise result in a recusal and/or abstention from participation/voting.

b. Proxy Voting

The second method to be considered in avoiding an abstention is the use of proxy voting.

- i. To utilize this remedy requires that the affected Constituency or Stakeholder Group be able to establish a consensus position on the applicable measure/motion for which one of its Councilors is unable to participate. Under these conditions, the organization is then permitted to transfer the vote of the abstaining Councilor by proxy to either the House NCA, another of its Constituency Councilors (where applicable), or another Councilor within the Stakeholder Group.
- ii. If an abstention is declared by a voting NCA, he/she should request permission of the Council to allow the non-voting NCA (via written proxy) to vote on the matter in place of the abstaining Councilor. In such an eventuality, the Council will use its default voting threshold to approve this action – all members may vote including the affected NCA. It should be noted that, since there is no Constituency or Stakeholder Group to provide specific voting direction, the non-voting NCA would be free to exercise his/her best judgment on the matter at issue.
- iii. Proxy instances do not count toward quorum calculations; however, in all other matters, they function as standard Council votes.
- iv. No GNSO Council Member is permitted to exercise more than one proxy vote for any specific action/motion before the Council. If a Constituency or Stakeholder Group finds itself with more than one abstention situation to be remedied, it must allocate its proxy votes to as many other Councilors as required such that no individual Councilor registers more than one at a time.

c. Temporary Alternate

The third method that can be exercised in avoiding an abstention is the naming by the Constituency or Stakeholder Group of a temporary replacement (“alternate”) who is empowered to “stand in” for the affected Councilor in Council discussions and voting. This method may also be used in circumstances of extended absence (e.g. due to illness) that do not warrant permanent replacement of a Council Member.

- i. The applicable Constituency or Stakeholder Group is expected to choose a responsible alternate who is not a current GNSO Council Member, but is otherwise knowledgeable on the matter at issue and can “stand in” for the affected Councilor.
- ii. The GNSO Secretariat will arrange for the named alternate to participate in GNSO Council meetings, teleconferences, email list discussions, as appropriate, and will cause such arrangements to be deactivated upon conclusion of the alternate’s tenure.
- iii. The alternate is entitled to participate in Council deliberations and voting only upon the specific matter(s) outlined in the request from the Constituency or Stakeholder Group (see 4.5.4-b). In all other matters, the regular Councilor is expected to continue in his/her normal capacity. The one exception to this constraint is if the alternate is replacing a Councilor who cannot fulfill his/her duties due to extended absence. In that instance, the alternate is expected to participate in all matters that would otherwise have occupied the attention of the absent Councilor.
- iv. The presence of a duly recognized Temporary Alternate at a Council meeting is counted in quorum calculations.

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The above remedies are available to Constituencies and Stakeholder Groups for the purposes of ensuring that, to the maximum extent possible, each and every GNSO Council vote can and will be exercised and that conditions otherwise resulting in an abstention can be avoided. The GNSO Council has not established any provision that would permit the voting thresholds and calculations to be altered, for example, by reducing the denominator due to an abstention. In the event that an abstention condition is not remedied through one of the actions provided above, it will not affect voting calculations under any circumstances. In other words, the number of members required to constitute a quorum and the number of affirmative votes necessary to pass a motion are not adjusted or amended in such cases. As a result, Constituencies and Stakeholder Groups are advised to utilize the above remedies whenever their votes may be jeopardized by the occurrence of a potential abstention.

4.5.4 Procedures

This paragraph outlines the steps required to notify the affected parties when an abstention condition is identified as well as the procedures that must be followed in remedying the abstention.

For the purposes of these procedures, the term “written” or “in writing” shall mean via postal mail or electronic mail (email).

a. Notification

A Councilor who believes that he/she should abstain from participation/voting on a measure before the Council is required to make the circumstances known to his/her Constituency and/or Stakeholder Group leadership (as appropriate), at the earliest opportunity, and provide a brief written notification documenting the circumstances to the GNSO Secretariat. If the situation is perceived to be confidential in nature, that information should be explicitly stated.

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b. Communication

In order to preserve the voting rights of the affected Constituency or Stakeholder Group, the mechanisms provided in Paragraph 4.5.3 should be evaluated and one selected that will resolve the abstention at the lowest level of administrative complexity. The Constituency or Stakeholder Group must provide a written statement to the GNSO Secretariat, as early as possible prior to any discussion/voting on the matter at issue, containing the following information:

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- Name of the abstaining Councilor.
- Remedy selected (from Paragraph 4.5.3).
- Specific subject/measure/motion/action of the Council for which the remedy is being exercised. *[Note: if a Temporary Alternate is being named due to an extended absence, the subject may be noted as unconstrained].*
- Date upon which the remedy will expire or terminate. *[Note: if the period needs to be extended, it can be done by providing a written notice to the GNSO Secretariat indicating the reason for extension (e.g. Council vote postponed) and a new expiration date. While there is no limit to the number of extensions; “standing” remedies are not allowed under any circumstances].*

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- For the specific remedies of Voting Direction and Proxy Voting, the communication must include an affirmation that the organization has established a consensus position on the matter at issue.
- For Voting Direction, a statement indicating that the affected Councilor has been directed how to vote on the matter.
- For Proxy Voting, identification of the House NCA or other GNSO Councilor who will register the vote for the affected Councilor.
- For a Temporary Alternate, identification of the individual who will serve as a substitute for the affected Councilor. Since the individual is not a GNSO Councilor, the organization should arrange for a short bio and Statement/Disclosure of Interest to be prepared and delivered to the GNSO Secretariat in advance of any discussion and/or voting scheduled to take place.

c. Effect and Recording of an Abstention Not Otherwise Remedied

If an abstention cannot be avoided after pursuing the remedies provided in Paragraph 4.5.3, then the Councilor may abstain from voting and an “Abstention” will be entered into the record. If the reason for the abstention warrants such action (e.g. obligational abstention), the Councilor shall be recused and not participate in discussions on the affected topic(s) or otherwise attempt to influence other Council members nor shall he/she vote on any action attendant to the matter for which the abstention conditions are present. An abstention shall not affect quorum requirements nor will it reduce the denominator in any vote tabulations for the affected House.

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