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Policy Development Process Work Team

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Proposed Final Report & Recommendations

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STATUS OF THIS DOCUMENT

18 This document is the Proposed Final Report of the Policy Development Process Work Team

19 concerning the development of, and transition to, a new GNSO policy development process. A

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20 Final Report will be prepared following public comment on this report and shall be referred to

21 the Policy Process Steering Committee for review and ultimately to the GNSO Council for

22 approval.

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30 # Table of Contents

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1 Executive Summary

- The Policy Development Process Work Team (PDP-WT) was tasked by the Policy Process Steering Committee (PPSC) to be 'responsible for developing a new policy development process that incorporates a working group approach and makes it more effective and responsive to ICANN's policy development needs'. The primary tasks of the PDP-WT were to develop:

    1. Appropriate operating principles, rules and procedures applicable to a new policy development process; and

    2. An implementation/transition plan.

- This draft Final Report presents the PDP-WT's views and recommendations in relation to task 1 and 2. The proposed recommendations represent, amongst others:
    o The codification of existing practices
    o New approaches
    o The clarification of existing rules.

- Some of the key recommendations of the new PDP are:
    o Recommended use of a Request for an Issue Report Template (recommendation 4)
    o Modification of the timeframe for the creation of a Preliminary Issue Report (recommendation 10)
    o Mandatory public comment period of a minimum of 30 days after the publication of the Preliminary Issue Report, before the vote on the initiation of a PDP and publication of Final Issue Report following review of public comments (recommendation 11)
    o Charter required for a PDP Working Group (recommendation 19)
    o Dialogue between GNSO Council and Advisory Committee in case GNSO Council decides not to initiate a PDP following an Issue Report requested by an Advisory Committee (recommendation 18)

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o Public comment period on initiation of a PDP to become optional (recommendation 22)

o Clarification of 'in scope of ICANN policy process or the GNSO' (recommendation 23)

o Required public comment period of 30 days on the Initial Report and a minimum of 21 days for any non-required public comment periods the PDP WG might choose to initiate (recommendation 28)

o Required Working Group output remains the Initial Report and Final Report (recommendation 34)

o Provision for the termination of a PDP prior to delivery of the Final Report (recommendation 37)

o Guidance to the GNSO Council on how to treat PDP WG recommendations (recommendation 39)

o Delivery of recommendations to the Board (recommendation 40)

o Possibility to use Implementation Review Teams (recommendation 43)

For a complete overview of all the recommendations, please see section 2.

▪ For purposes of its discussions, the PDP-WT divided the policy development process into the separate stages and considered each of these stages consecutively. The details of the discussion on each of these stages can be found in the Initial Report (see http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf).

In addition, a number of overarching issues that are present in multiple stages of the policy development process, including timing, translation, development of definitions, voting thresholds and decision-making methodology, were also discussed following the review of the five different stages (see section 3).

▪ The WT, supported by ICANN staff, has developed a first outline of the new Annex A (see section 4) as well as a supporting document that is envisioned to be included in the GNSO Council Operating Procedures as the PDP Procedure Manual (see section 5).

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130 ▪ To facilitate visualization of the new PDP, the WT has also developed a flow chart that
131 includes the main elements of the new proposed PDPas well as elements that would be
132 incorporated into the PDP Procedure Manual (see section [to be completed]).
133
134 ▪ In section 2, you will find an overview of the consensus recommendations of the PDP-WT.
135 For further background information on how these recommendations were developed, you
136 are strongly encouraged to review the Initial Report (see http://gnso.icann.org/issues/pdp-
137 initial-report-31may10-en.pdf), the WT's review of the public comments [include link] and
138 the WT's deliberations on the outstanding issues [include link], to appreciate the
139 deliberations of the PDP-WT that form the basis for these recommendations.
140
141 ▪ Public input is encouraged as part of the public comment period on the draft Final Report on
142 the proposed recommendations, the proposed elements for the new Annex A, the proposed
143 PDP Procedure Manual, as well as which elements should be included in the ICANN Bylaws
144 and which ones should be part of the GNSO Council Operating Rules.
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2 Approach taken & Proposed Recommendations

Following the publication of the Initial Report (see http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf) and a subsequent public comment period, the WT reviewed and addressed the comments received (see public comment review tool). In addition, the WT discussed the outstanding issues it had not been able to cover in time for the Initial Report and updated the recommendations accordingly [include link to outstanding issues document]. In order for the ICANN Community to review these updated recommendations, especially those not included in the Initial Report, the WT has published this draft Final Report for public comment. Following review of the public comments received, the WT plans to review the comments received and update the report where deemed appropriate before submitting it to the Policy Process Steering Committee for its review.

The PDP WT agreed to divide the policy development process into the following separate stages and consider each of these stages consecutively:

- Stage 1 – Planning and Request for an Issues Report
- Stage 2 – GNSO Council Review of the Issues Report and Initiation of the Policy Development Process
- Stage 3 – Working Group
- Stage 4 – Voting and Implementation
- Stage 5 – Policy Effectiveness and Compliance

Each of these stages were then broken down into related issues areas that were discussed by the PDP-WT. The following sections provide an overview of these deliberations, including proposed recommendations to address issues identified. To encourage input from the members of the WT, a number of surveys were conducted to solicit feedback. For further details on the

179   surveys and interim notes, please visit the PDP-WT Workspace: https://st.icann.org/icann-

180   ppsc/index.cgi?pdp_team.

181

182   For each of these stages a number of recommendations were developed (see hereunder) that

183   form the basis of the proposed new GNSO Policy Development Process. These

184   recommendations are:

185

186   **Stage 1 – Planning and Request for an Issues Report**

187

188   **1. Who has the ability to initiate a request for an issues report?**

189   Recommendation 1.

190   ▪   Although a request for a GNSO Issues Report has never been issued directly by the ICANN

191   Board, or any Advisory Committee (other than the At-Large Advisory Committee), the PDP-

192   WT recommends that the current three mechanisms for initiating a request for an Issue

193   Report (Board request, Advisory Committee Request or GNSO Council Member Request)

194   should be maintained.

195

196   Recommendation 2.

197   ▪   The current language in Annex A of the Bylaws contains several references to the term

198   "PDP" which over the years have been the source of confusion. The phrase "initiating a PDP"

199   is currently used to refer to initiating an issue report, for example, and is also used to refer

200   to the process of formally establishing Task Forces or working groups. Therefore, the PDP-

201   WT has distinguished the two concepts into (1) Raising an Issue and (2) Initiating a PDP. The

202   PDP-WT has recommended clarification of this language in the Bylaws.

203

204   **2. Procedures for Requesting an Issues Report**

205   See also recommendation 2.

206

207   Recommendation 3.

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209   ▪   The PDP-WT recommends the development of a Policy Development Process Procedure

210   Manual, which will constitute an integral part of the GNSO Council Operating Rules,

211   intended to provide guidance and suggestions to the GNSO and ICANN communities on the

212   overall PDP process, including those steps that could assist the community, working group

213   members, and Councillors in gathering evidence and obtaining sufficient information to

214   facilitate an effective and informed policy development process.

215

216   Recommendation 4.

217   ▪   The PDP-WT recommends that a 'request for an issues report' template should be

218   developed including items such as definition of issue, identification of problems, supporting

219   evidence, economic impact(s), effect(s) on competition and consumer trust, and rationale

220   for policy development. The use of such a template should be strongly encouraged, but

221   should not be mandatory. Such a template should become part of the Policy Development

222   Process Procedure Manual.

223

224   **3. Issue Scoping**

225   Recommendation 5.

226   ▪   The PDP-WT recommends adopting the proposed Policy Development Process Procedure

227   Manual, to provide guidance and suggestions to those parties raising an issue on which

228   steps could be considered helpful in gathering evidence and obtaining sufficient information

229   to facilitate an effective and informed policy development process.

230

231   **4. Creation of the Issues Report**

232   Recommendation 6.

233   ▪   The PDP-WT recommends that the currently required elements of an Issue Report (see

234   provision 2 of Annex A of the ICANN Bylaws) continue to be required in the new PDP, noting

235   that elements a (the proposed issue raised for consideration), b (the identity of the party

236   submitting the issue) and c (how that party is affected by the issue) should be part of the

237   new Annex A in the ICANN Bylaws, while elements d (support for the issue to initiate the

238   PDP) and e (recommendation from the Staff Manager) should be added to the Procedure

239 Manual. In addition, the PDP-WT notes that element e (recommendation from the Staff

240 Manager) should be split in two parts; the first part dealing with the question of whether a

241 PDP is considered in scope and the second part addressing whether the PDP should be

242 initiated. Furthermore, the PDP-WT recommends including in the Policy Development

243 Process Procedure Manual a recommendation for the entity requesting the Issue Report to

244 indicate whether there are any specific items they would like to see addressed in the Issue

245 Report, which could then be taken into consideration by the Staff Manager and/or Council

246 when reviewing the request. In addition, guidance could be provided in the Policy

247 Development Process Procedure Manual that the Council and/or Staff could provide advice

248 ahead of a vote on the request for an Issue Report whether they feel additional research,

249 discussion, or outreach should be conducted as part of the development of the Issue Report,

250 in order to ensure a balanced and informed Issue Report.

251

252 **5. What can the end result of a PDP be?**

253 Recommendation 7.

254 ▪ The PDP-WT recommends better information and communication with Working Group

255   members on the potential outcomes of a policy development process. There are more

256   potential outcomes of the PDP process than just the formation of "consensus policies" as

257   defined under the applicable gTLD Registry and Registrar agreements. Acceptable outcomes

258   include the development of best practices, recommendations to other supporting

259   organizations, a conclusion that no recommendation is necessary, recommendations for

260   future policy development, etc. This information could be included in the Charter of a

261   Working Group or in the instructions to a WG. It is also an element that should be included

262   in the Policy Development Process Procedure Manual.

263

264 **6. The role of ICANN staff**

265 Recommendation 8.

266 ▪ The PDP-WT recommends retaining the requirement for obtaining the opinion of the ICANN

267   General Counsel in the Issues Report as whether a proposed PDP is within the scope of the

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286   GNSO. Further details regarding the opinion of counsel are expected to be included in the

287   PDP Procedure Manual as opposed to the Bylaws.

288

289   Recommendation 9.

290   ▪   The PDP-WT recommends that additional guidance on the different roles ICANN staff can

291   perform, as outlined in the GNSO Working Group Guidelines, is to be included in the Policy

292   Development Process Procedure Manual.

293

294   **7. Community input / How to incorporate public comments**

295   Recommendation 10.

296   ▪   The PDP-WT recommends the modification of timeframes included in clause 1 – Creation of

297   an Issue Report in Annex A in relation to the development and delivery of an issues report as

298   follows:

299   Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board;

300   (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion

301   from an Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue

302   Report"). In the event the Staff Manager determines that more time is necessary to create

303   the Preliminary Issue Report, the Staff Manager may request an extension of time for

304   completion of the Preliminary Issue Report, which request should be discussed with the

305   Requestor.

306

307   Recommendation 11.

308   ▪   The PDP-WT recommends that that there is a mandatory public comment period that

309   follows the publication of a Preliminary Issue Report and before the GNSO Council is asked

310   to consider the initiation of a PDP. Such a Public Comment period would, among other

311   things, allow for additional information that may be missing from the Preliminary Issue

312   Report, or the correction or updating of any information in the Preliminary Issue Report. In

313   addition, this would allow for members of the ICANN Community to express their views to

314   the Council on whether or not to initiate a PDP. Depending on the comments received,

315   ICANN staff would include public inputs and any necessary corrections to the Preliminary

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323   Issue Report turning it into the Final Issue Report and/or summarize the comments received

324   for Council consideration.

325

326   **8. Role of Workshops / Information Gathering events**

327   Recommendation 12.

328   ▪   The PDP-WT recognizes the value of workshops on substantive issues prior to the initiation

329   of a PDP. It is therefore recommending that information on the potential role of workshops

330   and information gathering events be provided in the Policy Development Process Procedure

331   Manual. In addition, the PDP-WT recommends that the GNSO Council should consider

332   requiring such a workshop, on-line or face-to-face, on a specific issue during the planning

333   and initiation phase for a specific issue. Furthermore, the PDP-WT recommends that

334   invitations and/or announcements for workshops are communicated as broadly as possible.

335

336   **9. Efficiency and flexibility during planning / initiation phase**

337   ▪   See recommendation 12

338

339   **10. Impact Analyses**

340   Recommendation 13.

341   ▪   The PDP-WT recommends that the Policy Development Process Procedure Manual describe

342   the option for the GNSO Council to request that an impact analysis be conducted if

343   appropriate or necessary prior to the vote for the initiation of a PDP. Such an impact analysis

344   could include the assessment of the impact on the public interest; the security, stability and

345   resiliency of the DNS; competition, consumer trust and consumer choice, and; international

346   participation (as outlined in section 3 of the Affirmation of Commitments) [as well as the

347   impact on human rights].

348

349   **11. Resources and Prioritization**

350   Recommendation 14.

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360   ▪ The PDP-WT believes that the GNSO Council should take into full account the resources
361   available, both volunteers and staff, when making its decision on whether or not to initiate a
362   PDP.
363

364   Recommendation 15.
365   ▪ The PDP-WT discussed the notion of a fast-track procedure extensively but did not come to
366   agreement on how such a fast-track procedure might look. The PDP-WT recommends that
367   the GNSO Council re-evaluates the need for a fast-track procedure in due time as part of the
368   review of the new PDP, as it is of the view that the new PDP will offer additional flexibility
369   and would allow for 'faster' PDPs provided that the necessary resources are available.
370

371   **Stage 2 - GNSO Council Review of the Issues Report and Initiation of the Policy Development**
372   **Process**
373

374   **1. Flexibility when launching a policy development process**
375   Recommendation 16.
376   ▪ The PDP-WT recommends modifying the timeframes currently included in clause 3 of Annex
377   A – "Initiation of a PDP" to reflect current practice and experience. In addition, it proposed
378   to add language to codify the current practice that any voting Council members can request
379   the deferral of the consideration of an initiation of a PDP for one Council meeting.
380

381   Recommendation 17.
382   ▪ The PDP-WT recommends that further guidance be included in the Policy Development
383   Process Procedure Manual on how to deal with situations where further flexibility is
384   required e.g. additional research, ensuring that the Council provides clear indications on
385   expected timing of next steps.
386

387   **2. Consider an appeals mechanism in case the GNSO Council votes against initiating a PDP**
388   **requested by an AC**
389   Recommendation 18.

Comments:

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Deleted: prioritize PDPs and ensure that the resources exist (both staff and volunteer) upon the initiation of a PDP. In light of theupcoming GNSO Council Prioritization activity, the PDP-WT is deferring the specifics of how such prioritization can be achieved pending the outcome of such activity.

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Deleted: The PDP-WT is considering the notion of having a fast-track procedure that would allow for a more timely PDP in cases where such urgent action is deemed to be necessary while at the same time ensuring broad participation and avoiding gaming. The PDP-WT hopes to receive further input from the community on which elements such a procedure should contain and how it would work in practice, during the public comment period. ... [5]

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410   ▪   The PDP-WT recommends that if the GNSO Council votes to not initiate a PDP following an
411   Issue Report requested by an Advisory Committee (AC), the AC or its representatives should
412   have the opportunity to meet with representatives of the GNSO, and in particular, those
413   voting against the initiation of the PDP, to discuss the rationale for the rejection and why the
414   AC feels that reconsideration is appropriate. Following this meeting, the AC may submit a
415   statement to the GNSO Council requesting a re-vote and giving its rationale for such a re-
416   vote. This process may be followed just once for any given Issue Report.

417

418   **3. Should the approved voting thresholds apply to the entire GNSO Council or just members**
419   **present (as is current practice)?**
420   ▪   As it is expected that a recommendation for absentee voting / ballot will be included in the
421   GNSO Council Operating Rules, the PDP-WT considers this question no longer valid as all
422   Councillors will have the opportunity to vote whether they are present at the meeting or
423   not, therefore no recommendation is made in relation to this issue.

424

425   **4. Where in the process is chartering done?**
426   Recommendation 19.
427   ▪   The PDP-WT recommends updating clause 7 of Annex A of the ICANN Bylaws to reflect that
428   a charter is required for all Working Groups, and to specify the voting threshold that should
429   apply to the adoption of the working group charter which is identical to the one that applies
430   to the initiation of the PDP. Any modifications to a Working Group Charter may be adopted
431   by a simple majority vote of the GNSO Council.

432

433   Recommendation 20.
434   ▪   The PDP-WT recommends that a link to the new Annex A and the PDP Procedure Manual,
435   once finalized and approved, are included in the GNSO Working Group Guidelines, as these
436   two documents provide an overview of the requirements for PDP WGs.

437

438   **5. Should expedited procedures be available in case of urgency?**
439   See recommendation 15

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Deleted: no special formal appeals mechanism be developed. However, the PDP-WT recommends that the GNSO Council be required to state its reasons for a PDP after receipt of an Issues Report.

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452

6. How to involve advice from other ACs or SOs, and obtain consistent input from the Board?

453

Recommendation 21.

454

455   ▪   The PDP-WT recommends that further explanation on how to involve Advisory Committees

456   or Supporting Organisations as currently already being done be included as part of the Policy

457   Development Process Procedure Manual. Input from other SOs and ACs must be sought and

458   treated with the same due diligence as other comments and input processes. In addition,

459   comments from ACs and SOs should receive a response from the WG. This may include, for

460   example, direct reference in the applicable Report or embedded in other responsive

461   documentation or a direct response.

462

463   **7. Evaluate the ICANN Staff costs and resources needed to conduct the PDP and prioritize**

464   **existing policy work and revisit their existing deadlines and deliverables.**

465   See recommendation 14

466

467   **8. Public Comment Period after the Initiation of a PDP**

468   Recommendation 22.

469   ▪   Taking into account the required public comment period on the Preliminary Issue Report

470   (see recommendation 11), the PDP WT considers it no longer necessary to require a public

471   comment period on the initiation of a PDP. However, a WG may, at its discretion, decide to

472   obtain public comments at the start of their deliberations to obtain public input on the

473   Charter Questions or other specific issues related to their Charter.

474

475   **9. Clarification of 'in scope of ICANN policy process or the GNSO'**

476   Recommendation 23.

477   ▪   The PDP-WT recommends modifying clause 3 – Initiation of a PDP to clarify that within

478   scope means 'within scope of ICANN's mission and more specifically the role of the GNSO' as

479   opposed to within scope of the contracted parties' definition of "consensus policies".

480   Furthermore, the PDP-WT recommends that issues raised should be mapable against

481   specific provisions in the ICANN Bylaws, the Affirmation of Commitments and/or ICANN's

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500 Articles of Incorporation. This information would be required to be included in the request

501 for an Issue Report and should be added as a category in the Issue Report request template.

502

503 **Stage 3 – Working Group**

504

505 Recommendation 24.

506 ▪ The PDP-WT recommends that even though a Working Group currently forms the basic

507 mode of operation for a PDP, there should be flexibility to accommodate different working

508 methods if deemed appropriate by the GNSO Council, or allow for a different mode of

509 operation if so desired by the GNSO Council in the future without requiring a complete

510 overhaul of the Bylaws or GNSO Operating Rules.

511

512 **1. How to maximize the effectiveness of Working Groups**

513 Recommendation 25.

514 ▪ The PDP-WT recommends that each PDP WG will be strongly encouraged to review and

515 become familiar with the GNSO Working Group Guidelines and the PDP Procedure Manual

516 (once published), which includes further information and guidance on the functioning of

517 GNSO Working Groups.

518

519 **2. Communication with different ICANN Departments (e.g. Legal, Compliance, Services)**

520 Recommendation 26.

521 ▪ The PDP-WT recommends that further guidance is to be provided on which mechanisms are

522 available to a WG to communicate with different ICANN departments in the Policy

523 Development Process Procedure Manual.. Recommended approach would be for ICANN

524 policy staff to serve as the intermediary between a WG and the various ICANN departments

525 (finance, legal, compliance, etc.), provided that a procedure is in place which allows for

526 escalation via the WG Chair if the WG is of the opinion that communication is hindered

527 through the involvement of ICANN policy staff.

528

529 **3. Linking policy development with ICANN's strategic planning and budgeting**

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531   Recommendation 27.

532   ▪   The PDP-WT recommends that the initiation of a PDP may include consideration of how

533   ICANN's budget and planning can best accommodate the PDP and/or its possible outcomes,

534   and, if applicable, how the proposed PDP is aligned with ICANN's Strategic Plan.

535

536   **4. Public Comment**

537   Recommendation 28.

538   ▪   The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to change the

539   duration of the public comment period on the Initial Report from twenty to a minimum of

540   thirty calendar days. This same minimum should also apply to the public comment period on

541   the Issue Report, while other public comment periods that a WG / GNSO Council opt to have

542   as part of a PDP should have a minimum duration of 21 days. The minimum durations for

543   the Issue Report and Initial Report should be included in the ICANN Bylaws while the

544   minimum requirement of 21 days for other public comment periods should be included in

545   the Policy Development Process Procedure Manual. Further guidance on the recommended

546   duration, for example taking into account overlap with ICANN meetings, should be included

547   in the Policy Development Process Procedure Manual.

548

549   Recommendation 29.

550   ▪   The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to reflect the

551   current practice that a summary and analysis of the public comments received is to be

552   provided by the staff manager to the Working Group, which will be responsible for

553   reviewing and taking into consideration the public comments received.

554

555   Recommendation 30.

556   ▪   The PDP-WT recommends providing further guidance on how to conduct public comment

557   periods and review public comments received as part of the Policy Development Process

558   Procedure Manual. Such guidance should include the expectation that public comments are

559   carefully considered and analyzed by the WG; encouraging WGs to explain their rationale for

560   agreeing or disagreeing with the different comments received and, if appropriate, how

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570   these will be addressed in the report of the WG, and; other means to solicit input than the

571   traditional public comment forums such as surveys.

572

573   **5. Implementation, Impact and Feasibility**

574   Recommendation 31.

575   ▪ The PDP-WT recommends that PDP WGs provide input on issues related to implementation,

576   impact (economic, business, social, operational, etc.) and feasibility including, when

577   considered appropriate:

578   o Recommend the inclusion of implementation guidelines as part of the Final

579   Report;

580   o Consultation with the WG / Council on the draft implementation plan;

581   o The creation of an implementation team that consists of representatives of the

582   WG, amongst others, which would be tasked to review / provide input during

583   the implementation phase

584   Further guidance on this issue is to be included in the Policy Development Process

585   Procedure Manual.

586

587   **6. ICANN Staff Resources**

588   Recommendation 32.

589   ▪ The PDP-WT recommends that staff resources needed or expected in order to implement

590   the policy recommendations should be evaluated as part of the WG recommendations, and

591   as part of the Council's review of those recommendations, as part of the feasibility analysis

592   and/or impact statement (see also recommendation 31).

593

594   **7. Stakeholder Group / Constituency Statements**

595   Recommendation 33.

596   ▪ The PDP-WT recommends amending clause 7 of Annex A of the ICANN Bylaws to reflect the

597   practice that Stakeholder Group / Constituency statements are requested by the Working

598   Group and the timeline for submission should start from that point instead of the initiation

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600   of the PDP. It should be noted in the Policy Development Process Procedure Manual that a

601   WG can request Stakeholder Group / Constituency statements more than once if so desired.

602

603   **8. Working Group Output**

604   Recommendation 34.

605   ▪   The PDP-WT recommends that PDP Working Groups continue to be required to produce at

606   least an Initial Report and a Final Report, noting that more products can be produced if

607   desirable.

608

609   Recommendation 35.

610   ▪   The PDP-WT does note that the description of the difference between an Initial Report and a

611   Final Report as currently described in the Bylaws is not in line with actual practice, and

612   recommends that this language is updated to reflect that an Initial Report may reflect the

613   initial ideas of a WG which are then finalized, in combination with review and analysis of the

614   public comment period in the second phase leading to the Final Report.

615

616   Recommendation 36.

617   ▪   The PDP-WT recommends that a public comment period on the Initial Report remains

618   mandatory. Additional guidance on further optional public comment periods, e.g. when

619   there are substantial differences between the Initial Report and Final Report are to be

620   included as part of the Policy Development Process Procedure Manual.

621

622   **9. Termination of a PDP**

623   Recommendation 37.

624   ▪   The PDP recommends that a provision be added to the PDP Procedure Manual to allow for

625   the termination of a PDP prior to the publication of a Final Report only for significant cause,

626   upon a motion that passes with a Supermajority vote in favour of termination.

627

628   **Stage 4 – Voting and Implementation**

629

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631 **1. Working Group Recommendations**

632 Recommendation 38.

633 ▪ The PDP-WT recommends modifying clause 10 – "Council Deliberations of Annex A" of the

634 ICANN Bylaws to reflect current practice and requirements in the rules of procedure to

635 consider a report if it is received at least eight days in advance of a Council meeting,

636 otherwise the report shall be considered at the next Council meeting. In addition, the PDP-

637 WT recommends adding language to codify the current practice that any voting Council

638 member can request the deferral of the consideration of a final report for one Council

639 meeting.

640

641 Recommendation 39.

642 ▪ The PDP-WT recommends to provide additional guidance to GNSO Council in the Policy

643 Development Process Procedure Manual on how to treat Working Group recommendations,

644 especially those that have not received full consensus and the expected / desired approach

645 to adoption of some, but not all, or rejection of recommendations. PDP WGs should be

646 encouraged to indicate which, if any, recommendations are interdependent so the GNSO

647 Council can take this into account as part of their deliberations. The Council should be

648 strongly discouraged from itemizing recommendations that the PDP WT has identified as

649 interdependent. The PDP-WT would like to express its concern about the GNSO Council

650 'picking and choosing' or modifying recommendations, but recognizes that this is the

651 Council's prerogative. The PDP-WT would like to encourage the GNSO Council that there

652 were it does have concerns or would propose changes to recommendations, it passes these

653 concerns and/or recommendations for changes back to the respective PDP Working Group

654 for their input.

655

656 **2. Public Comments**

657 See recommendation 36.

658

659 **3. Delivery of Recommendations to the Board**

660 Recommendation 40.

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664   ▪   The PDP-WT recommends that the GNSO Council is responsible for the Board Report either

665   as author of the report or to approve the report before it is sent to the Board. Board Reports

666   on PDPs should be delivered from the GNSO Council directly to the Board and if any

667   summaries or addenda are needed, that should be the responsibility of the Council with the

668   help of the Working Group (if necessary). The PDP-WT discussed at length the current

669   practice of ICANN Policy Staff submitting a separate report to the Board, which is not

670   disclosed as a standard practice to the community at this stage, noting that this is not

671   directly related to the PDP, and unanimously believes that these reports should not be kept

672   confidential. If ICANN Policy Staff would like to submit a separate report related to a PDP to

673   the Board or is requested to do so, it should be done in an open and transparent matter,

674   noting that there might be cases where certain information cannot be provided due to its

675   privileged nature. Nevertheless, even in those circumstances, as much information as

676   possible, without disclosing business confidential information, should be provided.

677

678   **4. Agreement of the Council**

679   Recommendation 41.

680   ▪   The PDP-WT has discussed whether the voting thresholds might need to be reviewed (see

681   also overarching issues) but agrees that this issue should be covered as part of the next

682   overall review of the GNSO. The WT does note that it has proposed two new voting

683   thresholds in relation to the adoption of the WG Charter (see recommendation 19) as well

684   as a new voting threshold for the termination of a PDP (see recommendation 37).

685

686   **5. Board Vote**

687   Recommendation 42.

688   ▪   The PDP-WT recommends that the provisions in relation to the Board Vote in the ICANN

689   Bylaws remain essentially unchanged, but proposes the following modification to the

690   current provision 13f to clarify what 'act' means: If the GNSO Council is recommending a

691   Consensus Policy as defined within ICANN contracts, the Board can only approve a

692   Consensus Policy that was approved by the required GNSO voting threshold. In addition, an

693   explanation needs to be added in the Policy Development Procedure Manual to clarify that

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Deleted: has not arrived yet at a possible recommendation in relation to this issue and hopes to receive further input on this issue during the public comment period.

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705   all recommendations, also those not recommending new or changes to Consensus Policies,

706   should be communicated to the Board.

707

708   **6. Implementation**

709   Recommendation 43.

710   ▪   The PDP-WT recommends the use of WG Implementation Review Teams, when deemed

711   appropriate, which would be responsible in dealing with implementation issues. A PDP WG

712   should provide recommendations for whether a WG Implementation Review Team should

713   be established and any other recommendations deemed appropriate in relation to such a

714   Review Team (e.g. composition) as part of its Final Report. (see also recommendation 32)

715

716   **Stage 5 – Policy Effectiveness and Compliance**

717

718   **1. Periodic assessment of PDP Recommendations / Policy**

719   Recommendation 44.

720   ▪   The PDP-WT notes that a periodic assessment of PDP recommendations and/or policy is

721   important. WGs should be encouraged to include proposed timing, assessment tools and

722   metrics for review as part of their Final Report.

723

724   **2. GNSO Council Review of the PDP Working Group**

725   Recommendation 45.

726   ▪   The PDP Work Team notes that several documents, including the PPSC-WG WT and the WG

727   Guidelines, reference a "Working Group Self-Assessment," which all WGs are encouraged to

728   conduct. The Work Team believes that this could be a valuable exercise, and encourages

729   PDP WGs to complete a candid and objective self-assessment at the conclusion of their

730   work. However, the Work Team also notes that there is no standard or template for such an

731   assessment, nor clear guidance on who (Chair, Liaison and/or all WG participants) should

732   conduct the assessment, and recommends that these guidelines be developed.

733

734   **3. Periodic assessment of overall PDP process**

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Deleted: The PDP-WT notes that the GNSO Council Review of a PDP Working Group is important but has not arrived at any possible recommendations yet and hopes to receive further input on this issue during the public comment period

753   Recommendation 46.

754   ▪ The PDP-WT notes that the periodic assessment of the overall PDP process is important,

755   noting that a certain threshold of completed PDPs should be met before an overall review is

756   carried out. The WT does not have a specific view on whether the PPSC or a new Standing

757   Committee should be responsible for such a periodic assessment.

758

759   Recommendation 47.

760   ▪ The PDP-WT recommends that such an overall review also includes the review of the

761   Working Group Model in the context of the PDP, which should assess whether there are

762   stages in the PDP that are more suitable for Working Groups and those that might be more

763   suitable for formal advice from Stakeholder Groups and Constituencies.

764

765   In addition, a number of overarching issues were identified which were deemed to have an

766   impact on the overall policy development process or related to various stages of the new PDP

767   and therefore needed to be considered once an initial outline of the new PDP would have been

768   completed. These overarching issues consist of:

769

770   • Timing

771   • Translation

772   • Development of definitions

773   • Voting thresholds

774   • Decision-making methodology

775   • Transition / Implementation of the new PDP

776

777   Based on the discussions and deliberations to date, a flow chart which outlines the main

778   elements of the new Annex A – GNSO Policy Development Process of the ICANN Bylaws can be

779   found in section 9.

780

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Deleted: The PDP-WT has not completed its work on all these overarching issues, but has noted in section 8 its initial thoughts on these issues for public input and consideration. It is the intention of the PDP-WT to finalize its recommendations on these issues following the review and analysis of public comments on this initial report. _   ... [6]

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791   The WT, supported by ICANN staff, has also developed a first outline of the new Annex A (see

792   section 4) as well as a supporting document that is envisioned to be included in the GNSO

793   Council Operating Procedures as the PDP Procedure Manual (see section 5).

794

795   Based on the input received on the Initial Report and subsequent discussions, the PDP-WT has

796   updated this report to a draft Final Report to allow for further input and feedback from the

797   ICANN Community. Following review and analysis of the public comments received, the PDP-WT

798   is expected to finalize its report recommendations for submission to the Policy Process Steering

799   Committee (PPSC).

800

801

802

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804 # 3 Overarching Issues

805

806 In addition to the five stages discussed in the previous sections of this report, the PDP-WT also
807 identified a number of 'overarching issues' which were deemed to have an impact on the overall
808 policy development process or related to various stages of the new PDP and therefore needed
809 to be considered once an initial outline of the new PDP would have been completed. These
810 overarching issues consist of:

811

812   o   Timing
813   o   Translation
814   o   Development of definitions
815   o   Voting thresholds
816   o   Decision-making methodology
817   o   Transition / Implementation of the new PDP

818

819 The initial deliberations on a number of these issues can be found in the Initial Report (see
820 http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf). On the basis of these initial
821 deliberations, the review of the public comments received and further discussions, the PDP-WT
822 has reached the following preliminary conclusions. It is the intention of the PDP-WT to finalize
823 these conclusions following the review and analysis of public comments on this draft Final
824 Report.

825

826 **1. Timing**

827

828 Based on the different recommendations that have timing included, the following timeline
829 would be applicable to every PDP, noting the flexibility in a number of the different stages.

830

Task	Duration

Development of Preliminary Issues Report	To be decided [To be updated following finalization of recommendation 10]
Public Comment Period on Preliminary Issues Report	Minimum of 30 Days
Submission of Issues Report, including summary of comments received	Within 30 days of the closing of the public comment forum, though the Staff Manager may request an extension of that 30-day time for delivery based upon the considerations set forth in the PDP Procedure Manual.
Consideration of Issues Report by GNSO Council	At the Council meeting following the receipt of an Issue Report; provided that the Issue Report is received at least eight (8) calendar days prior to the GNSO Council meeting. If the Issue Report is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council shall consider the Issue Report at the subsequent meeting following the next GNSO Council meeting. At the written request of any Stakeholder Group or constituency, for any reason, consideration of the Issue Report may be postponed by not more than one (1) meeting, provided that that such Stakeholder Group or constituency details the precise rationale for such a postponement. Consideration of the Issue Report may only be postponed for a total of one (1) meeting, even if multiple Stakeholder Groups or constituencies request

	postponement.
Development of WG Charter	Council may set timeline for delivery of WG Charter
Approval of WG Charter	The Council shall consider whether to approve the proposed Working Group Charter at the Council meeting following the Chair's receipt of the proposed Working Group Charter; provided that the proposed Working Group Charter is received at least eight (8) calendar days prior to the GNSO Council meeting. If the proposed Working Group Charter is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council shall consider the proposed Working Group Charter at the meeting after the next GNSO Council meeting.
Formation of WG	To determined by the GNSO Council
Working Group	Milestones / timetable to be included in Charter if deemed appropriate
Request for Constituency / Stakeholder Group Statements	35 days
Public Comment Period on the Initial Report	Minimum of 30 days
Consideration of Final Report by GNSO Council	The GNSO Council shall consider whether to adopt the recommendations within the Final Report at the next meeting after the Final Report is forwarded to the Council Chair, provided that the Final Report is forwarded to the Council Chair at least eight (8) calendar

	days prior to the GNSO Council meeting. If the Final Report is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council shall consider the Final Report at the meeting after the next GNSO Council meeting. At the written request of any Stakeholder Group or constituency, for any reason, consideration of the Final Report may be postponed by not more than one (1) meeting, provided that that such Stakeholder Group or constituency details the precise rationale for such a postponement. Consideration of the Final Report may only be postponed for a total of one (1) meeting, even if multiple Stakeholder Groups or constituencies request postponement.
Submission of Council Recommendations Report to the Board	[To be decided]
Consideration by the ICANN Board	Where feasible, the Board shall consider the Recommendations Report at the Board's next meeting after receipt of the Recommendations Report from the GNSO Council.
Adoption by the ICANN Board	When the Board is prepared to make a decision on a GNSO Council Recommendation or Supplemental Recommendation, the Board shall take a preliminary (non-binding) vote on the Recommendation, and, where practicable, will publish a tentative decision that allows for

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	a ten (10) day period of public comment prior to final decision by the Board
Implementation	

831

832 Although it is difficult to indicate the overall timing for a PDP from start to finish due to the

833 flexibility in a number of the different steps, it might be worth pointing out that based on review

834 of recent PDPs the average length varies between 350 – 550 days.

835

836 **2. Translation**

837

838 What translations should be provided at each stage of the policy development process and how

839 will translation impact timing / delay e.g. in relation to a public comment period. How to assess

840 the success and/or additional needs for translation? The following are ICANN's current

841 translation principles:

842

843 *ICANN will provide timely and accurate translations, and move from an organisation that*

844 *provides translation of texts to one that is capable of communicating comfortably with a*

845 *range of different languages. The translation framework comprises a four-layer system:*

846 - *The bottom layer contains those specific documents and publications that*
847 *address the organisation's overall strategic thinking. They will be translated*
848 *into an agreed block of languages.*

849 - *The next layer contains a class of documents that ICANN undertakes to provide*
850 *in different languages to allow interaction within ICANN processes by non-*
851 *English speakers.*

852 - *The third layer comprises documents suggested by ICANN staff as being helpful*
853 *or necessary in ongoing processes; and documents requested by the Internet*
854 *community for the same reasons. These documents will be run through a*
855 *translation approval system.*

856 - *The top layer is where the community is encouraged to use online collaborative*
857 *tools to provide understandable versions of ICANN materials as well as material*

858 *dynamically generated by the community itself. ICANN will provide the*

859 *technology for community editing and rating, and a clear and predictable*

860 *online location for this interaction to occur. It will also seek input from the*

861 *community to review the tools.*

862

863 *English will remain the operating language of ICANN for business consultation and legal*

864 *purposes.*

865

866 *Every effort will be made to ensure equity between comments made in languages other*

867 *than English and those made in English. If it is not possible to arrange the release of*

868 *particular documents in the agreed languages at the same time, then each language will be*

869 *provided with the same time period in which to make comments.*

870

871 *ICANN will adopt the International Organisation for Standardisation's 639-2 naming system*

872 *for identifying and labelling particular languages.*

873

874 PDP-WT Preliminary Conclusion:

- The WT recognizes the importance of translation to facilitate participation of non-English speakers in the GNSO Policy Development Process. At the same time, the WT acknowledges the costs and timing implications that might result from enhanced translation of documents. Furthermore, the WT wants to emphasize the importance of a coherent and consistent approach across ICANN as an organization when it comes to translation. Awaiting and encouraging an overall ICANN policy on translation, the WT recommends the following in relation to the GNSO Policy Development Process:

1. At a minimum the following elements should be translated in the 5 UN languages:
   - WG Charter
   - Executive Summary of Initial, Final or any other report that is put out

for public comment, including recommendations (if not included in the
Executive Summary)

2. Public comments should be received in other languages and where feasible, these
comments should also be translated back into English.

3. ICANN is strongly encouraged to use volunteers to assist with translation, where
appropriate and practical

875

876 **3. Development of Definitions**

877

878 **PDP-WT Preliminary Conclusion**: the WT recommends that, where appropriate, definitions are
879 added to the new Annex A and/or Policy Development Process Procedure Manual based on the
880 WT discussions and recommendations to define concepts such as 'in scope', 'consensus policies'
881 and 'policy development process'.

882

883 **4. Voting thresholds**

884

885 The WT discussed whether the voting thresholds as adopted as part of the new GNSO structure
886 are still appropriate and effective. The existing thresholds are:

887

888   1.   Raising an Issue: Council initiation: 25% of the members of the Council of each house or
889   a majority of one house.

890   2. Initiating PDP:
891   a. More than 33% of the Council members of each House; or More than 66% vote
892   of one House if within scope
893   b. GNSO Supermajority Vote required if not in scope (75% of one House and a
894   majority of the other house)

895   3. Vote on Approving the Charter (as recommended by the WT – see recommendation 19)
896   a. More than 33% of the Council members of each house; or More than 66% of
897   one House if within Scope
898   b.   GNSO Supermajority vote required if not in scope

899   4.   Vote to terminate a PDP (as recommended by the WT – see recommendation 37)

900   5.   Vote of Council (From Article 10, Section 3, #9)

901   a.   Approve a PDP Recommendation without a GNSO Supermajority – requires an

902   affirmative vote of majority of each House and further requires that one GNSO

903   Council member representative of at least 3 of the 4 Stakeholder Groups

904   supports the Recommendation

905   b.   Approve a PDP Recommendation with a GNSO Supermajority – requires an

906   affirmative vote of a GNSO Supermajority; and

907   c.   Approve a PDP Recommendation Imposing New obligations on certain

908   Contracting Parties: where an ICANN contract provision specifies that "a two-

909   thirds vote of the council" demonstrates the presence of a consensus, the GNSO

910   Supermajority vote threshold will have to be met or exceeded with respect to

911   any contracting party affected by such contract provision.

912   6.   Board Vote

913   a.   In the event that the Council reached a GNSO Supermajority Vote, the

914   Board shall adopt the policy according to the GNSO Supermajority Vote

915   recommendation unless by a vote of more than sixty-six (66%) percent

916   of the Board determines that such policy is not in the best interests of

917   the ICANN community or ICANN.

918   b.   In the event that the Board determines not to act in accordance with

919   the GNSO Supermajority Vote recommendation, the Board shall (i)

920   articulate the reasons for its determination in a report to the Council

921   (the "Board Statement"); and (ii) submit the Board Statement to the

922   Council.

923   c.   The Council shall review the Board Statement for discussion with the

924   Board within twenty (20) calendar days after the Council's receipt of the

925   Board Statement. The Board shall determine the method (e.g., by

926   teleconference, e-mail, or otherwise) by which the Council and Board

927   will discuss the Board Statement.

928   d. At the conclusion of the Council and Board discussions, the Council shall

929   meet to affirm or modify its recommendation, and communicate that

930   conclusion (the "Supplemental Recommendation") to the Board,

931   including an explanation for its current recommendation. In the event

932   that the Council is able to reach a GNSO Supermajority Vote on the

933   Supplemental Recommendation, the Board shall adopt the

934   recommendation unless more than sixty-six (66%) percent of the Board

935   determines that such policy is not in the interests of the ICANN

936   community or ICANN.

937   e. In any case in which the Council is not able to reach GNSO

938   Supermajority vote, *a majority vote of the Board will be sufficient to act*

939   f. When a final decision on a GNSO Council Recommendation or

940   Supplemental Recommendation is timely, the Board shall take a

941   preliminary vote and, where practicable, will publish a tentative

942   decision that allows for a ten (10) day period of public comment prior to

943   a final decision by the Board

944

945 **PDP-WT Preliminary Conclusion:**

946 ▪ The WT agreed that the existing voting threshold 1 for 'Raising an Issue' is appropriate as

947   the initial gauge should be low.

948 ▪ The WT discussed voting threshold 2 'Initiating a PDP' and discussed whether a higher voting

949   threshold should apply if staff would recommend against initiating a PDP (not related to

950   scope issue). Most agreed that no higher voting threshold should be required, as it would

951   otherwise give staff indirectly a vote in the process. WT members discussed the issue of

952   prioritization and the role the current threshold, which is considered low by some, plays in

953   creating work the community and staff has difficulty keeping up with. Some where of the

954   opinion that keeping the threshold as it currently is would be appropriate. Others

955   considered there to be a strong relationship between this threshold and the prioritization

956   effort the GNSO Council is currently undertaking and were of the opinion that if there is no

957   effective prioritization this threshold may need to be raised in order to avoid GNSO

958   community and staff overload. No consensus was reached on how to address this issue.

959   ▪ The WT discussed voting threshold 2b and debated what is actually meant with 'if not in

960   scope'. It was noted that there has been one PDP that was considered 'out of scope' namely

961   the 'GNSO Policies for contractual conditions, existing gTLDs PDP' which addressed

962   contractual provisions in gTLD registry agreements. In debating the value of initiating a PDP

963   on issues that are 'out of scope' or on issues that might not be enforceable on contracted

964   parties, it was pointed out that the PDP is the only formal mechanism the GNSO has to bring

965   issues to the attention of the ICANN board.

966   ▪ The WT recommends that the definition of a 'GNSO Supermajority vote' is redefined to

967   include the original meaning of GNSO Supermajority i.e. 2/3 of Council members of each

968   house so a GNSO Supermajority vote would be 75% of one House and a majority of the

969   other house **or** 2/3 of Council members of each house.

970   ▪ In line with recommendation 19, the WT recommends the proposed voting threshold for the

971   adoption of a WG charter (3), noting that this would require every WG to have a charter. In

972   cases where two or more competing charters would be proposed, the GNSO Council Chair

973   should facilitate a meeting between the proponents of the different charter to determine

974   whether a compromise charter can be developed ahead of the GNSO Council vote. If no

975   compromise is found, the two or more competing charters are put forward for GNSO

976   Council consideration whereby the charter with the most votes is adopted. Any

977   modifications to a Working Group Charter may be adopted by a simple majority vote of the

978   GNSO Council.

979   ▪ In relation to voting threshold 4 – Vote of the Council, the WT confirms its earlier conclusion

980   that the Council should have the flexibility to address WG recommendations as a package or

981   individually, but that a WG would be encouraged to indicate to the Council where there

982   would be linkage between recommendations as part of its report. In those cases where

983   recommendations are considered to be mutually exclusive, it would be the expectation that

984   the GNSO Council Chair would manage the process of deliberation and decision on such

985   recommendations. (see recommendation 39)

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Deleted: It was agreed to put this issue to the mailing list for further input.

988 ▪ In relation to 4c, it was noted that only registrars have a clause in their agreement that
989 specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus.
990 Registries have a general definition of consensus in their agreements. A staff memorandum
991 circulated to the group (see http://forum.icann.org/lists/gnso-ppsc-pdp/msg00359.html)
992 recommends 'to standardize all of the voting requirements for all registries and all registrars
993 in order to adopt Consensus Policies that would be enforceable against them. Staff proposes
994 that the GNSO Supermajority Vote apply in all instances where the GNSO Council intends to
995 adopt consensus policies to be enforceable against all registrars and registries'. Some
996 argued that the current wording could also imply the lower threshold vote and this
997 clarification would ensure that the higher threshold would apply, while others argued this
998 might be a lower standard than currently applicable as 'consensus' in the registry agreement
999 does not only relate to the vote of the GNSO Council.
1000 ▪ In relation to 5a, the WT discussed whether it would be possible to word this provision in a
1001 positive way (instead of noting how many are needed to reject, note how many are needed
1002 to approve).
1003 ▪ In relation to 5b, the WT highlighted the importance of the board statement with info on
1004 why something was rejected. The WT discussed whether a timeframe should be included as
1005 to when the board is required to submit its statement to the GNSO Council and it was
1006 suggested that a certain timeframe should be included (e.g. Board shall within x days submit
1007 the board statement to the GNSO Council with guidance on how to cure the identified
1008 deficiencies).
1009 ▪ In relation to 5c, the WT agreed to consider including a similar timeframe as for earlier
1010 discussed items (i.e. consider at next meeting if received 8 days ahead of the meeting, or at
1011 the following meeting if not received 8 days ahead of the meeting).
1012 ▪ The WT also discussed whether the board should be able to pick and choose
1013 recommendations or whether they should be adopted or rejected 'en block' as has been
1014 current practice. Most agreed that the board should only be able to adopt or reject the
1015 GNSO Council recommendations as a whole as policy development is supposed to be done
1016 at the SO level, not by the board.

1017   ▪   The WT discussed 5e and noted that there were different interpretations of what 'will be
1018   sufficient to act' means. Some members of the contracted parties interpret this as meaning
1019   that without supermajority vote of the Council, the Board can act and adopt the
1020   recommendations with a majority vote, but these would not be binding on the contracted
1021   parties. Other members of the non-contracted parties were of the opinion that it meant that
1022   the board could act and adopt policy recommendations that would be enforceable on
1023   contracted parties even without a supermajority vote of the GNSO Council. There was
1024   support to clarify this provision to note that the board can adopt enforceable policy
1025   recommendations if there is no supermajority vote of the GNSO Council, but only if there is
1026   a supermajority vote of the Board in support. It was pointed out that it would be presumed
1027   that there was at least a majority vote in favor of the recommendations before the Board
1028   would consider any recommendations from the GNSO Council. The WT agreed to clarify this
1029   provision as proposed in recommendation 42.
1030   ▪   The WT discussed 5f and the meaning of 'timely'. Some suggested this could mean time-
1031   sensitive, critical or urgent. The question was raised who makes the assessment on whether
1032   something is timely? Most agreed that it would be the role of the ICANN Board to make this
1033   assessment, although the GNSO Council could make a recommendation to this end. ICANN
1034   staff has been requested to ask for clarification from Legal on this provision.
1035   ▪   The WT agreed to add a new voting threshold for the termination of a PDP (see
1036   recommendation 37).
1037   ▪   Overall, the WT agreed that the existing voting thresholds should be reviewed as part of the
1038   next cycle of GNSO Review.
1039
1040   **5. Decision-making methodology**
1041
1042   The PDP-WT recommends that PDP Working Groups are required to use the decision-making
1043   methodology that has been proposed in the GNSO Working Group Guidelines, at least for a
1044   certain period of time, following which its effectiveness and usability could be reviewed and
1045   assessed as part of the overall review of the new PDP.
1046

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1053 **6. Transition**

1054

1055 The WT agreed that following the adoption and implementation, the new PDP should apply to

1056 all new PDPs. The WT discussed whether it would / should be possible for existing PDPs to adopt

1057 the new model upon request. The Office of the General Counsel confirmed that a transition to

1058 the new PDP model for ongoing PDPs could be build in the ICANN Bylaws, should the WT decide

1059 to allow this possibility. The WT agreed to request further input on this issue during the public

1060 comment period on the Proposed Final Report.

1061

1062

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> **New PDP Flow Chart – Basis for new Annex A**

4 New GNSO PDP – Basis for new Annex A

Based on the WT recommendations and deliberations, the WT, with the support of ICANN Staff, has developed the outline below of the new Annex A that is to replace the current Annex A contained in the ICANN Bylaws.

Annex A – GNSO Policy Development

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required to form Consensus Policies as defined within ICANN contracts:

    a.   Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party Is affected by the issue;

    b.   Formal initiation of the Policy Development Process by the Council;

    c.   Formation of a Working Group;

    d.   Initial Report produced by a Working Group;

    e.   Final Report produced by a Working Group and forwarded to the Council for deliberation;

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1098   f. Council approval of PDP Recommendations contained in the Final Report, by the

1099   required thresholds;

1100   g. The PDP Recommendations shall be forwarded to the Board through a

1101   Recommendations Report forwarded to Board; and

1102   h. Board approval of PDP Recommendations.

1103

1104 Section 2. **Public Comment Required**

1105

1106 At minimum, every Preliminary Issue Report and Initial Report referred to in Section 1 above

1107 shall be posted for public comment on the ICANN website for a minimum of 30 days. Working

1108 Groups and Council are encouraged to, but not required, to post any other interim or draft

1109 Report or issue raised within the PDP for public comment.

1110

1111 Section 3. **Council Approval Process**

1112

1113 The Council approval process is set forth within the Policy Development Procedure Manual

1114 described at Section 5 below.

1115

1116 Section 4. **Board Approval Processes**

1117

1118 Board deliberation on the PDP Recommendations contained within the Recommendations

1119 Report shall proceed as follows:

1120   a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted

1121   by the Board unless, by a vote of more than sixty-six (66%) percent of the Board, the

1122   Board determines that such policy is not in the best interests of the ICANN community

1123   or ICANN.

1124   b. In the event that the Board determines, in accordance with paragraph a above, that the

1125   policy recommended by a GNSO Supermajority Vote is not in the best interests of the

1126   ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons

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1133   for its determination in a report to the Council (the "Board Statement"); and (ii) submit

1134   the Board Statement to the Council.

1135   c.   The Council shall review the Board Statement for discussion with the Board as soon as

1136   feasible after the Council's receipt of the Board Statement. The Board shall determine

1137   the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and

1138   Board will discuss the Board Statement.

1139   d.   At the conclusion of the Council and Board discussions, the Council shall meet to affirm

1140   or modify its recommendation, and communicate that conclusion (the "Supplemental

1141   Recommendation") to the Board, including an explanation for the then-current

1142   recommendation. In the event that the Council is able to reach a GNSO Supermajority

1143   Vote on the Supplemental Recommendation, the Board shall adopt the

1144   recommendation unless more than sixty-six (66%) percent of the Board determines that

1145   such policy is not in the interests of the ICANN community or ICANN.

1146   e.   In any case in which the Council is not able to reach GNSO Supermajority vote on a PDP

1147   Recommendation, a majority vote of the Board will be sufficient to either approve the

1148   PDP Recommendation for implementation or to determine that the policy

1149   recommended by the GNSO Council is not in the best interests of the ICANN Community

1150   or ICANN.

1151   f.   If the GNSO Council is recommending a Consensus Policy as defined within ICANN

1152   contracts, the Board can only approve a Consensus Policy that was approved by the

1153   required GNSO voting threshold.

1154

1155   Section 5. **Policy Development Process Procedure Manual**

1156

1157   The GNSO shall maintain a Policy Development Process Procedure Manual within the GNSO

1158   Operating Procedures. The Policy Development Process Procedure Manual shall contain specific

1159   guidance on completion of all elements identified in Section 1 of this Annex that are not

1160   otherwise defined in these Bylaws. The Policy Development Process Procedure Manual and any

1161   amendments thereto are subject to the 21 (twenty-one) day public comment period, as well as

1162   Board oversight and review, as specified at Article X, Section 3.6.

1163

1164   Section 6. **Council Expedited Procedures**

1165

1166   The Policy Development Procedure Manual may define expedited procedures for policy

1167   development work in exigent circumstances.

1168

1169   Section 7. **Required Thresholds**

1170

1171   All GNSO policy development is subject to the voting thresholds set forth at Article XX, Section

1172   3.9 of these Bylaws.

1173

1174   Section 8. **Implementation of Approved Policies**

1175

1176   Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give

1177   authorization or direction to ICANN staff to work with the GNSO Council to create an

1178   implementation plan based upon the implementation recommendations identified in the Final

1179   Report, and to implement the policy. The GNSO Council may, but is not required to, direct the

1180   creation of an implementation review team to assist in implementation of the policy.

1181

1182   Section 9. **Maintenance of Records**

1183

1184   Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will

1185   maintain on the Website, a status web page detailing the progress of each PDP issue. Such

1186   status page will outline the completed and upcoming steps in the PDP process, and contain links

1187   to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

1188

5 Policy Development Process Procedure Manual

As outlined before, in order to enhance flexibility of the Policy Development Process, the PDP-WT proposes to incorporate the details as well as further guidance on how to manage a PDP in a Policy Development Process Procedure Manual that would become an integral part of the GNSO Council Operating Procedures. Below is a first draft of such a PDP Procedure Manual that contains the main elements based on the recommendations outlined in the previous chapters.

5.1 PDP Procedure Manual - Introduction

These guidelines and processes supplement the requirements for PDPs described in Annex A of the ICANN Bylaws [insert link].

5.2 Requesting an Issue Report

Board Request. The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined in this Manual.

Council Request. The GNSO Council may request an Issue Report by a vote of at least twenty-five percent (25%) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

Requests for an Issue Report by the Board or by an Advisory Committee do not require any GNSO Council action, but are to be reviewed by Staff and prepared in accordance with Section 5.4 below.

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Deleted: Although this Manual is intended for the development of consensus policies, the GNSO Council may, at its discretion, follow the processes described in this Manual for other types of activities that are within the scope of the GNSO Council's mandate as described in Article X of the Bylaws.

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1234

1235   **5.3 Planning for Initiation of a PDP**

1236

1237   Consistent with ICANN's commitment to fact-based policy development, the GNSO Council and

1238   Staff are encouraged to provide advice in advance of a vote on the request for an issues report

1239   specifying any additional research, discussion, or outreach that should be conducted as part of

1240   the development of the Issues Report, in order to ensure a balanced and informed Issues

1241   Report.

1242

1243   The GNSO Council is encouraged to consider scheduling workshops on substantive issues prior

1244   to the initiation of a PDP. Such workshops could, amongst others; facilitate community

1245   understanding of the issue; assist in scoping and defining the issue; gather support for the

1246   request of an Issue Report, and/or; serve as a means to gather additional data and/or

1247   information before a request is submitted. Where appropriate, the GNSO Council should

1248   consider requiring such a workshop during the planning and initiation phase for a specific issue.

1249   To the extent such workshops are utilized by the GNSO Council, the invitations and/or

1250   announcements for workshops should be communicated as broadly as possible.

1251

1252   The GNSO Council should consider requiring an impact analysis to be conducted if appropriate

1253   or necessary prior to the vote for the initiation of a PDP. Such an impact analysis could include

1254   the assessment of the impact on the public interest; the security, stability and resiliency of the

1255   DNS; competition, consumer trust and consumer choice, and; international participation (as

1256   outlined in section 3 of the Affirmation of Commitments) [as well as the impact on human

1257   rights].

1258

1259   The GNSO Council should take into full account the resources available, both volunteers and

1260   staff, when making its decision on whether or not to initiate a PDP.

1261

1262   **5.4 Recommended Format of Issue Report Requests**

1263

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1271 The recommended format of requests for Issue Reports under paragraphs (b) and (c) of Section

1272 2 is described below:

1273

Request for Issue Report	
Name of Requestor:	
Name of Stakeholder Group/Constituency (if applicable) in support of request:	
Please provide rationale for policy development:	
Brief explanation of how issue affects your SG or Constituency:	
Suggestions on specific items to be addressed in the Issue Report (if any):	
Please provide a concise definition of the issue presented and the problems raised by the issue:	
Please provide supporting evidence (if any):	
How does this issue relate to the provisions of the ICANN Bylaws, the Affirmation of Commitments and/or ICANN's Articles of Incorporation:	
Date Submitted:	
Expected Completion Date:	

1274

1275 **5.5 Creation of the Preliminary Issue Report**

1276

1277 Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a

1278 properly supported motion from the GNSO Council; or (iii) a properly supported motion from an

1279 Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue Report"). In the

1280 event the Staff Manager determines that more time is necessary to create the Preliminary Issue

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1282   Report, the Staff Manager may request an extension of time for completion of the Preliminary

1283   Issue Report, which request should be discussed with the Requestor.

1284

1285   In the event that the Issue Report was initially requested by the Board or an Advisory

1286   Committee, the requestor shall be informed of any extension of time for completion of the Issue

1287   Report. Any request for extension of time should include consideration of the complexity of the

1288   issue, the extent of research and outreach recommended, and the ICANN Staff workload.

1289

1290   The following elements should be considered in the Issue Report:

1291   a)   The proposed issue raised for consideration;

1292   b)   The identity of the party submitting the request for the Issue Report;

1293   c)   How that party is affected by the issue, if known;

1294   d)   Support for the issue to initiate the PDP, if known;

1295   e)   The opinion of the ICANN General Counsel regarding whether the issue proposed for

1296   consideration within the Policy Development Process is properly within the scope of

1297   the ICANN's mission, policy process and more specifically the role of the GNSO. In

1298   determining whether the issue is properly within the scope of the ICANN policy

1299   process, General Counsel's opinion should examine whether the issue:

1300   a. is within the scope of ICANN's mission statement, and more specifically the

1301   role of the GNSO;

1302   b. is broadly applicable ~~to multiple situations or organizations~~;

1303   c. is likely to have lasting value or applicability, albeit with the need for

1304   occasional updates;

1305   d. is likely to enable ICANN to carry out its commitments under the Affirmation

1306   of Commitments;

1307   e. will establish a guide or framework for future decision-making; implicates or

1308   affects an existing ICANN policy.

1309   f. will implicate or affect an existing ICANN policy.

1310   f)   The opinion of the Staff Manager as to whether the Council should initiate the PDP

1311   on the issue

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1320

1321   **5.6 Public Comment on the Preliminary Issue Report**

1322

1323   Upon completion of the preliminary Issue Report, the preliminary Issue Report shall be posted

1324   on the ICANN website for a public comment period of no less than 30 days. When posted for

1325   Public Comment, Staff is encouraged to translate the executive summaries of Preliminary Issue

1326   Reports into the six UN languages to the extent permissible under the ICANN translation policy

1327   and the ICANN budget, though the posting of any version in English shall not be delayed while

1328   translations are being completed.

1329

1330   The Staff Manager is responsible for drafting a summary and analysis of the public comments

1331   received on the Issue Report and producing a final Issue Report based upon the comments

1332   received. The Staff Manager should forward the Final Issue Report, along with any summary and

1333   analysis of the public comments received, to the Chair of the GNSO Council for consideration for

1334   initiation of a PDP.

1335

1336   The summary and analysis and the Final Issue Report are expected to be delivered to the Chair

1337   of the GNSO Council within 30 days of the closing of the public comment forum, though the Staff

1338   Manager may request an extension of that 30-day time for delivery.

1339

1340   **5.7 Initiation of the PDP**

1341

1342   The Council may initiate the PDP as follows:

1343

1344   _Board Request_: If the Board requested an Issue Report, the Council, within the timeframe set

1345   forth in the paragraph below, shall note for the record the confirmation of receipt of the Issue

1346   Report and the formal initiation of the PDP. No vote is required for such action.

1347

1348   *GNSO Council or Advisory Committee Requests*: The Council may only initiate the PDP by a vote

1349   of the Council. Initiation of a PDP requires a vote as set forth in Article X, Section 3, paragraph

1350   9(b) and (c) in favor of initiating the PDP.

1351

1352   *Timing of vote on Initiation of the PDP*. The Council should endeavour to vote on whether to

1353   initiate the policy development process at the next scheduled Council meeting following the

1354   receipt of an Issue Report; provided that the Issue Report is received at least eight (8) calendar

1355   days prior to the GNSO Council meeting. If the Issue Report is forwarded to the GNSO Council

1356   Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting,

1357   the Council should endeavour to vote on the initiation of the PDP at the subsequent GNSO

1358   Council meeting. At the written request of any voting Council member, for any reason,

1359   consideration of the Issue Report may be postponed by not more than one (1) meeting,

1360   provided that that the Council member details the precise rationale for such a postponement.

1361   Consideration of the Issue Report may only be postponed for a total of one (1) meeting, even if

1362   multiple Council members request postponement.

1363

1364   Upon consideration of the Issue Report the GNSO Council may, when necessary, vote to suspend

1365   further consideration of the Issue Report. The basis for suspension could include prioritization

1366   reasons such as insufficient Staff or community support available due to other ongoing PDP

1367   work, requests for additional data and requests for additional discussion. The GNSO Council is

1368   expected to use this procedure sparingly, and should generally endeavour to vote on the

1369   initiation of a PDP within 90 calendar days of the receipt of the Final Issue Report. Any decision

1370   to suspend consideration of the Final Issue Report is to be accompanied by a proposed timeline

1371   for further consideration, including a timeline for a vote on the initiation of the PDP.

1372

1373   In the event that the GNSO Council does not approve the initiation of the PDP, not including the

1374   possible suspension of further consideration of the Issue Report as described above, any

1375   Councillor may appeal the denial, and request that the GNSO Council hold a renewed vote on

1376   the initiation of the PDP at the next subsequent GNSO Council meeting.

1377

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1386   In the event that the GNSO Council does not approve the initiation of the PDP following an Issue

1387   Report requested by an Advisory Committee (AC), the AC or its representatives should have the

1388   opportunity to meet with representatives of the GNSO, and in particular, those voting against

1389   the initiation of the PDP, to discuss the rationale for the rejection and why the AC feels that

1390   reconsideration is appropriate. Following this meeting, the AC may submit a statement to the

1391   GNSO Council requesting a re-vote and giving its rationale for such a re-vote. This process may

1392   be followed just once for any given Issue Report.

1393

1394   As part of its decision on the initiation of the PDP, the GNSO Council may include consideration

1395   of how ICANN's budget and planning can best accommodate the PDP and/or its possible

1396   outcomes, and, if applicable, how the proposed PDP is aligned with ICANN's Strategic Plan.

1397

1398   **5.8 Development and Approval of the Charter for the PDP**

1399

1400   Upon initiation of the PDP, a group formed at the direction of Council should be convened to

1401   draft the charter for the PDP Team. The Council should indicate the timeframe within which a

1402   draft PDP Charter is expected to be presented to the Chair of the GNSO Council. The elements of

1403   the Charter should include: [TBD – consider reference to the GNSO WG Guidelines which also

1404   includes a charter template].

1405

1406   The Council should consider whether to approve the proposed PDP Charter at the Council

1407   meeting following the Chair's receipt of the proposed PDP Charter; provided that the proposed

1408   PDP Charter is received at least eight (8) calendar days prior to the GNSO Council meeting. If the

1409   proposed PDP Charter is forwarded to the GNSO Council Chair within the eight (8) calendar days

1410   immediately preceding the next GNSO Council meeting, the Council should endeavour to

1411   consider the proposed PDP Charter at the meeting after the next GNSO Council meeting.

1412

1413   The same voting thresholds that apply to the initiation of the PDP also apply to the approval of

1414   the proposed PDP Charter. Specifically, the proposed PDP Charter is to be approved with an

1415   affirmative vote of vote of more than 33% of the Council members of each House or more than

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1417 66% vote of one House in favour of approval of a Charter for a PDP within scope; unless the Staff

1418 Recommendation stated that the issue is not properly within the scope of the ICANN policy

1419 process or the GNSO, in which case a GNSO Supermajority Vote as set forth in Article X, Section

1420 3, paragraph 9(c) in favour of approving the PDP Team Charter is specified to approve the PDP

1421 Charter.

1422

1423 Once approved, modification of any PDP Charter is discouraged, absent special circumstances.

1424 Approved charters may be modified or amended by a simple majority vote of each House.

1425

1426 In exigent circumstances, upon approval of the initiation of the PDP, the GNSO Council may

1427 direct certain work to be performed prior to the approval of the PDP Charter. The GNSO Council

1428 may only approve expedited processes in accordance with the procedures specified in Section

1429 [confirm] of this Manual.

1430

1431 **5.9 PDP Outcomes and Processes**

1432

1433 Upon approval of the PDP Charter, the GNSO Council may form a working group, task force, or

1434 drafting team (the "PDP Team"), to perform the PDP activities. The preferred model for the PDP

1435 Team is the Working Group model due to the availability of specific Working Group rules and

1436 procedures that are included in the GNSO Operating Rules and Procedures. The GNSO Council

1437 should not select another model for conducting PDPs unless the GNSO Council first identifies the

1438 specific rules and procedures to guide the PDP Team's deliberations. The PDP Team is required

1439 to review and become familiar with the GNSO Working Group Guidelines, which also apply to

1440 PDP Working Groups [include link to the GNSO Working Group Guidelines once published],

1441 which includes further information and guidance on the functioning of GNSO Working Groups.

1442

1443 Once formed, the PDP Team is responsible for engaging in the collection of information. If

1444 deemed appropriate or helpful by the PDP Team, the PDP Team may solicit the opinions of

1445 outside advisors, experts, or other members of the public. The PDP Team should carefully

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1452 consider the budgetary impacts, implementability, and/or feasibility of its proposed information
1453 requests and/or subsequent recommendations.
1454
1455 The PDP Team should formally solicit statements from each Stakeholder Group and
1456 Constituency in the early stages of the PDP. Stakeholder Groups and Constituencies should at a
1457 minimum have 35 days to complete such a statement from the moment that the statement is
1458 formally requested by the PDP Team. If appropriate, such statements may be solicited more
1459 than once by the PDP Team throughout the PDP process. The PDP Team is also encouraged to
1460 formally seek the opinion of other ICANN Advisory Committees and Supporting Organizations, as
1461 appropriate that may have expertise, experience, or an interest in the PDP issue. Solicitation of
1462 opinions should be done during the early stages of the PDP.
1463
1464 In addition, the PDP Team should seek input from other SOs and ACs. Such input should be
1465 treated with the same due diligence as other comments and input processes. In addition,
1466 comments from ACs and SOs should receive a response from the PDP Team. This may include,
1467 for example, direct reference in the applicable Report or embedded in other responsive
1468 documentation or a direct response.
1469
1470 The PDP Team is encouraged to establish communication in the early stages of the PDP with
1471 other departments, outside the policy department, within ICANN that may have an interest,
1472 expertise, or information regarding the implementability of the issue. The Staff Manager is
1473 responsible for serving as the intermediary between the PDP Team and the various ICANN
1474 departments (finance, legal, compliance, etc.). The PDP Team Chair may escalate to the Vice
1475 President of Policy if the PDP Team is of the opinion that such communications have been
1476 hindered through the involvement of ICANN policy Staff. ICANN Staff may perform additional
1477 distinct roles for a PDP Team as requested and appropriate (see GNSO Working Group
1478 Guidelines for further details).
1479
1480 This Section illustrates the types of outcomes that are permissible from a PDP. PDP Teams may
1481 make recommendations to the GNSO Council regarding:

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1484   i.   Consensus policies

1485   ii.   Other policies

1486   iii.   Best Practices

1487   iv.   Implementation Guidelines

1488   v.   Agreement terms and conditions

1489   vi.   Technical Specifications

1490   vii.   Research or Surveys to be Conducted

1491   viii.   Advice to ICANN or to the Board

1492   ix.   Advice to other Supporting Organizations or Advisory

1493   Committee

1494   x.   Budget issues

1495   xi.   Requests for Proposals

1496   xii.   Recommendations on future policy development activities

1497

1498 At the same time, a PDP Team may also conclude that no recommendation is necessary.

1499

1500 The Staff Manager is responsible for coordinating with the Chair(s) of the PDP Team to supervise

1501 and to carry out the PDP activities as necessary or appropriate, including, without limitation,

1502 making available the standard technical resources for the PDP Team, scheduling and attending

1503 PDP Team meetings, drafting and publishing PDP reports for public comment, and providing

1504 expertise where needed.

1505

1506 **5.10 Publication of the Initial Report**

1507

1508 After collection and review of information, the PDP Team and Staff are responsible for

1509 producing an Initial Report. The Initial Report should include the following elements:

1510   •   Compilation of Stakeholder Group and Constituency Statements

1511   •   Compilation of any statements received from any ICANN Supporting Organization or

1512   Advisory Committee

1513   •   Recommendations for policies, guidelines, best practices or other proposals to

1514   address the issue

1515   •   Statement of level of consensus for the recommendations presented in the Initial

1516   Report

1517   •   Information regarding the members of the PDP Team, such as the attendance

1518   records, Statements of Interest, etc.

1519   •   If applicable, input on issues related to implementation, impact (economic,

1520   business, social, operational, etc) and feasibility including the inclusion of

1521   implementation guidelines

1522

1523 These elements may be included as content within the Initial Report or by reference to

1524 information posted on an ICANN website (such as through a hyperlink).

1525

1526 The Initial Report should be delivered to the GNSO Council and posted for a public comment

1527 period of not less than 30 days. If such a public comment period would coincide with an ICANN

1528 Public Meeting, the PDP Team is strongly encouraged to extend the public comment period a

1529 minimum of seven (7) days. Any public comment period on items other than the Issue Report

1530 and Initial Report shall be for a minimum of 21 days. The PDP Team is encouraged to explore

1531 other means to solicit input than the traditional public comment forum such as, for example, the

1532 use of a survey which might allow for asking more targeted questions.

1533

1534 **5.11   Preparation of the Final Report**

1535

1536 At the end of the public comment period, the Staff Manager, in close coordination with the PDP

1537 Team, is responsible for reviewing the comments received and adding those deemed

1538 appropriate for inclusion to the Initial Report, in order to produce a revised Report for

1539 consideration by the PDP Team. The Staff Manager and the PDP Team are not obligated to

1540 include all comments made during the comment period, including each comment made by any

1541 one individual or organization.

1542

1543   The Staff Manager and the PDP Team may update the Initial Report if there are any

1544   recommendations within the Initial Report that require modification to address comments

1545   received through public comment.

1546

1547   The PDP Team is expected to deliberate as appropriate to properly evaluate and address

1548   comments raised during the public comment period. This should include the careful

1549   consideration and analysis of the public comments; explaining the rationale for agreeing and

1550   disagreeing with the different comments received, and, if appropriate, how these will be

1551   addressed in the report of the PDP Team. Following the review of the comments received and, if

1552   required, additional deliberations, the PDP Team is expected to produce a Final Report for

1553   transmission to the Council.

1554

1555   While the Final Report is not required to be posted for public comment, in preparing the Final

1556   Report, the PDP Team should consider whether the Final Report should be posted for public

1557   comment as a [Draft] Final Report, with the goal of maximizing accountability and transparency

1558   with regards the PDP, especially when substantial changes have been made compared to the

1559   contents of the Initial Report. When posted for Public Comment, Staff should consider

1560   translating the executive summaries of the Initial Reports and Draft Final Reports into the six UN

1561   languages, to the extent permissible under the ICANN translation policy and the ICANN budget,

1562   though the posting of any version in English is not to be delayed while translations are being

1563   completed. Upon completion of the Public Comment period, if any, and incorporation of any

1564   additional comments identified therein, or if no further comment period is necessary, the Final

1565   Report is to be forwarded to the GNSO Council Chair to begin the GNSO Council deliberation

1566   process.

1567

1568   In addition to any required public comment periods, the PDP Team may seek public comment on

1569   any item that the PDP Team notes it will benefit from further public input. The PDP Team does

1570   not have to seek approval from the GNSO Council to seek public comment on interim items. The

1571   minimum duration of a public comment period that does not concern the Initial Report is twenty

1572   (21) days.

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1578 Each recommendation in the Final Report should be accompanied by the appropriate consensus

1579 level designation (see GNSO Working Group Guidelines for applicable standard methodology for

1580 making decisions, including consensus level designations). [include direct reference to

1581 appropriate section]

1582

1583 **5.12 Expedited PDP Procedures**

1584

1585 No expedited PDP Procedures are available. The GNSO Council should re-evaluate the need for

1586 an expedited mechanism in due time, as part of the review of the new Policy Development

1587 Process.

1588

1589 **5.13 Council Deliberation**

1590

1591 The GNSO Council is strongly encouraged to consider the recommendations within the Final

1592 Report at the next meeting after the Final Report is forwarded to the Council Chair, provided

1593 that the Final Report is forwarded to the Council Chair at least eight (8) calendar days prior to

1594 the GNSO Council meeting. If the Final Report is forwarded to the GNSO Council Chair within the

1595 eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council

1596 should consider the Final Report at the meeting after the next GNSO Council meeting. At the

1597 written request of any voting Council member, for any reason, consideration of the Final Report

1598 may be postponed for no more than one (1) meeting, provided that that such Council member

1599 details the precise rationale for such a postponement. Consideration of the Final Report may

1600 only be postponed for a total of one (1) meeting, even if multiple Council members request

1601 postponement. The GNSO Council may, if deemed appropriate, schedule a separate session with

1602 the PDP Team to discuss the Final Report and ask any clarifying questions that might arise.

1603

1604 The GNSO Council is expected to vote on the recommendations contained in the Final Report.

1605 Approval of the PDP recommendations contained in the Final Report requires an affirmative

1606 vote meeting the thresholds set forth at Article X, Section 2(9) d – f.

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1612   In the event that the Final Report includes recommendations that did not achieve the consensus

1613   within the PDP Team, the GNSO Council should deliberate on whether to adopt them or remand

1614   the recommendations for further analysis and work. Although the GNSO Council may adopt all

1615   or any portion of the recommendations contained in the Final Report, it is recommended that

1616   the GNSO Council take into account whether the PDP Team has indicated that any

1617   recommendations contained in the Final Report are interdependent. The GNSO Council is

1618   strongly discouraged from itemizing recommendations that the PDP Team has identified

1619   interdependent or modifying recommendations wherever possible. In the event the GNSO

1620   Council expresses concerns or proposes changes to the PDP recommendations, it may be more

1621   appropriate to pass these concerns or recommendations for changes back to the respective PDP

1622   Team for input and follow-up.

1623

1624   **5.14   Preparation of the Board Report**

1625

1626   If the PDP Recommendations contained in the Final Report are approved by the GNSO Council,

1627   the GNSO Council may designate a person or group responsible for drafting a Recommendations

1628   Report to the Board. Staff should inform the GNSO Council from time to time of the format

1629   requested by the Board. These GNSO Council Reports supplement any Staff Reports that may

1630   highlight any legal, implementability, financial, and other operational concerns related to the

1631   PDP recommendations contained in the Final Report. In order to enhance ICANN's accountability

1632   and transparency, Staff is encouraged to publish its Staff Reports with minimal redactions

1633   wherever possible, without jeopardizing information that may be protected under

1634   attorney/client or other legal privileges.

1635

1636   **5.15   GNSO Council Role in Implementation**

1637

1638   Upon a final decision of the Board adopting the GNSO PDP policy, the Board may, as

1639   appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to

1640   create an implementation plan based upon the implementation recommendations identified in

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1642   the Final Report, and to implement the policy in as timely a fashion as possible. The GNSO

1643   Council may, but is not required to, direct the creation of an Implementation Review Team to

1644   assist Staff in developing the implementation details for the policy. In its Final Report, the PDP

1645   Team should provide recommendations to the GNSO Council on whether an Implementation

1646   Review Team should be established and any other recommendations deemed appropriate in

1647   relation to such an Implementation Review Team (e.g. composition).

1648

1649   **5.16   Termination of PDP prior to Final Report**

1650   The GNSO Council, may terminate a PDP prior to the publication of a Final Report only for

1651   significant cause, upon a motion that passes with a Supermajority Vote in favour of termination.

1652   The following are illustrative examples of possible reasons for a premature termination of a PDP:

1653

1654   1. **Deadlock**. The PDP Team is hopelessly deadlocked and unable to identify

1655   recommendations or statements that have either the strong support or a consensus

1656   of its members despite significant time and resources being dedicated to the PDP;

1657   2. **Changing Circumstances**. Events have occurred since the initiation of the PDP that

1658   have rendered the PDP moot or no longer necessary; or

1659   3. **Lack of Community Volunteers.** Despite several calls for participation, the work of

1660   the PDP Team is significantly impaired and unable to effectively conclude its

1661   deliberations due to lack of volunteer participation.

1662

1663   If there is no recommendation from the PDP Team for its termination, the Council is required to

1664   conduct a public comment forum first prior to conducting a vote on the termination of the PDP

1665   (as described above).

1666

1667   **5.17   Amendments or Modifications of Approved Policies**

1668

1669   Approved GNSO Council policies may be modified or amended by the GNSO Council at any time

1670   prior to the final approval by the ICANN Board as follows:

1671

1674   1.   The PDP Team is reconvened or, if disbanded, reformed, and should be consulted with

1675   regards to the proposed amendments or modifications;

1676   2.   The proposed amendments or modifications are posted for public comment for not less

1677   than twenty-one (21)thirty (30) days;

1678   3.   The GNSO Council approves of such amendments or modifications with a SuperMajority

1679   Vote of both Houses in favour.]

1680

1681 Approved GNSO Council policies that have been adopted by the ICANN Board and have been

1682 implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue

1683

1684 **5.18   Periodic Assessments of Approved Policies**

1685

1686 Periodic assessment of PDP recommendations and policies is an important tool to guard against

1687 unexpected results or inefficient processes arising from GNSO policies. PDP Teams are

1688 encouraged to include proposed timing, assessment tools, and metrics for review as part of their

1689 Final Report. In addition, the GNSO Council may at any time initiate reviews of past policy

1690 recommendations.

1691

1692 **5.19   Miscellaneous**

1693

1694 This Manual may be updated by the GNSO Council from time to time following the same

1695 procedures as applicable to amendments to the GNSO Council Operating Rules and Procedures.

1696

1697 In the event of any inconsistencies between the ICANN Bylaws or this Manual, the terms of the

1698 ICANN Bylaws shall supersede.

1699

1706 # Annex I - Public Comment Forum on the Initial Report

1707 A public comment forum was held on the Initial Report which ran from 31 May to 30 September

1708 (see **http://www.icann.org/en/announcements/announcement-2-31may10-en.htm**). A

1709 summary of the comments received can be found hereunder. In addition, the WT developed a

1710 public comment review tool to facilitate review and discussion of the comments received as well

1711 as providing an overview of how the different comments have been addressed in this report.

1712 You can review the public comment review tool here.

1713

1714 At the closing of the public comment period, eight submissions had been made. One of the

1715 submissions was unrelated to the report (spam), while another submission asked a question

1716 about who had constituted the Work Team. The remaining six submissions provided input on

1717 the Initial Report and its recommendations and were made by the At Large Advisory Committee

1718 (ALAC), the International Trademark Association (INTA) Internet Committee, the Registrar

1719 Stakeholder Group (RrSG), the Registries Stakeholder Group (RySG), Naomasa Maruyama and

1720 Mary Wong (whose comments have also been endorsed by the Non-Commercial Stakeholder

1721 Group).

1722

1723 The comments received have been summarized and categorized in the table below.

1724

	Comment (Summary)	Who
Comment relating to		
Working Group Model	Prior to formally institutionalizing the WG model, the PDP WT should undertake or commission a review of whether the WG model is in fact optimal for addressing PDP issues	ALAC
Evidence / data	PDPs should be based on responsibly document evidence of an issue to be addressed. A reasonable data-driven threshold for introduction of a PDP is a necessary step.	RrSG
Planning and Request for an Issues Report -	ICANN was established with parameters for good reasons – to keep the organization from overreaching and causing disruption, to clearly define its role, etc. If the GNSO is willing to continue accepting every issue that's raised, whether in scope or not, ICANN will continue to experience	RrSG

Issue Scoping (3a)	the difficulties it does now. Setting reasonable boundaries about scope should not be difficult.	
Planning and Request for an Issues Report - Issue Scoping (3b)	No potential outcomes should be dictated as part of the PDP, though the SG agrees a requestor should identify potential outcomes if possible, without bias.	RrSG
Planning and Request for an Issues Report - Issue Scoping (3c)	The proposed suggestion (if there is not sufficient information available, an issue does not pass to the next stage) is a reasonable one. Proceeding blindly on policy development without sufficient information is irresponsible.	RrSG
Planning and Request for an Issues Report - Issue Scoping (3d)	The RrSG agrees that a variety of alternatives should be employed to address issues of concern to the community. A PDP may or may not be the appropriate method.	RrSG
PDP Flow Chart	The RySG notes that the PDP Flowchart shows the 'Initiation of a PDP' prior to the 'Creation if a Drafting Team to develop the WG Charter'. In recent GNSO PDPs, it has appeared to be helpful to have a draft charter prepared before initiating the PDP; that then makes it easier to decide whether a PDP should be initiated because the desired objectives and deliverables are defined. For 'Adoption of the Charter', the "Same voting thresholds apply as for the Initiation of the PDP". The voting thresholds for initiating a PDP are as follows: To initiate a PDP within scope requires an affirmative vote of more than 33% of each House or more than 66% of one House. To initiate a PDP not within scope requires an affirmative vote of more than 75% of one House and a majority of the other House ("GNSO Supermajority"). It might be simpler to apply the default threshold, a simple majority of each house.	RySG
Comment relating to Recommendation # (see http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf)		
1 (Who -Request	The PDP ought to address the manner in which unaffiliated groups and individuals can properly raise issues they would	INTA

for Issues Report)	like to be considered. For instance, a funneling mechanism through which issues are vetted and/or passed to the GNSO or AC or relevant constituencies likely to have similar concerns, may be considered.	
1 (Who -Request for Issues Report)	It is appropriate that the current mechanisms for initiating a request for an Issues Report be maintained and not expanded. The language of the current Recommendation may itself create further confusion. For example, is it the WT's intention to equate the necessary action as between the GNSO Council and an AC? If so, that would have been clearer had the recommended language for (b) (where the Council raises an issue) read "raise an issue for policy development" (as it currently reads in relation to ACs) rather than simply "raise an issue". Another option might simply be to re-title Section 1 of Annex A of the latest ICANN Bylaws, to read "Raising an Issue for Consideration Before Initiation of a PDP" (instead of just "Raising An Issue", which is the current wording.) A separate section dealing with Board initiation of a PDP (bypassing an Issues Report and Council vote) should then be added. In similar vein, the words "Issue Raised by the Board" in Section 3(a) of Annex A should be amended to read "Initiation of PDP by the Board".	Mary Wong
2 (Language – Request for Issues Report)	Although this was presumably not part of the WT's charge, striking the "members present" language should be reviewed against other parts of the Bylaws (and any other applicable rules to ICANN constituent bodies, offices, committees, teams and groups, as the case may be) to see if similar problems present themselves in those situations and respects. A template for requesting an Issues Report would be useful, but ought not to be mandatory.	Mary Wong
3 (How – Request for Issues Report)	Support for recommendation 3 and suggests that said Manual will also be open for public comment as it is developed.	INTA
3 (How – Request for Issues Report)	How are the contents of the PDP Manual/Guidebook going to be developed? Note also that Recommendation 5 appears to duplicate Recommendation 3.	RySG
4 (How – Request for Issues Report)	Some basic template detail should probably be mandatory, including for instance a statement as to why the issue is important to the relevant constituency.	INTA
4 (How – Request	Issues for consideration should be raised through an electronic/online process that is linked to relevant sections	INTA

for Issues Report)	of the PDP Manual.	
4 (How – Request for Issues Report)	The RrSG believes this is a responsible step toward making future policies based on evidence and facts. A template that includes a clearly defined problem, well-documented supporting evidence, and a rationale for the use of increasingly very limited resources for development of policy, would be a useful tool.	RrSG
4 (How – Request for Issues Report)	Any manual or guidebook should encourage that ICANN participants are mindful and respectful of ICANN's limited resources.	RrSG
4 (How – Request for Issues Report)	The RrSG looks forward to a continued discussion of what would constitute a reasonable threshold for initiating a PDP.	RrSG
3, 4 & 5 (How – Request for Issues Report & Issue Scoping)	A manual and/or guidelines would be helpful. It is not clear at this point how, and by whom, these manuals and guidelines will be developed. They ought to be a community process. Similarly, suggestions for identifying potential outcomes and ways to define the issue should be accomplished with community input. Recommendation #5 seems repetitive in light of previous recommendations. Are there specific issues or concerns that were not addressed by, say, Recommendation #3, that the WT intended be addressed here?	Mary Wong
6 (Creation of Issues Report)	In some cases it might be useful to do additional research, hold discussions or conduct outreach before an Issues Report is requested, so it might be useful to include this possibility in the manual/guidebook.	RySG
6 (Creation of Issues Report)	The Bylaws should not be complicated with too much detail, particularly (in this regard) the precise contents of an Issues Report. The WT recommendation that this be taken up as part of the preparation of the manual and guidelines is a good way of ensuring that sufficient guidance is given such that an Issues Report will serve as both a precise and informative document upon which to base a vote to initiate a PDP (or not.)	Mary Wong
7 (End result of PDP)	The RrSG welcomes this recommendation. Issues should be met with the solution that most appropriately resolves them.	RrSG
7 (End result of PDP)	The fact that potential outcomes of a PDP can be other than the development of consensus policies ought to be further highlighted to the ICANN community, in line with the WT's recommendation.	Mary Wong
8 & 9 (Role of	The General Counsel's role in opining whether a proposed	Mary Wong

ICANN staff)	PDP is "within scope" is both useful and necessary, thus the WT's recommendation in this respect should be followed. It would, additionally, be helpful if ICANN staff's function with respect to a particular Issues Report (e.g. whether technical expertise was provided or sought) could be included, where possible. The proposed manual/guidelines could further explore this question.	
10 (Timeline Issues Report)	Maximum time frames in the current PDP in the Bylaws have for the most part have had to be ignored because they were unrealistic for many issues. Timeframes are better put into the manual/guidebook instead of any Bylaws. The practice of asking Staff to provide estimates of time needed has worked fairly well in GNSO history and better accommodates the variability of issue complexity.	RySG
10 (Timeline Issues Report)	It may be possible to combine options (c) and (d); for example, prescribing the time frame (minimum to maximum) in the Bylaws, with the added proviso that if ICANN staff requests a modification of the time frame, then the estimate requirements in (d) be provided as soon as possible upon the request for an Issues Report.	Mary Wong
11 (Community Input)	INTA agrees with this position as it would allow relevant stakeholders and community members to have input on new issues that may not be reflected in the Issues Report.	INTA
11 (Community Input)	Considering the nature of ICANN as a multi-stakeholder, consensus-building organization, the recommendation for a mandatory public comment period, after the preparation of an Issues Report and prior to the Council vote in favor (or not) of a PDP, should be implemented.	Mary Wong
12 (Role of workshops)	What is meant by a workshop? Workshops traditionally have been held at ICANN international meetings but those are held only three times a year. Note that drafting teams have been used successfully in the GNSO in recent years for several purposes including drafting charters, developing recommendations for consideration before initiating a PDP, etc. Does the WT see a place for DTs in the PDP process and, if so, what would that be?	RySG
12 (Role of workshops) & **13** (Impact Analysis)	This should be discussed, and possible processes recommended, by those tasked with preparing the relevant manual/guidelines.	Mary Wong
13 (Impact	INTA generally agrees with this recommendation with the caveat that more detailed guidance should be in the	INTA

Analysis)	Manual on what constitutes 'appropriate or necessary' and how the GNSO Council should consider and use such analyses. The design of such studies so early in the process might be flawed or could bias the outcome or decision on whether to proceed with a PDP. Public comment period could provide adequate bases for parties to argue or support undue fiscal hardship economic impact.	
13 (Impact Analysis)	The RrSG agrees with this recommendation and believes it would be a prudent step in a PDP. It recommends that the PDP-WT add to this recommendation that impact analyses include, to the extend possible, an assessment of the impact to: the operations of registries, registrars and service providers; ICANN as an entity (including ICANN's revenue); end-users and customers of the DNS.	RrSG
13 (Impact Analysis)	The RySG believes that this is a very constructive recommendation.	RySG
14 (Prioritization)	The RrSG supports this recommendation and looks forward to a continued discussion of prioritization methods.	RrSG
14 (Prioritization) & **15** (Fast Track Process)	Given the possibility of unexpected or urgent issues that can arise from time to time, it will be difficult for the GNSO Council to accomplish a truly meaningful prioritization of the various tasks (including a PDP.) It would be unfortunate if a particularly important issue (e.g. as demonstrated by strong support for a PDP amongst numerous constituencies or committees) could not be pursued due to a lack of resources. Specific indicators (e.g. level of support; existence of third party economic impact studies) could be identified as aids to the GNSO Council when determining prioritization or initiation of PDPs. A "fast track" procedure would be a useful option. However, as identified by the WT, due consideration needs to be given to questions relating to gaming and ensuring broad (and diverse) participation.	Mary Wong
15 (Fast Track Process)	For issues that need urgent attention, the ALAC supports the development of a streamlined process which will require less volunteer and staff time, and less elapsed time.	ALAC
15 (Fast Track Process)	INTA agrees that, under certain circumstances, emergency procedures (requiring by-law amendment) may be necessary. INTA concurs with a sunset period that requires a subsequent (full) PDP procedure to confirm or adapt any temporary policy.	INTA

15 (Fast Track Process)	Recent experiences in the GNSO have demonstrated the need for such a procedure so the RySG supports this recommendation. But it should be recognized that some issues will be too complex to adequately cover in a fast-track process so it would be helpful if there were some guidelines that could be used to decide when to consider a fast track procedure.	RySG
16 (Flexibility)	INTA agrees with the proposed modified language set out in the report, but suggests that the clarifying language 'calendar' days be inserted in sub-clause 'b'.	INTA
16 & 17 (Flexibility)	Where a PDP is initiated by Board action, it is not clear what (if any) role public comment (which, as recommended, should be provided after the issuance of an Issues Report) would play in this regard. As such, the 8 calendar days proposed by the WT may be either unnecessary (if the Council has no choice but to act on the Board's instruction) or insufficient (if public comment is to be considered.) The recommendation that a Stakeholder Group or constituency may defer a vote on a PDP for no more than one meeting, and needs to detail its reasons for such a request, is necessary to ensure timely action on issues of importance, and minimize gaming or other similarly strategic actions.	Mary Wong
18 (Appeals mechanism)	For the reasons stated by the WT in its report, requiring the Council to state its reasons in the absence of a formal appeal mechanism would help ensure transparency and accountability.	Mary Wong
19 & 20 (Chartering)	The WT's rationale and recommendations regarding, in particular, the nomenclature for, participation in, and chartering processes for, a Working Group (as opposed to a "task force") are timely and should be adopted.	Mary Wong
21 (AC/SO input)	It is encouraging that AC/SO cooperation is being contemplated on a more formal basis and will be institutionalized.	ALAC
21 (AC/SO input)	The WT's recommendation that further consideration be given as to how to further involve other SOs and ACs in the PDP process are welcome and should be adopted.	Mary Wong
22 (timeframe for taking a decision)	This recommendation presumably applies to situations where the Council (as opposed to Councilors representing particular Stakeholder Groups or constituencies) believe a vote should be deferred, e.g. in order to obtain expert advice. To ensure timely action (one way or the other), however, it does not seem advisable to leave the question	Mary Wong

	of how long such a deferral can last unanswered. Similarly, the question of whether a certain threshold of Council members is required before a deferral is confirmed is also important. To leave these questions to guidelines may not be the optimal solution, although it is certainly better than the current lack of guidelines and clarity. The WT may wish to explore the possibility of at least requiring that a deferral be made for no longer than the next Council meeting (unless the reason for the deferral reveals the need for a longer deferral period, in which case there should be a maximum time limit set, to be amended only upon further vote of the Council.)	
23 (Public Comment Period after Initiation)	INTA believes that the public comment period must be mandatory, noting that the public comment period is ample and the scope of comments is not restricted to the WG's initial questions.	INTA
23 (Public Comment Period after Initiation)	The function – and nature – of public comments in relation to a Working Group (WG) request after its initiation can be different from public comments solicited and received in response to an Issues Report. As such, a public comment period should be mandatory, unless the WG specifically deems it – and documents its reasons – unnecessary. Even so, this should not preclude the WG from initiating a public comment period at some later point in its processes.	Mary Wong
24 (Clarify 'in scope')	INTA agrees with the proposed language	INTA
24 (Clarify 'in scope')	The RrSG found this language to be confusing and would appreciate clarification from the WT. With regard to the general issue, it believes that ICANN's role should be limited to that of a technical coordination body and avoid mission creep. Furthermore, the GNSO should not confuse policy development with policy implementation.	RrSG
24 (Clarify 'in scope')	The WT's recommendation to clarify the "in scope" question, to distinguish this issue from that of "consensus policy", is necessary and should be adopted.	Mary Wong
25 (Maximize effectiveness of WGs)	INTA agrees with the proposed recommendation	INTA
25 (Maximize effectiveness of	Development of a "cheat sheet" for WGs could facilitate implementation of this recommendation	RySG

WGs)		
26 (Communication with ICANN departments)	INTA agrees that such inquiry is worthy and that mechanisms for communication with ICANN departments should be clearly established.	INTA
26 (Communication with ICANN departments)	Clarification over appropriate and available means and channels of communication with various ICANN departments, will be necessary and should be developed.	Mary Wong
27 (Link with strategic plan & budget)	The initiation of a PDP might include consideration of how ICANN's budget and planning can best embrace the PDP and/or its possible outcomes, the priority must be on ensuring that GNSO policy development can address the public's needs, and ICANN should adequately budget and plan to meet those requirements.	INTA
27 (Link with strategic plan & budget)	The fact that policy issues do not arise in organized fashion according to a calendar (budgetary or otherwise) renders it practically impossible to implement a single process to determine how best to link a PDP with an overall strategic plan or central budget (e.g. the fact that emergency and fast track processes are being considered demonstrates this.) It is important, however, that financial constraints not be the major factor curtailing the initiation, timing or workings of a PDP. Much responsibility therefore devolves by default to the GNSO Council in its current role as manager of overall GNSO processes and work. It would be helpful, however, if through the Issues Report and constituency/stakeholder group input as well as SO and AC feedback prior to and during a PDP, as much detailed information (such as costs, timing and the need for further expert analysis) can be provided to the Council, to assist its deliberations as to whether to initiate a PDP, and (if applicable) to the WG once a PDP is initiated and a charter approved. Suggestions as to what and how such information could consist of and be compiled could be made part of the manual/guidelines under consideration.	Mary Wong
28 / 29 (Public comment)	INTA agrees with the extension of timing for public comments, but believes the minimum should be 45 days to ensure that all members of the public have adequate time	INTA

	to comment. In addition, there may be circumstances under which more than 45 days is necessary, either because of the likely interest in the issue, or the calendaring of the request, and that provision should be made for extending the period for public comment under certain defined circumstances.	
28 (Public comment)	Timeframes are better placed in the manual / guidebook than in the Bylaws because the former are much easier to change as needed. GNSO experience to date has shown that flexibility is often needed; in that regard, it might be better to suggest comments periods of 20 to 30 days, the latter being preferred if possible.	RySG
28, 29 & 30 (Public Comment)	Given ICANN's reliance on volunteer input and the importance of public comments, the proposed extension of a public comment period to 30 days is welcome and should be adopted. Although it might not be feasible to expect a WG to review and acknowledge all public comments received, nor would it be fair to add unnecessarily to ICANN staff workload, it is still important that the WG have easy access to all public comments submitted. The recommended language should therefore be amended such that, at a minimum, the ICANN staff manager must provide, a full list of all public comments received and an indication of which comments were deemed appropriate to be included in the summary and analysis provided to the WG, and which not.	Mary Wong
31 (Implementation / impact)	The first option seems like it could have value but it is not clear that it would be practical in some PDPs. It may depend on what is meant by implementation guidelines, so that may need some clarification. For example, the New gTLD PDP contained implementation guidelines but they were at a fairly high level; if the final report had to contain more detail, the PDP would have taken considerably longer than the 1.5 years it lasted. And we have seen that the implementation process has taken even longer than the PDP took. To the extent possible, it would be helpful to consult with WGs during the implementation process, but for PDPs that last a long time, WG membership tends to change a lot so that reality needs to be considered. Also, it is important to do that in a way that does not too easily provide an avenue for redoing recommendations in cases where some parties may not have been totally satisfied with the results unless	RySG

	there is strong justification for doing so. Consultation with the GNSO should definitely happen during the implementation plan development. The GNSO Council should mainly be a channel through which that happens. In cases where an implementation team is formed, it would be useful to include members of the WG as possible.	
31 (Implementation / impact)	To the extent that a WG can provide recommendations as to implementation, they would doubtless be useful. A WG ought in all cases to consider including these as part of its report, and should also consider whether to recommend the formation of an implementation team, which should consist of a broad base of participants and preferably include at least a few WG members. Recognizing the periodic difficulty of distinguishing between "policy" and "implementation", it would be helpful (particularly in soliciting public comment) also if a WG could indicate which issues discussed or raised crossed the line, in its view, from one to the other.	Mary Wong
32 (Staff resources)	The RrSG concurs with this recommendation and encourages adoption of this provision as part of the PDP reform.	RrSG
32 (Staff resources)	The RySG strongly supports this recommendation.	RySG
33 (Constituency Statements)	The RySG thinks this is a good change. It might also be a good idea to note that in some cases constituency statements may be requested more than once.	RySG
33 (Constituency Statements)	The WT's note that the lack of a statement from a constituency or Stakeholder Group may reflect that group's belief as to the relative importance of that issue to it, or simply the group's current workload, is important as it recognizes that there are numerous stakeholders in the ICANN community with varying interests in different issues. The reliance on volunteer participation and the recent increase in overall GNSO workload has also taken its toll on volunteer time and resources. Regardless of the amendment to Clause 7, therefore, the WT's suggestion of additional follow-up with constituencies and Stakeholder Groups should be incorporated into the proposed manual and/or guidelines, and perhaps included as part of the charter for all WGs tasked with a PDP, where possible.	Mary Wong
34, 35, 36 (WG	The WT's recommendations in these respects make sense and should be adopted.	Mary Wong

Output) & **37** (WG Recommendations)		
36 (Public Comment period Initial Report)	INTA agrees that such a public comment period should be mandatory. Optional additional comment periods may be useful in certain circumstances, such as when a final report differs substantially from the Initial Report.	INTA
38 (WG Recommendations)	The RrSG has no currently formed position on this issue, but agrees it is an issue that deserves attention and looks forward to contributing to further discussion.	RrSG
38 (WG Recommendations)	It is important to note that WGs do not necessarily have balanced representation. In contrast, the Council structure is designed to facilitate balanced representation of the stakeholder groups. Assuming that Councilors are consulting with their SGs and constituencies, Council decisions should reflect the consensus or lack thereof of the broader GNSO community and hopefully the broader ICANN Community as applicable.	RySG
38 (WG Recommendations)	No, the GNSO Council should not have the flexibility to 'pick and choose' recommendations. It is very important for PDP Final Reports to give an objective description of the level of each consensus for each opinion / recommendation.	Naomasa Maruyama
38 (WG Recommendations)	The Council should not be able to "pick and choose" recommendations, where these have not received full consensus within a WG, without at least fully documenting its reasons for doing so. In such a case, Council members should also indicate for the record whether it consulted with his/her constituency and Stakeholder Group as well as the outcome of such consultations. Where WG recommendations have not received full consensus, the WG report should indicate the actual level of support each recommendation received and (subject to a WG participant's consent) a list of WG members in support of, or against, particular recommendations.	Mary Wong
39 (Board Report)	ALAC strongly supports this recommendation.	ALAC
39 (Board Report)	INTA's view is that Staff should be allowed to provide its opinion to the Board, in an open, and non-confidential manner. Staff may be in a better position than most to decipher positive and negative suggestions and recommendations and should be heard in this capacity.	INTA

39 (Board Report)	The RySG suggests rewording this sentence along the lines of the following: "Reports on PDPs should be delivered from the GNSO Council to the Board and any summaries needed should be approved by the Council after consultation with the Working Group (if necessary)". This would more clearly allow the Council to enlist GNSO policy staff support in preparing and delivering summaries and reports while still leaving approval of such to the Council in its representative capacity of GNSO Community members. In relation to the last sentence, as this initial report illustrates, reports need to be much more concise. Detailed background and supporting information can be referenced as appendices or attachments.	RySG
39 (Board Report)	All reports to the Board should be public. ICANN staff may be requested by the GNSO Council to assist in providing summary and analysis to the Board, but (as recommended by the WT) ultimate responsibility for the content of such summary and analysis should lie with the Council, who should work with the relevant WG to determine the need for and extent of ICANN staff assistance.	Mary Wong
40 (Agreement of the Council)	Although not presumably within the scope of this WT, it should be noted that the actual procedures regarding absentee voting in the GNSO Council Operating Rules are currently being clarified. The WT should take note of the official interpretation (if any) of the pertinent part of the Rules, and review whether or not to revisit this issue in light of it.	Mary Wong
42 (Implementation)	INTA agrees with the recommendation to create an implementation review team as it will ensure that policy is implemented as agreed to in other stages of the process.	INTA
42 (Implementation)	The RrSG has no objection to this recommendation, but it should be considered in the context of the RrSG's other comments about an overtaxed staff and volunteer community.	RrSG
42 (Implementation)	The RySG supports the idea contained in the first sentence of the recommendation and suggests that the recommended composition of such review team be made in the WG final report. The review team then could serve as an ongoing resource for the GNSO Council and ICANN implementation staff.	RySG
42 (Implementation)	A WG Implementation Review Team would likely facilitate implementation efforts, and could act as the main conduit between the GNSO Council and ICANN staff charged with actual implementation of adopted policy	Mary Wong

	recommendations. If a WG has included implementation recommendations as part of its report, the Implementation Review Team should ensure that these recommendations are either followed or amendments/departures from them justified. In addition, ICANN staff should consult regularly with the Team and update it frequently on the status of implementation efforts, as well as refer questions that might raise policy issues to it promptly, for review as to whether these should be referred to the Council.	
43 / 44 (Review of policy and WG)	Providing a policy now on these issues might create an avenue to appeal policy decisions rather than provide meaningful insights. Other aspects of the report already address avenues for measuring whether specific policy implementations are successful. Review can be positive and beneficial, but the multiple layers of review and assessment proposed may be overly extensive and might hinder the PDP process.	INTA
45 (Review of PDP process)	A periodic review of the effectiveness of the PDP Process would probably be beneficial. It may be that this review should be undertaken after a threshold number of PDPs have been completed.	INTA
Overarching Issues		
	Without firm recommendations or, in some cases, any roadmap suggesting the direction of the WT's discussions to date on a particular overarching issue, it is difficult for the public to comment. INTA hopes that the public will have another opportunity to comment upon any recommendations relating to the overarching issues before the Council considers them.	INTA

1725

1726 # Annex II – New PDP Flowchart

1727

1728 [Need to update recommendation numbers if this section is to remain in the report]

1729 This is a section reproduced from the Initial Report which contains a flow-chart that shows the

1730 main elements of the proposed new Annex A – GNSO Policy Development Process of the ICANN

1731 Bylaws based on the recommendations that are put forward by the PDP-WT for the

1732 community's consideration. The first chart provides a high level overview of the different steps

1733 and elements that are proposed to form the new PDP. Following the high level overview, you

1734 will find a more detailed breakdown of each phase, including the relevant recommendations of

1735 the PDP-WT in relation to each step. To facilitate review of the relevant recommendations,

1736 please see Annex IV for a list.

1737

1738 The Board Governance Committee Report on GNSO Improvements noted that 'Many in the

1739 ICANN community support removing the PDP requirements from the Bylaws and incorporating

1740 them into the GNSO's operating procedures. The procedure for developing "consensus policies,"

1741 however, must track with ICANN's contractual requirements, and should be clarified in the

1742 Bylaws'. To this end, the PDP-WT has provided an indication of which elements the PDP-WT is

1743 considering recommending be included in Annex A of the ICANN Bylaws (B) or the GNSO Rules

1744 of Procedure (R). The main difference being that changes to the ICANN Bylaws need to be

1745 approved by the ICANN Board while changes to the GNSO Rules of Procedure can be adopted by

1746 the GNSO Council, without requiring Board approval.

1747

1748 **Figure 1 – High level overview of the proposed new GNSO PDP**

1749 **Figure 2 – Other GNSO Processes**

1750 **Figure 3 - Stage I – Planning and Request for an Issues Report**

Figure 4 - Stage II – GNSO Council Review of the Issues Report and Initiation of the Policy Development Process

Figure 5 - Stage III – Working Group

Figure 6 - Stage IV – Voting and Implementation

Stage V – Policy Effectiveness and Compliance

To be decided – see recommendations 43, 44, 45.

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ANNEX III - Background

On 26 June 2008 the ICANN Board approved a set of recommendations designed to improve the effectiveness of the GNSO, including its policy activities, structure, operations, and communications. The GNSO Improvements Report, approved by the Board, identified the following key objectives:

- Maximize the ability for all interested stakeholders to participate in the GNSO's policy development processes;
- Ensure that recommendations can be developed on gTLD "consensus policies" for Board review and that the subject matter of "consensus policies" is clearly defined;
- Ensure that policy development processes are based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively;
- Align policy development more tightly with ICANN's strategic and operations plans; and
- Improve communications and administrative support for GNSO objectives.

The Board emphasized the need to improve inclusiveness and representativeness in the GNSO's work while increasing its effectiveness and efficiency. The following pertains to the PDP-WT's mission:

Revising the PDP: The Policy Development Process (PDP) needs to be revised to make it more effective and responsive to ICANN's needs. It should be brought in-line with the time and effort actually required to develop policy and made consistent with ICANN's existing contracts (including, but not limited to, clarifying the appropriate scope of GNSO "consensus policy" development). 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, the GNSO Council and Staff should propose new PDP

rules for the Board's consideration and approval that contain more flexibility. The new rules should emphasize the importance of the preparation that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert research in order to properly define the scope, objective, and schedule for a specific policy development goal and the development of metrics for measuring success.

The charter of the PDP-WT is to develop and document a revised GNSO Policy Development Process that achieves the goals established by the ICANN Board. The PDP-WT, with staff assistance, will need to determine what changes to the bylaws will be required. New processes will need to be documented properly to ensure that the bylaws (and any related operational rules or procedures) are updated accurately. The revised PDP, after review and approval by the PPSC, GNSO Council, and ICANN Board, would replace the current PDP defined in Annex A of the ICANN bylaws.

This mandate arises not from a change in the mission or role of the GNSO, but from the accumulation of experience with the current PDP and the decisions that have been made by the ICANN Board concerning an organizational restructuring of the GNSO.

The PDP-WT's mission is closely related to that of the parallel Working Group Work Team (WG-WT) also chartered by the PPSC. The charter of the WG-WT is to "[d]evelop a new GNSO Working Group Model that improves inclusiveness, improves effectiveness, and improves efficiency". The two PPSC Work Teams are expected to work independently, but in consultation with each other.

For further details please visit the GNSO Improvements Home Page.

ANNEX IV - Working Group Charter

I. TEAM CHARTER/GOALS:

The GNSO Council's responsibility in recommending substantive policies relating to generic top-level domains is a critical part of ICANN's function. The mechanism by which the GNSO makes such recommendations to the ICANN Board of Directors is through the GNSO Policy Development Process (PDP) set forth in the ICANN Bylaws. The PDP Work Team is responsible for developing a new policy development process that incorporates a working group approach and makes it more effective and responsive to ICANN's policy development needs. The primary tasks are to develop:

1. Appropriate operating principles, rules and procedures applicable to a new policy development process; and
2. An implementation/transition plan.

Specifically, the GNSO Improvements Report approved by the ICANN Board recommended that a new PDP:

1. Be better aligned with the contractual requirements of ICANN's consensus policies as that term is used in its contracts with registries and registrars and clearly distinguishes the development of "consensus policies" from general policy advice the GNSO Council may wish to provide to 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.
2. Emphasize the importance of the work that must be done before launching a working group or other policy development activity, such as public discussion, fact-finding and expert research in order to define properly the scope, objective and schedule for a specific policy development goal.

3.   Be more flexible than the current model, containing timelines that are consistent with the task.

4.   Provide for periodic assessment to determine the effectiveness of revised rules, processes, and procedures on policy development work including self-reporting by each working group of any lessons learned, as well as input on metrics that could help measure the success of the policy recommendation. In addition the GNSO Council Chair should present an annual report to the ICANN community on the effectiveness of new GNSO policies using the metrics developed at the end of each PDP. The report should also contain a synthesis of lessons learned from policy development during the year with a view to establishing best practices. The report should be presented annually at an ICANN public meeting each year, and the material should be incorporated into the ICANN Annual Report prepared by Staff.

5.   Better align the PDP process with ICANN's strategic plan and operations plan. The Council, constituencies and staff should publish an annual "policy development plan" for current and upcoming work, to better align resources with strategic objectives, and to create a stronger nexus between the work plan of the GNSO Council and the ICANN planning process. The plan should be linked to ICANN's overall strategic plan, but be sufficiently flexible to accommodate changes in priority determined by rapid evolution in the DNS marketplace and unexpected initiatives.

6.   Contain rules, processes and procedures that are more effective and efficient and that meet consensus policy requirements as detailed further in the Report, to include specifying certain policy activities that should be done, including: research, consultation with constituencies, periods for public comment, timelines consistent with the complexity of the task, regular reporting to the Council as established in the scoping phase, and a final report and public comment period as in the current PDP.

The PDP Team shall work independently from, but in close consultation with, the Working Group Team of the Policy Process Steering Committee (PPSC). The Policy Development Process Team shall be responsible for making recommendations concerning the development of and transition to a new PDP for PPSC review.

ANNEX V - The Working Group

▪ Following the adoption of the charter by the GNSO Council, a call for volunteers was launched. The following individuals are part of the PDP-WT. Statements of Interests can be found[include link], [include link].

NAME	AFFILIATION	Meetings Attended
Sophia Bekele	Individual	
James Bladel	Registrar	
Marilyn Cade	Individual	
Bertrand de la Chapelle	GAC	
Paul Diaz	Registrar	
Avri Doria	NCA/NCSG[1]	
J. Scott Evans (Observer)	IPC	
Alex Gakuru	NCUC	
Alan Greenberg	ALAC	
Tony Harris	ISP	
Wolf-Ulrich Knoben	ISP	
Tatyana Khramtsova	Registrar	
Cheryl Langdon-Orr	ALAC (Alternate)	
Zbynek Loebl	IPC	
David Maher	RyC	
Jeff Neuman (Chair)	RyC	
Gabriel Pineiro	NCUC	
Mike Rodenbaugh	CBUC	
Kristina Rosette	IPC	
Greg Ruth	ISP	
Antonio Tavares	ISP	
Jean-Christophe Vignes	Registrar	
Jaime Wagner	ISP	
Liz Williams	CBUC	
Brian Winterfeldt	IPC	

To view the attendance sheet, please click here.

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[1] NCA until 26 Oct 09, NCSG after

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Stage 1 – Planning and Request for an Issues Report

Stage 2 – GNSO Council Review of the Issues Report and Initiation of the Policy

Development Process

Stage 3 – Working Group

Stage 4 – Voting and Implementation

Stage 5 – Policy Effectiveness and Compliance

Based on these discussions, e-mail exchanges, surveys and review of the public comments on the Initial Report on the subject matter, the PDP-WT has developed these recommendations that are intended to form the basis for the new GNSO Policy Development Process.

Overarching Issues

In addition to the five stages discussed in the previous sections of this report, the PDP-WT also identified a number of 'overarching issues' which were deemed to have an impact on the overall policy development process or related to various stages of the new PDP and therefore needed to be considered once an initial outline of the new PDP would have been completed. These overarching issues consist of:

Timing

Translation

Development of definitions

Voting thresholds

Decision-making methodology

Transition / Implementation of the new PDP

Proposed Changes to Annex A – GNSO Policy Development Process of the ICANN By-Laws

Section [TBC] of this draft Final Report contains a number of flow charts that reflect the main elements of the new Annex A, as well as those elements that are envisioned to be incorporated in the rules of procedure. .

Following review of the public comments received and further deliberations, the PDP-WT has developed, with the support of ICANN staff, a proposed basis forfor the new Annex A for consideration by the PPSC.

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. The following options are being explored:

Setting a maximum timeframe (e.g. 30-45 days) in the By-Laws which can be modified on the request of ICANN Staff with the agreement of the GNSO Council or the Issues Report requestor (if requested by an Advisory Committee or the ICANN Board); or

Request that ICANN staff provide the GNSO Council with an estimate of time it would take for the ICANN Staff to complete an issues report taking into account the complexity of the issue and the ICANN staff workload.

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The PDP-WT is considering the notion of having a fast-track procedure that would allow for a more timely PDP in cases where such urgent action is deemed to be necessary while at the same time ensuring broad participation and avoiding gaming. The PDP-WT hopes to receive further input from the community on which elements such a procedure should contain and how it would work in practice, during the public comment period.

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The PDP-WT has not completed its work on all these overarching issues, but has noted in section 8 its initial thoughts on these issues for public input and consideration. It is the intention of the PDP-WT to finalize its recommendations on these issues following the review and analysis of public comments on this initial report.

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The methodology proposed by the Working Group Work Team for Working Groups in general is as follows:

(From the latest version of the WG WT dated 14 October 2010)GNSO Working Group Guidelines

It should be noted that further changes might be made following submission to the Policy Process Steering Committee.

In addition, the PDP WT might want to review whether further details need to be provided for decision-making in a drafting team responsible for preparing a charter. No specific rules are currently provided, but a recent experience demonstrates that there might be a need to provide further guidance especially in cases where there is disagreement or even deadlock on what should be included in the charter.

See also feedback from WG-WT members to a number of questions in relation to decision-making: https://st.icann.org/icann-ppsc/index.cgi?additional_questions.

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The recommendation of the Staff Manager as to whether the Council should initiate the PDP on the issue.

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or modified as follows:

The

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or

The unanimous vote of each House of the GNSO Council, for those modifications and amendments considered to be non-controversial or involving insignificant wording changes to the approved policy. Prior to any such vote, the GNSO Council should consider opening a public comment forum on the proposed revisions to the adopted policy.]