PDP-WT   **Review of the Policy Development Process**
Stage I   **PLANNING AND INITIATION**

In order to facilitate the discussion, this document aims to bring together the PDP Work Plan notes, questions from the staff paper and issues and ideas raised in previous debates. Please review this document to see if there is anything missing, especially in the concerns / questions section. Feel free to share your ideas and suggestions on the mailing list. The hope is that if the group can reach consensus on how these concerns / questions should be addressed, it will be easier to work towards a proposed solution.

Issue to be addressed	Current Practice / Rules	Concerns / Questions	Notes from WT calls / How to address concerns - questions	Proposed Solution	By-law change recommended (Y/N)
1. Who has the right to initiate a request for an issues report	From the ICANN by-laws: a. Board Initiation. The Board may initiate the PDP by instructing the GNSO Council ("Council") to begin the process outlined in this Annex. b. Council Initiation. The GNSO Council may initiate the PDP by a vote of at least twenty-five percent (25%) of the members of the Council present at any meeting in which a motion to initiate the PDP is made. c. Advisory Committee Initiation. An Advisory Committee may raise an issue for policy development by action of such committee to commence the PDP, and transmission of that request to the GNSO Council.	1a. Should other parties be allowed to raise an issue? If so, under which conditions and procedures? 1b. Current language in the by-laws refers to the initiation of a PDP when an Issues Report is requested. This has proven to be confusing.	1a. Recommendation to adopt Same Criteria from Current PDP and not expand the list of persons or groups that could "raise an issue." Consider whether the GNSO and the AC's should develop and announce a formal mechanism to allow other parties who may or may not be members of a formal constituency, stakeholder group or advisory committee to make suggestions to the GNSO/AC on topics for an issues report • Some entities such as APWG/ISOC might have reason to make suggestions • Concern that might encourage random/unqualified submissions from public that just creates unnecessary work on the Council • Some stated that it is incumbent on these organizations to raise the issues through their stakeholder groups or constituencies		

2.Procedures for requesting an issues report	From the ICANN by-laws: a. Board Initiation. The Board may initiate the PDP by instructing the GNSO Council ("Council") to begin the process outlined in this Annex. b. Council Initiation. The GNSO Council may initiate the PDP by a vote of at least twenty-five percent (25%) of the members of the Council present at any meeting in which a motion to initiate the PDP is made. c. Advisory Committee Initiation. An Advisory Committee may raise an issue for policy development by action of such committee to commence the PDP, and transmission of that request to the GNSO Council.	2a. Are the procedures outlined in the by-laws still relevant and efficient? 2b. There are no requirements as to what information a request should contain. Would a template be helpful including items such as definition of issue, identification of problems, supporting evidence, why should the issue be considered for policy development?			
3. Issues Scoping	No rules or current practice	3a. In theory, there is currently no limit on the issues that can be raised as there is no requirement for the issue to be 'within scope' (i.e. within ICANN's mission and linked to gTLDs). This assessment is carried out as part of the issues report. Should an initial assessment take place when an issue is raised? 3b. Should the requestor identify the desired goal/outcome of a PDP? 3c. What actions are needed in order to ensure a precise and narrow definition of an issue? 3.d Should an initial assessment be foreseen whether GNSO policy			

		development is the appropriate response to the issue raised or whether other alternatives are deemed more efficient to achieve the desired outcome?			
4. Creation of the Issues Report	Within fifteen (15) calendar days after receiving either (i) an instruction from the Board; (ii) a properly supported motion from a Council member; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (an "Issue Report"). Each Issue Report shall contain at least the following: a. The proposed issue raised for consideration; b. The identity of the party submitting the issue; c. How that party is affected by the issue; d. Support for the issue to initiate the PDP; e. A recommendation from the Staff Manager as to whether the Council should initiate the PDP for this issue (the "Staff Recommendation"). Each Staff Recommendation shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO. In determining whether the issue is properly	4a. Current requirements for content of an Issues Report are pre-defined in the by-laws. Are they still relevant? 4b. Is an Issues Report still the desired outcome of the planning / initiation phase or would a more robust pre-PDP Preparation Report be more appropriate? 4c. Should, where available, positions of stakeholders be included?	Discussed reviewing IETF "Birds of a Feather" (see http://www.rfc-archive.org/getrfc.php?rfc=5434&tag=Considerations-for-Having-a-Successful-Birds-of-a-Feather-(BOF)-Session) 4b. Bertrand's suggestion: Consider the use of three steps: 1. Light Issues Brief (3 or so pages) that highlights the following: • the proposed issue raised for consideration • the identity of the party submitting the issue and the reasons invoked for doing it • the main dimensions of the issue 2. Staff Recommendation on whether policy is needed: • General Counsel comments • the degree of support for launching a PDP on that issue • the expected outcome of the PDP (including whether it should be "consensus policy", "general policy" or "recommendations" for instance) • the main issues to address in the PDP 3. Issues Report Suggestion to use a		

	within the scope of the ICANN policy process, the General Counsel shall examine whether such issue: 1. is within the scope of ICANN's mission statement; 2. is broadly applicable to multiple situations or organizations; 3. is likely to have lasting value or applicability, albeit with the need for occasional updates; 4. will establish a guide or framework for future decision-making; or 5. implicates or affects an existing ICANN policy		Briefing/Scoping White Paper similar to that used by the OECD that provides an executive summary of research, information obtained through educational workshops prior to creating an Issues Report This early paper could cover a, b and c in the current PDP; Council could then make a "go/no-go decision for more in depth Issues Paper which should be put out for public comment (this includes also d and e from current PDP). • Third party researchers could be used to gather the appropriate information • May delay process of initiating a PDP but may result in a better understanding of the issues and a more efficient use of the PDP process • Could be used to educate the GAC/other ACs on topics under consideration • After comment period, Council should then make a decision about going into a PDP. Consider whether there should be a possibility to ask for other policy work other than a PDP		
5. What can be the end result of a PDP	[not clear what should be covered under this phase]				
6. The ongoing role	From the ICANN by-laws: Each Staff Recommendation	6a. On paper, the role of ICANN's General Counsel is limited to	Discussed how/who should deliver the initial determination		

of the Office of the General Counsel in providing legal advice to the policy development process	shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO. In determining whether the issue is properly within the scope of the ICANN policy process, the General Counsel shall examine whether such issue: 1. is within the scope of ICANN's mission statement; 2. is broadly applicable to multiple situations or organizations; 3. is likely to have lasting value or applicability, albeit with the need for occasional updates; 4. will establish a guide or framework for future decision-making; or 5. implicates or affects an existing ICANN policy.	providing input for the staff recommendation which is part of the Issues Report. Should other consultations be foreseen e.g. at the request stage?	on GNSO scope. Two alternatives suggested: 1. Policy Staff to solicit input from the OGC and produce for the GNSO the initial determination on whether policy work is within GNSO scope; or 2. Formal Opinion of the Legal Department on GNSO Scope to be required at the commencement of a PDP inquiry Legal Input to be solicited later in the PDP when specific policy determinations are to be explored for the purpose of: 1) confirming that the policy work is within GNSO scope and 2) if the policy is expected to be binding on contracted parties, whether such policy can be binding on such parties as a Consensus Policy or through other contract terms Need to build in a procedure to get a second opinion (from who?) if the GNSO disagrees with the Staff/OGC opinion on scope		
7. Community input / How to incorporate public comments	No rules or current practice	7a. Should there be a requirement to obtain public input at the stage of the request? 7b. Should there be a need to build in flexibility for public consultation in the preparation of an issues			

		report there where further information is desirable to complete the report? 7c. Should constituencies be consulted at this stage e.g. their definition of the issue is and if/how it affects them? 7d. How to incorporate community input at the planning / initiation phase?			
8. Role of Workshops / Information Gathering events**	No rules or current practice	8a. Is there a role for workshops / information gathering events at the planning / initiation phase? If so, how can this be build in?			
9. Efficiency and flexibility during planning / initiation phase***	From ICANN by-laws: Within fifteen (15) calendar days after receiving either (i) an instruction from the Board; (ii) a properly supported motion from a Council member; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (an "Issue Report")	9a. Current deadline of 15 days after receipt of a request is unworkable. How to build in sufficient flexibility to allow for additional research and consultation when needed, while being able to move forward quickly in those cases where additional work is not deemed necessary? Would a flexible timetable be an option i.e. in the request the submitting party with staff support develops a draft timeline which can consist of a number of phases that are pre-determined with a set timeframe? 9.b What flexibility should be foreseen for additional research or study at the initiation phase?			
10. Economic Impact Analysis****	No rules or current practice	10a. Whether to conduct preliminary economic analysis, such as to evaluate market			

		demands, impact to Community, ICANN staff costs, and other resources needed from ICANN			
11. Resources and Prioritization*	No rules or current practice	11.a Should there be a maximum of issues that can be taken into consideration at the same time taking into account ICANN staff time but also volunteer workload? 11b. Should there be a fast-track procedure for 'emergency' issues?			

* Not addressed in Topic_A_-_Current_PDP1 with 4-30 notes.doc
** Former: 'Whether to conduct informative workshops to educate the public' in the document Topic_A_-_Current_PDP1 with 4-30 notes.doc
*** Former: 'How to make PDPs more efficient & build in flexibility to allow for additional research / and or fact finding' in Topic_A_-_Current_PDP1 with 4-30 notes.doc
**** Former: 'Whether to conduct preliminary economic analysis, such as to evaluate market demands, impact to Community, ICANN staff costs, and other resources needed from ICANN' in Topic_A_-_Current_PDP1 with 4-30 notes.doc