

Policy Development Process Work Team Draft Recommendations

STATUS OF THIS DOCUMENT

These are the recommendations from the Policy Development Process Work Team (PDP WT) concerning the development of and transition to a new PDP for review by the Policy Process Steering Committee (PPSC).

1 APPROACH TAKEN

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 Initiation
- Stage 2 – Proposal Review and Voting Thresholds
- Stage 3 – Work phase
- Stage 4 – Voting and Implementation
- Stage 5 – Assessment of Policy Effectiveness and Compliance

Further details to be added.

2 STAGE 1 - PLANNING AND INITIATION

In discussing this stage, the PDP WT addressed the following general issues:

1. Who has the right to initiate a request for an issues report?
2. Procedures for requesting an issues report
3. Issues Scoping
4. Creation of the Issues Report
5. What are the possible end results of a PDP
6. The role of ICANN staff
7. Community input / How to incorporate public comments
8. Role of Workshops / Information Gathering events
9. Efficiency and flexibility during planning / initiation phase
10. Economic Impact Analysis
11. Resources and Prioritization

1. Who has the right to initiate a request for an issues report?

Current By-law Provisions

The current ICANN by-laws provide for three possible mechanisms for the initiation of an “Issues Report”: Board Initiation, GNSO Council Initiation and Advisory Committee Initiation (see [ICANN By-Laws](#)). It is worth noting that to date, only the latter two (Council Initiation and Advisory Committee Initiation) have been utilized.

Concerns / Questions

- 1.a Should other parties be allowed to raise an issue? If so, under which conditions and procedures?
- 1.b Current language in Annex A of the by-laws refers to the initiation of a PDP twice, first, when an Issues Report is requested (1. Raising an Issue) and again when

the Issues Report is complete (3. Initiation of a PDP) . This has proven to be confusing.

PDP WT Response

Although a request for an Issues Report has never been issued directly by the ICANN Board, the WT recommends that the current three mechanisms for initiating a request for an Issues Report should be maintained. The WT discussed the possibility of having additional mechanisms to allow future constituencies to initiate a request for an Issues Report. These could include groups like the Anti-phishing Working Group, ISOC, members of the public, etc. However, the WT believes that such groups should have access to participate in Stakeholder Groups or an Advisory Committee and if the issue truly merits attention from the GNSO Council, such attention will be received. That said, the WT does believe that for those not familiar or active in the ICANN Process, there should be information available to these individuals and entities on the policy process and how to raise an issue.

- 1.a 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 Advisory Committees 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
- 1.b Some entities such as APWG/ISOC might have reason to make suggestions
- 1.c Concern that might encourage random/unqualified submissions from public that just creates unnecessary work on the Council
- 1.d Some stated that it is incumbent on these organizations to raise the issues through their stakeholder groups or constituencies
- 1.e Most agreed that this needed to be clarified.

Recommended Changes

Original Text	Proposed Text
ICANN By-Laws	
1. Raising an Issue	
<p>An issue may be raised for consideration as part of the PDP by any of the following:</p> <p>a. <i>Board Initiation.</i> The Board may initiate the PDP by instructing the GNSO Council ("Council") to begin the process outlined in this Annex.</p> <p>b. <i>Council Initiation.</i> The GNSO Council may initiate the PDP 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.</p> <p>c. <i>Advisory Committee Initiation.</i> 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.</p>	<p>An issue may be raised for consideration as part of the PDP by any of the following:</p> <p>a. <i>Board Initiation.</i> The Board initiate the PDP by instructing the GNSO Council ("Council") to begin the process outlined in this Annex.</p> <p>b. <i>Council Initiation.</i> The GNSO Council may raise an issue 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</p> <p>c. <i>Advisory Committee Initiation.</i> An Advisory Committee may raise an issue for policy development by action of such committee to raise an issue, and transmission of that request to the GNSO Council.</p>

Justification

There was broad agreement that the status quo should be maintained with regard to who should be able to raise an issue and that the language should be clarified so that the term "policy development process" or "PDP" refer to the formal process initiated by the GNSO Council after the completion and delivery of an Issues Report to the GNSO Council. The same changes should be made to the GNSO Rules of Procedure.

2. Procedures for Requesting an Issues Report

Current Practice

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. [In the new GNSO structure, the voting threshold is as follows: Create an Issues Report – either greater than 25% vote of both houses or simple majority of one house]
- 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.

Concerns / Questions

- 2.a Are the procedures outlined in Annex A of the by-laws still relevant and efficient?
- 2.b 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? Should use of a template be required?
- 2.c Is requesting an issues report the same as initiating a PDP? If not, should the Board and/or Advisory Committees be allowed to initiate a PDP?
- 2.d Should more details be provided on how an Advisory Committee can request an issues report?

PDP WT Response

2.a Will the ‘members present’ also apply to new voting threshold? This should be clarified in the voting rules. Another option would be to leave it up to each house to define their voting rules. Proposal would be to strike the words of members present. [*Will need to be aligned with discussion on this issue in Phase II*]

2.b An optional request for an issues report template was discussed which could include different sources of information or background on the issue proposed. Such a template was deemed helpful as long as it would not be an obligation to complete the whole template before a request would be considered.

Could a “Bird of a Feather (“BOF”) approach, like that currently used by the Internet Engineering Task Force (“IETF”) help frame the issue and ensure that sufficient information is available to make an informed decision and facilitate the creation of an issues report? This should be presented to the GNSO Council as an optional tool to assist in the development of an issue and the ultimate Issues Report, but the Work Team did not believe that this should be made a requirement for the requesting of an Issues Report.

Should constituencies have the opportunity to provide their position on the issue and/or provide supporting information?

There was agreement that guidelines should be developed that suggest information that could be provided to facilitate the preparatory phase. The contents of these guidelines should be further discussed.

2.c Advisory Committees should be allowed to request an issues report, but they should not be allowed to initiate a PDP without the required Council support for the initiation of a PDP. Currently the GNSO does vote on the initiation of a PDP when an issues report is requested by an advisory committee. The Board can initiate a PDP directly without Council intervention.

Recommended Changes

- See section 1 for proposed changes to ICANN by-laws.
- Develop a Policy Development Process Manual or Guidebook, which could be an integral part of the GNSO Rules of Procedure, that provides guidance and

suggestions to those parties raising an issue on which steps could be helpful in gathering evidence and providing sufficient information to facilitate the overall policy development process.

- A 'request for an issues report' template should be developed including items such as definition of issue, identification of problems, supporting evidence, why should the issue be considered for policy development. Further consideration would need to be given as to whether some of these elements should be required before a request is considered by the GNSO Council. Such a template should become part of the above mentioned Policy Development Process Manual or Guidebook.

3. Issues Scoping

Current rules and practice

No current rules or practice.

Concerns / Questions

- 3.a 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. either within the "picket fence" of the gTLD Registry and Registrar agreements or within the parameters of ICANN's mission as it relates to the GNSO in general). This assessment is carried out as part of the issues report. Should an initial assessment take place when an issue is raised?
- 3.b Should the requestor identify the desired goal/outcome of a PDP?
- 3.c 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?

PDP WT Response

- 3.a It was suggested that ICANN staff should be willing to do an initial assessment of scope if requested by the body that is planning to raise an issue. ICANN staff has expressed a concern that assessing whether an issue is in scope may be difficult, but at the very least would require that issues are narrow and defined in order for this determination to be made.
- 3.b It was suggested that those requesting the issues report should be encouraged to identify potential outcomes, if possible, as long as this would not bias or restrict the Working Group in its activities and recommendations.
- 3.c Suggestions made include: workshops, templates, birds of a feather, community discussion, option to ask clarifying questions, early and frequent consultation between affected parties, better understanding of appropriate role of ICANN organizations within the ICANN community affected by the issue, require inclusion of supporting information when an issue is raised. A suggestion was made that there should be a mechanism by which if there is not sufficient information available an issue does not pass to the next stage.
- 3.d Some suggested this could be part of the staff response, if requested, but it should not affect the ability to raise an issue. It was also noted that a policy development process can cover a broad range of issues and have a variety of outcomes.

Recommended Changes

- Develop a Policy Development Process Manual or Guidebook, which could be an integral part of the GNSO Rules of Procedure, that provides guidance and suggestions to those parties raising an issue on which steps could be considered helpful in gathering evidence and providing sufficient information to facilitate the overall policy development process.

4. Creation of the Issues Report

Current rules and practices

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 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

Concerns / Questions

- 4.a Current requirements for content of an Issues Report are pre-defined in the by-laws. Are they still relevant?

- 4.b 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?
- 4.c Should, where available, positions of stakeholders be included?

PDP WT Response

The PDP WT discussed and reviewed the IETF's "Bird of a Feather" (BOF)¹ concept as a possible precursor to raising an issue and/or the development of an issues report. BOF processes typically focus on garnering support for a specific charter and the specific work items in a charter. The focus of this initial activity is on the issue, not on finding a solution to the issue. In an ICANN context, an initial BOF-like process could also focus on the desired or required policy approach to address the issue.

- 4.a Some indicated that they felt these requirements were still valid, but these should not unnecessarily limit the content of an Issues Report. Some would prefer to see two documents created by staff, a short initial issues paper and, at the appropriate time, staff-produced recommendations, but they also noted that the content of these documents may call for too precise a level of detail to be specified in the by-laws. Others suggested that a new template could be developed that should be populated with relevant information and a checklist for completion, including a proposed timeline.
- 4.b A number of suggestions were made such as:
 - o The use of the following 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. Recommendation on whether a PDP should be initiated:
 - General Counsel comments

¹ See https://st.icann.org/data/workspaces/icann-ppsc/attachments/pdp_team:20090604091634-1-14428/original/Summary%20of%20contribution%20of%20Thomas%20Narten.pdf

- 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

- The use a 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.
- Some noted that the creation of a drafting team or BOF should be optional and at the Council's discretion.
- Consider whether there should be a possibility to ask for other policy work other than a PDP

There was, however, overall agreement that a report of some kind, whether called an Issues Report or not, should be the desired outcome of the planning and initiation phase. In addition, there was overall agreement that consideration should be given to the fact that some issues might require more information or more research than others.

- 4.c Some suggested that opposition should be factored into any decision to proceed with policy work. Others suggested that this should be considered but in a concise manner and with neutral reporting.

Recommended Changes

- No changes have been recommended by the Work Team to the Bylaws at this point. However, the group may choose to reassess upon completion of work on all of the Phases. [One could consider including in the Policy Development Process Manual or Guidebook a recommendation for the entity requesting the issues report to indicate whether there are any specific items they would like to see addressed in the issues report which could then be taken into consideration by the Council when reviewing the request. In addition, it could be an option for the Council and/or Staff could provide advice ahead of a vote on the request for an issues report whether they feel additional research, discussion, or outreach should be conducted as part of the development of the issues report, in order to ensure a balanced and informed Issues Report. These items would then need to be taken into account for the timeline for delivery of the Issues Report.]

5. What can the end result of a PDP be

Current rules and practices

None

Concerns / Questions

- 5.a Current perception is that the only outcome of a PDP is a recommendation for policy changes. How should this be addressed?

PDP WT Response

- 5.a Other outcomes can be recommendations (e.g. for clarification of an existing policy, breaking up work in sub-PDPs, contract changes), best practices, technical specifications, code of conduct, review of an existing policy. A tentative typology of PDP outcomes could be:
- Guidelines/Best practices (non-binding recommendations)
 - Consensus Policies (binding provisions within the framework of existing agreements - picket fence - to be implemented by the contracted parties)

- General Decisions (formal enforceable decisions on a specific topic beyond the existing agreements)
- Policy frameworks (general orientations charting the course for a broad range of activities, such as in the introduction of new gTLDs)

The purpose of clarifying such a typology (not limitative and exploratory at that stage) would be to clarify processes and establish some form of hierarchy of norms and rules, currently absent from the exclusively contract-based environment.

Recommended Changes

- Better information and communication with Working Group members on the potential outcomes of a policy development process. This information could be included in the Charter or in the instructions and processes for WGs that is being prepared by the Working Group Work Team [to be verified]. It is also an element that should be included in the Policy Development Process Manual or Guidebook.

6. The role of ICANN staff

Current rules and practices

From the ICANN by-laws:

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 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.

Questions / Concerns

- 6.a On paper, the role of ICANN's General Counsel is limited to providing input for the staff recommendation which is part of the Issues Report. Should other consultations be foreseen e.g. at the request stage?
- 6.b Should there be a possibility to request a 'second opinion' if there is disagreement with the opinion of the General Counsel's office?
- 6.c Should the role of ICANN staff in the planning and initiation phase be clarified?

PDP WT Response

- 6.a The PDP WT discussed who and how the initial determination on GNSO scope should be delivered. Two alternatives were suggested:
 - 1. Policy Staff to solicit input from the Office of the General Counsel and produce for the GNSO the initial determination on whether policy work is within GNSO scope; or
 - 2. Formal Opinion of the Office of the General Counsel on GNSO Scope to be required at the commencement of a PDP inquiry.

It was also proposed that legal input should 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.
- 6.b Some suggested that there is a need to build in a procedure to get a second opinion if the GNSO disagrees with the Staff/OGC opinion on scope, but no further suggestions were provided as to whom could deliver such a second opinion or how such a procedure would work.
- 6.c Discussions have identified at least four different roles:
 - Expertise (can be technical, legal, economic, etc... and can also make use of external resources such as consultants)
 - Secretariat (fundamentally a support function, covering both logistics and drafting assistance in a totally neutral manner reflecting faithfully the work of working groups)

- Operational / implementation (day-to-day operations in the framework of existing policies and rules)
- Gate-keeping / Scoping (internal role of the General Counsel, but possibly distinct, guaranteeing respect of the procedures and competences of the different structures)

It was suggested that the PDP reform could lead to justify corresponding improvements in the structure of the ICANN staff. A clearer distinction by function could also correspond to specific rights and responsibilities, as the neutrality of the staff in decision-shaping was mentioned by some as a concern.

Recommendations

- To be decided

7. Community input / How to incorporate public comments

Current rules and practices

None

Concerns / Questions

- 7.a Should there be a requirement to obtain public input at the stage of the request?
- 7.b 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?
- 7.c Should constituencies be consulted at this stage e.g. their definition of the issue is and if/how it affects them?
- 7.d How to incorporate community input at the planning / initiation phase?

PDP-WT Response

- 7.a Some suggested that this could be optional, as a way to gather further input or information if this is deemed lacking. Others suggested that public comments should be invited once the Issues Report has been prepared, but before the GNSO Council decides on the initiation of a PDP. It was also suggested that

stakeholders identified in the request for an issues report should be allowed to submit comments.

- 7.b Some suggested that this should only happen on the request of the Council. Others added that the current timeline for an Issues Report is completely unrealistic; staff must have adequate time to consult with Community experts, advocates and opponents to develop a well-informed and balanced report. It was also suggested that public consultations and/or additional research should be possible in between the initial 'issue paper' and the recommendations, depending on the complexity of the topic. Again, it was emphasized that this should happen upon the instructions of the GNSO Council. In addition, it was proposed that community opinion should be sought after the issues report has been released, but before a decision is taken on the initiation of a PDP.
- 7.c It was suggested that the party raising the issue could elect to do so if desired. Others suggested that with more time, constituencies could contribute to the Issues Report, but this should not be a requirement as it could delay the process. It was also noted that the important aspect is to make sure a diversity of viewpoints is represented in the Issues Report. Others noted that constituencies should be consulted after the publication of the Issues Report.
- 7.d Some suggested that community input could be incorporated via workshops, birds of a feather or a public comment period and that all relevant information stemming from these activities should be incorporated in the Issues Report. Others suggested that a public consultation following the publication of the Issues Report should be considered to inform the GNSO Council of community views before deciding on the initiation of a PDP.

Recommendation

Original Text

Proposed Text

ICANN By-Laws

1. Creation of the Issue Report

Within fifteen (15) calendar days after

[To be decided] days after receiving either

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 within the scope of the ICANN policy process, the General Counsel shall examine whether

(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 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.

f. **On or before the fifteen (15) day deadline**, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate the PDP, as discussed below.

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.

f. **[To be decided]**, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate the PDP, as discussed below.

Justification

The current timelines are too limited to allow for outreach or additional research to ensure the development of a well-balanced and informed Issues Report.

- Other recommendations to be decided
[An option could be to add a public comment period following the publication of the Issues Report and before a decision on the initiation of a PDP to allow for additional information missing from the Issues Report to be submitted, or correct or update any information in the Issues Report that is deemed incorrect. In addition, this would

allow for the ICANN Community to express their views to the Council on whether to initiate a PDP or not.

To address the timeline issue, one could consider changing the by-laws by having a maximum timeline for the development of an Issues Report, e.g. 60 days, but allow this to be modified if the Council decides so, following a recommendation from staff if additional time for research and consultation is deemed necessary. It could also be a Council decision, possibly on the recommendation of staff, whether additional public comment periods, workshops or research need to be foreseen. As the approach will differ depending on the complexity of the issue, it might be appropriate to leave this at the discretion of the Council instead of trying to foresee all possible scenarios in the by-laws.]

8. Role of Workshops / Information Gathering events

Current rules and practices

None

Concerns / Questions

8.a Is there a role for workshops / information gathering events at the planning / initiation phase? If so, how can this be build in?

PDP WT Response

8.a Many agreed that there could be a role for workshops and information gathering events at the planning and initiation stage. Some noted, however, that this should not be a requirement. Others added that it might be more appropriate for such events to take place after the publication of the issues report. Several people expressed concern that such events would have the potential to slow down the overall process as such meetings would likely be organized in conjunction with ICANN meetings.

Recommendations

- To be decided [One could consider including information on the potential role of workshops and information gathering events in the Policy Development Process Manual or Guidebook. In addition, this could be one of the items to be decided by the GNSO Council, possibly on the basis of a staff recommendation, to add to the planning and initiation phase for a specific issue.]

9. Efficiency and flexibility during planning / initiation phase

Current rules and practice

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")

Concerns / Questions

- 9.a 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?

PDP WT Response

- 9.a It was suggested that a drafting team that is tasked with developing a charter for a WG should also be in a good position to develop a realistic timeline for delivery of the milestones. Some suggested a maximum deadline of 30 days or 45 days

that could be extended but only with the agreement of the requester. Others suggested to include target dates in the by-laws based on the current experience with PDP timelines, but with the flexibility for modification by the GNSO Council if it is deemed necessary to allow for extra time for research or consultation. It was also suggested that guidance could be provided on how much additional time should be needed for certain additional elements such as a workshop or public comment period during the planning and initiation phase. Some noted that this should be left to the Council to decide on a case-by-case basis, with input from Staff as to their current workload and estimate of time to complete each project. Others noted that the timeline should be driven by the complexity of the issue but within a certain date boundary set out. Some suggested that there should be two types of requests, one standard request, which would be queued behind existing requests / reports, and a second expedited / urgent request which would move up to the queue if it has broad support of multiple SO/ACs and/or the Board or GNSO Council.

- 9.b Some suggested that flexibility should be retained, but that research or study can occur after the initiation phase. Some indicated that research / study at this stage should be minimized. Others suggested that there should be flexibility at all stages.

Recommendations

- To be decided [Recommendations suggested for issue 7 could also apply here]

10. Economic Impact Analysis

Current rules and practices

None

Concerns / Questions

- 10.a Whether to conduct preliminary economic analysis, such as to evaluate market demands, impact to Community, ICANN staff costs, and other resources needed from ICANN

PDP WT Response

- 10.a Some wondered whether it would be feasible to do an economic impact analysis at this stage of the process? It might be appropriate for some issues, but not others. Others noted that it might prejudice the outcome. It was noted that an option could be left to leave this to the discretion of the GNSO Council, possibly on the recommendation of ICANN staff, to decide, but that this should not delay the overall process.

Recommendations

- To be decided

11. Resources and Prioritization

Current Rules and Practice

None

Concerns / Questions

- 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?
- 11.b Should there be a fast-track procedure for 'emergency' issues?

PDP WT Response

- 11.a There was overall agreement that there should be a mechanism for prioritizing and planning PDPs over time. Ideas discussed included: consideration of a similar role / function as the IETF area director; should constituencies be asked to provide names of volunteers for participating in a WG at the time of a vote for

- the initiation of a PDP; how to deal with issues that are only of interest to one or two constituencies. The group noted that it would be worth checking with the WG-WT whether they have considered these last two ideas in their deliberations. Most agreed that it should be the role of the GNSO Council to prioritize, but no clear solution was proposed as to how to do this.
- 11.b Some agreed that such a procedure could be developed, but more time would be required in order to do so. Issues to be considered would include how to demonstrate a higher need and how to avoid gaming the system. Some criteria suggested include: the community clearly considers it so and expresses it in an explicit manner; the issue is clearly outlined and the common goal clearly identified (including the expected outcome); the ICANN Board and GNSO Council agree about the urgency.

Recommendations

- To be decided.

3 STAGE II – GNSO COUNCIL REVIEW OF THE ISSUES REPORT AND INITIATION OF THE POLICY DEVELOPMENT PROCESS

In discussing this stage, the PDP WT addressed the following general issues:

1. Flexibility when launching a policy development process
2. Appeals mechanism in case the GNSO votes against initiating a PDP requested by an AC or SO
3. Application of the Voting thresholds
4. Charter development
5. Need for an Expedited procedure in extraordinary circumstances
6. Advice from other ACs or SOs, and input from the Board
7. Evaluation of the ICANN Staff costs and resources
8. Resources available to GNSO to take informed decision
9. Public Comment Period after the Initiation of a PDP
10. Clarification of 'in scope of ICANN policy process or the GNSO'

1. Maintaining flexibility when launching a Policy Development Process

Current By-Law Provisions

The Council shall initiate the PDP as follows:

- a) Issue Raised by the Board. If the Board directs the Council to initiate the PDP, then the Council shall meet and do so within fifteen (15) calendar days after receipt of the Issue Report, with no intermediate vote of the Council.
- b) Issue Raised by Other than by the Board. If a policy issue is presented to the Council for consideration via an Issue Report, then the Council shall meet within fifteen (15) calendar days after receipt of such Report to vote on whether to initiate the PDP. Such meeting may be convened in any manner deemed appropriate by the Council, including in person, via conference call or via electronic mail.

Concerns / Questions

- 1.a Within which timeframe should the Council decide whether to initiate a PDP or not? Should the same timeframe apply to an issue raised by the Board?
- 1.b What other flexibility would be desired when launching a policy development process?

PDP-WT Response

- 1.a In relation to an issue raised by the Board, the WT discussed that the actual initiation of the PDP in practice is the adoption of the WG charter as there is no vote by the Council in this situation to formally “initiate a PDP.” In other words, currently the Bylaws state that if the Board desires the GNSO to conduct a PDP, then that will happen. It was noted, however, that if the Council must vote to approve a WG charter related to an issue raised by the Board, that this would be one mechanism in which the Council could potentially block the initiation of a PDP if the Council would decide not to adopt the Charter. However, some in the group expressed the belief that this was an appropriate “check and balance” of Board action.

The WT proposes to use the same voting thresholds currently found in the Bylaws with respect to the initiation of a PDP to adopt a WG charter (see also issue 4). In addition, the WT discussed the timeline for the delivery of the charter and consideration by the GNSO Council. Some suggested that the charter should be voted upon on the next meeting after delivery by the drafting team, others pointed out this might be difficult in case the Council discussion would result in changes to the charter or a constituency would like to defer a vote on the charter to be able to discuss it with their respective constituency.

It was suggested, that the requirement could be for the council to ‘take action’ on the initiation of a PDP which could have a number of different meanings (vote, deferral, additional work, etc.). The question was raised whether a specific deadline should be included to ensure that a vote would be taken in a timely

manner. A suggestion was made to include a timeframe for decision in the by-laws, but to allow for the Council to decide, following a vote, to defer it to a later date. It was suggested that any such deferral should be accompanied by a reason or explanation for such deferral and the possibility of establishing a maximum number of deferrals. The question was raised how long after a 'no' vote on the initiation of a PDP, could the same request be tabled again or would this only be allowed if new information became available? Currently there is no mechanism to appeal a 'no' vote and the WT does not recommend that one should be included. The WT, however, does believe that if the Council decides It was also suggested that any 'no' vote should be accompanied by the reasons for the 'no' vote as currently is the requirement for rejecting the final report of a Working Group.

It was noted that the timeframe should be reviewed in the context of the overall timeline for the policy development process.

As part of the survey undertaken to gather input from the WT members, a number of suggestions were made ranging from a 45 to 90 day timeframe to decide whether to initiate a PDP or not. Some suggested that a timeframe should be given in number of Council meetings (i.e. a decision should be taken at the latest at the second meeting following the receipt of the Issues Report). Many noted that there should be flexibility for the Council to deliberate, especially in relation to complex issues, but it was also noted that there should be transparency and predictability as to when an issue can be expected to be voted upon.

- 1.b Some suggested that it might be helpful to foresee some flexibility for prioritization and scheduling reasons (e.g. be able to put the initiation of a PDP on hold if there are already too many going on). Other suggestions made include categorization of reasons for the initiation of a PDP, request for additional data, emergency procedure. It was noted that any requests for more information or

additional time for discussion, should be accompanied by a timeline so that there is a reasonable expectation as to when an issue will be voted upon.

Recommendations

Original Text	Proposed Text
ICANN By-Laws	
3. Initiation of a PDP	
The Council shall initiate the PDP as follows:	The Council shall initiate the PDP as follows:
a) Issue Raised by the Board. If the Board directs the Council to initiate the PDP, then the Council shall meet and do so within fifteen (15) calendar days after receipt of the Issue Report , with no intermediate vote of the Council. b) Issue Raised by Other than by the Board. If a policy issue is presented to the Council for consideration via an Issue Report, then the Council shall meet within fifteen (15) calendar days after receipt of such Report to vote on whether to initiate the PDP. Such meeting may be convened in any manner deemed appropriate by the Council, including in person, via conference call or via electronic mail.	a) Issue Raised by the Board. If the Board directs the Council to initiate the PDP, then the Council shall meet and do so at the first meeting following receipt of the Issue Report , with no intermediate vote of the Council; provided that such meeting is at least seven (7) calendar days from the date of receipt of the Issues report. If receipt of the Issues Report is received within seven (7) calendar days of a meeting, then the Council shall meet and initiate the PDP at the following meeting. b) Issue Raised by Other than by the Board. If a policy issue is presented to the Council for consideration via an Issues Report, then the Council shall consider whether to initiate the PDP at the meeting following receipt of

such Issues Report; provided that receipt of the Issues Report is at least seven (7) days prior to the meeting. In the event that receipt of the Issues Report is less than seven (7) days prior to the meeting, then the Council shall consider whether to initiate a PDP at the following meeting. At the written request of any Stakeholder Group or constituency, for any reason, consideration of the Issues Report may be postponed by no more than one (1) meeting, provided that such Stakeholder Group or constituency details the precise rationale for such a postponement. Report to vote on whether to initiate the PDP. Such meeting may be convened in any manner deemed appropriate by the Council, including in person, via conference call or via electronic mail.

Justification

For section A, instead of ‘the Council shall meet and do so within fifteen (15) calendar days after receipt of the Issue Report’, it might be more realistic to note ‘the Council shall meet and do so at the first meeting following receipt of the Issue Report’.

[Further discussion will be required to come to consensus on what timeline, if any, should be included in the by-laws for section B, as the current deadline of fifteen calendar days after receipt of the Issue Report is not realistic.]

- Further guidance should be included in the Policy Development Process Manual or Guidebook on how to deal with situations where further flexibility is required e.g. additional research, ensuring that the Council provides clear indications on expected timing of next steps.
- 2. Consider an appeals mechanism in case the GNSO votes against initiating a PDP requested by an AC or SO**

Current Practice

Currently the Council votes on whether or not to initiate a PDP on an issue raised by another SO or AC. There is no formal appeal mechanism for the SO or AC that initially raised the issue.

Concerns / Questions

- 2.a Should an appeal mechanism be developed in case the GNSO decides not to initiate a PDP on an issue raised by another SO or AC? If yes, how should such an appeal mechanism work?

PDP-WT Response

- 2.a During its discussions on this issue, the WT did not believe a formal appeals process is needed. The WT noted that any party aggrieved by a decision of the GNSO Council had other mechanisms to vet its complaint and could even ask the ICANN Board to raise the issue. In addition, it was also noted that the thresholds to initiate a PDP are fairly low; thus, failure to convince the GNSO Council to initiate a PDP was a clear signal that the GNSO was not interested in working on the issue. However, it should be noted that in the survey that was conducted of WT members, 36% of respondents did respond that they would support the development of an appeals mechanism. Specific suggestions on how such an appeal mechanism should work included having discussions with the

specific SO or AC that initially raised the decision, requesting a formal reconsideration by the Council or ICANN Board; or an appeal to the ombudsman or committee of the board. Some Members of the WT believe that if the Council does elect to not initiate a PDP, it should provide detailed information to the requestor of the Issue as to why it decided not to move forward with the PDP. This could either serve as guidance on how to revise an Issues Report to re-submit for consideration.

Recommendations

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

3. Should the approved voting thresholds apply to the entire GNSO Council or just members present (as is current practice)?

Current By-Law Provisions

Vote of the Council. A vote of more than 33% of the Council members of each House or more than 66% vote of one House in favor of initiating the PDP within scope will suffice to initiate the PDP; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a GSNO Super Majority Vote as set forth in Article X, Section 3, paragraph 9(c) in favor of initiating the PDP will be required to initiate the PDP.

Concerns / Questions

- 3.a What would be the advantages and/or downsides of changing the voting thresholds to apply to the entire GNSO Council and not only members present?

PDP-WT Response

- 3.a As it is expected that a recommendation for absentee voting / ballot will be included in the GNSO Council operating rules, this question is no longer valid as

all Councilors will have the opportunity to vote whether they are present or not at the meeting. It should be noted though, that a quorum is required at the start of a meeting, before a vote can be initiated to ensure that sufficient Councilors are present to discuss an issue and vote on it.

Recommendations

- None

4. Where in the process is chartering done?

Current By-Law Provisions

- b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Staff Manager, shall develop a charter or terms of reference for the task force (the "Charter") within ten (10) calendar days after initiation of the PDP. Such Charter will include:
1. the issue to be addressed by the task force, as such issue was articulated for the vote before the Council that commenced the PDP;
 2. the specific timeline that the task force must adhere to, as set forth below, unless the Board determines that there is a compelling reason to extend the timeline; and
 3. any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

Concerns / Questions

- 4.a At what point in the process should the charter be developed? And by whom?
- 4.b Are the elements outlined in the ICANN by-laws relating to the Charter still relevant? If not, what other elements should be added or changed?

PDP-WT Response

- 4.a The WT discussed the current practice related to questions such as who serves on charter committees, what is the expected timeline for developing a charter,

who is responsible for the initial draft of the charter, how is the charter approved by the Council and who is tasked with renegotiating the charter.

The WT agreed that this issue should be dealt with in the GNSO Council operating rules as opposed to the Bylaws. In addition, the WT recognized that responsibility for the drafting of a Charter should not rest with ICANN staff, but rather with those interested in the particular issue(s) raised. ICANN staff should make itself available to participate in the process of the charter development. It was noted that the Working Group Work Team (WG-WT) is in the process of developing a template for this purpose, with predetermined information to be completed. The WT supported the current informal process of having the Council solicit volunteers to form a drafting committee to develop a charter. The Council should encourage participation from each constituency/Stakeholder Group, but such drafting teams should be open and not comprised solely of GNSO Council members (although they would be free to volunteer). The WT supported the practice of appointing a Council liaison to oversee the process and to serve as the initial chair of the drafting committee until such time that a chair can be elected by the drafting committee. In any event, the role of the Council liaison shall be to oversee the drafting team process and to report back to the Council on the drafting team's progress, timeline and any issues encountered.

The WT agreed that any changes to the charter requested by a PDP Working Group following its adoption by the Council, should be communicated by the Council Liaison to the Council. The WT agreed that one of the first items for a formal WG to consider is evaluating its charter and seeking any clarification or revisions.

The WT supports the current practice that an initial charter must be approved before the formation of a Working Group. In addition, the WT believes that the same voting thresholds for approving the initiation of a PDP should be used to approve a WG charter. This means that to approve a charter for a WG with respect to an "in scope" PDP, it would also require either a 33% vote of both

houses or more than 66% vote of one house. Alternatively, to initiate the charter for a PDP 'not within scope' it requires more than 75% of one house and a majority of the other house. The WT did consider the alternative, namely requiring a majority of both houses to approve the charter, but it was thought that having a higher threshold to approve the charter could result in the approval of creating a working group, but failure to ever approve a charter (which would hold up the process) and could lead to a gaming of the process by those not initially supporting the Initiation of the PDP. For example, if there was a PDP in scope that the council voted to initiate with more than 66% of one house, the other house could effectively hold up all of the work of the working group by never voting in favor of a charter. The WT also discussed potentially having a default rule of a majority vote of both houses to approve any changes or modifications to the charter, but no agreement was reached yet.

The WT also noted that it was important that a charter not restrict potential outcomes of a PDP, examples of potential outcomes could be provided, but these should not limit the discussions of the WG. In other words, the charter should not state that the output of the group is to require contracted parties to do X, Y or Z, as an appropriate outcome may be a best practices or voluntary approach as opposed to a "consensus policy" as defined in the registry and/or registrar agreements.

In the survey undertaken to gather input from the WT members, one person expressed support for developing the charter prior to the launch of a PDP and make it part of the motion on the initiation of a PDP, but this was not the general opinion of the WT.

- 4.b A majority of respondents to the survey felt that the elements outlined in the ICANN by-laws related to the Charter are still relevant (64% - yes, 27% - no strong view, 9% - no). The 'no' response seemed to be directly related to the timeframe proposed for adoption of the charter.

Recommendations

Original Text

Proposed Text

ICANN By-Laws

7. Taskforces (Working Groups)

b. **Task Force** *Charter or Terms of Reference*. The Council, with the assistance of the Staff Manager, shall develop a charter or terms of reference for **the task force** (the "Charter") **within ten (10) calendar days** after initiation of the PDP. Such Charter will include:

1. the issue to be addressed by the **task force**, as such issue was articulated for the vote before the Council that commenced the PDP;
2. the specific timeline that the task force must adhere to, as set forth below, unless the Board determines that there is a compelling reason to extend the timeline; and
3. any specific instructions from the Council for the **task force**, including whether or not the task force should solicit the advice of outside advisors on the issue.

b. **Working Group** *Charter or Terms of Reference*. The Council **or a drafting team**, with the assistance of the Staff Manager, shall develop a charter or terms of reference for the **working group** (the "Charter") within a reasonable period after the Initiation of a PDP within the time frame set forth by the Council in accordance with its operating procedures. Such Charter will include, at a minimum:

1. the issue to be addressed by the **working group**, as such issue was articulated for the vote before the Council that commenced the PDP;
2. the specific timeline that the **working group** should adhere to, as set forth below, unless the Board determines that there is a compelling reason to extend the timeline; and
3. any specific instructions from the Council for the **working group**, including whether or not the **working group** should solicit the advice of

outside advisors on the issue.

The Council shall decide on the adoption of the Working Group Charter using the same voting thresholds as were applicable to the original initiation of the PDP.

Justification

Changes reflect move to working group model. [Further discussion will be required to come to consensus on what timeline, if any, should be included in the by-laws for the development of a charter]

- Work with the WG-WT to provide input for the Working Group Guidelines section or annex that will be dedicated to a PDP WG concerning best practices for developing the charter for a PDP WG.

5. Should expedited procedures be available in case of urgency?

Current practice

There are no provisions in the ICANN by-laws regarding expedited policy development procedures, but the Registrar Accreditation Agreement as well as each of the current registry agreements do allow for the establishment of a temporary policy by the Board if this policy is deemed necessary to maintain the stability of the Internet: 'A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services,

the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives’.

Concerns / Questions

- 5.a Should an expedited procedure be developed for issues deemed urgent? If yes, how should such a procedure look and who should make the determination whether an issue is ‘urgent’?

PDP-WT Response

- 5.a There is no consensus within the WT that expedited procedures can be developed that will both ensure an informed policy development process and provide the appropriate procedural safeguards. Some proposed that in order to have an expedited process, higher voting thresholds, e.g. supermajority would be required. Some questioned whether an emergency procedure would impede on the bottom up process. It was suggested that an emergency procedure could follow the model the board has at its disposal to impose a certain measure for a limited amount of time following which it would need to be confirmed / adapted through a proper policy development process in order to stay in place. The question was asked how to deal with issues that would go through an expedited process that would invalidate or make other ongoing policy work obsolete. In addition, it was noted that consideration should be given to how emergency issues might be incorporated into already ongoing PDPs.

The question was then asked whether the board should have increased powers in case of a ‘GNSO emergency’?

Some suggested that an emergency procedure could be put in place that mirrored the full policy development process, but had shorter deadlines. Others pointed out that perhaps certain elements of the policy process could be removed in exigent circumstances. Those circumstances could include an immediate likelihood of harm.

It was proposed that an 'emergency order' could be considered in cases where there is evidence of imminent harm, following which a normal PDP procedure would need to be followed to confirm or adapt the emergency order. It was also suggested that there should be a built-in commitment for a sunset timeframe i.e. if you were to execute on an expedited issue A, you would also simultaneously launch a PDP on that issue that would determine whether or not that emergency action was warranted or not.

In response to the WT survey, 55% of respondents supported the development of an expedited procedure, 27% had no strong view either way, 9% did not support the development of an expedited procedure and 9% had mixed feelings on the issue. On the question of who should make the determination whether an issue is urgent, several noted that this should be the responsibility of the GNSO Council, possibly in co-ordination with other SOs/ACs and ICANN staff. It was suggested that in case it was an issue initiated by the Board, the Board could specify in its request that it was deemed a matter of urgency. It was suggested that higher voting thresholds should apply to such a process and consideration could be given to eliminating or running in parallel certain parts of the PDP process in order to reduce the overall timeline. Most agreed that further discussion would be required to flesh out such a process and determine which, if any, changes to the by-laws should be proposed.

Recommendations

- To be decided [Further discussion required by the WG-WT to agree on the principles of such a procedure, if any, and determine which, if any, changes to the by-laws should be proposed].

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

Current practice

No current practice of soliciting feedback from other ACs or SOs apart from gathering such information as part of the drafting of the Issue Report e.g. SSAC advisories.

Concerns / Questions

- 6.a Should ACs, SOs and the Board be invited to share their view on whether the GNSO Council should initiate a PDP or not? If yes, how should these views be presented to and evaluated by the GNSO Council?

PDP-WT response

- 6.a The WT is of the opinion that as a courtesy to other ACs and SOs, the Issues Report, once finalized, but prior to the work of a WG should circulate the Issues Report to all ACs / SOs with an express invitation to comment on any issues with the Initiation of a PDP. It was noted, however, that sufficient time should be allotted for ACs/SOs to provide feedback, while at the same time not unnecessarily delaying the process. The suggestion was made that such feedback could also be obtained as part of a workshop or webinar on the Issues Report, or a public comment period on the Issues Report. In addition, an AC or SO might decide to adopt a resolution on the issue.

Recommendations

- Further guidance on how to involve ACs / SOs to be included as part of the Policy Development Process Manual or Guidebook.

7. Evaluate the ICANN Staff costs and resources needed to conduct the PDP and prioritize existing policy work and revisit their existing deadlines and deliverables.

Current Practice

None

Concerns / Questions

7.a How should the GNSO Council prioritize its work with respect to the Initiation of new PDPs?

PDP-WT Response

7.a The WT noted that some issues that would need to be taken into account if/when discussing a system of prioritization include:

- Should there be a maximum of PDPs that can run simultaneously
- Role of identification of resources at the start of a PDP
- Development of a template to assess costs / burden
- Role of staff in making assessment or decisions on prioritization of PDPs
- Possibility to vote on initiation of a PDP but put on hold creation of a WG or set for later data to allow for better spread
- Should Council have flexibility and discretion to adjust timelines or decide when to start a WG? Or provide Council with max. timelines within which they need to act?
- Multiple mechanisms to raise or lower the priority of a PDP without it dominating all activities or being pushed to the back burner
- Expected workload for staff

It was pointed out that there might be a need for further community input on the question whether a PDP should have fixed, flexible or target timelines. In addition, while it was important to consider ICANN staff and its resources, the GNSO Council should also consider the availability and interest of GNSO

volunteers and related resources. A suggestion, made as part of the survey, was to develop an annual work plan based on longer term strategic planning using established norms / best practice for project planning that would include resource allocation management tools that would be used to create a community viewable master plan for PDPs and the changes that occur to this plan due to changes in need and priority.

Recommendations

- To be decided [Further discussion is required by the WT to develop such a system of prioritization, if any, and decide which, if any, changes to the by-laws need to be made]
- 8. What options should the GNSO Council have at its disposal to ensure that it can take an informed decision on whether to initiate a PDP or not subject to the time frames set forth in Question 4 above?**

Current Practice

No current practice. The by-laws only foresee that the Council should meet to vote on the initiation.

Concerns / Questions

- 8.a Should the Council be allowed to invite experts and/or interested parties to provide additional information and/or answer questions on the issue?
- 8.b Should the Council be allowed to defer a vote if it feels that there are still questions that need to be answered before it can take an informed decision on whether to initiate a PDP or not?

PDP-WT Response

- 8.a The WT agreed that experts can inform Council deliberations. The WT also noted that by having a public comment period on the Issues Report, there would already be an opportunity for experts and community members to share their

- views, also on whether or not to initiate a PDP. In response to the survey, everyone (100%) of respondents agreed that the Council should be allowed to invite experts and/or interested parties to provide additional information and/or answer questions on the issue.
- 8.b A large majority of respondents to the survey (91%), agreed that the Council should be allowed to defer a vote if it feels that there are still questions that need to be answered before it can take an informed decision on whether to initiate a PDP or not, although someone pointed out that the possibility to defer a vote should be restricted by a threshold.

Recommendations

- Further guidance on the options the GNSO Council has at its disposal to take an informed decision to be included as part of the Policy Development Process Manual or Guidebook.

9. Public Comment Period after the Initiation of a PDP

Current By-law Provisions

After initiation of the PDP, ICANN shall post a notification of such action to the Website. A public comment period shall be commenced for the issue for a period of twenty (20) calendar days after initiation of the PDP. The Staff Manager, or some other designated representative of ICANN shall review the public comments and incorporate them into a report (the "Public Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

Current Practice

Currently, a number of Working Groups often wait until after its first few meetings to decide how the required public comment period should be used. In addition to the notification of the initiation of a PDP, this public comment period has been used by Working Groups to obtain input from the community on specific questions or issues

raised in the Issues Report or in the charter itself to inform the deliberations of the Working Group at the start of the process.

Concerns / Questions

9.a Are these provisions still relevant?

PDP-WT Response

9.a The WT noted that if there is a public comment period following the Issues Report, as has been recommended for stage I, that might already cover public input at the start of the process. At the same time, however, the WT acknowledged that WGs may want to continue the current practice of asking specific questions to the community at the start of the WG process in order to inform the WG's deliberations. The WT suggested that it should be left as an option for the WG to consider at the start of its activities, but it may not need to be mandated by the by-laws. In response to the survey, 64% of respondents agreed that the provisions are still relevant, 27% disagreed, and 9% had no strong view either way.

Recommendations

Original Text

Proposed Text

ICANN By-Laws

6. Public Notification of Initiation of the PDP

After initiation of the PDP, ICANN shall post a notification of such action to the Website. A public comment period shall be commenced for the issue for a period of twenty (20) calendar days after initiation of the PDP. The Staff Manager, or some other designated representative of ICANN shall review the public comments and

[To be decided]

incorporate them into a report (the "Public Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

Justification

[To be reviewed in conjunction with the proposal to have a public comment period on the Issue Paper. If such a recommendation would be adopted, it might no longer be necessary to mandate the notification of the initiation of a PDP.]

10. Clarification of ‘in scope of ICANN policy process or the GNSO’

Current By-law Provisions

Vote of the Council. A vote of more than 33% of the Council members of each House or more than 66% vote of one House in favor of initiating the PDP within scope will suffice to initiate the PDP; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a GSNO Super Majority Vote as set forth in Article X, Section 3, paragraph 9(c) in favor of initiating the PDP will be required to initiate the PDP.

Concerns / Questions

10.a What does ‘in scope’ mean? Does that relate to whether something is within the scope of the GNSO, or does it relate to ‘consensus policies’ as defined in the registry and registrar agreements? How should this be clarified?

PDP-WT Response

10.b The WT noted that for purposes of conducting a policy development process, “in scope” should be defined to mean “within the scope of the GNSO” and that whether a topic is within the scope of the registry or registrar agreements is not something that must be considered upon the initiation of a PDP. Although

knowing whether something is within the scope of the contracted party agreements may inform the process with respect to possible outcomes, it should not affect whether a PDP is initiated or not. The WT recognizes that there is a lack of understanding of this issue within the ICANN community and this will be important to clarify in the future. In addition, each WG (and its members) should understand that just because a PDP is initiated and is within the scope of the GNSO, that does not necessarily mean that the outcomes of the WG are necessarily within the scope of a Consensus Policy as defined in the contracted parties' agreements and therefore contracted parties may not be forced to adopt the recommendations.

Recommendations

Original Text	Proposed Text
ICANN By-Laws	
3. Initiation of a PDP	
Vote of the Council. A vote of more than 33% of the Council members of each House or more than 66% vote of one House in favor of initiating the PDP within scope will suffice to initiate the PDP; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a GSNO Super Majority Vote as set forth in Article X, Section 3, paragraph 9(c) in favor of initiating the PDP will be required to initiate the PDP.	Vote of the Council. A vote of more than 33% of the Council members of each House or more than 66% vote of one House in favor of initiating the PDP within scope of ICANN's mission and more specifically the role of the GNSO (as defined in Article I, Section I and Article X, Section 1 of the Bylaws), will suffice to initiate the PDP; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a GSNO Super Majority Vote as set forth in Article X, Section 3, paragraph 9(c) in favor of initiating the PDP will be required

to initiate the PDP.

Justification

The current reference to 'in scope' has created confusion and a clarification is therefore recommended.

4 ANNEX I - BACKGROUND

To be completed

5 ANNEX II - 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.

6 ANNEX III - 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 [here](#).

NAME	AFFILIATION
Sophia Bekele	Individual
James Bladel	Registrar
Marilyn Cade	Individual
Bertrand de la Chapelle	GAC
Paul Diaz	Registrar
Avri Doria	NCA
J. Scott Evans	IPC
Alan Greenberg	ALAC
Tony Harris	ISP
Cheryl Langdon-Orr	ALAC (Alternate)
Zbynek Loebel	IPC
David Maher	RyC
Jeff Neuman (Chair)	RyC
Gabriel Pineiro	NCUC
Mike Rodenbaugh	CBUC
Kristina Rosette	IPC
Greg Ruth	ISP
Jean-Christophe Vignes	Registrar
Liz Williams	CBUC
Brian Winterfeldt	IPC