List of Issues Identified by the PPSC (date 14 August 2010)

Issue 1: Skills-based balance in sub-teams as opposed to representational balance (comment 1 from the Registries Stakeholder Group)

Issue 2: Ability of the Liaison to state opinion like that of the WG Chair (comment 2 from the Registries Stakeholder Group)

Issue 3: Tools to guide the WG Chair in determining consensus (comment 3 from Tim Ruiz)

Issue 4: WG participation through conference calls and online - treatment of WG participants that may not be able to participate in both manners (comment 4 from Mike Rodenbaugh)

Issue 5: Balance between transparency, privacy of personal information, and security of the deliberation process to ensure full participation and integrity of the process (comment 5 from the IPC)

Issue 6: Process for responding to comments (comment 6 from the IPC)

Issue 7: Setting forth which recommendations should be mandatory as opposed to guidelines (comment 7 from the IPC)

Comments submitted by Jeff Neuman on behalf of the Registries Stakeholder Group:

1. On page 11 in the 'Chair' paragraph, this sentence is of some concern:

    "The Chair should underscore the importance of achieving representational balance on any sub-teams that are formed."

    There are times when a subgroup may be formed to develop a draft document for full group review and editing. In cases like this, it is often more effective to have just 2 or 3 people do this, but obviously such a small group would not be representationally balanced. Certainly, such a subgroup should be open to whoever wants to join it, but it usually works just fine if every interest group is not represented because the goal is simply to create a draft for further discussion by the wider group. Might the following wording work instead?

    "The Chair should make it clear that participation on sub-teams is open to all and he/she should encourage representational balance if that is possible and effective. However, it should be understood that there will not always be volunteers from every interest group and that it is often acceptable to have a small sub-team that is not totally representational perform an initial role that will later be reviewed by the broader representationally balanced group."

    As an alternative, we could also use the wording that occurs in the second paragraph of Section 2.3: ". . . the Chair should ensure that the sub-team is properly balanced with the appropriate skills and resources to ensure successful completion." The focus here is on the needed skills and resources rather then representation.

    Issue for consideration: role of the Liaison (comment from the Registries Stakeholder Group)

2. The first bullet in Section 6.1.4 talks about the liaison role. The last sentence says, "The CO is therefore strongly encouraged to appoint an individual to the role of liaison who is

expected to remain neutral and fulfill the role as described above." As was done regarding the Chair role, it seems that it should be stated that the liaison is not prevented from stating personal opinions or in advocating positions of a group he/she represents provided that it is made clear that that is being done separate from the liaison role.

Comments submitted by Tim Ruiz:

3. The only issues I still have are all regarding section 3.6:
   It would be helpful for the guidelines to provide example methods and/or tools for use by the Chair and/or ICANN Staff to test consensus on an issue or topic - examples might include e-surveys or straw polls documented on the working group mailing list.

   This section requires "several participants" to appeal a consensus call. "Several" is subjective and ambiguous. This should be exact so as not to cause unecessary debate later if it is invoked. Further to that issue, why should a single member not be allowed to make such an appeal?

   This section also states, "Based upon the WG's needs and/or the Chair's direction, WG participants may request that their name is not associated explicitly with any view/position." Can this be explained further? Is it intended that if a member makes such a request that they are more or less withdrawing from the consensus consideration of that issue? No view or position stated should count toward consensus unless a member can be explicitly associated with that view or position. That information will be necessary in the event of any appeals of consensus calls, or for the Council as they review the policy output of the working group. In addition, anonymous participation in WGs is completely contratry to ICANN's commitment to openness and transparency.

Comments submitted by Mike Rodenbaugh:

4. My key issue is to make sure that the WG rules ensure that mail list participants are treated equally as those who participate on calls. This means no meaningful decisions can ever be taken on WG calls, but must always be subject to list discussion and polling. Reasons for this

are cultural and practical, as very few people have time and inclination to participate consistently on WG calls, particularly non-English speakers. My read of the current report does not make any of this clear, but I think it must be clear, and not subject to later revision by any particular WG.

Comments submitted by J. Scott on behalf of IPC:

5. Transparency, Proportionality, Security of WGs: The level of Stakeholder Group participation in Working Groups should be transparent, and clearly indicated when not proportional amongst Stakeholder Groups. The importance of substantive transparency and transparency of one's affiliation with a particular Stakeholder Group, however, needs to be balanced by privacy of personal information and security of the deliberation process to insure full participation and integrity of the process. By way of specific examples, the following INTA recommendations were not accepted but should be adopted to achieve the balanced goal of appropriate transparency/proportionality/security:
    (a) "quorum" should be specifically defined in subsection 3.1 (entitled "Participation");
    (b) there should be a formal mechanism in subsection 3.2 (entitled "Representativeness) to ensure that the Chair of the WG *affirmatively confirms* that there is inclusive representation and not overrepresentation on the WG;
    (c) Working Groups (WGs) should also consult, depending on the WG's subject matter, groups and individuals with technical expertise in preserving the Internet's stability, security and interoperability as well as groups and individuals representing brand owners so the WG is fully informed as the ramifications of its initiatives and proposed courses of action (Section 4.4, paragraph 2); and
    (d) ensure that the SOI and DOI do not inadvertently contain sensitive personal information (Section 2.1.2).   In general, discretion should be used to provide information to the public necessary to understand the WG participants' identity, while safeguarding information whose publication could discourage participation in Working Groups and/or potentially violate national laws.

6. Comment process and response: When formally soliciting the public's views on an issue, ICANN staff or the appropriate Working Group should issue a formal response. The response

should include a description of the manner and extent of which the public comments were considered in the process.

7. Definiteness and mandatory requirements: Throughout the Revised Guidelines the language and concepts need to be refined to be stronger and more definite to insure the principles articulated in the Revised Guidelines will be mandatory, or at least more strongly encouraged, and Working Group members and prospective members receive clear direction. INTA is concerned that the Revised Guidelines contain many laudable principles, but that (1) adherence to those provisions is often either characterized as aspirational or discretionary, which risks resulting in those principles not being honored in practice, and (2) certain provisions are not adequately detailed to enable Working Group members and prospective members to implement the Guidelines appropriately and in a way that promotes those principles. By way of representative examples, the following specific INTA recommendations were not accepted but should be adopted to achieve clarity and actual implementation of the articulated, aspirational principles:

(a) With respect to the standards for circulating "Calls for Volunteers" in Sections 6.1.1 and 2.1.1, the original version of the Guidelines provided that the announcement of a Call for Volunteers through certain channels (including publication on the ICANN website and to GNSO Stakeholder Groups) "should be explored at a minimum." INTA 's Comments recommended that this language be changed to require that those channels be "required to be utilized as the default rule, subject to exceptions only in extraordinary circumstances." The Revised Guidelines do incorporate that change, but are still vague and appear to allow for substantial discretion because the sentence begins with the following language: "Depending upon the scope of the Working Group and its intended subject matter, the following avenues are required to be utilized as the default rule . . . ."

(b) Section 6.1.1 goes on to state that, "*Ideally*, the Call for Volunteers announcement should include the following types of information about the Working Group . . . ." and that "In addition, a CO *might want* to include some statement as to the purpose of the activity . . ." This weak, equivocal language appears in many places throughout the document.

(c) The first two sections of the Guidelines refer to the "Chartering Organization" and

"Charter" but do not describe them in any detail. It is not until Section 6 that the reader learns that a Chartering Organization "can be any formal entity or informal grouping of individuals that wishes to generate a WG Charter document." INTA recommends including specific information about the identity, role, and responsibility of the Chartering Organizations within this document. If there is an existing ICANN approval process for forming the Chartering Organizations, INTA recommends that this process be fleshed out through a link or reference to a source of more detailed information in a different document. INTA recommends adding references in the introductory sections to the more detailed definitions in Section 6.

(d) There is no guidance about considerations for funding a WG, although the introduction states that this concept is covered in the Guidelines (Section 1.1 states "… WG WT has developed this document, entitled 'Working Group Guidelines', which [...] addresses what should be considered in creating, purposing, funding, staffing, and instructing/guiding a WG to accomplish the desired outcome (the chartering process)"). INTA recommends adding specific language to guide Chartering Organizations with decisions regarding their funding of a Working Group.