

## SECTION 6: RESTRUCTURE THE GNSO COUNCIL

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### 6.1 BGC Recommendations

*BGC 7: The Council should transition from being a legislative body to a strategic manager overseeing policy development. Among the Council's most important functions should be guiding the establishment of working groups and monitoring their progress. The Council should be responsible for launching a working group by deciding upon the appropriate mandate and timeline, and ensuring that it has an experienced and impartial Chair, who performs adequate outreach and has sufficient expertise. The Council should be available to provide guidance on any issues when they arise.*

*A working group should present its report and conclusions, including any minority views, to the Council for review...*

*In forwarding the working group's report to the Board, the Council should indicate whether it agrees that the working group has fulfilled its mandate...*

*BGC 8: A second important role for the Council is to develop ways to (i) assess and benchmark gTLD policy implementation; and (ii) analyze trends and changes in the gTLD arena...*

*BGC 9: A third important role for the Council is to work with ICANN Staff to (i) align the GNSO Council's work with ICANN's strategic plan, (ii) increase the use of project- management methodologies; and (iii) improve the GNSO's website, document management capacity and ability to solicit meaningful public comments on its work.*

*BGC 10: To reach its full potential, the Council should be as inclusive and representative of the broad interests represented in the GNSO as possible, while limiting its size to promote efficiency and effectiveness. We recommend a 19-person Council consisting of 16 elected members, four from each of four stakeholder groups, with two of these groups representing those parties "under contract" with ICANN, namely registries (four seats) and registrars (four seats). These we refer to as "ICANN contracted parties". The other two stakeholder groups will represent those who are "affected by the contracts" ("ICANN non-contracted parties"), including commercial registrants (four seats) and non-commercial registrants (four seats). In addition, three Councilors would be appointed by the Nominating Committee (pending the outcome of the BGC's "NomCom Improvement Process"). Under this restructuring plan, there is no longer a justification for weighted voting...*

*BGC 11: Another way to enhance inclusiveness and enable more people to feel involved in Council activities is to establish term limits for Councilors, thus giving more people an opportunity to serve in these important positions.*

*BGC 12: Council members should provide real-time, updated Statements of Interest similar to what is required for members of the Board in a standardized format that is publicly accessible. ICANN Staff should develop a basic template of information that GNSO Councilors, constituency leaders and others participating in policy development activities must first complete. These Statements should be supplemented by Declarations of Interest that pertain to specific matters under discussion.*

*BGC 13: The Council should work with Staff to develop a training and development curriculum to promote skills development for the Council, prospective chairs of working groups and, ideally, all members of the ICANN community who might wish to take part in working groups.*

## 6.2 Major accomplishments and milestones

(As noted on the GNSO website<sup>50</sup>):

- Board approved revised Article X (GNSO) Bylaws (September 2009)
- Stakeholder Groups/Constituencies (SG/C)
  - Board approved four new Stakeholder Groups (28 August 2009)
  - Board approved permanent Charters for Registries and Registrars Stakeholder Groups (30 July 2009)
  - Board approved permanent Charters for Non-Commercial and Commercial Stakeholder Groups (24 June 2011)
  - Board recognized the Not-for-Profit Operational Concerns (NPOC) Constituency in the Non-Commercial Stakeholder Group (June 2011).
  - Board approved a new Process for Recognition of New GNSO Constituencies (24 June 2011)
- GNSO/Council
  - Bicameral Council established with two voting Houses (Seoul, Q4 2009)
  - Substantially enhanced GNSO Operating Procedures (currently v2.4) including new voting remedies (proxy/abstentions), statements of interest, SG/Constituency operating

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<sup>50</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/accomplishments-en.htm>

principles and participation guidelines, Working Group guidelines (Annex 1), and a Policy Development Process manual (Annex 2).

- Approved the Charter for a new Standing Committee on Improvement Implementation (SCI) to review and assess the ongoing functioning of recommendations accepted by the two Steering Committees and the Council (7 April 2011).

### 6.3 Summary of the Westlake Review Team’s assessment of implementation effectiveness

#### **BGC Recommendation 7 (Council as strategic manager of policy development)**

The Westlake Review Team considers that BGC Recommendation 7 has been implemented. However, the role of the GNSO Council in gTLD Policy Development should be clarified to confine the Council to ensuring that due process is followed and that all stakeholders have the opportunity to contribute. The Council should not be re-litigating policy that has been reported by a Working Group.

#### **BGC Recommendation 8 (Assess policy implementation and analyze trends in the gTLD arena)**

The Westlake Review Team has commented above (Section 5.4.2) on assessment of policy implementation.

#### **BGC Recommendation 9 (Align Council’s work with ICANN’s strategic plan, increase project management methodologies and improve GNSO’s website and document management).**

The Westlake Review Team has commented above (Section 5.4.3) on links to ICANN’s Strategic Plan, noting that the GNSO does not have plans that link to ICANN’s Strategic Plan.

Project information showing stages of activity for each current project is shown on the GNSO website (Projects List<sup>51</sup>). However we were unable to locate the type of information that would normally be expected with a ‘project management’ approach to operating WGs, for example resource planning and management.

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<sup>51</sup> <http://gnso.icann.org/en/meetings/projects-list.pdf>

We received no comments or suggestions regarding improvements to the GNSO website, but several people commented that so much information is available that it can be difficult to find what one is looking for. However the Westlake Review Team notes that staff have recently launched a one-stop web-page to assist<sup>52</sup>.

The Westlake Review Team considers that Recommendation 9 has been partially implemented.

### **BGC Recommendation 10, 11, 12 (Restructure Council membership, councillor term limits and Council member statements of interest)**

The Westlake Review Team considers that BGC Recommendations 10, 11 and 12 have been implemented effectively and has commented elsewhere on Council Member Statements of Interest (Section 7 – Enhance Constituencies). However, the Westlake Review Team considers that there are some areas where improvements could be made and we note these below.

### **BGC Recommendation 13 (Council training and development)**

The GNSO ran the first Council Induction and Development Session at ICANN 48 in Buenos Aires and again at ICANN 51 in Los Angeles. In 2013 the ICANN Leadership Training Programme was introduced as one module of the ICANN Academy, as a cross-community effort in which GNSO members participated. While BGC Recommendation 13 has been implemented, the Westlake Review Team believes that actions could be taken to further improve the effectiveness of this recommendation.

## **6.4 Basis for Westlake’s assessment**

### **6.4.1 BGC Recommendation 7 (Council as strategic manager of policy development)**

#### ***Observations/Analysis***

In its 2008 review, the BGC recommended<sup>53</sup> that *The Council should transition from being a legislative body to a strategic manager overseeing policy development. Among the Council’s most important functions should be guiding the establishment of Working Groups and monitoring their progress.*

Most survey respondents and interviewees consider that this recommendation has been implemented effectively – see comments in section 4.4.1 - The WG model is effective.

<sup>52</sup> <http://gnso.icann.org/sites/gnso.icann.org/files/gnso/presentations/policy-efforts.htm>

<sup>53</sup> <http://archive.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>

The Westlake Review Team considers that one of the principles of good policy is that it be developed in an open and transparent way, by a Working Group drawn from a diverse range of informed and committed stakeholders. This is the intention of the PDP that has been developed in recent years.

The key steps for the GNSO Council in the PDP process are;

- The Council should decide whether and when to charter a working group, based on the Issue Report.
- The Council should be responsible for launching a working group by deciding upon the appropriate mandate and timeline.
- The Council should ensure that the working group has an experienced and neutral Chair, appropriate representation and has sufficient technical expertise and knowledge of ICANN.
- The Council should monitor the progress of each working group. In doing so, the Council should offer guidance and support to assist the working group in reaching a satisfactory conclusion, with the participation of all relevant stakeholders.

In practice, there is potential for this process to be compromised by inputs from other parties or groups, and several survey respondents and interviewees referred to three of these in various ways as unhelpful to the development of timely and well-crafted policy:

1. The GAC.

Several respondents noted that the GAC had sometimes provided input to Policy Development Processes at a very late stage in the process. While these respondents did not question the right of the GAC to offer input, there was concern that it came so late in the process, and that in some cases the GAC had not participated at an earlier stage. The response we have heard from some members of the GAC is that they cannot generally participate earlier because that would require their nominee to act on behalf of all GAC members, and no GAC member is authorized to state a position that would bind all members (GAC members represent sovereign governments and therefore cannot be bound by others).

We understand that GNSO has recently appointed a Liaison to work with the GAC to facilitate information sharing and early engagement of the GAC in GNSO policy development. The GAC-GNSO Consultation Group is working on additional mechanisms for early engagement of the GAC in policy development. We believe these are constructive steps; as noted above, we recommend further that the GAC consider appointing a liaison to

every PDP Working Group that involves identified public interest concerns. This would provide a channel of communication and offer guidance which, although not binding on the GAC, might help to identify issues of potential concern to the GAC and reduce delays later in the process.

## 2. The GNSO Council

Several survey respondents and interviewees commented that there appears to be some confusion around the role of the Council in relation to policy development. Under certain circumstances, the GNSO Council is currently able to draft an amendment to a policy recommended by a WG. Although we are not aware of any instances of this occurring, in our view, this power is inappropriate: it compromises the WG led multi-stakeholder, consensus-driven process that has been carefully developed. The process also underpins the credible functioning of the GNSO in developing policy that is legally binding on many of its members. In our view, and as the BGC noted, the Council should not be a ‘legislative body,’ but a strategic manager of the policy setting process.

The role of the Council is to satisfy itself that the Working Group has followed the correct process and reached the required level of consensus in producing its recommendations. The GNSO Council should then (as the BGC WG recommended) ensure that:

- The scoping of the issue remains valid
- All relevant stakeholders are aware of, and involved, in the process
- No Stakeholder Group is dominating the process
- Any necessary expert opinion has been provided
- Data has been provided and used where appropriate
- The proposed policy can be implemented

The Westlake Review Team considers that, if these conditions have been satisfied, the Council should forward the policy to the Board for final approval. Any concerns should be limited to matters of the process, not the substance of the policy.

If the Council cannot reach agreement, it should articulate the reasons why the policy could not be recommended in its existing format and refer the matter back to the WG for possible amendment.

### 3. The Board

Several survey respondents and interviewees noted that the Board had overruled policy developed through a PDP and recommended by the GNSO Council. There was a view that in at least one recent case the Board had yielded to a late submission from the GAC and on that basis had referred the proposed policy back to the GNSO Council. As one respondent noted:

- *...a recent example is that the Board, instead of acting on the recommendation of the GNSO, allowed the GAC to derail a recommendation regarding rights protection mechanisms for IGOs and NGO's. The Board sent the issue back to the GNSO for consideration. One comment I heard was, 'at least they sent it back, normally they would ignore us all together'.*

We acknowledge that the Board is the peak governing body of ICANN, so it would be inappropriate to limit its authority. However, we consider that this power should be used only in cases where the Board:<sup>54</sup>

- Identified a significant risk raised by the recommended policy, or
- Considered that the recommended policy would compromise or conflict with ICANN's strategy, values or existing legal obligations, or with other existing ICANN policy or policies, or
- Believed that the recommended policy went beyond ICANN's limited technical mandate.

As noted above in relation to the GNSO Council, we consider that the role of the Board should not be to re-litigate or amend policy itself, but to articulate its reasons for rejection and refer the policy back to the GNSO PDP WG for re-consideration and re-submission.

Besides ensuring that a balance of stakeholders will be involved throughout, the amendment we recommend should mitigate the risk of compromising the PDP through the lobbying of the GNSO Council or Board members in favour of a particular policy line.

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<sup>54</sup> <https://www.icann.org/resources/pages/governance/bylaws-en> - refer Annex A - GNSO Policy Development Process

It would also reduce the ability of other arms of ICANN to determine policy without regard (whether actual or perceived) for the full Policy Development Process.

#### **Westlake Review Team Recommendation**

- ❖ **Recommendation 19:** As strategic manager rather than a policy body the GNSO Council should continue to focus on ensuring that a WG has been properly constituted, has thoroughly fulfilled the terms of its charter and has followed due process.

#### **BGC Recommendation 8. (Assess policy implementation and analyze trends in the gTLD arena)**

We have discussed the issue of policy implementation assessment in section 5.4.2 BGC Recommendation 5 (Self Assessment)

#### **BGC Recommendation 9. (Align Council’s work with ICANN’s strategic plan, increase project management methodologies and improve GNSO’s website and document management).**

We have discussed the issue of aligning the GNSO Council’s work with the ICANN Strategic Plan in section 5.4.3 BGC Recommendation 6 (Link to ICANN’s Strategic Plan).

#### ***Prioritization of GNSO Projects***

As noted elsewhere in this review, volunteer time is a limited resource. Prioritization is one management tool that assists in making the most effective use of limited resources. The Communications and Coordination Work Team<sup>55</sup> recommended “*work prioritisation so as not to overwhelm the community and unintentionally hinder active participation*”.

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<sup>55</sup> <http://gns0.icann.org/en/ongoing-work/archive/2012/improvements/osc-en.htm>



## Observations

A number of survey respondents and interviewees commented that except in urgent cases, the number of PDPs running concurrently should be limited, allowing for resources (particularly volunteer time) to be prioritized. For example:

- *There are too many WGs, not enough volunteers, have to get the same people all the time. Hard to find people who are prepared to do this.*
- *Limit the number of working groups that can be in existence at any one time.*
- *Planning and prioritizing efforts. Volunteers are being spread too thin and having too many issues bubbling along at any one point in time is going to lead to poor outcomes.*
- *Focus on less issues at one time*

Survey respondents and interviewees also noted that PDPs should be focused on generic names policy development (as required under Article X of the ICANN Bylaws) rather than other topics such as governance, administration and budget. For example:

- *[GNSO should] stick to its remit of producing policy related to gTLDs - nothing more*
- *There should be a distinction between policies related to ICANN governance, administration, budget, etc and generic names policy. Also broader Internet Governance policy issues should be relegated to committees. These are three distinct buckets of work that should be treated separately. They do not all directly impinge on generic names policy development.*
- *Stop creating too many WGs that aren't sure if they will end in PDP*
- *Stop performing PDPs on subjects that may be duplicative of, or mooted by, other ongoing work within ICANN (e.g. the PPSAI PDP WG vis-a-vis the EWG RDS system) before the outcomes of the other work are finalized.*
- **CONCENTRATE ON GNSO (gTLD) POLICY AND ALLOW REPRESENTATION ON BROADER ISSUES TO BE DRIVEN BY CONSTITUENCIES e.g. participation in Cross Community WGs should be at the Constituency level. [Emphasis in the original]**

## Analysis

The prioritization issues raised by survey respondents and interviewees relate to both policy development and other GNSO projects. As with a number of issues identified throughout this review,

prioritization of resources is not new. During 2010, the GNSO Council convened the Work Prioritization Model Drafting Team (WPM-DT) to develop procedures to categorise and rank/prioritize each project (PDPs and others)<sup>56</sup>. The goals of the WPM-DT were:

- **Education and Transparency:** to establish organisational awareness and understanding of the [GNSO] Council's priorities.
- **Resource Allocation:** to assist the [GNSO] Council in managing limited resources among the organisation's prioritised projects.
- **Strategic Management:** to inform [GNSO] Councillors so that the GNSO's prioritization is considered when discussing issues and voting on related motions.

A list of eligible projects was adopted by the Council effective 20 May 2010 and Value Ratings approved 23 June 2010 in Brussels<sup>57</sup>.

We have been advised that no consensus on how projects should be prioritised could be reached and the Project did not proceed. The Westlake Review Team has been unable to locate GNSO Council resolutions related to abandoning this project, but a poll was conducted which resulted in further discussions taking place via email, with no specific actions resulting<sup>58</sup>.

### Westlake Review Team Recommendations

- ❖ **Recommendation 20:** That the GNSO Council should review annually ICANN's Strategic Objectives with a view to planning future policy development that strikes a balance between ICANN's Strategic Objectives and the GNSO resources available for policy development.
- ❖ **Recommendation 21:** That the GNSO Council should regularly undertake or commission analysis of trends in gTLDs in order to forecast likely requirements for policy and to ensure those affected are well-represented in the policy-making process.

<sup>56</sup> <http://gnso.icann.org/drafts/wpmg-section-6-and-annex-09apr10-en.pdf>

<sup>57</sup> <http://gnso.icann.org/drafts/draft-work-prioritization-project-list-value-ratings-23jun10-en.pdf>

<sup>58</sup> <http://sel.icann.org/mailling-lists/archives/council/msg09519.html>

## **BGC Recommendations 10 and 11. (Restructure Council membership and councillor term limits)**

### ***Observations***

The Council was restructured following the BGC recommendations. Term limits were introduced at the same time.

The Council appears functional. It is constructed to balance the various interests.

### ***Analysis***

The current structure has been implemented relatively recently. It is not broken, and we do not recommend any change at this time.

## **BGC Recommendation 12. (Council member statements of interest)**

Statements of Interest are discussed in section 7.4.2 BGC Recommendation 15 (Constituency operating rules and participation)

## **BGC Recommendation 13 (Council training and development)**

### ***Observations***

Various comments were made in the 360° survey and interviews relating to this Council training and development. Comments include: variable performance of Council members; member selection process not being aimed at delivering people with the appropriate skills (e.g. planning); a lack of technical training; and a lack of measures. For example:

- *The GNSO would benefit from actively encouraging technical/operational expertise on the part of councillors.*
- *Provide technical training to counsellors without technical background*
- *...the GNSO Council; Not much PM experience. Little use of the word 'governance.'...*

### ***Analysis***

As discussed above, Section 5 – Revise the PDP, staff introduced the ICANN Leadership Training Programme in 2013. This programme is for both new and existing community leaders and is an intensive on-boarding and facilitation skills training programme with key elements such as facilitation, conflict, mediation and communication skills.

In addition to the ICANN Leadership Training Programme, GNSO Council Induction and Development Sessions were run in 2013 and 2014.<sup>59</sup> The objectives of these sessions are to allow for the Council members to get to know each other better, provide information on the functioning and operations of the GNSO Council and to allow for planning for upcoming projects and activities, in order to further enhance the co-operation within and effectiveness of the GNSO Council. The Westlake Review Team considers that these sessions are an important part of the on-going development programme for Council members.

However we consider the effectiveness of BGC Recommendation 13 could be improved:

- A. The BGC WG proposed action under this recommendation anticipated “A proposed curriculum (including suggested courses, delivery mechanisms and links between positions and training) should be developed.” This meant that training should be relevant to the positions. The Westlake Review Team was unable to locate any training and development specifically linked to the skills and competencies required for GNSO Council members. The ICANN Leadership Training Programme is a positive step to provide training for incoming and existing leaders in general, but Council members have other needs such as governance and technical skills (for example, project management).
- B. As discussed in Section 6 - Revise the PDP, there is no formal skills assessment system in place. The training programme is optional and generic, and does not address identified individual needs. There is no means to measure the level of competence and skills of incumbents, or the effectiveness of the training undertaken.

ATRT<sup>60</sup> Recommendations 1, 2, 3 provided recommendations in the area of Board performance and work practices as follows:

- ATRT Recommendation 1: *The Board should develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyse those findings over time.*
- ATRT2 Recommendation 2: *The Board should develop metrics to measure the effectiveness of the Board’s functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement.*

<sup>59</sup> <https://gns0.icann.org/en/correspondence/council-development-notes-17oct14-en.pdf>

<sup>60</sup> <https://www.icann.org/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf>

- ATRT2 Recommendation 3: *The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time...*

While the above recommendations relate to the ICANN Board, we consider the principles underlying these recommendations are equally applicable to the GNSO Council and should be considered in its training and development programme.

The Westlake Review Team considers that a robust training and development programme is a critical element in maintaining the effectiveness of the GNSO Council.

#### **Westlake Review Team Recommendations**

- Recommendation 22: That the GNSO Council develop a competency-based framework, which its members should utilise to identify development needs and opportunities.