To: Chair, ICANN Board

From: Chair, GNSO Council

Cc: ICANN Secretary

Dear Vint,

Recommendation 13 of the LSE Report stated:
"Fixed term limits should be introduced for GNSO Councilors either of
two two-year terms (as applied in some Constituencies already) or
perhaps of a single three-year term"

At its meeting on the 16 November, the GNSO Council passed a resolution
in support of this recommendation as follows:

"The recommendations of the LSE regarding term limits for GNSO Council
members should be adopted immediately by the GNSO Council with no
grandfathering except in connection with the ability of a council member
to serve out their existing term. A council member can serve no more
than two consecutive terms (regardless of duration). Moreover, a former
council member must remain off the GNSO Council for one full term prior
to serving any subsequent term. However, there shall be an exception to
the two term limit in connection with special circumstances (I.e.
Geographic diversity requirements) where a constituency is unable to
find an alternative representative to serve. In applying this special
circumstance exception, the existence of an otherwise qualified
candidate willing to serve on the council within that constituency shall
constitute a non-rebuttable indication that special circumstances do not
exist. The GNSO Council will forward this recommendation to the ICANN
Board of Directors for implementation in the bylaws and also recommend
to the GNSO Constituencies that they voluntarily adopt these practices
until such time that they have been formally implemented by the Council
and Board."

The motion passed 15 votes in favour and 7 abstentions.   There were a
range of reasons for the abstentions which can be found in the minutes
below.

The motion would require a bylaw amendment to be enforced, but
constituencies are able to voluntarily comply with this recommendation.

See below for the detailed minutes of this discussion which were
approved in the Council meeting today.

Regards,
Bruce Tonkin

Item 5: Regarding term limits

Proposed Resolution from Ross Rader:

The recommendations of the LSE regarding term limits for GNSO Council
members should be adopted immediately by the GNSO Council with no
grandfathering except in connection with the ability of a council member
to serve out their existing term. A council member can serve no more
than two consecutive terms (regardless of duration). Moreover, a former

council member must remain off the GNSO Council for one full term prior to serving any subsequent term. However, there shall be an exception to the two term limit in connection with special circumstances (I.e. Geographic diversity requirements) where a constituency is unable to find an alternative representative to serve. In applying this special circumstance exception, the existence of an otherwise qualified candidate willing to serve on the council within that constituency shall constitute a non-rebuttable indication that special circumstances do not exist. The GNSO Council will forward this recommendation to the ICANN Board of Directors for implementation in the bylaws and also recommend to the GNSO Constituencies that they voluntarily adopt these practices until such time that they have been formally implemented by the Council and Board.

Denise Michel reported that the Board Governance committee had on its agenda for final approval, a process for GNSO improvements that entailed creating a joint Board-GNSO working group to consider the recommendations raised in the Patrick Sharry Council Review, the LSE review and other input from the GNSO and the public to develop specific recommendations to be considered by the ICANN Board. Approval was anticipated in the next few weeks and the council would be apprised. The next meeting date for the Board Governance committee was still to be decided.

Two groups could be envisaged:
- the ICANN Board would appoint a group that would be comprised of Board members, Council members and others,
- that the GNSO might decide to form a working group with a wider group of GNSO members.

The Board group would take input from any structure that the GNSO decided to create.

Philip Sheppard proposed providing immediate input to the members of the Board Governance committee and referred to his proposed resolution as an amendment to the resolution under agenda item 6.

Whereas the GNSO council review report and GNSO review reports are now complete.
The Council resolves to establish a GNSO working group.
The working group membership should be wider than just members of Council embracing all relevant parties and work in a collaborative manner. Council instructs staff to draft terms of reference for the working group within 14 days with a proposal for membership that balances broad participation by relevant parties with practicality.

Maureen Cubberley supported Philip Sheppard's approach of cooperative development.

It was fair that the Board wanted to deal with the issue and it should be noted that the Council had expressed its wish to be involved in the options. Philip Sheppard's proposal, council deliberations indicating the desire to be involved in discussions with the Board at an early stage and prior to it making a final decision should be passed on to the Board for consideration.

Bruce Tonkin commented that the GNSO Council could not set term limits, it could recommend to the Board to make a bylaw change in that regard or it could recommend that constituencies voluntarily adjust their processes accordingly.

Dan Halloran, deputy General Counsel, confirmed that the GNSO was governed by the ICANN Bylaws and that it would require a Board vote to change the ICANN bylaws. The resolution was making a recommendation to the Board and the resolution was not binding on any constituencies.

Alistair Dixon asked what the rationale was for addressing the one particular recommendation from the LSE Report.
Ross Rader responded that the Council was long standing, new blood would be useful, and the LSE recognised it as an item that could be dealt with separately, outside of the reform process. No research had been undertaken on the impact on the other constituencies before drafting the resolution, however, it should be noted that the Registrar constituency had term limits, and the author was be affected by those.

It was argued that the resolution was put forward by a Council member on the mailing list, posted on the agenda 7 days prior to the meeting which gave Council members the opportunity to discuss resolutions with their constituencies prior to the meeting and it was up to each of them to determine the impact of the motion on the constituency. It was considered that the impact on constituencies would differ from one to another.
Concern was expressed that Council was intervening in the governance of the constituencies which was not an issue that could be adequately addressed sporadically on the mailing list.

No one recommendation from the LSE Review had any status above another.

The LSE Review was intended as an independent review and should not be seen in the light of an external entity mandating changes to be implemented. It was up to the ICANN Board and the community to read it along with the previous Patrick Sharry Council Review and other inputs to define a process for improving the GNSO and to move forward with recommendations.

Philip Sheppard who chaired LSE briefings, noted that a question was posed as to the nature of the report that some elements could be taken together and some elements could be separable. In that discussion, term limits were mentioned as being able to be separated out, recognising that many other elements could not, while another part of the proposal talked about joining constituencies together and the impact that that would have in terms of the nature of the term limits. Thus the premise that this particular item could be separated is flawed.

Philip Sheppard posed the following questions:
- why do you think that there is a lack of new blood on Council?
- why do you believe that elections are able to provide new blood?
- what are the precise benefits of term limits versus not term limits
- why do you believe that Council should impose this as opposed to the constituencies being allowed to exercise their sovereign right to do so?

The discussion that followed highlighted that constituencies were not seen to have rights independent of the ICANN bylaws, but they did have the right to question the bylaws and they could run their affairs consistent with the ICANN bylaws as they saw fit.

Ross Rader commented that the resolution did not address the capability of constituencies to govern themselves or appointing members to task forces, but amending the qualifications for the Council members. Furthermore there seemed to be no reason to delay such a resolution and did not believe that it affected the larger reform. The average term of participation in the Council is much longer than in any similarly

situated body.

The rules of the constituencies specified the appointment of a specific number of members to the council, so the resolution in no way changed the governance structure of the constituencies but rather changed the constitution of the Council.

The difference between the nature of the constituencies was pointed out.

The registrars and gTLD registries constituencies, were likely to draw engaged and available participation as opposed to other constituencies which were recipients of the services offered by the registries and registrars.

Tony Holmes commented that one element could not be singled out and the passion noted in the discussions was reason to object to the vote without more dialogue.

Robin Gross commented that the issue was not new and failed to understand that it would be a loss of control within constituencies, rather it should be seen as levelling the playing field among the constituencies. The LSE report was not an all in one package.

Tony Holmes noted that the ISPC had no concerns over appointing new blood to the Council and if it is appropriate and it is the view of the constituency then it would certainly happen, there is nothing in the bylaws to stop it, it is a concept that we support putting the best people in the process.

Bret Fausett commented that there were sound policy reasons against term limits, the scope should be discussed, and recommended, that the issue be taken up at the Sao Paulo meetings.
Greg Ruth considered that the Council imposing term limits on constituencies was equal to the council controlling constituencies. The constituencies had sovereign rights, they did not have the same bylaws, thus they did not need to play by the same rules. It appeared a bad way to conduct a bottom up policy making process.

Bruce Tonkin commented that there were views for and against the motion and the need for further reflection at a face-to-face meeting in Sao Paulo.

The standard rules are that if there is quorum, it is the majority of the votes in the meeting in which there is quorum that determines the outcome.
The Registrar and gTLD Registries constituency members have double voting in the procedural motion.

Bruce Tonkin proposed a procedural vote on calling the question.
Should the motion proposed by Ross Rader be voted now at the meeting or should the motion be tabled for voting on in Sao Paulo.

The motion carried with 13 votes in favour of voting on the resolution at the present meeting:
Lucy Nichols, (IPC) Robin Gross, Norbert Klein, (NCUC) Ross Rader and Tom Keller, (2 votes each - Registrars constituency) Cary Karp, Ken Stubbs and June Seo, (2 votes each - gTLD Registries constituency)

7 votes against voting on the resolution at the present meeting:
Marilyn Cade, Phillip Sheppard, Alistair Dixon, (CBUC) Tony Holmes, Tony Harris, Greg Ruth, (ISPCPC) Maureen Cubberley

2 votes abstaining:
Bruce Tonkin GNSO chair abstained (2 votes)

5 votes not recorded:
Avri Doria, Ute Decker, Mawaki Chango did not vote, (dropped off call)

Kiyoshi Tsuru and Sophia Bekele no vote, absent.
Total 27 votes

Motion to table the resolution to the next Council meeting in Sao Paulo, failed.

Ross Rader, seconded by Cary Karp proposed:

The recommendations of the LSE regarding term limits for GNSO Council members should be adopted immediately by the GNSO Council with no grandfathering except in connection with the ability of a council member to serve out their existing term. A council member can serve no more than two consecutive terms (regardless of duration). Moreover, a former council member must remain off the GNSO Council for one full term prior to serving any subsequent term. However, there shall be an exception to the two term limit in connection with special circumstances (I.e. Geographic diversity requirements) where a constituency is unable to find an alternative representative to serve. In applying this special circumstance exception, the existence of an otherwise qualified candidate willing to serve on the council within that constituency shall constitute a non-rebuttable indication that special circumstances do not exist. The GNSO Council will forward this recommendation to the ICANN Board of Directors for implementation in the bylaws and also recommend to the GNSO Constituencies that they voluntarily adopt these practices until such time that they have been formally implemented by the Council and Board.

Councillors were called to make Statements of Interest on the impact of the resolution on them as individuals.

Marilyn Cade called a point of order to the Deputy General Counsel's comment that the GNSO Council could not set term limits and thus objected to speculation on the impact on individuals.

The resolution carried with 15 votes in favour.

Lucy Nichols, (IPC) Robin Gross, Norbert Klein, (NCUC)

Ross Rader would not be impacted by the motion as he would be ineligible to serve on the Council after the end of his current term under the terms of the Registrar constituency (2 votes) Tom Keller is likewise bound by the Registrar constituency bylaws, (2 votes) Bruce Tonkin is bound by the Registrar constituency bylaws with his term expiring at the end of 2007. In addition Bruce supports the motion as the effect of the motion is a recommendation to the Board and that the Board would take input from the community as part of its procedure to making any bylaw change. (2 votes) - Registrars constituency) Cary Karp, - noted that he would be no longer eligible for any further service on Council at the end of his term (2 votes) Ken Stubbs, June Seo, (2 votes each - gTLD Registries constituency)

7 votes abstaining:
Marilyn Cade, Phillip Sheppard, Alistair Dixon, (CBUC) Tony Holmes, Tony Harris, Greg Ruth, (ISPCPC) Maureen Cubberley

Statements of abstention

Philip Sheppard (CBUC)
I am abstaining on this vote for the following reasons that I would like read into the
record:

I object to the piecemeal and ill-considered approach to the items in the LSE review and prefer to discuss them in the broader context of a working group. In such a group the inter-relation of different aspects of the review can be better understood and their implications debated with all interested parties. The specific question of term limits is inseparable to the proposal for joined constituencies and touches on the bottom-up sovereignty of the constituencies themselves.

Marilyn Cade (CBUC)
I am abstaining with regret because I am accountable to the Constituency that elected me, to the GNSO and ICANN community. I do not support the resolution and I have reasons for not supporting it. I do not think that the Council should vote on one or two elements of a review that impacts, in fact the constituency, not just the council. The LSE team itself acknowledged that the report was not definitive but should be seen as one set of input. We have a lot of work to do, that work is pending and it deserves Council and the broader community within the GNSO attention in a productive, pragmatic, and mutually respectful approach that I am not seeing at this time, and how we work together to ensure improvements and evolution in the GNSO. I think the GNSO Council has a responsibility to discuss and examine issues thoughtfully, and that we need to seek to hear from the constituencies themselves before voting on the resolution that is being proposed, so I cannot vote on this resolution. I do not understand or accept the Council's authority, I have heard from the assistant General Counsel, we have no authority other than to make a recommendation. A Constituency should govern itself, select its representatives, it should determine the number of years by electing them and I do not understand why one constituency would seek to establish rules when other constituencies, that may be very different, all constituencies are every different. If I were to ask the Council to look ahead, which I will do now, we have a lot of work on the GNSO Review and I would think that the community broadly, and all of our constituencies would prefer that we set this resolution aside and we focus on productive ways to work together so that others in the GNSO community could have ways to improve the GNSO with the resources available to the GNSO from ICANN to support and form policy development, to examine ways to broaden and deepen participation. Therefore I state that I am abstaining.

Alistair Dixon (CBUC)
I am abstaining. I do not support moving ahead with this proposal in isolation from the broader recommendations of the GNSO Review from the LSE, so I would like to abstain.

Tony Harris (ISPCPC)
I abstain from the vote and as far as I am aware the Council is not being commissioned to undertake a reform by anybody. The LSE was hired to do that job and this would be preempting their work, so in view of that I am abstain from the vote.

Tony Holmes (ISPCPC)
I am very disappointed that some members of Council seem to force this vote, whilst the ISPCPC remains totally committed to the work of the

GNSO and as an ISPCPC selected member have no option other than to
abstain from a vote from this issue. The ISPCPC does not offer any
support for a process that chooses to selectively identify specific
aspects of the GNSO Review and drive those forward as totally separate
elements that can be voted on in isolation. There has to be recognised,
both within the review undertaken by the LSE and also the earlier work
undertaken by Patrick Sharry, that this is a complex and intertwined set
of issues. The proposed approach raises several other issues that
require a more detailed analysis before any decision can be taken. This
includes questions over the authority of the Council to impose any
restrictions on constituencies under the existing bylaws, as well as the
fact that there are terrific constraints on the election of candidates,
the voluntary nature of the heavy work load imposed on councillors, the
ability of constituencies to select their most effective and well
qualified members to undertake those important roles. It is even more
inappropriate to take any decision on this issue when the structure and
working arrangements of the Council itself are being questioned, if not
to say, exercised. Finally choosing to adopt a piecemeal approach to the
GNSO Review and call for votes on any specific recommendation prior to
considering the very broad aspects of the review and the opportunity to
seek additional input and listen to other parts of the community is
unwise, unacceptable and bad practice, in addition its sets a very bad
precedent for the future work of the council. I would like to add that
the ISPCPC are ready and willing to play an active part in assessing the
report from the LSE as part of a full study that needs to be undertaken
to ensure that the GNSO functions as a first class element of the ICANN
structure.

Greg Ruth (ISPCPC)
I wish to abstain because I consider this motion to be an illegal motion
under the bylaws, Under the governing principles of ICANN in general. I
believe that it is inappropriate for the Council to impose constraints
on the governance of the individual constituency. The way that a bottom
up process works is that constituencies run the Council, not the other
way round.

Maureen Cubberley (Nominating Committee appointee) I abstain. Originally
I posted to the list in support of term limits. Personally, as a
Nominating Committee appointee, my term is up in December 2006 and I
have not sought re-appointment and therefore will not be returning. I
support the principle under the direction of the proposed resolution. I
do not think that it is thorough enough and having heard the passion in
this discussion that to make a decision on this today would contribute
to the dysfunctionality of the group rather than move it forward, so for
that reason I wish to be on the record as abstaining from the vote, but
supporting the principle of term limits.

5 votes not recorded:
Avri Doria, Ute Decker, Mawaki Chango did not vote, (dropped off call)

Kiyoshi Tsuru and Sophia Bekele, no vote, absent.
Total 27 votes

The motion passed
Bruce Tonkin noted that the motion would be forwarded to the Board for
consideration and to the constituencies to voluntarily consider.

Decision 5:
The recommendations of the LSE regarding term limits for GNSO Council
members should be adopted immediately by the GNSO Council with no
grandfathering except in connection with the ability of a council member

to serve out their existing term. A council member can serve no more than two consecutive terms (regardless of duration). Moreover, a former council member must remain off the GNSO Council for one full term prior to serving any subsequent term. However, there shall be an exception to the two term limit in connection with special circumstances (I.e. Geographic diversity requirements) where a constituency is unable to find an alternative representative to serve. In applying this special circumstance exception, the existence of an otherwise qualified candidate willing to serve on the council within that constituency shall constitute a non-rebuttable indication that special circumstances do not exist. The GNSO Council will forward this recommendation to the ICANN Board of Directors for implementation in the bylaws and also recommend to the GNSO Constituencies that they voluntarily adopt these practices until such time that they have been formally implemented by the Council and Board.