Tool Kit Services Recommendations for Key GNSO Organizations -
Submission of the GNSO Constituency and Stakeholder Group Operations Work Team to the GNSO Operating Steering Committee

18 October 2009

<u>References</u>

1. REPORT OF THE BOARD GOVERNANCE COMMITTEE GNSO REVIEW WORKING GROUP ON GNSO IMPROVEMENTS, 3 February 2008 (BGC GNSO Improvements Report) located at http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf

2. GNSO Improvements wiki (https://st.icann.org/gnso_transition/index.cgi?gnso_improvements)

3. *GNSO Survey Final Report, 28 January 2009*

Introduction

The purpose of this document is to provide implementation recommendations in response to the following action item contained in the BGC GNSO Improvements Report: "The Board tasks Staff with developing, within six months, in consultation with the Council, a "tool kit" of basic services that would be made available to all constituencies." (See reference 1 above, bottom of page 46).

At the time the report was drafted, constituencies were deemed to be the main organizational units of the GNSO. Since that time another organizational unit has been introduced: Stakeholder Groups (SGs). Therefore the recommendations that follow are intended to apply more broadly than just to constituencies so that they can potentially meet the needs of both key GNSO organizational units as appropriate.

Background

Creation of Work Team:

On 26 June 2008, the ICANN Board endorsed the BGC GNSO Improvements Report. To fulfill its consultative obligations set forth in that report. In response to that report, the GNSO Council formed two steering committees that were tasked with overseeing and coordinating the implementation of the GNSO improvement recommendations. (See reference 2 above.) The Operations Steering Committee (OSC) formed three implementation work teams (WTs), one of which is the GNSO Constituency and Stakeholder Group Operations WT (CSG WT).

As one of its several areas of focus, the CSG WT was tasked with developing recommendations for possible services that could possibly be offered to GNSO organizational units.[1]

Identification of Basic Service Options

First, the CSG WT reviewed the results of a survey performed by ICANN Staff at the end of 2008 in which respondents were asked to indicate the relative importance of providing 12 individual services to all officially recognized ICANN constituencies. As shown in the table below (ranked high to low by percentage), of the 12 Staff services presented, 1-11 were scored either "4-Moderate" or "5-High" importance by a majority of the respondents. (See pages 7-8 of reference 3 above.)

Rank	Total Number of Respondents to This Question: 29	Votes	Pct.
1	Assembling background and reference materials for Working Groups	26	90%
2	Support for organizing face-to-face meetings (e.g. date/time, location, equipment, telephone bridge and, in certain venues, arranging accommodations)	25	86%
3	Support for organizing teleconferences (schedule, announce, monitor)	25	86%
4	Support for the Policy Development Process (PDP) by drafting materials, under constituency direction and for constituency consideration (e.g. statements), tracking deadlines, summarizing policy debates	24	83%
5	Preparing minutes of formal constituency meetings and teleconferences	18	62%
5	Assisting volunteer leaders by identifying/scheduling liaison contacts within ICANN	18	62%
5	Constituency web site hosting and content maintenance (i.e. keeping site up to date with relevant documents and information)	18	62%
8	Provide grants/funding for constituencies to provide their own support	17	61%
9	Organizational record keeping (e.g. statements of interest, archives)	16	55%
9	Maintaining up-to-date member contact info, mailing/discussion lists	16	55%
9	MP3 recordings of meetings	16	55%
12	Assisting in conducting elections for constituency officers	11	38%

On 3 June 2009 the CSG WT sent a request for additional input to GNSO community members. In particular, the CSG WT asked for answers to the following questions:

1. Are there any tool kit services that you would add to those listed in the table?
2. How would you rank any additional tool kit services relative to those listed in the table?

No additional services or changes to priorities were suggested so the CSG WT decided to focus on the services in the above table that relate to GNSO organizational support, i.e., those services that may be of value to constituencies and SGs.

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[1] At the time the BGC Report was drafted, Constituencies were deemed to be the main organizational units of the GNSO. Since that time the ICANN Board has approved four new GNSO Stakeholder Group Charters. Two of those charters effectively replaced constituency structures for the Registry and Registrar communities with their SG equivalents (see - http://www.icann.org/en/minutes/prelim-report-30jul09.htm). Therefore the recommendations that follow are intended to apply more broadly than just to constituencies so that they can potentially meet the needs of both key GNSO organizational structures.

CSG WT Recommendations

The CSG WT recommends the following:
1. As soon as funds are available and any prerequisite actions can be taken, a tool kit of the optional services as listed below be offered to eligible GNSO organizations:
    a. Assembling background and reference materials for Working Groups
    b. Support for organizing face-to-face meetings (e.g. date/time, location, equipment, telephone bridge and, in certain venues, arranging accommodations)
    c. Support for organizing teleconferences (schedule, announce, monitor)
    d. Preparing minutes of formal meetings and teleconferences
    e. Assisting volunteer leaders by identifying/scheduling liaison contacts within ICANN
    f. Web site hosting and content maintenance (i.e., keeping site up to date with relevant documents and information)
    g. Provide grants/funding for constituencies to provide their own administrative support
    h. Organizational record keeping (e.g., statements of interest, archives)
    i. Maintaining up-to-date member contact info, mailing/discussion lists
    j. Producing MP3 recordings of meetings
    k. Assisting in conducting elections for officers
2. To the extent that the entire package of the above listed services cannot be implemented in a timely manner, they should be prioritized in the order listed; if lower prioritized services can readily be implemented before higher prioritized services without causing delays for any higher prioritized services, that should happen.
3. SGs and Constituencies with ICANN Board approved charters are the primary organizations eligible for any or all services in the tool kit.
4. Budget permitting, all services in the tool kit should be provided without charge to other eligible GNSO organizations as may be later identified; if funds are insufficient to do this, some services may be offered on a cost-based fee basis provided that is done in an equitable manner across all eligible organizations.
5. Eligible organizations may opt to receive any, all or none of the services as they see fit provided that they provide sufficient notice as to be defined by ICANN Staff.
6. Prior to the availability of any tool kit services, ICANN Staff should develop and inform GNSO organizations of the following:
    a. What services are available
    b. General specifications of each service
    c. Any requirements for using the service (initial and ongoing)
    d. Procedures for requesting each service
    e. Procedures for cancelling or modifying a service
    f. Process for evaluating services
    g. Process for adding or deleting services.

Report on the Issue of Whether the Task 1, Subtask 4 Recommendations Should Be Sent to the Operations Steering Committee Ahead of the Other Task 1 Recommendations:

The GNSO Operations Stakeholder Group and Constituency Operations Work Team members discussed at length whether the whether the Task 1, Subtask 4 recommendations on the tool kit of services should be sent to the Operations Steering Committee (OSC) ahead of the Other Task 1 recommendations. In accordance with the [Work Team Charter](#), the Work Team members reached rough consensus on this issue.[2] The following Work Team members agreed on the recommendation and the decision to submit the recommendations to the OSC at this time:

• Olga Cavalli - Nominating Committee Appointee
• Claudio DiGangi - Intellectual Property Interests Constituency
• Chuck Gomes - gTLD Registries Constituency
• Tony Harris - Internet Service and Connectivity Providers Constituency
• Zahid Jamil - Commercial and Business Users Constituency
• Hector Ariel Manoff - Intellectual Property Interests Constituency
• Krista Papac - Registrar Constituency
• Michael Young - gTLD Registries Constituency

The following Work Team members disagreed with the decision to send the Task 1, Subtask 4 document to the OSC at this time:

- Rafik Dammak - Non-Commercial Users Constituency
- S. Kshatriya - Individual (India)
- Victoria McEvedy - Intellectual Property Interests Constituency
- Dr. Shahram Soboutipour - Individual (Iran)

Rafik Dammak, S.S. Kshatriya and Victoria McEvedy have chosen to exercise their right to submit Minority Reports expressing their disagreement with certain substantive

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[2] Section III of the Work Team Charter provides, in part, that:
 "Decision Making: The WT shall function on the basis of 'rough consensus' meaning that all points of view will be discussed until the Chair can ascertain that the point of view is understood and has been covered. That consensus viewpoint will be reported to the OSC in the form of a WT Report. Anyone with a minority view will be invited to include a discussion in the WT Report. The minority view should include the names and affiliations of those contributing to that part of the report.

In producing the WT Report, the Chair will be responsible for designating each position as having one of the following designations:

• Unanimous consensus position
• Rough consensus position where no more than 1/3 disagrees and at least 2/3 agree
• Strong support (at least a simple majority), but significant opposition (more than 1/3)
• No majority position"

recommendations in the report as well as the timing of the report submission. Those reports are set forth below in alphabetical order:

Minority Report of Rafik Dammak

This minority report is related to the GNSO OSC Constituency Operations Team work. It concerns to which is defined as Subtask 1.4 and about toolkit implementation.
The main issue was sending this subtask report without waiting for finishing the final report. I disagree with that as it may prevent reviewing and updating the report regarding the rest of subtasks and then may creating some incoherence and inconsistency between the defined 4 parts made within the WT.
The toolkit as important feature needed by constituencies or stakeholders groups should reflect principles, which may be present in the other subtasks reports for the sake of coherence consistency. My other concern is about this procedural aspect and not reaching a real rough consensus, so far there are 4 people expressing opposition for several reasons.

Rafik Dammak
17/10/2009

MINORITY REPORT

Names: S. S. Kshatriya (SS), Affiliation: Individual (India)

Members Of: GNSO STAKEHOLDER GROUP AND CONSTITUENCY
                    OPERATIONS TEAM
                    (Operations Team will be referred to as WT in this document)

My Views: My Views are expressed separately at the end of each section.

Subject: This Minority Report arose due to effort of some WT members in
                    the meeting on Friday September 25, 2009 in forcing discussions
                    (out of turn) and an effort to send 'Task 1 Subtask 4 Tool Kit'
                    separately and in advance of other Subtasks of Task 1 to
                    OSC/GNSO Council against previously decided norms and
                    without any valid reason.

1.   Introduction

This GNSO-OSC-Constituency Operations Team (WT) was tasked with developing implementation proposals for recommendations on GNSO improvements made in the Board Governance Committee's February 3, 2008 Report (BGC Report).
The BGC Report made recommendations for the reform of constituencies and in particular for reforms to improve representativeness, inclusiveness, effectiveness, efficiency, transparency and accountability.

The BGC Report noted:

*"As these recommendations will put a significant burden on the GNSO and its constituencies, ICANN should provide dedicated Staff support for constituencies to assist with standardization, outreach and their internal work"(§6.2, p. 44)*and, on p. 46 a 'Tool Kit' of such support is recommended.

This minority report argues that without improvements--- there is no burden and no need for support.

It is stressed that when improvements are agreed –then and only then is it appropriate to consider the corresponding support. To agree to the support first is premature and against norms.

It is also extremely cynical given that during WT proceedings, the improvements have been staunchly resisted by the same parties who are so eager for the staff support.

There are also process concerns and procedural lapses related to the manner in which the motion was moved and determined. And these can raise doubts about the intentions and objectives of the parties supporting. These are discussed in the following section.

My Views and Objections

(i).   Support without the improvements offends the letter and the spirit of the BGC recommendations. It is to put the proverbial cart before the horse. Did the BGC intend this result? I do not think so. This is an entirely cynical manoeuvre. The BGC statement above makes clear its intention that support be conditional upon and for the increased burden of the constituency improvements ----not in return for *no* improvements.

The work on the substantive improvements is not yet complete This WT divided its task into 4 parts or subtasks as follows: 1-Participation Rules; 2-Operating Principles; 3-Database of Members; and 4-Toolkit. WT has spent some 6 months on its work and is close to completing the balance of it. Why expedite the Staff Support in these circumstances?

My concern is that once the support is determined ---there will be no incentive for the improvements or worse the WT will find itself unable to agree the improvements as is done now to stall the improvements.

That this is a cynical is demonstrated by the fact the Toolkit includes items such as support for the publication of minutes and recordings of meetings ---when these very recommendations (that minutes should be published and recordings made) remain the subject of contention.

Indeed, in WT proceedings, there is currently no support whatsoever for constituencies to publish recordings of any kinds of meetings. Even a recommendation for the publication

of minutes has proved controversial –and the current language now refers to action points, resolutions and decisions.

What this does demonstrate is that this Tool Kit bears no relation to any substantive proposals ---and is entirely speculative.

(ii).   The BGC Report makes no reference to the Tool Kit being applicable to Stakeholder Groups. It refers to Constituencies –and while we must extend it to their counterparts ie other Interested Parties, the Tool Kit draft makes the bare statement that the Tool Kit should apply to GNSO Organizational Groups.

No case is made for the need for these resources to apply at Stakeholder Group level. Further the report contemplates its extension to other eligible groups ---but gives no information on who they might be? Who are these other eligible groups? Will they be suffering increased burden from any (yet to be agreed) improvements? None of these questions are answered.

Again—this is just another reason why this Toolkit is premature. It is a blank cheque to groups unknown and for reasons unclear and reforms never agreed. It should not be approved.

2.   Serious Process and Procedural Lapses

(i)   The issue of bifurcation (dividing the work and prioritizing some aspects) was discussed in depth by the WT on a number of occasions –as a result of charter amendments and related processes and the whole group unanimously decided against it – most recently on 21 August 2009 (see MP3 recordings)**.**

The re-opening of this topic was not on the Agenda on 25 September. In fact there was no Agenda for that call. Added to this, the Chair circulated a mail on September 22, 2009 detailing the 'next steps' for September 25 meeting wherein she talked of '*produce our outcome document'* out of subtask draft documents. This is for a consolidated document and not a bifurcated one.

It is true that one member of the WT had suggested it be raised but this was merely an email from a member and lacked the significance of an Agenda item –and the notification reach of an Agenda. Some members of the group were taken by surprise. Some members had not finally reviewed the relevant Toolkit at the time in order to give substantive comments.

(ii)   Though there was no agenda, meeting on September 25 started on predicted note. As has been the practice in several last meetings; progress of subtask documents were discussed in order—subtask 1, 2, 3, and subtask 4 Tool Kit. When subtask-4 document was being discussed; a member, suddenly raised the point of bifurcation and forwarding subtask 4 Tool Kit to OSC and the Council for consideration.

(iii)   Serious discussions followed in the meeting in favor and against bifurcation. One of my arguments that 'what will fall if we wait for 2 to 4 weeks and send a consolidated document' was not agreed to by those members pressing for bifurcation. They were not prepared to accommodate any view against their line of thinking and were prepared to advance any argument.

(iv)   The Chair summed up the meeting; noting that no consensus was reached and that, discussions were to continue through emails. Post September 25 meeting, a number of emails were exchanged and I will mention two of them dated September 28, 2009, having bearing on my argument.

One member in his mail to the Chair, as if summing the email discussions, noted, that there was no consensus for sending Tool Kit and suggested either of the actions: 1. calling for minority report or, 2. putting the idea to rest. Another member, in his reply to that mail expressed his support and suggested 'need to move forward'—a positive action in my view.

However, possibility of a positive action was not explored within the WT.

(v)   During discussion on the said topic, within the meeting and through email, some members supported an issue or a person without giving reasoned arguments. Such a practice has been observed while discussions on other topics too.

My Views and Objections

(i), and (ii)   In the said meeting, an issue, not being in agenda and not being part of the discussion pattern during the day, was forced upon WT. Some members, knowing fully well that there existed WT's (their own) decision against bifurcation is serious and objectionable. Such members, during discussions in the said meeting showed no signs of accommodating other views, contrary to their own. It does not go well with the established norms.

(iii), and (iv)   If an issue is not forced and enough time and reasoned thoughts are given, it is possible to avoid division.

(iii)   An impression is created as if WT is a legislative body where members vote on party line. This goes against the established practice of a work team or work group and totally against aims and objectives for which this WT is constituted. In my opinion it is deplorable and defeats the very purpose for which we have gathered in WT to work—i.e., GNSO Improvements.

Minority Report by Victoria McEvedy

Introduction

This GNSO Constituency Operations Team (WG) was tasked with developing implementation proposals for recommendations on GNSO improvements made in the Board Governance Committee's February 2008 Report (BGC Report).

This minority report concerns a proposed Toolkit –one aspect of this WG's tasks — and the WG's determination to expedite it. This report opposes such expedition.

The BGC Report made recommendations for the improvement of constituencies and in particular for reforms to improve representativeness, inclusiveness, effectiveness, efficiency, transparency and accountability. The BGC Report noted:

> *"As these recommendations will put a significant burden on the GNSO and its constituencies, ICANN should provide dedicated Staff support for constituencies to assist with standardization, outreach and their internal work"(*§6.2, p. 44*)* and, under on p. 46 a 'Tool Kit' of such support is recommended.

Without improvements, there is no added burden. Only when improvements are agreed – and only then--is it appropriate to consider the corresponding support. To agree the support first is premature.

The current proposal is a blank cheque for reasons unclear and reforms never agreed. It should not be approved.

The Substantive Objection

Support without the improvements offends the letter and the spirit of the BGC recommendations. It is to put the cart before the horse. It is also cynical--given improvements have been staunchly resisted by the same parties who are so eager for the staff support.

The BGC statement above makes clear its intention that support be for the burden of the improvements ----not in return for *no* improvements.

The work on the substantive improvements is not yet complete but the WG has spent some 10 months on its work and is close to completing the balance of it. Why expedite the support?

My concern is that once the support is determined ---there will be no incentive to reach consensus on improvements. These are already staunchly resisted by the usual agents of the status quo.

That this is a cynical is demonstrated by the fact the Toolkit includes items such as support for the publication of minutes and recordings of meetings ---when these very recommendations (that minutes should be published and recordings made) remain the subject of contention. Indeed, there is currently no support whatsoever for constituencies to publish recordings of any kinds of meetings. Even a recommendation for the

publication of minutes has proved controversial –and the current language now refers to action points, resolutions and decisions.

What this does demonstrate is that this ToolKit bears no relation to any substantive proposals ---and is entirely speculative. It is premature.

The draft makes the bare statement that the ToolKit should apply to GNSO Organizational Groups. No case is made for the need for these resources to apply at Stakeholder Group level. Further the report contemplates its extension to other eligible groups ---but gives no information on who they might be? Who are these other eligible groups? Will they be suffering an increased burden from any (yet to be agreed) improvements? None of these questions are answered. Again—this is just another reason why this Toolkit is premature.

Process

The issue of bifurcation (dividing the work and prioritizing some aspects) was discussed in depth by the WG on a number of occasions and the whole group unanimously decided against it –most recently on 21 August 2009.

The re-opening of this topic was not warned on any Agenda on 25 September. It was not an Agenda item and members of the group were taken by surprise. Substantive comments from members were still pending when the surprise motion was made to expedite.

Further, when the final substantive comments were submitted, no attempt whatsoever was made to explore them or accommodate them in order to reach consensus. Rather it was made clear that they could be ignored ---as only rough consensus was required.

In these circumstances, the re-opening of the issue was not conducted fairly.

Victoria McEvedy
15 October 2009