February 28, 2009

Via Email

ICANN Board of Directors
Peter Dengate Thrush, Chair
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292

Re: Non-Commercial Stakeholder Group Petition and Charter

Dear Chairman Dengate Thrush and the ICANN Board,

Please accept the Petition and Charter for the Non-Commercial Stakeholders Group (NCSG) accompanying this letter. Ideally, the ICANN Board should receive a single Charter proposition based on a consensus of all existing and proposed constituencies within the NCSG. Unfortunately, reaching such a consensus has proven impossible.

As a member of the NCUC, I offered suggestions and requests from the beginning of their proposed charter development process. My proffered amendments and compromises received nothing but cursory dismissals. On November 23, 2008, I proposed alternative charter language based on the unified group concept proposed by the NCUC. This alternative charter accepted the major assumptions of the NCUC structure and added several functional ways to maintain a balance of representation and a diffusion of power. I also drafted a short Statement of Purpose that provided rationale for that alternative proposal which was dismissed without comment.

In an attempt to engage in further discussions, I wrote an explanation of how each section of my charter compared to the NCUC proposal and why those areas where I suggested compromises were problematic. I provided an annotated version for quick comparison. In my charter, I suggested alternative provisions in an effort to reach a compromise. Again, the response was blanket dismissal. I offered to discuss these alternate provisions with the NCUC's designers, but my offers went unheeded.

I requested a dozen of my recruits for the future CyberSafety Constituency to join the NCUC prior to the Cairo meeting. I assumed they could then participate in NCUC discussions regarding a NCSG charter. After trying to follow the generally uncivil responses I received on the list to my charter suggestions, two individuals asked directly for an explanation of why the NCUC proposal was superior. The NCUC officers quickly responded that my alternative charter was after the "deadline," and insinuated that the new people did not sufficiently understand the ICANN system and politics. The archive of the November, 2008 emails on the charter proposals is available at http://listserv.syr.edu/scripts/wa.exe?A1=ind0811&L=ncuc-discuss.

After repeated failed attempts to craft any compromise in the NCUC proposal, I began exploring other options with others in a wider range of the ICANN community. This

consultation and study made clear that the ideal NCSG charter should be based on the existing constituency model.

Briefly, this alternative charter proposes a "thin" model, conceiving of the NCSG role as: 1) coordinating, facilitating, and encouraging the flourishing and proper functioning of the constituencies; and 2) allocating council seats in certain situations where even divisibility is not possible. With six Council seats assigned to the NCSG by the Board, the presumption in this charter is even division, which occurs when the number of constituencies is one, two, three, or six. With four or five constituencies, the EC of the NCSG (comprised of one representative from each constituency) will allocate one seat to each constituency and then follow a procedure (summarized below) for deciding the remaining one or two seat(s). Note that under this Charter, no issue about allocation arises until there are four or five NCSG constituencies recognized by the Board. As a result, administrative overhead is minimized as much as possible. The general charter approach taken for handling the uneven situations is as follows:

First, the NCSG EC will attempt to reach agreement, applying principles set forth in the charter. If a consensus is not forthcoming, the EC will conduct a vote. A super-majority vote of the NCSG EC is sufficient to pass a proposal for allocation.

The proposal for allocation may be initiated by any constituency and must state whether the request is to allocate seats to particular constituencies for them to fill with their established election procedures; or to allocate seat(s) to identified individual within a certain constituency, or to an individual who is a member of more than one constituency.

If the matter cannot be resolved by vote within the NCSG EC, the EC will conduct an election for the extra seat(s) giving one vote per one individual/organization to each member of any constituency within the NCSG in good standing under each constituency's charter.

In anticipation of a time when the Board is presented with a petition for a seventh constituency, I suggest forming a working group to further study potential bases on which to organize the NCSG. My objective is to find a principled standard to assure adequate stakeholder representation in a structure of no more than six constituencies. I have circulated a couple of proposals for ways to devise a six constituency organization that guarantees broad and complete coverage with six constituencies for further discussion in the community.

In its October 1, 2008 resolution, the ICANN Board set forth the following as guiding principles in the formation of the new Stakeholder Groups:

1. "The need to better represent the wide variety of groups and individuals that compose the global ICANN community…; and

2. "The inclusion of new actors/participants, where applicable, and the expansion of constituencies within Stakeholder Groups, where applicable."

The structure and voting provisions set forth in the NCUC proposed charter miss the mark on these important policies. The latest drafts of the NCUC proposal have not been

circulated on the NCUC list and I do not have access to them. However, I understand that little has changed from the earlier draft I received with respect to the fundamental role of constituencies in that structure.

The NCUC acknowledges the possibility of a wide divergence of perspectives in the NCSG not heretofore involved in NCUC. It proposes to resolve those on a purely majoritarian basis. Members can be accepted by the majority-elected chair and executive committee without sufficient provision for transparency and input in these choices. Then these admitted members are allocated one to four votes each. Elections for the Chair and all six GNSO Council then will be based on a simple majority vote from this stakeholder-wide group. Thus, minority voices are again silenced. I understand there has been a proposal to support the formation of a working group if a minority of twenty percent of the stakeholder members so request. But after this working group expends time and effort, there is no provision for supporting the work of this minority group and no provision for giving any minority, even forty-nine percent any leaders or Council seats.

One objective that both charter proposal designers share is to avoid complexity and administrative burdens. However, the very simple majority vote concept in the current NCUC Charter has proven disastrous to minority involvement. The NCUC leaders have not conceived of their role as requiring familiarity with or representation of obvious range of non-commercial users interests outside of free expression, anonymity, and anti-regulation. As discussed in a lengthy email exchange on the NCUC-archived email list in September 2007 and at the Los Angeles ICANN Meeting in October 2007, the existing NCUC leaders have taken the position that they represent the particular views of their sponsor organizations unless such positions are out-voted by other participants in NCUC. Until any particular group can recruit and give votes to fifty-one percent, it is ignored.

The NCUC argues that giving constituencies any kind of weight or power in the NCSG may create improper incentives to create constituencies. However, constituency creation is subject to ICANN Board approval. The NCUC proposal creates incentives to give votes to individuals and groups who need not otherwise be involved with the work and will rubber stamp positions of elected officers, rather than pulling in new participants who will actually read and consider the issues.

The CyberSafety proposed charter has a simple organization composed of constituencies and an Executive Committee formed by representatives of constituencies. Such an emphasis on the constituency as the primary unit of the NCSG will provide an equal opportunity for all voices to be heard and will encourage new and diverse participants by giving them opportunities for meaningful participation.

Very truly yours,

Cheryl B. Preston
Edwin M. Thomas Professor of Law
Brigham Young University

CP80 Foundation

Attachments:

NCSG Petition and Charter Submitted by Cheryl Preston (CyberSafety)

 Stakeholder Group Petition and Charter

Stakeholder Group Name:	Non-Commercial Stakeholder Group (NCSG)
Your Name:	Cheryl B. Preston
Your Company/Organization:	Brigham Young University
Tel. Number:	*[Redacted]*
Fax Number:	*[Redacted]*
Email Address:	*[Redacted]*
Submission Date:	February 28, 2009

Non-Commercial Stakeholder Group Charter

1.0   Mission and Principles

1.1   Mission. The purpose of the Non-Commercial Stakeholder Group (NCSG) is to represent, through its Constituencies, non-commercial Internet users of Generic Top-level Domains (gTLDs), including without limitation:

   1.1.1   Non-commercial entities such as educational institutions, research organizations, philanthropic organizations, foundations, and non-commercial service providers;

   1.1.2   Registrants and owners of domain names; and

   1.1.3   Individual Internet users, through representative experts on technology, Internet policy, and the interests of non-commercial users.

1.2   Principles for Leaders and Member Constituencies. The NCSG is committed to:

   1.2.1   Carrying out its mission in a fair, open and transparent manner, and ensuring that new participants and Constituencies can easily access and understand its operations and processes;

   1.2.2   Service standards for leadership positions including impartiality, accountability, and avoidance of conflicts of interest; and

   1.2.3.   Behavioral expectations of all NCSG Members, including without limitation: adhering to ICANN Bylaws/Policies; supporting the bottom-up consensus model; treating others with dignity, respect, courtesy, and civility; listening attentively to and understand others; acting with honesty, sincerity, and integrity; and maintaining community good standing.

2.0   Organization and Membership

2.1   Composition. The NCSG is comprised of two (2) structures.

2.1.1 **Constituencies.** Constituencies are structures organized according to the ICANN Bylaws and approved by the ICANN Board for representation of non-commercial Internet users within the Generic Names Supporting Organization (GNSO).

2.1.2 **Executive Committee (EC).** The EC's principal functions include:

1. Coordination of and among NCSG Constituencies;

2. Resolution of disputes among Constituencies; and

3. Allocation of GNSO Council seats accorded to the NCSG by the ICANN Board.

2.2 **Constituencies.**

2.2.1 **Constituency Qualification and Recognition.** Forming a NCSG Constituency requires:

1. Submitting a "Notice of Intent to Form New Constituency" (NOIF) to the ICANN Board. The NOIF will be distributed to the GNSO Council as well as all GNSO constituencies and will be publicly posted on the GNSO website;

2. Submitting a "New Constituency Petition and Charter" (Petition) to the ICANN Board for formal recognition, approval and assignment to the NCSG, following a NOIF. The Petition will also be distributed to the GNSO Council and all extant GNSO constituencies and will be publicly posted on the ICANN website for public comment and/or other communication organs, including the GNSO website; and

3. Recognition and approval by the ICANN Board in accordance with its Bylaws.

2.2.2 **Constituency Structure.** The internal structure, leadership, and operation of each Constituency will be governed by the Constituency Charter as approved by the Board and managed by its members in accordance with procedures in such Charter. Each NCSG Constituency shall conform to the principles set forth in the Section 1.2 of this Charter.

2.2.3 **Constituency Rights and Responsibilities.** Each NCSG Constituency shall:

1. Elect/appoint a delegate to serve on the NCSG EC;

2. Elect/appoint GNSO Council Members (CRs) to fill the Council seat(s) allocated to the Constituency;

3. Develop and issue policy and position statements;

4. Participate in GNSO policy development processes;

5. Select Nominating Committee delegate(s) as directed by the ICANN Board; and

6.   Perform any other activities identified by the ICANN Board, GNSO Council, or the NCSG as Constituency responsibilities.

3.0   NCSG Leadership

3.1   Composition. The Executive Committee (EC) shall be comprised of one (1) delegate from each recognized Constituency within the NCSG.

3.2   Roles and Responsibilities.

3.2.1   Elect Officers. The EC shall elect from the committee members elected/appointed by the Constituencies a Chair and Vice Chair to serve for one year terms.

3.2.2   Hold EC Meetings.

1.   The EC Chair shall call meetings as necessary to address the duties of the EC set forth in this Charter, and shall:

   a.   Develop meeting agendas;

   b.   Schedule and conduct EC meetings;

   c.   Keep minutes of EC meetings and records of EC decisions;

   d.   Provide notice of meeting;

   e.   Make publically available on the NCSG website or other public communication organ information regarding the scheduling of meetings, the agenda, the minutes of EC meeting, and the decisions of the EC; and

   f.   Maintain a private communication organ for administration purposes, which shall be archived and available to members of NCSG.

2.   EC meetings may be informal in nature and conducted through email, wiki, or online commons mechanisms.

3.2.3   Facilitate Policy Coordination Meetings. Upon request from a Constituency, the EC shall invite all NCSG Council Representatives (CRs) and a representative from each Constituency to appoint a representative to join in a meeting, conference call, web discussion, or other communicative format (meeting) to discuss GNSO policy development issues.

1.   The EC shall send such invitation to the CRs and chair of each Constituency and request that each Constituency post a notice of such meeting on the Constituency's public communications organ.

2.   The EC shall provide as much notice of such meeting as possible in light of the timing of the request and the urgency of issue(s) being addressed.

3.2.4   Allocate Seats. Allocate GNSO Council seats as provided below in Section 4.

3.2.5   Support the GNSO Council and the ICANN Board. The EC shall cooperate with and support the GNSO Council and the ICANN Board.

1.   If requested by the ICANN Board, select Nominating Committee delegate(s);

2.   Encourage and support recruitment, outreach, and training efforts targeted at expanding the NCSG through identification and formation of new Constituencies and new members of NCSG Constituencies; and

3.   Request ICANN staff assistance when necessary to facilitate the goals, objectives, and duties of the NCSG.

3.2.6   Decision Making Process. All members of the NCSG EC will participate in making decisions.

1.   A quorum of at least three-quarters (3/4) of the members of the EC is required for making significant decisions, such as GNSO Council seat allocations.

2.   Decisions will be made by consensus as described in Paragraph 6.2.3 when possible.

3.   If the EC cannot resolve a decision by consensus, the Chair shall conduct a vote. All members of the PC, including the Chair, have a vote.

3.2.7   Voting Procedures.

1.   Voting shall normally be by a show of hands or call of Aye or Nay (For or Against) in a teleconference. Electronic voting shall also be permitted where the Chair indicates that this manner of voting shall be used.

2.   When the result of a vote is in doubt, the Chair may take a second vote by a roll-call. A vote by roll-call shall also be taken if it is requested by a EC members.

3.   When an amendment to a proposal is moved, the amendment shall be voted on first.

4.   When two or more amendments to a proposal are moved, the amendment deemed by the Chair to be furthest removed in substance from the original proposal shall be voted on first, and then on the amendment next furthest removed there from, and so on, until all the amendments have been put to a vote.

5.   If one or more amendments are adopted, the amended proposal shall then be voted upon as a whole.

6.   A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

4.0 GNSO Council Seat Allocation.

4.1 **Even Distribution.** Subject to the provisions of Section 5, each NCSG Constituency shall be allocated an even number of Council seats.

4.2 **Extra Seats.** Subject to the provisions of section 5, the EC shall allocate any Council seats remaining after the assignment provided in paragraph 4.1 according to the following:

4.2.1 **Request for Additional Seat.** At such time as there is one (1) or two (2) seats that cannot be allocated evenly as provided in paragraph 4.1, any NCSG Constituency may petition the EC to request an additional Council Seat. Such request shall:

1. State the reason for the request and provide evidence showing why such petition should be granted.

2. State if the request is to:

a. Allocate a seat to such Constituency to be filled in accordance with the Constituency Charter; or

b. Allocate a seat to an identified named individual who must be a member in good standing of one or more NCSG Constituencies.

4.2.2 **Standards for Determination.** Upon receipt of such petition(s) for an extra seat, the EC shall schedule a meeting to consider the petitions based on the following considerations:

1. Consistency with GNSO and ICANN objectives, including

a. Geographic diversity;

b. Breadth of interests represented;

c. Economic, social, cultural and ethnic diversity;

d. Fairness among Constituencies;

e. Reasonable rotation among Constituencies;

f. Size of petitioning Constituency;

g. Participation levels of petitioning Constituency; and

h. Adherence to the principles of this Charter.

2. Reasons stated in and evidence supplied by the petition;

3. Need for any particular expertise of a nominated candidate or of such Constituency;

4. History of performance of such Constituency's CRs; and

5. Support for such nominee or Constituency from NCSG Constituencies other than the petitioning Constituency.

4.2.3 **Voting.** The EC will conduct a committee vote in accordance with the procedures outlined in Paragraph 3.2.7. A vote on the allocation of a GNSO Council seat requires a super-majority, or at least two-thirds (2/3) of the EC. Each extra seat, if more than one, shall be voted on separately.

4.2.4 **Inability to Reach Determination.** If after following the process described in Paragraphs 4.2.2 and 4.2.3, the EC is unable reach consensus with respect to any of the extra seat(s), or obtain a super-majority vote, or otherwise to make a determination, the EC shall conduct an election for such extra seat(s).

4.2.5 **Responsibilities and Duties of CRs.** A CR elected or appointed pursuant to this Section shall be subject to the rules, principles, responsibilities, and duties as set forth in the Charter of the Constituency of which such individual is a member. Individuals who are members in more than one (1) Constituency shall identify in the petition or nomination process the Constituency Charter pursuant to which he or she will serve.

5.0 Election for Extra Seats.

5.1 **Request Nominations.** Promptly following a vote of the EC that does not reach a determination under Paragraph 4.2.4, the Chair shall post a call for nominations on the NCSG website and other public communication organ.

5.2 **Eligibility.** Any member of a NCSG Constituency in good standing is eligible. Nominees may include individuals identified in petitions pursuant to Paragraph 4.2.1.

5.3 **Voting.**

5.3.1 Each NCSG Constituency shall provide a list to the NCSG EC of the names and email address of each member of such Constituency eligible to vote pursuant to such Constituency's Charter. The EC may request additional information if it is unable to verify each member on such lists pursuant to public ICANN information.

5.3.2 The EC shall prepare a list of candidates.

5.3.3 The EC shall request candidates to provide, on the NCSG website or other public communication organ, a statement of their experience and qualifications, their Constituency membership, and which Constituency Charter they will adhere in their work as a CR.

5.3.4 Each member eligible to vote shall cast one (1) vote.

5.3.5 The EC shall request the assistance of Staff in providing notice and conducting a vote of all NCSG members according to the lists provided by each Constituency.

5.4 **Results.** If one extra seat is available, the individual receiving the highest number of NCSG constituency member votes, shall be appointed by the NCSG EC to the GNSO Council for a two (2) year term. If more than one seat was subject to member election, the EC shall appoint the top two (2) individuals receiving the largest number of NCSG constituency member votes.