

# **Internet Service Provider and Connectivity Providers Constituency**

## **Comments on the report of the Board Governance Committee GNSO Review Working Group**

### **1. Introduction and overview**

The ISPCP welcomes the opportunity to comment on the report from the Board Governance Committee (BGC). The GNSO is a critical element of ICANN and its continued evolution in order to address the dynamics of a rapidly changing market place is essential.

The ISPCP offers support for making ongoing changes that will enhance the ability of the GNSO to deal with new challenges, whilst ensuring a stable and secure environment is maintained. Within all organizations an ongoing process of review and change is essential if consistent progress is to be made.

It is the view of the ISPCP that changes to the GNSO must be viewed within the context of the broad review planned for all ICANNs functions and operations. Whilst lessons have been learnt and issues identified that require attention, care must be taken to ensure that the problems of today are resolved in a manner that will best meet future needs. Currently there is no 'big bang' solution that can be implemented that will resolve all without incurring significant risks to the policy making process for the GNSO..

While change within the GNSO is both inevitable and welcome, it is essential that the organization maintain a degree of stability so that it can continue to function. The GNSO faces significant challenges in the coming years – including the planned introduction of new gTLDs and IDNs, in addition to other policy improvement activities. The GNSO must have the minimal stability it needs in order to meet these challenges. Therefore the ISPCP supports a phased approach towards change, introducing and building on new methods of working across the initial period, then adopting further changes that have been honed and refined through this process.

It should be stated that it is not our intention to propose an open ended solution, merely to ensure early lessons are learnt and subsequent changes really do result in positive improvements that will last for a substantial period, thereby maintaining focus on the real issues ICANN and the GNSO in particular need to tackle.

### **2. Detailed Comments on the report**

The BGC has structured its recommendations for changes to the GNSO under 5 main categories:

- Adopting a WG model
- Revising the PDP (Policy Development Process)
- Restructuring the GNSO Council
- Enhancing constituencies
- Improving Coordination with ICANN structures

The ISPCP Constituency would like to comment on the BGC's report according to this structure. In addition we offer some suggestions to the proposed implementation plan.

#### **2.1 Adopting a WG model**

The BGC WG recommends that a working group model become the foundation and focal point for consensus policy development work in the GNSO, and potentially for other Council activities. The potential value of this approach has recently become evident; we cite the

recent IDN WG as an excellent example of how this model can successfully work. Generally, the ISPCP supports the spirit of this recommendation as it allows unfettered access to all interested stakeholders and facilitates, and assists the drive towards genuine consensus based policies. However, the success of this approach hinges on appointing strong, experienced and competent chairs who will remain neutral. Currently this appears to be a very challenging issue, particularly when considering the breadth of work scheduled for the GNSO.

The ISPCP welcomes the report's recognition that leadership capacity in a volunteer organization is a critical requirement for making the working group model work effectively. The ISPCP strongly supports formal and funded activities that will build leadership capacity within the community that will make up the membership of the working groups.

Achieving a balance of stakeholder interests represented in a WG will also be a challenging but crucial goal. The steps listed within section 3.2 of the report provide a number of excellent guidelines. The concept of setting a minimum threshold at the outset for active support before decisions are reached is particularly essential.

We express caution concerning the proposal that allows ICANN staff to recruit compensating outside experts to assist with particular areas. Whilst in principle this may well provide benefits, such activity should only be invoked at the request of the working group, not at the behest of ICANN staff.

The possibility of ICANN support for travel and funding is also accepted in principle. Certainly face to face meetings have resulted in rapid progress in the past, but this needs to be carefully controlled and monitored. Neither should it be assumed that the possibility of funding would result in the emergence of potential working group Chairs or Co-Chairs of the required caliber. Council involvement in the choice of Chair is essential.

The ISPCP offers support for the recommendation that the Board ask staff to work with Council to develop a set of working principles, rules and procedures for GNSO working groups, but in addition propose that Staff and council review the efficacy of these arrangements at six monthly intervals across the first year that follows initial implementation. It is envisaged that the working principles and procedures could be further improved/refined as a result of those activities.

## **2.1 Revising the PDP (Policy Development Process)**

The inflexibility of the current PDP has been evident for some time. The ISPCP endorses the recommendations that have been put forth regarding changes to the PDP to provide more flexibility, so that the process can be more readily adapted to the particular task at hand. Additional activities undertaken prior to PDP launch should further enhance prospects for successful policy making efforts.

The ISPCP notes that whilst it has been argued that voting will become less of an issue with more emphasis placed on working groups, when 'consensus policies' are discussed within the report there is a clear reference to voting and 'supermajority' decisions. The ISPCP will comment further on the issue of voting later within this response. However, the acknowledgement that this aspect is tied so closely to the manner in which consensus policies are dealt with by the board and the Bylaws that determine those actions, argues that in the future voting arrangements will remain equally as important as they are today.

## **2.3 Restructuring the GNSO Council**

This issue is the most contentious and difficult part of any proposal for reform. The ISPCP agrees that, if the development of policies through WG consensus can be made to work, the GNSO Council can evolve from a policy development organ to one that manages the policy development process. The Council will then be able to take on a more strategic role, for example bringing the policy making agenda into line with the ICANN strategic plan.

However, the ISPCP finds several aspects of the proposed restructuring of the Council totally unacceptable as well as lacking in detail, particularly in areas where such information is crucial in facilitating a detailed assessment of the approach. There are also some

fundamental misunderstandings and inaccuracies stated within the report that distort the conclusions it reaches on restructuring **Balanced representation**

The assumption that because the ISPCP, BC and IP Constituencies attend a joint meeting with the ICANN Board they “coordinate” in the development of policy decisions, shows a lack of understanding and background knowledge of how this arrangement evolved. The cross constituency sessions at ICANN meetings came about due to the frustration of those constituencies when trying to get time with Board members to discuss key issues. Vying with contracted parties (registries, registrars) for face to face dialogue with the Board was problematic for all three constituencies who now choose to meet with the Board jointly as a matter of mutual convenience. Suggesting that collaboration goes beyond the organization of these sessions is a gross mis-interpretation; each constituency represents a distinctly separate group of stakeholders with diverse and independent drivers and issues.

It is unrealistic to presume that all constituencies within a “stakeholder group” will always be able to agree on common positions to be taken to the Council; after all, that is why they distinguish themselves as separate constituencies. Balanced and appropriate representation by all stakeholder groups not only supports policy development through the ‘bottom up’ principle, but also safeguards against capture by any stakeholder group. Limiting votes within the combined stakeholder groups will only exacerbate problems over representation. Combining a ‘selected’ group of stakeholders or constituencies challenges these fundamental requirements and the very basis of the ICANN model.

### **Term limits**

With regard to term limits for Councilors, the ISPCP understand the thinking behind this proposal, although they have offered no support in the past. That position was adopted due to concerns on a number of points. Geographic representation, which remains a fundamental requirement, will always limit the pool of potential candidates. Similarly it should not be assumed that within all constituencies candidates are queuing to take a seat on council. Representation is time and resource consuming and heavily impacts normal business life. Whilst those Constituencies where GNSO issues impact their core business are unlikely to struggle on this basis, it must be appreciated that this is not the situation across the entire Supporting Organization.

Due regard must be given to these issues and whilst in principle limiting terms appears a fine aim, exceptions must not be so strictly defined that any Constituency finds they are in a situation where they are unable to elect those representatives who are best placed in terms of required skills, experience or ability to dedicate time and effort to Council business.

Additionally, it is worth noting that once Council adopts a policy management role and, as argued within the report voting becomes less of an issue, then part of the rationale to impose strict term limits also diminishes.

### **Supply and Demand Groupings**

Separating the GNSO community into Supply and Demand (Users) is currently a misuse of these terms. How can any ‘Supplier’ group not include ISPs and Connectivity Providers? If ISPs and Connectivity PROVIDERS are not providers what are they?

The proposed structure uses these terms in an attempt to justify separating those with ICANN contracts (Registries and Registrars) from the rest of the GNSO Community and in doing so perpetuates the unacceptable voting arrangements within the GNSO where the contractual parties can never be outvoted by the demand side due to the equal split of votes between them. There is no other known example where those with a contractual relationship with the body that has the overarching responsibility for critical resources are afforded such influence over key decisions that impact their business.

It is the view of the ISPCP that any grouping of Suppliers **MUST INCLUDE** ISPs and Connectivity Providers.

The ISPCP Constituency has always maintained that it plays a unique role in the Internet space. Indeed, that was why it was separated out as a constituency distinct from the others from the beginning. ISPs are not DNS consumers, neither do we provide domain name registration services as our core business. But a major part of our core business involves the

resolution of domain names; that is, we provide the bulk of the Domain Name System. When Internet end users employ a domain name, their computers send that name to ISPs name servers to obtain the corresponding IP address; very seldom is it necessary for Registry servers to get involved. In fact, without the DNS infrastructure provided by ISPs, the entire DNS (and perforce Internet service, as well) would simply grind to a halt; the servers operated by Registries would never be able to handle even a fraction of the load. Therefore, the ISPs are clearly on the supply side of the DNS equation, even though we receive no direct revenue for operating the DNS.

### **Voting within the GNSO Council**

The ISPCP notes the report states that with reorganization weighted voting is no longer justified and welcomes that proposal. However, there is a clear need to ensure that voting does become balanced and the new proposals do not achieve that in any form.

Whenever this point has been raised in dialogue with BGC members one of the responses always given --and also stated within the report -- is that voting will become less of an issue as Council adopts a more strategic and supervisory role. Over time that may well be the result, but it will not happen for a considerable period. Whilst the move towards consensus based outcomes within WGs is commendable, it cannot be assumed that this will be achievable in every case. What happens then is not addressed within the report, particularly in the case where additional guidance and help has been offered to WGs and they still fail to achieve consensus.

In such cases the issues will end up being tabled at Council where voting appears to offer the only way forward. In such instances fair and equitable voting arrangements are essential, with no grouping being able to dominate. Failure to address this point masks a raft of difficult issues that the report has failed to address

Under the current proposals the suppliers and demand side could reach an impasse, which leaves the NomCom appointees to determine the way forward. Placing NomCom appointees, who may come from diverse and varied backgrounds, with limited experience of operational or strategic Internet issues, in such an influential position is both ill advised and unacceptable.

### **Size of the Council**

The plan seeks to trim the size of the Council to make it more efficient. But even with substantial restructuring only 2 of the current 21 seats are eliminated. The ISPCP do not agree with the premise (reduction in size makes the Council automatically more efficient or agile). It is not the size of the Council that has impeded progress in the past.

It is the view of the ISPCP that the major impediment to making progress in developing meaningful policies over the last 5 years has been the undue voting power given to Registries and Registrars through weighted voting. This has stymied honest debate, collegial, cooperative spirit and compromise on policy development. Such a situation is always likely to occur when one grouping is assured that they cannot lose once an issue is put to the vote. Yet the BGC, without providing reason or proof, asserts that a 50-50 division of voting power between Registry and Registrars on the one hand and all other constituencies on the other, is an acceptable "balance."

### **Impact on existing Constituencies**

In assessing this further it is noted that despite the stated desire to make the Council a deliberative and strategically focused body it proposes a structure that would skew its discussions. Right now, Registries and Registrars have 6 seats (and thus 6 voices with 12 votes) out of 21. In the proposed restructuring, they would have 8 voices out of 19. At the same time, the aggregate number of IP, ISP and Business voices would be reduced from 9 to 4 – hardly fostering balanced discussions.

The impact of reducing the voice of the broad business community who have supported the ICANN model (and even assisted in financing its creation) through WSIS and latterly IGF should not be underestimated. Continued support for a model in which influence becomes more diluted over time poses a real challenge and must not be taken for granted.

Indeed, depending on the rules for choosing councilors from the stakeholder groups, certain constituencies may not be represented on Council at all. For example, if councilors from the

“commercial” stakeholders’ group are elected by simple majority of all members, IP or ISP interests may find it difficult to gain any seats at all.

### **NomCom appointees**

The ISPCP note that ICANN has been founded on the principle of bottom up, stakeholder driven policy development. Therefore, it is inappropriate for NomCom appointees to vote on the GNSO Council, as they represent no stakeholder group. However, we welcome the addition of their expertise and experience to the Council’s deliberations in a non voting role.

### **Transition Issues**

The above issues raise serious questions related to the future construct and working arrangements of the Council. It is essential that the GNSO retain the ability to address the extensive program of work, which must remain its prime focus during the period of change. The transition to an arrangement based on Working Groups should improve effectiveness, but is not without its own challenges. Across the initial year of change it’s envisaged that the process will require further changes and amendments in order to reap the maximum benefits. Making substantial changes to the GNSO Council at the same time as introducing this new practice is fraught with problems that will threaten progress on key issues and potentially result in bad publicity for ICANN.

### **Further issues on representation**

Within the current proposals there is no consideration of how representation within the supplier and demand side would materialize (particularly in the situation where existing diverse stakeholders are lumped together), or how voting would be conducted to take account of all parties. The exact role of constituencies within a stakeholder group is also unclear? Presumably, constituencies will function much the same as they do today in that they elect officers, conduct member meetings to develop positions and maintain their own web sites. But unless provisions are made to ensure that every constituency has some direct representation on the Council (viz. a seat or seats), the smaller constituencies will in effect be dominated by those that are able to secure board seats. That would provide a disincentive for participation. Furthermore, the practical inability to get a seat at the table would provide a powerful disincentive to form new constituencies.

### **The need for a phased approach**

It has been repeatedly stated that voting will become less of an issue, and that may well prove to be the case once sound working group practices are established and proven, along with an adequate number of experienced and neutral chairs to lead them. That is not the case now, neither will it be across the first 12 months following the introduction of the new ways of working. The need to facilitate training of Chairs is a point well made within the report. The need to adopt a flexible approach is also well recognized. This is an area where that need is paramount. Adopting a whole set of structural changes prior to gaining experience of new working methods and procedures is at best, likely to place the already demanding work program of the GNSO at high risk, and in the worse case, fragment different factions within the Council even further. As the report notes, the GNSO’s leadership capacity would need to be built up BEFORE significant numbers of working groups could be commissioned. Clearly, building a base of effective leadership within the GNSO is a prerequisite for the success of the working group model. As a result, building that capacity is something that needs to be done before wholesale changes to the policy development process and structure of the GNSO are embarked upon.

***The ISPCP urge the ICANN Board to defer any decision on the future structure of the GNSO across that initial 12 month period, but work with the ICANN community to refine and amend the existing proposal, taking account of input provided through comments, coupled with experience gained from transition to a Working Group model and a revised PDP.***

### **Additional points on restructuring**

The proposals within the report to improve communications methods covering the website, minutes, document management as well as policy tracking capabilities are fully supported by

the ISPCP. In addition, the ISPCP offer support for the Board to request Council and staff to prepare a set of operating principles to facilitate Council undertaking the strategic management role of the Policy Development Process. That process is not dependent upon major structural changes being made to the Council. Those two aspects should be viewed separately.

The ISPCP is particularly pleased to note that the need to revise the process for gathering and addressing public comment on policy issues has resulted in a clear recommendation along with the need for translation of documents. Such a move can only assist in ICANN being viewed as a true International, multi-stakeholder organization.

## **2.4 Enhancing constituencies**

The ISPCP Constituency applauds any efforts to make constituencies more transparent, accountable and accessible. But the adoption of a single set of rules that would apply to all constituencies could be unduly restrictive. It would be far more appropriate to set a framework of principles within which the Constituencies can work, rather than the 'one size fits all' approach. Barriers to participation, such as the examples of fee structure and information barriers can easily be judged and addressed against an appropriate framework, and each Constituency should be asked to validate its approach when judged against set principles.

It is suggested within the report that creation of four broad stakeholder groups would reduce the importance of Constituencies. In practice, such an approach is likely to result in serious in-fighting and attempts to capture the stakeholder group on key issues by forming alliances within stakeholder groups and Constituencies.

The ISPCP endorses the proposals for increased staff support, especially with regard to outreach efforts. ICANN staff should support constituencies to the extent that it is no longer necessary to charge membership fees; this would eliminate a barrier to entry.

Within the report a recommendation is made that staff should develop and implement an outreach program to explore the formation of new Constituency Groups. The need to handle this in a professional manner adds weight to the argument for a staged approach that doesn't invoke immediate major structural reform of the council. It's already clear that new Constituencies are likely to emerge, but simply wedging them within four major stakeholder blocks without any ability to gain seats on Council will either result in them seeking to flood those groups with representatives in order to boost their chances, or deter them from participation. As suggested previously, it would be far more appropriate to review the impact of immediate changes to working practices, the effects of greater outreach, the emergence of new constituencies and interest groups and propose structural changes a little later that reflect real need, rather than push ahead with plans based on an envisaged scenario that at best, is opaque.

## **2.5 Improving Coordination with ICANN structures**

The ISPCP agrees that communication between the GNSO and the Board, SOs and Advisory Committees should be supported by more formal and more frequent exchanges. There is a clear need for greater awareness between the support organizations and Advisory Committees. Although this has improved over recent years there is still a long way to go.

The ISPCP suggest that due consideration should be given to a review of the meeting schedule and agenda in order to address this issue. Whilst accepting that time at ICANN meetings is limited, such events are the only opportunity for diverse groups to meet face to face. More consideration of this issue is urged.

## **3. Additional concerns and implementation considerations**

The report proposes that most of the proposed actions take place within a 6 month period. This is considered totally impracticable. Such an approach would prove challenging even if ICANN staff, GNSO Council, Working Group and Task Force members stopped all other ICANN Policy work and concentrated on fulfilling the requirements listed within the report!

The phased approach promoted by the ISPCP where the move to a Working Group structure is accomplished before structural changes are made to the GNSO, significantly reduces the load.

Whatever decisions are taken on the way forward, the current proposed timeframe must be reconsidered against the current program of work for both staff and Council and the actions re-evaluated and phased to reflect priorities. Issues which have the full support of respondents e.g. amendments to the PDP, improved web sites, communications etc should be tackled first.

#### **4. Conclusions/Summary**

The Constituency has reviewed the report of the BGC and draws the following broad conclusions from the detailed assessment given above. It is emphasized that reading this section without first considering the full text that contains further rationale for statements made is not advised.

The ISPCP supports the need for constant review and change as part of an ongoing process of continual improvement.

The move towards a working group approach for all policy development within the GNSO is supported.

The success of the Working Group approach is intrinsically linked to leadership by experienced, competent and neutral Chairman.

Detailed guidelines for WGs must be developed.

The use of outside experts is supported but their involvement must be carefully orchestrated through individual WGs.

Support for travel and funding is accepted in principle.

Support is offered for the proposal that Staff should work with Council to develop a set of working principles for WGs and the ISPCP further request that council regularly review their efficacy.

The ISPCP endorse recommendations to amend the PDP.

The ISPCP hold the view that voting at the council level will remain a critical issue, at least in the near/medium term.

Strong opposition is offered against some of the proposals regarding restructuring of the GNSO Council.

Views expressed that the ISP, BC and IP Constituencies coordinate policy and share common view on most issues are based on factual misunderstandings and lack of background knowledge.

Balanced representation within the GNSO Council remains imperative and is not achieved with the proposed approach.

Imposing term limits for Council representation is not supported without caveats. This has to be balanced against other considerations and in addition the rationale for imposing this should also reduce over time. Term limits are a matter that should be left to individual constituencies to consider within an agreed set of principles for Constituency operation.

The current proposals to split representation between 'Supply' and 'Demand' is unbalanced, totally ignores the pivotal role of ISPs as 'Suppliers', disenfranchises the broad business community, and skews representation within the council.

Support is offered to scrap the current unfair weighted voting arrangement.

Lack of detail on what happens on key issues when consensus proves unachievable within WGs masks a raft of major issues, (including voting arrangements), all of which have failed to be addressed within the report.

The ISPCP does not agree that the reducing the size of the Council would necessarily make it more efficient.

The proposal to split future voting 50:50 between Registrar/Registries and the rest is unacceptable.

The restructuring proposals result in totally unbalanced representation across major stakeholders. The impact on what can be considered as the 'broad business community' (outside of Registries/Registrars) is a major, and serious, failing.

Major issues related to the proposed Council structure and the election of councilors from the proposed stakeholder groups have not been addressed within the report, resulting in serious concern that balanced representation may prove unachievable.

The ISPCP welcomes the expertise that NomCom appointees bring to Council deliberations but in a non-voting capacity.

Due to outstanding issues over representation, the future construct and voting arrangements within Council, the ISPCP oppose the proposal to make substantial changes to the GNSO Council until these issues have been addressed and lessons learnt from an initial period of policy development through the Working Group approach have been taken into account.

The ISPCP urge the ICANN Board to defer any decision on the future structure of the GNSO for a 12 month period commencing with the formal move to a Working Group policy development process, but work with the ICANN community to refine and amend the existing proposal, taking account of input provided through comments, coupled with experience gained from transition to a Working Group model and a revised PDP.

Support is offered for the proposals to improve communications, document management, and policy tracking capabilities.

The ISPCP support the proposal for Council and staff to prepare a set of operating principles to facilitate the strategic management role.

The ISPCP support the proposal to revise the public comment process.

It is the view of the ISPCP that a framework of principles should be developed within which constituencies should operate and be assessed. A 'one size fits all' approach to set rules for Constituencies is not supported.

Support is offered for the proposal to increase staff support, especially with regard to outreach.

The ISPCP consider better communications with the ICANN Board, SOs, and advisory committees are essential.

The specified timeframe for change (6 months) is considered totally impracticable and unrealistic and would severely threaten the existing work plan for both GNSO and ICANN staff.