

**LSE Briefing on the GNSO Review Report to the GNSO Council
and constituency members
October 3, 2006 at 11:00 UTC**

Moderator: Philip Sheppard

Attendees: Lucy Nichols, Ute Decker, Jane Mutemear (IPC) Marilyn Cade, Philip Sheppard, Will Rogers, Steve Delbianco, Michael Palage (CBUC) Avri Doria, (Nom Com) Tony Harris, Tony Holmes, Greg Ruth (ISP) Marie Zitkova, June Seo, (gTLD Registries) Milton Mueller (NCUC) Suzanne Sene (GAC liaison to GNSO Council)

Bruce Tonkin GNSO Council chair – absent – apologies

Denise Michel, Liz Williams, Glen de Saint Gery (ICANN staff)

Prof. Patrick Dunleavy, Simon Bastow (LSE)

The GNSO Review Report:

<http://www.icann.org/announcements/gnso-review-report-sep06.pdf>
the annexes

<http://www.icann.org/announcements/gnso-review-annexes-sep06.pdf>

Note: The following is the output of transcribing from an audio recording of the London School of Economics briefing to the GNSO Council and the constituencies on 3 October 2006. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://gnso-audio.icann.org/LSE-GNSO-20061003.mp3>

The Power point presentation that was used may be found at :

<http://gnso.icann.org/correspondence/LSE-03oct06.pdf>

Philip Sheppard: ... for all or the second one I understand being organized we'll have a transcript of the discussions. Anyway, let me just run through who we

haven't called besides myself and (Marilyn Cade) from the Business Constituency. We have (Ute Decker) and (Lucy Nichols) from the IP Constituency Council and also (Jane Mutemear) from that Constituency as a member.

From the ISPs we have at the moment (Greg Ruth). From the Council Nominating Committee members we have (Avri Doria). We also have from the BC membership (Steve Del Bianco) and from staff Glen de Saint Géry, (Denise Michel) and (Liz Williams) and I believe Susan Sene of the GAC has joined us. Is that right, Susan?

(Susan Sene): Indeed, thank you. Good morning.

Philip Sheppard: Good morning and welcome. So that's that. I think, as you know, Patrick sent the call. We'll make a start. That's right. I understand you're planning on taking us through the PowerPoint presentation that you sent to me and your guests, well, that should be something like about ten minutes, and after that we can go into a Q&A. Is that right?

Patrick Dunleavy: That's what I would propose, but obviously if staff members feel they all read it already and want to get straight to the Q&A, that would be also fine by us.

Philip Sheppard: Okay, I think that would be useful actually because I think what I also liked about the PowerPoint was that it quite clearly sort of grouped the recommendations under your four principles, and I think that's quite a useful way of understanding it, so maybe just taking us through that I think will be a useful ten minutes.

Patrick Dunleavy: Can I just interrupt just to introduce two further members of the LSE Team here present?

Philip Sheppard: Yes.

Patrick Dunleavy: (Simon Bastow) and (Oliver Pierce). Say hello.

(Simon Bastow): Hi, Counsel.

Philip Sheppard: Hello, Simon. And, Oliver, welcome.

(Oliver Pierce): Thank you very much.

Philip Sheppard: Okay, on a joint telephone. So, Patrick. Please kick off and take us through your presentation.

Patrick Dunleavy: Okay, well there are 17 slides here, so I'm going to have to whip over them a little bit more swiftly than one minute, but basically the – we want to start with some comments about what we've done, want to emphasize that GNSO has obviously achieved a great deal so far. So principles for moving forward and then a discussion about recommendations:

Coordinator: (Unintelligible) now joins.

Man: Hello.

Woman: Hello.

Patrick Dunleavy: Reference just to remind you that we were to look at four main themes. The representativeness, openness and transparency,

effectiveness and regularity in compliance of GNSO and the GNSO constituency.

We used a big battery of different methods to try and get the list, while not claiming that they are easily available kind of master data that, you know, make our analysis or recommendations an open and shut case.

We very much had to operate by putting together different parcels of information and so the report is in part a judgment call by ourselves, but what we tried to do in the report is to make clear what the evidential basis for each of the parts of the analysis.

And we think that the complete ensemble of data is a good one. But I'd just say that we've seen various comments on logs and such suggesting that we've had interaction with people about the detailed report, and that's not been the case. I want to emphasize that. This is very much our view, and although we've discussed this little presentation with ...

Denise Michel (Patrick), you're fading out.

(Patrick Dunleavy): Sorry. Thank you very much for that.

Denise Michel Sure.

(Patrick Dunleavy): It's always a good thing to watch for with me. Moving onto what GNSO has dealt with, which is Slide Four. We obviously recognize that the council has been making a huge contribution to the developments of ICANN and that the constituencies and the council together have been a very important source of expertise and information about

policies on WHOIS and gTLD registries and others have been progressed very considerably in that time.

And we've tried to give an estimate of the scale of work that we think that GNSO has been undertaking. So I think all of our comments and suggestions need to be, you know, set in the context of that recognition of very, very ...

Coordinator: (Marilyn Cade) now joins.

(Patrick Dunleavy): ... of ICANN. Moving on then to the principles for moving forward as I have on Slide Five, and I think we would argue that they reflect the terms of reference very closely and on ICANN's mission so other changes that would help enhance representativeness of the council and its constituency.

Are there ways in which GNSO operations can be made more transparent to a wider range of stakeholders across the Internet community, while the structures of GNSO and its constituencies are well adapted to what will undoubtedly be a continuously rapidly changing set of stakeholders' issues and a new need and environment?

And finally can GNSO council work perhaps in ways that would, you know, enhance the situation genuinely concerns this position?

So we don't claim that any of these principles is very straightforward or easy to identify how things should be done, but we do think that there are some fairly clear cut ways forward that GNSO and ICANN would benefit from applying.

So if we're thinking about representativeness on Slide Six, our two key suggestions here is that a -- in the first place, it should be easier to find out who's involved in GNSO, who the stakeholders are, and this needs to be in a very much more accessible and straightforward than it is at the moment.

And I think related to this. It's not very clear from the written record or even from talking to people in quite some depth. How many constituency members are participating in different positions and we believe its representativeness would be enhanced if this was like ...

Moving onto Slide Seven then, still on this basic principle of enhancing representativeness. The bottom-up stakeholder involvement we thought that ICANN has meant that GNSO constituencies are very autonomous in the way they operate.

And this does create problems because it does mean that, you know, for people who are wanting to join constituencies or wanting to understand how GNSO operates, they have to learn, you know, very different rulebook, very different sets of expectations, very different ways of operating.

And we believe that while retaining emphasis on bottom-up stakeholder involvement and who would benefit from getting, you know, more consistency in the way we operate and that constituencies have been constrained by lack of staff and resources and that ICANN could be helpful in terms of providing extra help and facilities for them, particularly for constituencies.

Carrying on with the representativeness principle on Slide Eight, in fact that's another couple of recommendations. There was a bit of a problem really that ICANN is tremendously visible in the Internet community. GNSO is clearly, you know, much less visible than ICANN as a whole.

And then within GNSO the constituencies are, you know, another order of magnitude less visible. And we think that this has a way of messing things up this way.

It inherently limits people's artistic capability and that the more straightforward thing to do would be for ICANN to move towards breaking a kind of membership of ICANN and then for this membership to break down to GNSO for those stakeholders who are in generic names issues.

And then within that break down to very clearly identifiable and very visible and very straightforward, straightforwardly organized constituencies. And there is some information in the report that we've relatively laboriously assembled on how those constituencies represent different kinds of interest.

And you know, I want to say that we are not in any way being critical of the constituencies or of GNSO at this point. This is a fantastically difficult area to operate in. It's very difficult to decide what is a good performance, what's a not so good performance, and we certainly haven't really ventured to do that here.

We think that the constituencies and GNSO have done a good job so far in terms of generating participation, but it's not very, very widespread participation.

And it's not necessarily as fully representative as ICANN and GNSO can have and would perhaps like, so that's really what that recommendation five is suggesting. And there are obviously issues for generic names in terms of representing global – different global constituencies in different global regions.

So then we move on in Slide Nine to the visibility and transparency principle, and there are, you know, some recommendations relating to some very well-know.

And I think well-appreciated limitations, past limitations, of the GNSO and indeed the ICANN website, and so we're making some suggestions for what I think would be pretty normal kind of expectation of any large corporate body dealing with these sorts of Internet-related issues.

It would be a good website. It will be accessible. The top few levels will be carefully designed, kept up to date. It will be a regular collection and compilation of statistics. There'll be analysis of usage, and this is a very important source of information that's really been a bit neglected.

(Milton Mueller): (Patrick), I would like to make a point here.

Philip Sheppard: (Milton), what we're doing is just a de facto run through of this presentation and then we're going to have a Q&A directly after that.

(Milton Mueller):My point is related to that. We're on recommendation seven, and there are seventeen. Twenty minutes have passed.

Philip Sheppard: (Milton), you're actually joining the call late. (Patrick) promised us a maximum of ten minutes, which means he's got another three to run from the time we gave him, and I'd like him to continue with that. Please continue, (Patrick).

(Patrick Dunleavy): Okay. Following on recommendation eight is a rather more technical and detailed thing arguing that document management should be improved. I think that's very important for overall external visibility.

In the interviews that we did and the consultations that we undertook, there was some issues that were raised on Slide Ten about the predictability of the GNSO's activities and the suggestions here that there should be a policy development plan, that it should look out for two years and should become progressively more firmed up and that GNSO and ICANN should really try to encourage, you know, participation in GNSO issues on a more incentive-oriented way.

Moving onto Slide 11, we think the GNSO Council Chair has played the very important part. We're a little bit feel that the GNSO Council Chair needs to be made more visible, and there are number of suggestions about this, but this obviously is sort of a broader area for ICANN to continue.

We think that following pretty continuous representation is about that there is a need to improve the declaration of interests and to move towards fixed times for GNSO council.

Moving quickly onto Principle Three, the GNSO has a constituency structure which is very articulated and which outsiders find is relatively difficult to understand and to follow.

It's also a constituency structure that is a bit difficult to operate and vulnerable to change, so we think that there needs to be a much more flexible and include this constituency structure, and think that the council and the staff need to work together more, which is the focus of Recommendation 14. I'm sure there's been a great change and improvement in the last year, but obviously things continue.

Recommendations 15 and 16 suggest that given the volume of work that GNSO council and council members do, there really is a need to make sure that they can be compensated for travel and accommodation costs, and perhaps there's a need to move away from teleconferencing to more face-to-face meetings.

Slide 14 discusses the recommendation that there should be a more flexible of – a wider and more flexible use – of task forces, and that task forces shouldn't be combined to members of the GNSO council and should draw on a wider range of people. Then we make additional suggestions and move forward with the work.

Slide 15 says that the by-laws are over-prescriptive and I think over-constraining relating to GNSO, so there needs to be a re-balancing of where the rules have been laid and there needs to be a formal kind of (unintelligible).

Finally, moving onto Slides 16 and 17, I kind of call recommendation leaders that there should be a remodeling of the constituency structure, that's to say, the way in which seats are allocated types of interests. And what we'd suggest is that a very much more simple and flexible structure and an appropriate remodeling of the council go along with that could allow the council to be, you know, much more adaptive for the years to come.

Coordinator: (Tony Holmes) joining.

(Patrick): There are three suggested areas that we think are pretty clearly defined in the existing workings of the council, which are registration interests, registrars and registries, business interests including intellectual property ISPs, and civil society.

We think a slightly smaller council would be easier to manage, and we've suggested that there are inherently areas where there are a vast number of possible solutions.

What we've just suggested are sort of indicative set of ways forward that would obviously need to be discussed in great detail, but basically a 15-person council assigning five seats for the registry and five for the registrations interests, five to the business community, three to Civil Society and retaining the three nominating committee members, raising the consensus threshold to round about 75%, one could argue about where exactly one ought to draw that line.

That would tend to create the structure in which people would know absolutely from the outset that (A) their own interests are protected and (B) they would need to get the active cooperation of other groups

in order to be able to achieve consensus parity, so that completes the more or less the presentation. There's some details that we could go into.

Philip Sheppard: (Patrick), thank you much for that concise run through. While you've been talking, a few other people have joined. I note Tony Holmes and Tony Harris from the ISPs, Will Roger from the Business Constituency, Milton Mueller for the Non Commercial, Marie Zitkova from the Registries.

DISCUSSION AND QUESTIONS:

What I'll do, I'd suggest is just perhaps a kick-off discussion on what I think may be three of the points that are more open to debate from what I've seen has already been discussed on various shifts so far and take questions around those three scenes, and then we'll have a more general session on anything else.

The three I was thinking of is **Recommendation Six under Principle One**, which is the idea of a direct membership in ICANN. I think there may be questions in terms of how that might work.

The second one is **Recommendation 18 under Principle Three**, which is the idea of a pool of expertise and perhaps to thrash out some ideas there. And the third one is putting the surprise **Recommendation 19 in terms of simplification of structure under Principle Four**.

And I think that probably having one from each of those three principles may be a good starting point. I'm sure there probably is easier agreement on some of these other recommendations like the grouping of websites, et cetera.

So if we're in agreement, perhaps I'll just see if there are any specific questions around the first of those points, and if not, I'll pose one myself to get conversation going.

So **Recommendation Six, the basis participation and direct membership**. Would anybody like to pose a direct question to (Patrick) or members of his team on that?

(Milton Mueller):I would. This is (Milton).

Philip Sheppard: (Milton), go – I'd just like to take a queue to see who's interested and then pass them onto (Patrick) to summarize. (Milton)? Anyone else?

Avri Doria : I have one quick question. Will there be an opportunity for questions that don't fall into these four categories?

Philip Sheppard: Yes, indeed. Absolutely. I was just going to start conversation with those, and we will then move on for a more general session. (Milton), anyone else? Then, (Milton), go ahead.

(Milton Mueller): Hello, (Patrick). If people are members directly of ICANN, which in general I think is a good idea, if it's a suggestion which if implemented properly would be good, but our concern would be who controls access to those members?

In other words, does the list of ICANN members become a propaganda tool for the central administration to dump their view of every issue, and then the constituency organizations don't have any control over what those people see or is it still autonomously administered as it is now in which, you know, or is it completely open?

Anybody can get access to it, in which case you might find people a little intimidated by the amount of mail they'd be getting. Or did you not even, you know, make a specific recommendation about that?

(Patrick Dunleavy): Well, a quick thing here to point out, (Milton), is that we haven't really investigated anything except GNSO. We don't feel really in a position to comment on matters relating to general ICANN policy and administration.

Like, for example, if there was an indirect membership, how much would the ICANN center, if you'd like, communicate with the members. But I think that what we would hope would be achievable very much within, you know, the ethos of, would take over representation.

If there was a membership of ICANN, then everybody would have to be partitioned down to a constituency as the constituency structure would lend itself to that and therefore that the constituency would have a good, reliable, up-to-date method of communicating with membership and of developing, you know, a good, effective interaction with its membership.

So we think having membership of ICANN would first of all just be easier for most people. It would simplify their information costs. It would tend to increase the number of people who get involved in ICANN and then breaking it down to GNSO and then across what we're suggesting is three constituencies that are very easy to understand why they're there, what they're doing and what interests they're looking out for.

We hope that would just really create a strong bond – a stronger bond even – than exists at the moment and also a bond that’s easier for outsiders to understand and to get involved in.

Philip Sheppard: (Milton), a follow up or anybody else a follow up?

(Tony Harris): Yes, Tony Harris. Can I speak?

Philip Sheppard: Tony Harris), go ahead.

Tony Harris Yes, my only thought on this is – well, let’s say personally I’ve done quite a bit, quite a few efforts at efforts at outreach, to get new people involved in ICANN, and it’s not all that easy actually.

So I was wondering if, although I can see the rationale behind this point, any meditation has gone into how – who would do this outreach and where these new direct stakeholders will come from.

Patrick Dunleavy Well, we’re suggesting that ICANN should support the constituencies much more actively than they have up to now and that there should be a constituency support officer.

And so we would hope that the combination of, you know, somewhat more standardized constituency arrangement plus more effective ICANN support for constituencies plus the greater visibility of the ICANN membership and the breaking down of all the members into constituencies, relevant constituencies, all of that would have very palliative effects on constituency membership and outreach.

Philip Sheppard: (Patrick), just to be clear on this, your suggestion, I think I want to try to understand the difference between participation in ICANN and policy development within ICANN.

Your suggestion is that there is a bigger community who become members, for want of a better word, of ICANN of which a subset of those would be members of these new constituencies. Is that the concept?

(Patrick): Yes, I mean the basic idea is at the moment if you look at the level of information costs involved in finding out that GNSO exists and then finding out the constituencies exist and what those constituencies exist for, they are very substantial really for people in the Internet community at the moment.

So the idea is that, you know, ICANN membership properly presented and detailed and obviously where that would develop would need to be discussed very carefully between constituencies, GNSO and ICANN, so this isn't a work through recommendation in that detailed way.

But the wider visibility if ICANN would tend to pull in, you know, much more easily and straightforwardly a wider pool of people and then part of the induction into membership would be ICANN pointing them towards, you know, relevant constituencies for their – relevant – supporting organizations for their interests and then within supporting organizations, the relevant constituencies.

Simon Bastow: I see that as well. I think we would envisage that constituency members and officials would do a similar kind of outreach work, so there would still be an onus on some constituencies to bring

organizations in and just filter in through the ICANN level rather than at the constituency level.

Tony Harris: This is (Philip). Can I get in queue?

Philip Sheppard: Yes, Tony, I have you. Anyone else want to follow up?

Tony Holmes: Yes, I'd like to join the queue as well. Tony Holmes.

Philip Sheppard: Tony Holmes.

(Will Roger): (Will Roger) for a really quick comment.

Philip Sheppard: And (Will). Anybody else? Okay, let's take those. If we can, I'll take the three questions in one lot and then let (Patrick) respond jointly. Tony Holmes). Tony Harris), sorry.

Tony Holmes): Let's let Attorney (Harris) go first. I've spoken already.

Philip Sheppard: Okay, Tony Holmes).

Tony Holmes): I'd like to ask any thought's been given to the criteria that would be set for each of those three categories because in a number of cases I can see a certain amount of overlap. How would that be handled? Any thoughts on that?

Philip Sheppard: Okay. Tony Harris?

Tony Harris: Yes, I'll defer because I had the same thought.

Philip Sheppard: Okay, very good and (Will).

(Will Roger): Just I'm not sure if it's more of a comment or a question, but with our talk about the relative difficulty of getting new members and new people involved, I wonder if a lot of that isn't related to the well-known difficulty of navigating and understanding the ICANN site.

If you all take a look at perhaps a different or better, sort of, communication, process might key into that. Because I think if there were a really easily understood, ICANN site, it would probably double the member numbers overnight. At least member participants would double up.

Philip Sheppard: (Patrick) I'd like to make one comment as well, (unintelligible) interrupt as well. I think on one of the words I was responding to what you , what I wrote to you and what you were saying was the information (costs) you obviously found this yourself in terms of your own work in doing this review.

Part of that is not only what (Will) is saying in terms of the website is not so easy to understand. You've made that point in recommendations, but also I think, very soon, any discussion gets into very esoteric areas, with reserved vocabulary for which your average internet user, and certainly your average businessman, would feel excluded because he doesn't understand that.

I think that's one interesting challenge that we have to try to overcome. That's my thoughts there. Your responses to those points.

(Patrick): Thanks, very much. I think they're all very good points. I mean, on the other hand between categories, I think that we would say that the, you know, the members themselves have a choice as to which of the ICANN they join up to.

And they have to decide their priorities between the categories. Obviously you'd need to have the basic kinds of checks, to make sure you didn't have, I don't know, a lot of non-business people join the business proficiency.

But, I think that would be rather straight-forward to implement. And having simpler constituencies I think would also make the question of choosing the most appropriate category for oneself. Much more straight-forward than perhaps at the moment. I agree very much with (Will), that the improvement in communication of at least a more organized web site, I think would be huge.

I mean, ICANN, with very, very visible, very discussed body but, it doesn't break down very far within that. And I agree also very strongly with (Phil's) point that there is a kind of exclusionary potential for, you know, groups that use rather esoteric vocabularies and acronyms and so on.

But I think part of the suggested top four layers of the ICANN website re-organization, is that there would be a continuous effort to update. People that, you know, there would be an effort to communicate, you know, in a non-exclusionary way.

Now, of course, you're always going to hit, given the nature of GNSO Council's work. You're always going to hit quite difficult issues, and so

on. But I think, what weighs into that, people do that mainly by the conference.

But it would be great to have the website plus the conference, plus the constituencies, all working in a much more coordinated way. And good to have things like easier documentation strategies that you could follow through. And so that, businesses for example or civil society people would be able to keep tabs on the issues that they are particularly interested in.

And I think there's a lot of interest in particular issues. That not being, kind of, captured and incorporated in GNSO, because of the source of overall difficulty of keeping up with what's happening.

Milton Mueller: A quick follow-up then. so just to confirm, when you suggest these categories, civil society, registration industry and business, you are saying that membership and participation in those constituencies would be mutually exclusive. That you would select one and not the other.

(Patrick): Yes, I think that was our broad idea. Obviously these are very broad ideas, and they do need to be developed and articulated, if they're going to be implemented.

(Milton Mueller): Well, I think it's very essential that, that be the case. That they be mutually exclusive. Our constituents in particular have suffered in its earliest formations of people, you know, like an industry association of registry, saying "Oh, we're non-profit, so we'll join your constituency".

Of course there's conflict of interest in the discussion of the policies there that, and there was a sense of double representation for some people until we, in a very controversial decision, excluded people who were members of other constituencies and at the time we were told, "well that's very exclusionary, you're not in the spirit of consensus", blah, blah, blah.

So, we felt that, that had to be done in order to have a clean discussion of alternative perspectives, feeding into our policies.

(Patrick Dunleavy): Obviously there are issues here, and wherever you have (unintelligible) involved, in any area like blogging, or emailing or whatever, there's always a risk of, sort of, commercial surrogates representing in other ways. But I think that it would be very straightforward to develop appropriate sets of rules and to monitor where the shoe is pinching, if it does pinch.

Milton Mueller: I agree.

Philip Sheppard: Okay, just as an observation, there is an interesting internal contradiction in the way that ICANN first started with its constituencies in that it sets up a certain set of constituencies with a specific scope and role, and yet had a (unintelligible) to say that participation in any one constituency should not be the grounds for exclusion in another. It was tensions coming from that I think, you just heard described by (Milton) and certainly was referred to in other constituencies as well.

And I think that was a curious principal of non-exclusion. Perhaps hadn't been thought through as well as it might have been at the very start of the organization.

We started to move already into the **discussion of recommendation 19**, so I suggest we do that, more formally now. And this is a suggestion for **a simplification of the constituencies into one possibility, which was the three** outlined by (Patrick).

I have a question on that as well, but let me just see who else would like to ask a specific question about this concept of the simplification of registry of constituencies and, the benefits that would stem from that.

Marie Zitkova This is Marie Zitkova, I have a question.

Philip Sheppard: (Maria), well

Tony Harris: I will step in later right?

Philip Sheppard: Yes, sure.

Tony Harris: Okay.

Philip Sheppard: That will do it for now? Okay...

Tony Harris: You find the number of the article...

Philip Sheppard: It was recommendation 19.

Tony Harris: Nineteen?

Philip Sheppard: And slide number 16.

Tony Harris: Okay, thank you.

Philip Sheppard: So, Marie, go ahead.

Marie Zitkova Oh, okay, well, I think my question goes from the other question we had just before and from the notion of those constituents being possibly excluded. What I would like to understand is you came to the suggestion on the basis of benchmarking the other organizations and how did those other organizations in that case compare to ICANN?

Philip Sheppard: Okay, very good question, Marie. Milton.

(Milton): Well, in terms of the tri partite constituency structure, it's a great idea, it is a long overdue idea. Actually we've been advocating it for some time. But there's one glaring problem in your recommendations which I just cannot fathom.

What is the point of having two of those constituencies having five people on the Council when one of them of a long suffering civil society, which, you know, has as much to contribute as the business interest?

Why, is that one told that they're second class citizens and they only get three members and do not have the same ability to block consensus?

Philip Sheppard: OK Patrick off again.

(Patrick): Okay, well, maybe I could just start with (Milton's) question first. The suggested, you know, signs of the council and make up of the council, is one of, you know, an infinitely large number of possible permutations. And we ran over a very wide range before we just spoke with someone sort of focal stand.

And what we were aiming to achieve is a structure in which registration interests would have the confidence that they would be able to protect their interests in relation to the contract that applied to them.

But without having the complexity of the weight of voting which we think of being difficult to operate and not very helpful for the way in which counsel discussions have developed.

At the same time you have a number of constituencies where there was really fairly overwhelming evidence that there was a, sort of a general business orientation. It was fairly common ground between those. So we think that if you look at the way the council has operated, you know, these two blocks have been the key blocks in practice.

(Milton): I don't see that.

(Patrick): And could I just add, we suggested that, I mean, that there have been, that there should be a quiet substantial reduction in the vote attaching to these two blocks.

Though, you know, under the current arrangement that would account for 23. Registry has 12 weighted votes, so, to go to five out of 16 would be registration interests, would be a change.

Similarly at the moment there are nine votes across the three different business related constituencies. Intellectual property and ISP and again we go to five out of 16 is all ready a reduction in the row.

So, what we're suggesting for the civil society group, and it is only a suggestion, and we wouldn't have any particular strong view if it would settle the GNSO or ICANN that this should be increased

But we did feel that broadening the basis for civil society, was an important task. But there are difficulties in securing an appropriate civil society structure.

There have been, you know, some difficulties in, you know, securing involvement in a Nom Commercial user area, and that account for involvement .

So, we felt that, the combination of free civil society seats, plus some members of the Nominating Committee are likely to be representing civil society interests, actually produced a balanced representation.

Now, you know, if you say to me, "well this could be changed, or it could be four or five members of a civil society", that could actually be true. But then I think, other interest groups would think that their representation was being reduced and you would then get into a, kind of, endless numbers game, which we were trying to avoid getting in to.

Milton Mueller: Just a quick follow-up. I would really point out that when you talk about civil society, that somehow in consolidating what is now the NCUC & ALAC, but if you put those two groups together, you'd find that they had been active and influential on the council, and within ICANN.

As the business interest, for example, I think the record of participation of NCUC on the council matches that of the ISPs. Certainly not the business community in which your dealing with people, you know, who, basically it's their job to do these things.

Yes, you're dealing with volunteers, but I think that since 2003 when we reorganized that the level of participation of NCUC has been matching those of others.

So, I don't like the implication that, well, you know, we're incapable of sustaining this role. I just don't think that's true. And another problem is, it becomes a self-fulfilling prophecy.

If you tell people "You're going to be permanently in the minority, you're always outdone and outmatched." Then why should people participate?

Tony Harris: Can I get on queue for that?

Philip Sheppard: Yes, on queue.

Tony Holmes: I'd like to be added to the queue as well, Tony Holmes

Philip Sheppard: Okay.

Greg Ruth: This is Greg Ruth, I'd like to be added to the queue.

Philip Sheppard: All right. Okay?

(Patrick): From Milton's response there, I mean, I certainly wouldn't want anything in our report to be construed as commenting adversely on NCUC's participation or contribution, because that's not the case. But I think that both for NCUC and for the other ways of representing civil society interests, it's a work in progress.

And, you know, our hope very much is that, renewed constituency structure would produce the kind of levels of increased involvement that would be, you know, very important in changing the whole climate of participation. Perhaps I could ask my colleague Simon Bastow to comment briefly

Simon Bastow: Sorry, just to clarify a question. You were asking specifically how we used our case study of comparisons to generate conclusions about future model and structure of the constituency.

Marie Zitkova Yes, I think that's a correct interpretation. Basically the report and the discussion that has happened to now, I think that has an inherent conflict in this.

And that is, on one hand I agree that the current structure is not supporting development on consensus. On the other hand, it would appear to me that, just getting into 3 constituencies will not help it.

But maybe I'm not right. So, the reason I'm asking is because I want to understand if there are experiences in similar environments.

Environments which produce policies that are to be binding for only some participants.

Simon Bastow: Okay, well, we certainly tried to build in, as many comparisons as we could. And, I mean, in terms of the other organizations their dependencies lists five or six big organizations that we spoke to.

And we asked them how policy development worked and played back how it worked to the GSNO and tried to get their views on it. So, I mean, we were just, sort of, looking for interesting characteristics used in other organizations. And trying to get their reactions on how the GNSO worked.

I mean, one or two major things really came from that. I mean, take the ICC for example, we interviewed a couple of people there. And the idea that organizations join the ICC at the corporate level and then are filtered into or towards the relevant commissions, was something that ICC suggested to us was quite an important way of drawing people in, as (Patrick) mentioned, there in the core.

Another organization, suggested to us that, although they had formal structures for voting in place, actually their voting happened relatively infrequently.

In fact, one person said to us, that in his five or six years of experience at that organization they hadn't taken a single vote. And policy emanated relatively effectively from the way they work. So, this is, sort of, general pointers and ideas that we tried to filter in and...

(Patrick): Maybe I can pick up on a more general point. You know, I think a great deal hangs on the definition of the precise level of agreement needed to achieve consensus policy.

And there have been a suggestion that was pointed out to us by a very wide range of people. That having a route can be very low vote pressure for consensus. Within the current structure, did create, sort of, the possibility of, if you like, balancing issues in part on very narrow majorities.

And, that was not terribly helpful for consensus. So the combination of the moving to the three constituencies with the precise sort of level that we've suggested as a initial guideline.

And raising the threshold, we think it would mean the people would know from the outset that really to progress things through a consensus vote, there would have to be successful deliberation. And a genuine, very high level of consensus.

Philip Sheppard: Okay, (Tony Holmes), you had a question also around recommendation 19.

(Tony Holmes): Yes, I think Tony Harris was first, but I'll take the opportunity to go ahead. With this arrangement, do you not feel that all you are doing is basically pushing the discussion of the development of issues lower down?

For instance in the business grouping, you're going to have a number of diverse groupings in there. And I can only imagine the way that would work.

Would be on key issues what is now the IP constituency, what is now the BC, what is now the ISPs. They will have their own community discussions because they'll be coming up from the same perspective.

So that dialogue is still going to take place. The only difference is, it takes place within that grouping.

Rather than at the Council level, and if you look at the three groups that you set out, I would suggest that two of them, are probably far closer together in terms of the makeup of the group and the views they will have.

More than one other of those groupings, so that dialogue is going to take place. It just happens further down. And I fail to see what you see as the benefit from that interaction, above what we actually have today.

Philip Sheppard: Okay, Tony, good question about dynamics.

(Tony Harris):.

Tony Harris Yes, actually we've seen those spilled over into **recommendation 20**, from some of the things that I've heard. So, I'll refer to that also. First of all, I don't think it would be fair to say and I think I read in the text of the main document, that we constitute an inflexible block, the three business oriented constituencies.

We tend to disagree quite a bit actually, especially with the IP constituency. And I can understand the balance concept which is put forth.

And eliminating weighted voting is certainly imperative because basically the GNSO is dominated by the incumbents right now. I find the 75 % threshold an interesting concept and that leads me to ask why we would need to reduce the 21 seats and regroup the constituencies because if you take away weighted voting, the registries

and registrars still have six votes which is more than 25 % of the total 21 votes.

So they would still be able to block any vote that would be harmful to their legitimate interests if this were the case. Another thing I would like to point out, to this very, I think, well thought out and presented study on the GNSO is that, I hope you've taken into consideration that representatives to the GNSO, first of all we're volunteers, we don't have salaries.

Reducing the number of reps that work in the GNSO will increase the workload on each of them because we're required to participate in different committees and different policy development processes.

And we had this battle with the reform process, two or three years ago when we insisted on keeping three reps for constituency because it was the only way we could spread the work around, and keep our day jobs at the same time. Just some thoughts that I wanted to share.

Philip Sheppard: Yes, a valid point about some of the work codes. Greg Ruth I take your point and then I'll ask Patrick) to answer all three.

(Gregory): The whole premise of recommendation 18 is to simplify the council and to be able to reach a more genuine consensus. And it seems to me that the inclusion of non (unintelligible) council at all is apathetical to that goal.

They don't represent anybody and the idea, you know, of your recommendation is, at least recommendation number one is to enhance representativeness of ICANN.

In fact, by retaining three non-com. members on the council while you shrink the size of the council gives them even more disproportionate vote. I mean have you given any consideration to the idea of eliminating non-com appointees entirely?

Philip Sheppard: Okay (Greg), let me make an observation. I mean if we go back to the original rationale of (unintelligible) non-com. there was supposed to be a balancing force between the otherwise equalized voting, or between registries and registrars and the rest of council.

And it was its original theory, although indeed the way that it happened, it shown a different part. So, I think it was a very good question. Why not, deal with them all together. Did you consider that? So there's your questions. (Patrick)?

(Patrick): Okay, if I could do them in, sort of, reverse order. On Greg's point, I think that our terms of reference we're very much confined to GNSO council and the constituencies.

And just because we didn't, you know, investigate, ICANN central operations or anything outside of GNSO in relation to that. So we didn't really look in great detail at the way the Nominating Committee process worked.

So, to some degree, suggesting that the three Nom Com. people be retained, is a reflection of this existing policy. And we really think it could have a very helpful effect.

But as the civil society constituency became perhaps more populated and better organized, then certainly one could make an argument that its representation should increase and the Nom Com. representation should decline.

But I'd just like to stress that, you know, we're limited by our terms of reference and, you know, what we have looked at in detail. On Tony Harris's point, I think it's very, very important when you're looking at the status quo and then possibly moving to an alternative set of arrangements, that you should have, basically a principled way of making your position.

You know, in political philosophy there's an argument that, you know, people should make ethical commitments, and ethical statements, which don't really relate to their individual position.

But that they'd be equally willing to maintain them in other positions. So what we've tried to do, to make a authentic suggestions, that are genuinely disinterested but are not in any way seeking to advance any one interest over another.

And that do hang together as a whole, and meet the objectives and the principles that we have set out. So, obviously as I've mentioned several time already, there are possible infinitely large number of combinations of, you know, size of accounts, or/and divisions of both council. There certainly would be a very, very large number of votes ... and I wouldn't like to get in to commenting on any one ad hoc, you know, suggestion.

I definitely would need to see that everything that was being proposed and I suggest that would make sense, for the council as a whole to follow just was not, representing one interests' point of view.

Tony Harris: I'd never applied that, I'm sorry.

Philip Sheppard: Next point. Are you really saying that the central point of the recommendation of the 19 is a simplification of the constituency structure. And essentially you've thrown out one possibility almost for discussion of how a simplification could look, but to some extent it's now up to ourselves to look at what may be the most optimal application. Would that be fair to characterize your representation as that?

(Patrick): Yes, absolutely, I mean what we've wanted to do is to try and make a, sort of, a clear suggestion of how things might be done differently in a balance and take all interests into account kind of way.

And I am not suggesting in any way that what (Tony Harris) said to us was just sort of straight forwardly self interested but it was the case.

So when we did our very extensive interview program quite large numbers of people around suggested that ,you know, one group or another they didn't like, should be excluded altogether or have it, you know, sized substantially changed or something of that kind.

And we've tried to stay clear of anything of that kind in our recommendation. I would stress to you that this is obviously an area where there needs to be a very considerable debate and discussion within ICANN, between ICANN and GNSO.

So among the constituencies and that are work has been an effort to inform that to soft things up to show how a coherence scheme might work and how it might be done.

And how there is benefits to be achieved if it were done in a well thought through way. But I don't think that, you know, just picking one item here and putting it.

If you do that the string will quickly unravel as is the whole fabric of the recommendations will quickly unravel. So they do need to be sort of put together in a joined up way.

Philip Sheppard Okay, on (Tony Holmes) point.

(Patrick): Well, I think it is very important that there should be a great deal of flexibility within the constituencies. And that within the constituencies there should be a capability to respond to, you know, very rapid changes.

There have been very rapid changes in registration interest, there have been very rapid changes in what kind of businesses are involved on what kind of issues in relation to the business constituency and so on.

And similarly have been, you know, quite substantial changes in the Non Commercial users constituency with some early players dropping out. So we've seen very rapid changes in all three of these suggested new constituency areas.

And I think the great advantage of having that taking place inside the constituency , as Tony Holmes said having more dialog and reflecting and so on going on lower down.

Is that, that would be a structure that's easy for people to understand, and easy for them to influence. And that there wouldn't be, you know, institutional sort of legal barriers getting in the way corresponding to where the issues are and who wants to get involved.

(Tony Holmes): All right can I comment on that (Philip)?

(Philip): Yes, let me just start cut myself after you and then I'll get (Patrick's) response after you so there you go Tony.

Milton Mueller: Point of order, I am going to have to leave in about ten minutes to take a kid to school.

(Philip): Okay.

Milton Mueller: I just wanted to ask before I leave will I get an opportunity to ask about the consensus bar raising up to 75%.

(Philip): Yes, that's what I've come along to within ten minutes maybe chancing it but we'll have that discussion within the space to call and the transcript will be made available. Okay (Tony Holmes).

(Tony Holmes): One of my points was somewhat crossed over there because one of the issues I was trying to make was that with the breakdown that is proposed be a little of dialog and the discussion in the difference of views that's going to take place lower down.

Is far, far heavier in one of those groups ends from the other two because apparently the views that came out of would come out of those communities are far closer in some areas.

And that was my point so it's actually putting a very heavy burden on one particular grouping. But I don't see it's going to be at the same magnitude across the groups;

(Philip): Okay, one of the challenges you mentioned (Patrick) was in terms of reference to a set of course. And I think one is the problems that we saw in the BC with one permutation that is with the different frequencies that you set out.

We're looking at other objectives that you would want to put also in constituency structure. I think certainly having a combined registration interest constituency would raise questions to do with anti-trust and competition whereas one of the founding principles of the Domain Name registration has been a separation of the monopolies for the registry and the registrar interests

I think also there the other complication that comes after that of course is you look at the constituency say like the ISP's who are themselves suppliers of internet related services to business and noncommercial users.

And indeed there is a and often a within the same organization maybe an ISP and a registrar. And if you look at some of the founding principles upon which business would be involved, which is looking for

competition, a low cost applied based and trust. I think you'll find those are the same shared principles that the Civil Society would be seeking.

So I think what I am really saying by that analysis is that indeed there are different ways of cutting it. But I do see some particular challenges in the options that you came out with.

So anyway (Patrick) I just wanted you to respond to those two points. And then we may want to move on to the 75% questions straight after that.

(Patrick): Well I think our suggestion of the, you know, the single business contingency was funded to quite a deal of comment that was given to us from people in and outside ICANN.

Structure of that moment which suggested that the existing articulation between the business, Intellectual Property and the ISP constituency was not easy to follow, was not comprehensive, and could be a barrier.

We noticed that the cross constituency meetings has worked very well in terms of bring these views together. So we really think our suggestion is sort of going with the grain of the way these constituencies have operated.

I do think that, you know, the way in which contingency are set up does need to be able to respond flexibly. I mean there have been very considerable changes in how people, you know, register for or how end consumer register for Domain names.

And who they are operating with. And so the suggestion that we make is really designed to help separate out supply side actors and demand side actors between registration interests and business and civil society .

Philip Sheppard Okay, (Milton) are you still with us.

(Milton): Yes.

Philip Sheppard Then please ask your question, please on recommendation 21.

(Milton): Right. Patrick, you're a political scientist and I think you understand interest groups and their interactions. Now when you talk about raising the consensus to 75% I understand some of the rationale for that.

But I think you are completely I just can't understand your belief that this would create more incentive for different constituencies to engage constructively with each other.

Essentially if the status quo were ideal which it's not. Then this logic would make some sense nobody could sort of deviate from a perfect equilibrium unless there was a very strong consensus.

On issues like WHOIS the status quo is unacceptable to many people. Indeed many people believe it's illegal but we can't budge from it even under the current system because certain constituencies simply have no incentive to budge from the status quo.

Raising the bar to 75% I see would make creation of almost any new policy on any topic including adding new compliant domains virtually impossible in my opinion.

And at the same time your report documents the massive amounts of time that we spend accomplishing very little. And I see the consensus bar raising as contributing to that if not making it worse. So I'm just curious as to how you can make that judgment to raise it.

Unless you really do believe the status quo is ideal and we don't need any new policies and we can only move if there is overwhelming support for something, which there almost never is.

(Patrick): Okay, well that's a very good point. I mean there is a local analysis lying behind this suggestion. And I think it's it would be a myth to suggest that, you know, that there's any simple relationship between what the kind of consensus bar is and how effectively an organization works and develops.

And so there is nothing particularly sacred about sort of 67% rule. If you look at some other very important world organizations like the European Union for example has a qualified majority of those who have about 72% but the interesting thing about this counsel and so on.

Is that when it gets to decisions these are a large number of divisions are made some people will dissent. But very few votes are taken and most division actually are unanimous. So I think within the range of different sorts of organizations.

GNSO counsel is a little bit unusual in being on the sort of more some what more rancorous end. And it's suggestive of a need to improve the deliberative quality of what's going on.

And that's really what we're suggesting in saying well let's have task forces that bring in the wider range of expertise and let's perhaps have the GNSO move the way from sort of dominating the task forces.

Incidentally this is the point that Tony Harris has made about the workload allocation and was suggesting that more people should get involved. The GNSO council should focus down on the key policy settings, time taking, decision making, which should be more creative use of task forces.

And so I think that's what we are suggesting is a balance development of the deliberative capacities of GNSO including I may add the very important role that staff complaint helping the, you know, the counsel to move forward in constructive ways.

So the deliberative capacity of counsel perhaps you know a very small move away. I mean we've suggested 75% but it could be 72% you could pick a somewhat higher level of consensus.

And a split of the vote so that the temptation which is there at the moment we'll kind of just try and put things narrowly over the barriers. That's a destructive temptation basically and we believe that there's no reason at all why if you can if you do this it changes as a package. You couldn't move towards GNSO Council being considerably less rancorous .

Looking much more open handedly and evenly because everybody would know that they'd have to get a very wide measure of agreement from the beginning.

Looking for positive ways forward and ways of making sure that you don't have long run aspects of the status quo which may make, for what some find as unhealthy interests.

Philip Sheppard Okay, (Patrick) thank you for that. I think your analogy with the European Union is quite interesting one. I think possible one of the other reasons member states often like to discuss the consensus and then come to a commonality is of course is because nobody wants to be seen to be on the losing side, which is something that we don't necessarily suffer from within ICANN.

We have something more of a David and Goliath spirit there. Of course the other thing that reflects the way that European Council votes go is the acknowledged presence of a blocking minority.

Which is an excuse of things not proceeding and I think we've actually seen those same dynamics within the GNSO so an interesting analogy.

We've got about 35 minutes left to run on this call. I had a third point which I will defer for the moment. And just take a list of **open questions** on any other recommendations we haven't covered so far. Now we've had one and I'm sure others do to.

Let's just let me just test the water to see how many we want to try to cover and then we can prioritize as necessary. (Avri) what was your point?

Avri Okay, my point was not about specific recommendations which there have been some discussions and reports that it was perhaps all or nothing. That one had to approach all the recommendations in the report as sort of a block.

As sort of consider them together as opposed to being able to sort of say well some of these, you know, we can reach an agreement. There can be some far more difficult and so I'm really looking for an indication from the people that wrote the report is what do you conceive of this.

Is this presented as here's a packet and for the whole thing to work it's got to go together. Or is it a set of recommendations any of which can be accepted or rejected. Of course some of them are more related than others.

(Philip): Okay, Avri good, good question. Patrick you answered that partially I think didn't you. I think in your second slide. When you mentioned the limitations would have to take some lease on approach but you also mentioned the danger of the unraveling string and the linking of so many recommendations. Perhaps you could explain a bit more about the conflict there in relation to Avri's point.

(Patrick): Yes, I think that there are some recommendations that are fairly free standing for example, you know, introducing term limits for GNSO counselors we believe that's could be considered more or less

independently but I think that the what were suggesting really for GNSO is kind of an overall architecture with some principles.

So the point would be I think that if people have difficulties with, you know, individual points and they like the principles. It would be good to see a process of development constructive debate occurring.

And, you know, were not in any way claiming to be, you know, omni competent or omnisknowledgeable about GNSO and ICANN so the whole process of discussion and deliberation that needs to continue between the constituencies, GNSO, and the ICANN board.

We're very happy to contribute to that and one of the things we'd like to contribute is the is pointing out we've tried to put forward a package of recommendations which is relatively balanced and which is relatively fair to everybody as far as we can possibly make it.

And which does hang together and does have for example, you know, strengthening the deliberative process as well as, you know, thinking about reorganizing the voting process and so on. Because, you know, there is an issue about how much voting how much should GNSO be behaving as a legislative body and how much more as a constructive, deliberative body.

So there's bigger one's which I think do hang together and which we would very much urge people to try and keep in view at the same time.

Philip Sheppard Okay, that was very helpful. Thank you. Who else has question on any of the points of the Review. Okay, I'm hearing silence. I guess I will compose my third point, which was to do with the expertise and you

mentioned the concepts of associate membership I think you phrased it of experts who could be used.

Could you let us know a little bit more about what you meant by that. Was it simply a pool of economists, competition lawyers, and other experts to be called upon or something different to that?

(Patrick): Yes, I think what we felt that a number of comparative bodies that we looked at range very widely in their use of experts and they had sort of a process of resemble. They would put in pretty wide group of people that would look at relatively representative group of people.

Or people who had different kinds of expertise. They try and pull them into a maybe a week intensive work and work very constructively on taking forward various issues and so obviously, you know, it's a little bit difficult for a body like GNSO to do this because and that's why we think that there's been a certain tendency within the last few years for sort of counsel members to sort of predominant on task forces.

And we think if there was kind of a recognized expert category and these names were known and people could be added to them and people could be scrutinized. And this would help to get to a broader task force process that would more flexibly engage expertise.

Philip Sheppard And typically in other organizations those experts would be paid a daily rate for their time or what?

(Patrick): Well, we didn't go into all that much detail of the other organizations. But I think that they would have to be, you know, there is certainly a capacity for GNSO to use paid experts.

Much more widely and extensively and creatively. And perhaps as ICANN revenue grows there will be more opportunities to think about that. But also there would be a, you know, a kind of paid people expenses kind of a thing and ask them to, you know, contribute mainly for the joy of trying to shape generic names policy.

(Philip): Okay, other questions for Patrick on any points, any recommendations. There's one of myself which was your **recommendation to do with visibility**. And the point about the GNSO council chair needs to become much more visible with ICANN and to carry more institutional weight. Now one of those suggestions there was a possibility of GNSO chair also been giving a Board seat.

For which I think sounded okay except if you happen to be the chair with the weight of the time commitments involved. It almost becomes a full time job there.

(Patrick): Yes.

(Philip): But I wondered what other ideas where you talk through or maybe part of that basic idea. Which certainly would seem to be appropriate.

(Patrick): Again, I mean again I'd like to address that we were a little bit constrained because obviously we believe that the GNSO chair plays a very important role not only within GNSO but more broadly within ICANN.

And yet there isn't really a clear or straight forward institutional recognition of that. In a way that ICANN is set up and we think there

has been some cases or incidents where the kind of communication between the Board and GNSO and GNSO constituencies have been weakened because of that.

So yes, we haven't ourselves investigated you know that way the ICANN Board operates so it's not something that we can make a very clear and specific recommendation.

On how the institution of recognition should be achieved but we believe that if it was achieved the GNSO chair would be more easily understandable outside of ICANN and better able to represent the GNSO council as a whole to the wider Internet community.

As well as GNSO to the ICANN board and so there would be a range of different possibilities and we'd be happy to discuss the pros and cons of each of these that have been suggested to us.

And one other problems is the GNSO chair is a very busy person already and so as you mentioned Philip it would be definitely a burden. But what we don't think is very satisfactory is for the GNSO chair to be a very important figure.

It's not to be sort of recognized widely outside of ICANN and to be not completely visible within ICANN. And there not to be kind of settled institutional arrangement so the chair influence is tending to be a bit of a sort of personal thing. That operates on a personal level and we seem to probably should be clarified and settled on a day to day basis.

(Philip): I certainly understand the thoughts behind that recommendation.

Tony Holmes: I have a question to that.

(Philip): Oh, we have one question yes. Certainly.

Tony Holmes: Yes, it's just for clarification. With that arrangement would you say that the purpose of the chair seating on the board is to represent GNSO or if it could become an independent Board member along at the same lines of the rest of the board members.

(Patrick): Well, I think a number of people suggested to us that the GNSO chair might sit in the board meetings and be a liaison.

But wouldn't necessarily be a full board member. A number of other people suggested to us that the GNSO chair might do a period as chair and then automatically go onto the Board.

For us to have for a period of two years so as to have that expertise sort of cycling into the board in a regular way.

A number of other suggestion were made about how the GNSO chair might liaise with the Board or with in a or sort of a senior management grouping within ICANN. But representing very, very much the whole of GNSO and not any individual interest.

(Philip): Okay, last change for any questions well were on the call. In that case (Patrick) and your team thank you very much. For being with us and there may be a second call our secretariat will be in touch with you on that.

Thank you again for making your time available. Thank you to everybody who participated in this call. I wish you all a very good continuation of your day or good evening.

Patrick: Thank you.

Woman: (Philip)?

END