SYRACUSE UNIVERSITY

School of Information Studies

22 January 2009

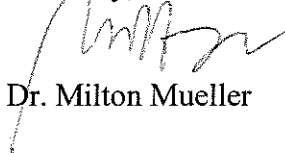To: ICANN Board, Peter Dengate Thrush, Chair

From: Noncommercial Users Constituency

Dear Peter:

In line with the November Board resolution asking constituencies to submit their charters to the Board for reconfirmation, please find attached a) the current charter of the Noncommercial Users Constituency; b) our recent charter amendments paving the way for individual membership and c) a report evaluating our compliance with your charter and bylaw requirements.

As outgoing chair of the Noncommercial Users Constituency, I ask that you direct your reply to the new Chair, Robin Gross (robin@ipjustice.org)

Sincerely,

Dr. Milton Mueller

a) Link to: NCUC charter:

http://ncuc.syr.edu/current_charter.htm

b) Provisional individual membership form:

http://ncuc.syr.edu/individual-memb-provisional.txt

Report: Constituency Renewal Process

24 January 2009

According to the staff email of November 4, 2008, NCUC is required to:

1) Review NCUC practices, operations, and charter documents, as appropriate, to evaluate its adherence to the requirements of Bylaw Article X, Section 5, Subsection 3, which require that each constituency represent the interests of its stakeholder communities globally and operates to the maximum extent feasible in an open and transparent manner, consistent with procedures designed to ensure fairness;

2) Provide a written report to the Board (that includes its Board-approved charter) evaluating its compliance with its charter and Bylaw requirements on or before the February 2009 Board meeting.

Compliance with the Bylaws

The current NCUC charter has been in place since 2003. Based on our own review and the LSE review we believe that for the most part it reflects the key values of transparency and fairness in representation. The NCUC is required by its charter to:

- Hold elections for officers every year, which permits representatives to be adjusted more rapidly in line with members preferences
- Achieve equal geographic representation through an Executive committee that assigns a slot to each geographic region
- Was the first to implement term limits on officers and Council members
- Was recognized by the LSE GNSO Review as having the most geographically diverse Council representatives and the most change in the composition of its Council representatives
- All communications to its listserv are transparent, as they are archived and posted on the web http://listserv.syr.edu/archives/ncuc-discuss.html
- As is the case with all other constituencies, and the Board itself, Executive Committee discussions are not publicly available, as they involve strategic and budgetary exchanges and decisions

In terms of the weaknesses of the constituency, we have some of the same problem as other constituencies:

- Too much of the work falls on too few shoulders;

- Levels of participation are not high enough due to the highly specialized and extremely time-consuming nature of GNSO work
- Too much GNSO work is purely organizational and not related to the kind of policy issues that can interest or motivate NCUC members
- It is difficult to get consistent and reliable representation from developing country nonprofits, especially in Africa and South Asia, as many of these organizations are not specialized and/or well-resourced enough to follow DNS policy issues closely.

Our conclusion: Whatever shortcomings the NCUC has are based not on its charter but on the basic facts that motivate political participation. The other GNSO constituencies are composed of registries, registrars and the lobbyists for multinational brand owners who comprise the business user constituencies. These are constituencies with a major economic interest in the outcome of DNS policy decisions, which directly impacts their financial bottom line. These large and concentrated financial interests invest in supporting full-time professional participants accordingly. Nonprofit organizations have a much more diffuse stake in domain name policy issues. For most noncommercial stakeholders, DNS policy is a small part of a much larger picture of the public interest. Very few noncommercial stakeholders are focused on transnational issues to begin with. Very few of them can justify to their boards, members or volunteers the expenditure of large sums of money or time on global governance of the domain name system specifically. Add to this the unbalanced representational structure of the old GNSO, which gave commercial users three times as many votes as noncommercial users, thereby often rendering participation futile, and one can only be surprised that the NCUC has as much participation as it does.

The NCUC has a diverse set of organizations as members, and the number of organizational members actually exceeds the number of business user constituency entities. We note that the LSE report, an objective external assessment, concluded that NCUC is the only constituency that is "generally perceived as more representative than influential."

Growing membership and diversity

Last year, responding to the Board's concerns about the role of individuals in the GNSO and the breadth of representation in the NCUC, we instituted some important changes. We allowed individuals to join NCUC on a provisional basis. We have also recruited new organizational members because of the publicity surrounding the GNSO reforms and our own recruitment efforts. See attached documents for the specifics.

Since the Paris meeting, when the membership drive was instituted, NCUC has increased its membership by 22 participants, a 40% increase. Seven (7) of the new memberships are organizational, and 15 are individuals. Many of the individual memberships, however, are from people associated with larger nonprofit institutions, such as universities or research institutes, which would have a difficult time getting the entire organization to endorse and support their participation in the ICANN policy process. Thus the new, more flexible individual membership actually allows people in large nonprofit organizations

who reflect the interests and perspectives of noncommercial stakeholders to participate in ICANN more easily.

The NCUC is the only GNSO constituency that has experienced this level of growth.

The new NCSG
In line with the GNSO reform, NCUC has spent most of its energy in the past 7 months preparing a charter proposal for the new Noncommercial Stakeholders Group (NCSG). We believe that the process of constructing a new Stakeholder Group for the new bicameral GNSO is far more important than tinkering with the existing structure of the NCUC. We have consulted closely with members of ALAC on this effort, and while they have been cooperative in setting up joint meetings so far they have not proposed any amendments or even transmitted a formal position for or against the proposal.

Under our proposed plan for the NCSG, all noncommercial stakeholders would join the new NCSG directly, and then form new constituencies in a flexible and lightweight process that avoids the duplicated and burdensome organizational overhead of the old GNSO constituency structure. There would be a unified communication and membership infrastructure for the NCSG. Noncommercial stakeholders would elect Council members on an integrated basis, assuring every member the same voting rights. As part of this plan, the NCUC would dissolve, leaving its members free to regroup as they see fit under the integrated structure.

Based on many discussions with many parties, we are convinced that an integrated stakeholder model we are proposing best conforms to the Bylaw's requirement for fairness; it is also the model that best facilitates increased participation and ease of participation by noncommercial groups.
- A NCSG composed of structurally separate constituencies is inherently unequal, because an individual members' voting influence over Council seats will depend on what constituency they join. (Under a constituency-based plan, each constituency will have different numbers of members but would be guaranteed the same number of Council seats.)
- Such a structure will also lead to the proliferation of organizational overhead, burdening participants with duplicative mailing lists, membership administration, voting processes, web sites, and so on. Noncommercial organizations and individuals are already confused by ICANN's complex structure and constructing an NCSG out of multiple constituencies will only make matters worse.
- A fragmented structure will fragment discussions into factions that no longer understand each other, thus making consensus more difficult to achieve. This conflicts with the spirit of the Board Governance Committee's recommendations, which emphasized consensus-based policy making.
- A fragmented constituency structure fosters unhealthy forms of political competition and infighting. The recognition of new constituencies inherently results in the reduction of Council seats for all other constituencies. This will encourage all competing constituencies to criticize each other as "unrepresentative" or inadequate in some way.

- By guaranteeing Council seats to any group that gains recognition as a constituency, a fragmented constituency structure gives small factions a strong incentive to break away from a larger group. (NCUC is already experiencing this problem: a small group with only one active member proposes to break away and form an "Internet Safety" constituency. Presumably, if the Board recognizes it as a constituency it is granted the same status and Council seats as a group 10 times its size. No doubt this pattern will be repeated if it succeeds.)

The Role and Status of Individuals

In June 2008 NCUC chair circulated the following memo via its official email list:

In line with our previously stated position on GNSO reform, we believe that individuals who register domain names and take an interest in domains for personal use, and/or are mostly concerned with the public interest aspects of domain name policy, should be admitted into the Noncommercial Users Stakeholder group. Examples of such individual users would be a person with a personal domain for an email account, a domain name holder with a family web site or blog, or individual academics or members of noncommercial organizations who find it too difficult or lack the standing to get their organization to formally join on an organizational basis

Individuals who register domain names for business purposes - e.g., investors in the domain name market, small businesses, and consultants - and are mainly concerned with the way domain name policy affects their business activity should be represented through the Commercial Users stakeholder group.
Until the GNSO reforms are completed, we propose to add noncommercial individuals as provisional, nonvoting members. This period can also serve as an experiment to see how the representation of individuals can best be formally structured. We anticipate asking interested individuals to sign a commitment that:
1.   They are not currently members of any other GNSO constituency
2.   Their interest in domain name policy relates to their individual use and public interest aspects

This experiment was ratified by the NCUC at the Paris meeting and put into effect shortly thereafter. We were especially concerned whether inappropriate people, such as hidden representatives of business interests, would seek to "stack" the NCUC membership using this option. As noted above, however, we have succeeded in making GNSO participation available to many people from whom a full organizational endorsement would be difficult or impossible, and in broadening the diversity of views in the NCUC.

NCUC has had many discussions with ALAC about this policy. Some of the new individual (and organizational) members, in fact, have either moved into NCUC from At Large RALOs or have positioned themselves in both. As far as we can tell, this has not caused any problems. We consider the experiment a success and have used the provisional individual membership policy as the basis for individual membership in our proposed charter for the NCSG.

The membership application form for individuals can be downloaded here:
http://ncuc.syr.edu/individual-memb-provisional.txt