

## Policy & Implementation

### What is this about?

Mainly as a result of discussions stemming from implementation related issues of the new gTLD program, there is increased focus on which topics call for policy and which call for implementation work, including which processes should be used, at what time and how diverging opinions should be acted upon.

Following several discussions by the GNSO Council on this topic, the GNSO Council formed a Working Group which has been tasked to provide concrete recommendations on how to address some of these issues from a GNSO perspective.

### Why is this important?

While developing a bright-line rule as to what is policy or implementation may not be possible, the hope is that by developing clear processes and identifying clear roles and responsibilities for the different stakeholders, it will become easier to deal with these issues going forward and allow for broad participation and involvement.

### What is the current status of this project?

Following its [review of public comments](#) received on the [Initial Recommendations Report](#), the Working Group has now submitted its [Final Recommendations Report](#) for GNSO Council consideration. In short, the WG is putting forward the following recommendations for adoption:

- In response to charter question 1 (recommendations concerning a set of principles that would underpin any GNSO policy and implementation related discussions, taking into account existing GNSO Operating Procedures), the WG recommends adhering to the principles outlined in section 4 of the Initial Recommendations Report when policy or implementation related issues arise in the implementation phase (**Recommendation #1**).
- The WG proposes three new standardized processes for GNSO deliberations (**Recommendation #2**) regarding such issues as also outlined in the high level overview in Annex B, namely:
  - **GNSO Input Process (GIP)** - to be used for those instances for which the GNSO Council intends to provide non-binding advice, which is expected to typically concern topics that are not gTLD specific and for which no policy recommendations have been developed to date. “Non-binding advice” means advice that has no binding force on the party it is provided to. For example, this process could be used to provide input on the ICANN Strategic Plan or recommendations from an Accountability and Transparency Review Team. It is the expectation that such input would be treated in a similar manner as public comments are currently considered by the entity (e.g. Board, NPOC, or WG) to which the input is provided.
  - **GNSO Guidance Process (GGP)** – to be used in those instances for which the GNSO Council intends to provide guidance that is required to be considered by the ICANN Board, but which is not expected to result in new contractual obligations for contracted

parties. Guidance developed through a GGP means advice that has a binding force on the ICANN Board to consider the guidance and it can only be rejected by a vote of more than two-thirds (2/3) of the Board, if the Board determines that such guidance is not in the best interests of the ICANN community or ICANN. It is expected that this would typically involve clarification of, or advice on existing gTLD policy recommendations. This could be in response to a specific request from the ICANN Board but could also be at the initiative of the GNSO Council to an issue that has been identified. For example, such a process could have been used in relation to the request from the ICANN Board to provide input on the .brand registry agreement, specification 13.

- **GNSO Expedited Policy Development Process** - to be used in those instances in which the GNSO Council intends to develop recommendations that would result in new contractual obligations for contracted parties that meet the criteria for “consensus policies”<sup>4</sup> as well as the qualifying criteria to initiate an expedited PDP. Those qualifying criteria are (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation; or (2) to provide new or additional policy recommendations on a specific policy issue that had been substantially scoped previously, such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP.

The details of each of these processes can be found in Annex C (GNSO Input Process), Annex D and E (GNSO Guidance Process) and Annex F and G (GNSO Expedited Policy Development Process) of the Final Report.

- The WG also recommends to add a provision to the GNSO Operating Procedures that clarifies that parallel efforts on similar / identical topics should be avoided. As the manager of the process, the GNSO Council is expected to resolve which process would be the most appropriate to use (recommendation #3).
- In its deliberations on three implementation related charter questions, the WG reviewed the Consensus Policy Implementation Framework that has been developed by the ICANN Global Domains Division (GDD) to support predictability, accountability, transparency, and efficiency in the Consensus Policy implementation process (see Annex J of the Initial Recommendations Report). As a result, the WG recommends that the Policy Development Process Manual be modified to require the creation of an Implementation Review Team following the adoption of PDP recommendations by the ICANN Board, but allow the GNSO Council the flexibility to not create an IRT in exceptional circumstances (e.g. if another IRT is already in place that could deal with the PDP recommendations). (Recommendation #4) and the adoption of the implementation review team principles as outlined in Annex L are followed as part of the creation as well as operation of IRTs (Recommendation #5).

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<sup>4</sup> For further information about ‘consensus policies’, please see <http://gns0.icann.org/en/basics/consensus-policy/about>.

### Expected next steps

The GNSO Council is expected to consider the Final Recommendations Report for adoption during its meeting in Buenos Aires (see <http://buenosaires53.icann.org/en/schedule/wed-gnso-council>).

### Background

Following several discussions by the GNSO on this topic, the GNSO Council formed a Working Group which has been tasked to provide concrete recommendations on how to address some of these issues from a GNSO perspective. The WG started its deliberations in August 2013 and has been tasked to provide the GNSO Council with recommendations on:

1. A set of principles that would underpin any GNSO policy and implementation related discussions, taking into account existing GNSO Operating Procedures.
2. A process for developing gTLD policy, perhaps in the form of "Policy Guidance", including criteria for when it would be appropriate to use such a process (for developing policy other than "Consensus Policy") instead of a GNSO Policy Development Process;
3. A framework for implementation related discussions associated with GNSO Policy Recommendations;
4. Criteria to be used to determine when an action should be addressed by a policy process and when it should be considered implementation, and;
5. Further guidance on how GNSO Implementation Review Teams, as defined in the PDP Manual, are expected to function and operate.

### How can I get involved

As the recommendations will require changes to the ICANN Bylaws, a public comment forum is anticipated prior to ICANN Board consideration. Anyone can provide their input on the proposed changes to the ICANN Bylaws in due time (see <http://www.icann.org/en/news/public-comment>).

### Where can I find more information?

- Policy & Implementation Final Recommendations Report - <http://gns0.icann.org/en/drafts/policy-implementation-recommendations-01jun15-en.pdf>
- Working Group workspace – <https://community.icann.org/x/y1V-Ag>

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