

Policy Development Process Work Team Proposed Final Report & Recommendations Executive Summary & Recommendations

STATUS OF THIS DOCUMENT

This is the Executive Summary & Recommendations of the Proposed Final Report of the Policy Development Process Work Team concerning the development of, and transition to, a new GNSO policy development process.

Note on Translations

This document has been translated from English in order to reach a wider audience. While the Internet Corporation for Assigned Names and Numbers (ICANN) has made efforts to verify the accuracy of the translation, English is the working language of ICANN and the English original of this document is the only official and authoritative text. Please note that this Executive Summary is only one chapter of the full report which is only available in English and can be found at <http://gns0.icann.org/>.

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1 Executive Summary

- The Policy Development Process Work Team (PDP-WT) was tasked by the Policy Process Steering Committee (PPSC) to be ‘responsible for developing a new policy development process that incorporates a working group approach and makes it more effective and responsive to ICANN’s policy development needs’. The primary tasks of the PDP-WT were to develop:
 - 1 Appropriate operating principles, rules and procedures applicable to a new policy development process; and
 - 2 An implementation/transition plan.
- This Proposed Final Report presents the PDP-WT’s views and recommendations in relation to tasks 1 and 2. The proposed recommendations seek to:
 - Codify existing practices and procedures already utilized by the GNSO community in policy development processes (PDPs);
 - Clarify existing rules, methods and procedures set forth in the ICANN Bylaws and GNSO Council’s Operating Procedures
 - Suggest new approaches, methods and procedures to be used in the new policy development process.
- To this end, the PDP-WT has developed dozens of recommendations to improve the existing PDP process. Some of the key recommendations of the new PDP include:
 - Recommending the use of a standardized “Request for an Issue Report Template” (recommendation 4)
 - The introduction of a “Preliminary Issues Report” which shall be published for public comment prior to the creation of a Final Issues Report to be acted upon by the GNSO Council (recommendations 10 & 11).

- A Requirement that each PDP Working Group operate under a Charter (recommendation 19)
- Dialogue between the GNSO Council and an Advisory Committee in the event that an the GNSO Council decides not to initiate a PDP following an Issues Report requested by such Advisory Committee (recommendation 18)
- Changing the existing Bylaws requiring a mandatory public comment period upon initiation of a PDP to optional at the discretion of the PDP Working Group (recommendation 22)
- Clarification of 'in scope of ICANN policy process or the GNSO' (recommendation 23)
- Changing the timeframes of public comment periods including (i) a required public comment period of no less than 30 days on a PDP Working Group's Initial Report and (ii) a minimum of 21 days for any non-required public comment periods the PDP WG might choose to initiate at its discretion (recommendation 28)
- Maintaining the existing requirement of PDP Working Groups producing both an Initial Report and Final Report, but giving PDP Working Groups the discretion to produce additional outputs (recommendation 34)
- A recommendation allowing for the termination of a PDP prior to delivery of the Final Report (recommendation 37)
- Guidance to the GNSO Council on the treatment of PDP WG recommendations (recommendation 39)
- New procedures on the delivery of recommendations to the Board including a requirement that all reports presented to the Board are reviewed by either the PDP Working Group or the GNSO Council and made publicly available (recommendation 40)
- The use of Implementation Review Teams (recommendation 43)
- A redefinition of 'GNSO Supermajority vote' to include the original meaning of GNSO Supermajority i.e. 2/3 of Council members of each house so a GNSO Supermajority vote would be 75% of one House and a majority of the other house or 2/3 of Council members of each house (recommendation 48)

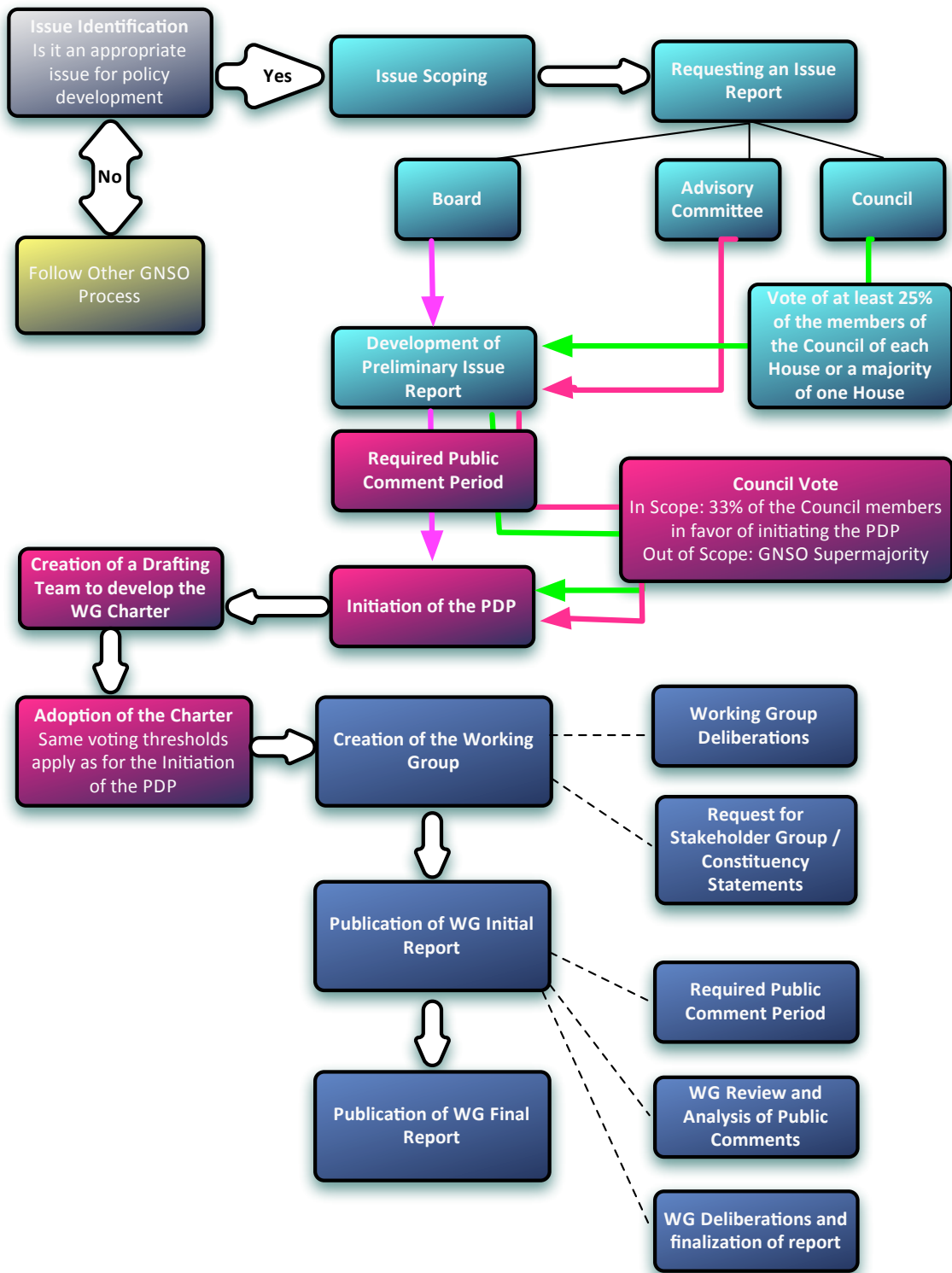
For a complete overview of all the recommendations, please see Section 2.

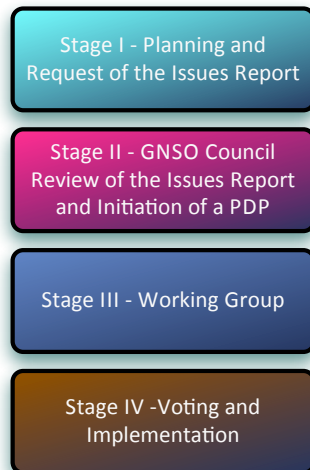
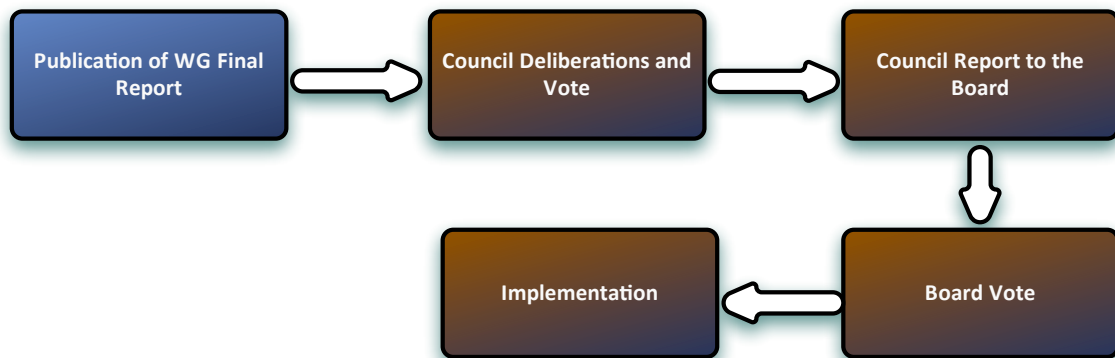
- For purposes of its discussions, the PDP-WT divided the policy development process into the separate distinct stages and initially considered each of these stages consecutively. The details of the discussion on each of these stages can be found in the Initial Report (see <http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf>).

In addition, a number of overarching issues that are present in multiple stages of the policy development process, including timing, translation, development of definitions, voting thresholds and decision-making methodology, were also discussed following the review of the five different stages (see section 3).

- The WT, supported by ICANN staff, has developed a first outline of the new Annex A (see section 4) as well as a supporting document that is envisioned to be included in the GNSO Council Operating Procedures as the PDP Manual (see section 5).
- In section 2, you will find an overview of the recommendations of the PDP-WT. For further background information on how these recommendations were developed, you are strongly encouraged to review the Initial Report (see <http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf>), the WT's review of the public comments (see Annex A) and the WT's [deliberations on the outstanding issues](#), to appreciate the deliberations of the PDP-WT that form the basis for these recommendations.
- Public input is encouraged as part of the public comment period on the Proposed Final Report on the proposed recommendations, the proposed elements for the new Annex A, the proposed PDP Manual, as well as which elements should be included in the ICANN Bylaws and which ones should be part of the GNSO Council Operating Rules.

- To facilitate visualization of the new PDP, the WT has also developed a flow chart that includes that provides a high-level overview of the main elements of the new PDP that can be found hereunder.





2 Approach taken & Proposed Recommendations

Following the publication of the Initial Report (see <http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf>) and a subsequent public comment period, the WT reviewed and addressed the comments received (see [public comment review tool](#)). In addition, the WT discussed the outstanding issues it had not been able to cover in time for the Initial Report and updated the recommendations accordingly [include link to outstanding issues document]. In order for the ICANN Community to review these updated recommendations, especially those not included in the Initial Report, the WT has published this Proposed Final Report for public comment. Following review of the public comments received, the WT plans to review the comments received and update the report where deemed appropriate before submitting it to the Policy Process Steering Committee for its review.

The PDP WT agreed to divide the policy development process into the following separate stages and consider each of these stages consecutively:

- Stage 1 – Planning and Request for an Issues Report
- Stage 2 – GNSO Council Review of the Issues Report and Initiation of the Policy Development Process
- Stage 3 – Working Group
- Stage 4 – Voting and Implementation
- Stage 5 – Policy Effectiveness and Compliance

Each of these stages were then broken down into related issues areas that were discussed by the PDP-WT. The following sections provide an overview of these deliberations, including proposed recommendations to address issues identified. To encourage input from the members of the WT, a number of surveys were conducted to solicit feedback. For further details on the

surveys and interim notes, please visit the PDP-WT Workspace: https://st.icann.org/icann-ppsc/index.cgi?pdp_team.

For each of these stages a number of recommendations were developed (see hereunder) that form the basis of the proposed new GNSO Policy Development Process. These recommendations are provided below. Please note that in order to make this section of the document concise, most of the context for the recommendations have been removed and the PDP-WT urges the community to read the Initial Report for further context on the recommendations.

Stage 1 – Planning and Request for an Issues Report

1. Who has the ability to initiate a request for an issues report?

Recommendation 1.

- Although a request for a GNSO Issues Report has never been issued directly by the ICANN Board, or any Advisory Committee (other than the At-Large Advisory Committee), the PDP-WT recommends that the current three mechanisms for initiating a request for an Issue Report (Board request, Advisory Committee Request or GNSO Council Member Request) should be maintained.

Recommendation 2.

- The current language in Annex A of the Bylaws contains several references to the term “PDP” which over the years have been the source of confusion. The phrase “initiating a PDP” is currently used to refer to initiating an issue report, for example, and is also used to refer to the process of formally establishing Task Forces or working groups. Therefore, the PDP-WT has distinguished the two concepts into (1) Raising an Issue and (2) Initiating a PDP. The PDP-WT has recommended clarification of this language in the Bylaws and whenever such terms are used by the community.

2. Procedures for Requesting an Issues Report

See also recommendation 2.

Recommendation 3.

- The PDP-WT recommends the development of a Policy Development Process Manual, which will constitute an integral part of the GNSO Council Operating Rules, intended to provide guidance and suggestions to the GNSO and ICANN communities on the overall PDP process, including those steps that could assist the community, working group members, and Councillors in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.

Recommendation 4.

- The PDP-WT recommends that a 'request for an Issue Report' template should be developed including items such as definition of issue, identification of problems, supporting evidence, economic impact(s), effect(s) on competition and consumer trust, and rationale for policy development. The use of such a template should be strongly encouraged, but should not be mandatory. Such a template should be included in the PDP Manual.

3. Issue Scoping

Recommendation 5.

- The PDP-WT recommends adopting the proposed Policy Development Process Manual, to provide guidance and suggestions to those parties raising an issue on which steps could be considered helpful in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.

4. Creation of the Issues Report

Recommendation 6.

- The PDP-WT recommends that the currently required elements of an Issue Report¹ continue to be required for all future PDPs. However the PDP-WT recommends that only certain of the elements be identified in Annex A of the Bylaws and others in the PDP Manual. More specifically, the Bylaws should continue to require elements a (the proposed issue raised for consideration), b (the identity of the party submitting the issue) and c (how that party is affected by the issue), while elements d (support for the issue to initiate the PDP) and e (recommendation from the Staff Manager) should be added to the PDP Manual. In addition, the PDP-WT notes that element e (recommendation from the Staff Manager) should be split in two parts; the first part dealing with the question of whether a PDP is considered in scope and the second part addressing whether the PDP should be initiated. Although currently included as one element in the ICANN Bylaws, the reality is that these two elements should be treated separately. Furthermore, the PDP-WT recommends including in the PDP Manual a recommendation for the entity requesting an Issue Report to indicate whether there are any additional items it would like to have addressed in the Issue Report. This in turn which could then be taken into consideration by the Staff Manager and/or Council when reviewing the request for an Issue Report. In addition, the PDP Manual should allow for ICANN Staff or the Council to request additional research, discussion, or outreach to be conducted as part of the development of the Issue Report.

5. What can the end result of a PDP be?

Recommendation 7.

- The PDP-WT recommends better information and communication with Working Group members on the potential outcomes of a policy development process. There are more

¹ See provision 2 of Annex A of the ICANN Bylaws

potential outcomes of the PDP process than just the formation of “consensus policies” as defined under the applicable gTLD Registry and Registrar agreements. Acceptable outcomes also include the development of best practices, recommendations to other supporting organizations, recommendations that no changes are necessary, recommendations for future policy development, recommendations for additional research or study, etc. If known in advance, this information could be included in the Charter of a Working Group or in the Council’s instructions to a WG. The PDP Manual should clearly advise the Council and Working Group members of these other potential outcomes.

6. The role of ICANN staff

Recommendation 8.

- The PDP-WT recommends retaining the requirement for obtaining the opinion of the ICANN General Counsel’s office in the Issues Report as to whether a proposed PDP is within the scope of the GNSO. Further details regarding the opinion of counsel are expected to be included in the PDP Manual as opposed to the Bylaws. For more clarification of the meaning of “in scope” please see Recommendation 23 below.

Recommendation 9.

- The PDP-WT recommends that additional guidance on the different roles ICANN staff can perform, as outlined in the GNSO Working Group Guidelines, is to be included in the PDP Manual.

7. Community input / How to incorporate public comments

Recommendation 10.

- The PDP-WT recommends the modification of timeframes included in clause 1 – Creation of an Issue Report in Annex A in relation to the development and delivery of an issues report as follows:

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a resolution from the GNSO Council; or (iii) a duly supported request from an Advisory Committee, the Staff Manager will create a report (a “Preliminary Issue Report”). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report, which request should be discussed with the Requestor.

Recommendation 11.

- The PDP-WT recommends that there is a mandatory public comment period that follows the publication of a Preliminary Issue Report and before the GNSO Council is asked to consider the initiation of a PDP. Such a Public Comment period would, among other things, allow for additional information that may be missing from the Preliminary Issue Report, or the correction or updating of any information in the Preliminary Issue Report. In addition, this would allow for members of the ICANN Community to express their views to the Council on whether or not to initiate a PDP. Depending on the comments received, ICANN staff would include public inputs and any necessary corrections to the Preliminary Issue Report turning it into the Final Issue Report and/or summarize the comments received for Council consideration.

8. Role of Workshops / Information Gathering events

Recommendation 12.

- The PDP-WT recognizes the value of workshops on substantive issues prior to the initiation of a PDP. It is therefore recommending that information on the potential role of workshops and information gathering events be provided in the PDP Manual. In addition, the PDP-WT recommends that the GNSO Council should consider requiring such a workshop, on-line or face-to-face, on a specific issue during the planning and initiation phase for a specific issue. Furthermore, the PDP-WT recommends that invitations and/or announcements for workshops are communicated as broadly as possible.

9. Efficiency and flexibility during planning / initiation phase

- See recommendation 12 above.

10. Impact Analyses

Recommendation 13.

- The PDP-WT recommends that the PDP Manual describe the option for the GNSO Council to request that an impact analysis be conducted if appropriate or necessary prior to the vote for the initiation of a PDP. Such an impact analysis could include the assessment of the impact on (i) the public interest, (ii) the security, stability and resiliency of the DNS, (iii) competition, consumer trust and consumer choice, and (iv) international participation² [as well as the impact on human rights]³.

11. Resources and Prioritization

² As outlined in section 3 of the Affirmation of Commitments

³ The bracketed language only received minority support from within the PDP-WT. The WT hopes to receive input as part of the public comment period on whether the bracketed language should be maintained or not.

Recommendation 14.

- The PDP-WT believes that the GNSO Council should take into full account the resources available, both volunteers from the community as well as ICANN staff, when making its decision on whether or not to initiate a PDP.

Recommendation 15.

- The PDP-WT discussed the notion of a fast-track procedure extensively but did not come to agreement on whether such a process is truly needed, and if so, what such a fast-track procedure might look like. The PDP-WT recommends that the GNSO Council re-evaluates the need for a fast-track procedure in due time as part of the review of the new PDP, as it is of the view that the new PDP will offer additional flexibility and would allow for ‘faster’ PDPs provided that the necessary resources are available without the need for a formal ‘fast track’ proces.

Stage 2 - GNSO Council Review of the Issues Report and Initiation of the Policy Development Process

1. Flexibility when launching a policy development process

Recommendation 16.

- The PDP-WT recommends modifying the timeframes currently included in clause 3 of Annex A – “Initiation of a PDP” to reflect current practice and experience. In addition, it proposed to add language to codify the current practice that any voting⁴ Council members may request the deferral of the consideration of an initiation of a PDP for one Council meeting.

Recommendation 17.

⁴ The term “voting Council Member” is intentionally used by the PDP-WT to refer to only those persons serving on the GNSO Council that have a vote as opposed to liaisons and others that do not.

- The PDP-WT recommends that further guidance be included in the PDP Manual on how to deal with situations where further flexibility is required e.g. additional research, ensuring that the Council provides clear indications on expected timing of next steps.

2. Consider an appeals mechanism in case the GNSO Council votes against initiating a PDP requested by an AC

Recommendation 18.

- The PDP-WT recommends that if the GNSO Council votes to not initiate a PDP following an Issue Report requested by an Advisory Committee (AC), the AC or its representatives should have the opportunity to meet with representatives of the GNSO to discuss the rationale for the rejection and why the AC feels that reconsideration is appropriate⁵. Following this meeting, the AC may submit a statement to the GNSO Council requesting a re-vote on the initiation of a PDP and giving its rationale for such a request. This process may be followed just once for any given Issue Report.

3. Should the approved voting thresholds apply to the entire GNSO Council or just members present (as is current practice)?

- As it is expected that a recommendation for absentee voting / ballot will be included in the GNSO Council Operating Rules, the PDP-WT considers this question no longer valid as all Councillors will have the opportunity to vote whether they are present at the meeting or not, therefore no recommendation is made with respect to this issue.

4. Where in the process is chartering done?

Recommendation 19.

⁵ In particular those meeting with the AC should include members of the GNSO Council that voted against the initiation of the PDP.

- The PDP-WT recommends updating clause 7 of Annex A of the ICANN Bylaws to reflect that a charter is required for all Working Groups, and to specify the voting threshold that should apply to the adoption of the working group charter which is identical to the one that applies to the initiation of the PDP. Any modifications to a Working Group Charter made after adoption by the GNSO Council of such Charter, however, may be adopted by a majority vote of the GNSO Council (as such term is currently defined in the Bylaws).

Recommendation 20.

- The PDP-WT recommends that a link to the new Annex A and the PDP Manual, once finalized and approved, are included in the GNSO Working Group Guidelines, as these two documents provide an overview of the requirements for PDP WGs.

5. Should expedited procedures be available in case of urgency?

See recommendation 15

6. How to involve advice from other ACs or SOs, and obtain consistent input from the Board?

Recommendation 21.

- The PDP-WT recommends that further explanation on how to involve Advisory Committees or Supporting Organisations in a PDP be included as part of the PDP Manual. Much of this will involve the codification of existing practice. It is the belief of the PDP-WT that input from other SOs and ACs must be sought and treated with the same due diligence as other comments and input processes. In addition, comments from ACs and SOs should receive a response from the WG. This may include, for example, direct reference in the applicable Report or embedded in other responsive documentation or a direct response.

7. Evaluate the ICANN Staff costs and resources needed to conduct the PDP and prioritize existing policy work and revisit their existing deadlines and deliverables.

See recommendation 14

8. Public Comment Period after the Initiation of a PDP

Recommendation 22.

- Taking into account the required public comment period on the Preliminary Issue Report (see recommendation 11), the PDP WT considers it no longer necessary to require a public comment period on the initiation of a PDP. However, a WG may, at its discretion, decide to conduct a public comment period at the start of their deliberations to obtain input on issues raised in the Charter.

9. Clarification of ‘in scope of ICANN policy process or the GNSO’

Recommendation 23.

- The PDP-WT recommends modifying clause 3 – Initiation of a PDP to clarify that within scope means ‘within scope of ICANN’s mission and more specifically the role of the GNSO’ as opposed to within scope of the contracted parties’ definition of “consensus policies”. Furthermore, the PDP-WT recommends that issues raised should be mapable against specific provisions in the ICANN Bylaws, the Affirmation of Commitments and/or ICANN’s Articles of Incorporation. This information would be required to be included in the request for an Issue Report and should be added as a category in the Issue Report request template.

Stage 3 – Working Group

Recommendation 24.

- The PDP-WT recommends that even though a Working Group currently forms the basic mode of operation for a PDP, there should be flexibility to accommodate different working methods if deemed appropriate by the GNSO Council, in accordance with the GNSO Operating Rules. Any such new working methods must contain each of the elements set forth in the ICANN Bylaws and PDP Manual.

1. How to maximize the effectiveness of Working Groups

Recommendation 25.

- The PDP-WT recommends that each PDP WG will be strongly encouraged to review and become familiar with the GNSO Working Group Guidelines and the PDP Manual (once published), which includes further information and guidance on the functioning of GNSO Working Groups.

2. Communication with different ICANN Departments (e.g. Legal, Compliance, Services)

Recommendation 26.

- The PDP-WT recommends that further guidance should be included in the PDP Manual on the mechanisms and protocols for Working Groups to communicate with different ICANN departments. It may be necessary for PDP Working Groups to consult with the General Counsel's office, Compliance, Operations, Finance, etc. The PDP-WT recommends that ICANN policy staff serve as the official intermediaries between a Working Group and the various ICANN departments, provided that a procedure is in place which allows for escalation via the WG Chair if the WG is of the opinion that communication is hindered through the involvement of ICANN policy staff.

3. Linking policy development with ICANN's strategic planning and budgeting

Recommendation 27.

- The PDP-WT recommends that the initiation of a PDP may include consideration of how ICANN's budget and planning can best accommodate the PDP and/or its possible outcomes, and, if applicable, how the proposed PDP is aligned with ICANN's Strategic Plan.

4. Public Comment

Recommendation 28.

- The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to change the duration of the public comment period on the Initial Report from 20 days to a minimum of

thirty calendar days. This same minimum should also apply to the public comment period on the Preliminary Issue Report, while other public comment periods that a WG / GNSO Council opt to have as part of a PDP should have a minimum duration of 21 days. The minimum durations for the Preliminary Issue Report and Initial Report should be included in the ICANN Bylaws while the minimum requirement of 21 days for other public comment periods should be included in the PDP Manual. Further guidance on the recommended duration, for example taking into account overlap with ICANN meetings, should be included in the PDP Manual.

Recommendation 29.

- The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to reflect the current practice that a summary and analysis of the public comments received is to be provided by the staff manager to the Working Group. The Working Group shall be responsible for reviewing and taking into consideration the public comments received.

Recommendation 30.

- The PDP-WT recommends providing further guidance in the PDP Manual on how to conduct public comment periods and review public comments received. Such guidance should include the expectation that public comments are carefully considered and analyzed by the WG; encouraging WGs to explain their rationale for agreeing or disagreeing with the different comments received and, if appropriate, how these will be addressed in the report of the WG, and; other means to solicit input than the traditional public comment forums such as surveys.

5. Implementation, Impact and Feasibility

Recommendation 31.

- The PDP-WT recommends that PDP WGs provide input on issues related to implementation, impact (economic, business, social, operational, etc.) and feasibility including, when considered appropriate:
 - Recommend the inclusion of implementation guidelines as part of the Final Report;
 - Consultation with the WG / Council on the draft implementation plan;
 - The creation of an implementation team that consists of representatives of the WG, amongst others, which would be tasked to review / provide input during the implementation phase

Further guidance on this issue is to be included in the PDP Manual.

6. ICANN Staff Resources

Recommendation 32.

- The PDP-WT recommends that staff resources needed or expected in order to implement the policy recommendations should be evaluated as part of the WG recommendations, and as part of the Council's review of those recommendations. This could be included as part of the feasibility analysis and/or impact statement (see also recommendation 31).

7. Stakeholder Group / Constituency Statements

Recommendation 33.

- The PDP-WT recommends amending clause 7 of Annex A of the ICANN Bylaws to reflect the practice that Stakeholder Group / Constituency statements are requested by the Working Group and the timeline for submission should start from that point instead of the initiation of the PDP. It should be noted in the PDP Manual that a WG can request Stakeholder Group / Constituency statements more than once if so desired.

8. Working Group Output

Recommendation 34.

- The PDP-WT recommends that PDP Working Groups continue to be required to produce at least an Initial Report and a Final Report, noting that additional outputs can be produced if desirable.

Recommendation 35.

- The PDP-WT does note that the description of the difference between an Initial Report and a Final Report as currently described in the Bylaws is not in line with actual practice, and recommends that this language is updated to reflect that an Initial Report may reflect the initial ideas of a WG which are then finalized, in combination with review and analysis of the public comment period in the second phase leading to the Final Report.

Recommendation 36.

- The PDP-WT recommends that a public comment period on the Initial Report remains mandatory. Additional guidance on further optional public comment periods, e.g. when there are substantial differences between the Initial Report and Final Report are to be included as part of the PDP Manual.

9. Termination of a PDP

Recommendation 37.

- The PDP recommends that a provision be added to the PDP Manual to allow for the termination of a PDP prior to the publication of a Final Report if the GNSO Council finds significant cause and passes a motion with a Supermajority vote in favour of termination.

Stage 4 – Voting and Implementation

1. Working Group Recommendations

Recommendation 38.

- The PDP-WT recommends modifying clause 10 – “Council Deliberations of Annex A” of the ICANN Bylaws to reflect current practice and requirements in the rules of procedure to consider a report if it is received at least eight (8) days in advance of a Council meeting, otherwise the report shall be considered at the next Council meeting. In addition, the PDP-WT recommends adding language to codify the current practice that any voting Council member can request the deferral of the consideration of a final report for one Council meeting..

Recommendation 39.

- The PDP-WT recommends providing additional guidance to GNSO Council in the PDP Manual on how to treat Working Group recommendations, especially those that have not received full consensus and the expected / desired approach to adoption of some, but not all, or rejection of recommendations. PDP WGs should be encouraged to indicate which, if any, recommendations are interdependent so the GNSO Council can take this into account as part of their deliberations. The Council should be strongly discouraged from separating recommendations that the PDP WT has identified as interdependent. The PDP-WT would like to express its concern about the GNSO Council ‘picking and choosing’ or modifying recommendations, but recognizes that this is the Council’s prerogative. The PDP-WT would like to encourage the GNSO Council that there were it does have concerns or would propose changes to recommendations, it passes these concerns and/or recommendations for changes back to the respective PDP Working Group for their input.

2. Public Comments

See recommendation 36.

3. Delivery of Recommendations to the Board

Recommendation 40.

- The PDP-WT recommends that all reports to the ICANN Board concerning a PDP should be publicly disclosed. In addition, it notes that the GNSO Council is responsible for the Board Report either as author of the report or by approving the report before it is sent to the Board. Board Reports on PDPs should be delivered from the GNSO Council directly to the Board and if any summaries or addenda are needed by request of the Board, those should be assembled by the GNSO council (upon consultation of the Working Group if necessary). If feasible, the Board Report should be delivered to the Board within 21 days following the adoption of the Final Report. The PDP-WT discussed at length the current practice of ICANN Policy Staff submitting a separate report to the Board, which is not disclosed to the community and is drafted without the aid of the Council or applicable PDP Working Group. The PDP-WT unanimously believes that these reports should not be kept confidential. If ICANN Policy Staff would like to submit a separate report related to a PDP to the Board or is requested to do so, it should be done in an open and transparent matter and disclosed to the community at the same time it is delivered to the Board. The PDP-WT notes that there might be cases where certain confidential information cannot be publicly disclosed due to its privileged nature. Nevertheless, even in those circumstances, as much information as possible, without disclosing business confidential information, must be provided. This may include a description by ICANN Staff of the general nature of such information and the rationale for its non-disclosure.

4. Agreement of the Council

Recommendation 41.

- The PDP-WT discussed whether the voting thresholds currently in place might need to be reviewed (see also overarching issues) but agrees that this issue should be covered as part of the next overall review of the GNSO. The WT does note that it has proposed two new voting thresholds in relation to the adoption of the WG Charter (see recommendation 19) as well as a new voting threshold for the termination of a PDP (see recommendation 37).

5. Board Vote

Recommendation 42.

- The PDP-WT recommends that the provisions in relation to the Board Vote in the ICANN Bylaws remain essentially unchanged, but recognizes that the current provision 13f⁶ is not clear especially in relation to what ‘act’ means. Some members of the WT suggest that this should be interpreted in a narrow sense (the Board cannot declare a recommendation as a Consensus Policy under the applicable ICANN Contracts if that recommendation was not approved by the required GNSO voting threshold). Other members of the WT suggest that this should be interpreted in a broader sense (the Board can approve a Consensus Policy even if it was not approved by the required GNSO voting threshold). The PDP-WT is in the process of seeking further input on this issue by the ICANN Board, Staff and the community in order to determine whether this provision needs to stay as is, be clarified or be removed. In addition, an explanation needs to be added in the PDP Manual to clarify that all recommendations, also those not recommending new or changes to Consensus Policies, should be communicated to the Board.

6. Implementation

Recommendation 43.

⁶ From the ICANN Bylaws – 13 Board Vote f. In any case in which the Council is not able to reach GNSO Supermajority vote, a majority vote of the Board will be sufficient to act.

- The PDP-WT recommends the use of WG Implementation Review Teams, when deemed appropriate, which would be responsible in dealing with implementation issues. A PDP WG should provide recommendations for whether a WG Implementation Review Team should be established and any other recommendations deemed appropriate in relation to such a Review Team (e.g. composition) as part of its Final Report. (see also recommendation 32)

Stage 5 – Policy Effectiveness and Compliance

1. Periodic assessment of PDP Recommendations / Policy

Recommendation 44.

- The PDP-WT notes that a periodic assessment of PDP recommendations and/or policy is important. WGs should be encouraged to include proposed timing, assessment tools and metrics for review as part of their Final Report.

2. GNSO Council Review of the PDP Working Group

Recommendation 45.

- The PDP Work Team notes that several documents, including the PPSC-WG WT and the WG Guidelines, reference a "Working Group Self-Assessment," which all WGs are encouraged to conduct. The Work Team believes that this could be a valuable exercise, and encourages PDP WGs to complete a candid and objective self-assessment at the conclusion of their work. However, the Work Team also notes that there are no ICANN guidelines and recommends that the GNSO Council develops such guidelines after some experience is gained in WG self-assessments...

3. Periodic assessment of overall PDP process

Recommendation 46.

- The PDP-WT notes that the periodic assessment of the overall PDP process is important, noting that a certain threshold of completed PDPs should be met before an overall review is

carried out. The WT does not have a specific view on whether the PPSC or a new Standing Committee should be responsible for such a periodic assessment.

Recommendation 47.

- The PDP-WT recommends that such an overall review also includes the review of the Working Group Model in the context of the PDP, which should assess whether there are stages in the PDP that are more suitable for Working Groups and those that might be more suitable for formal advice from Stakeholder Groups and Constituencies.

Other

Recommendation 48.

- The WT recommends that the definition of a 'GNSO Supermajority vote' is redefined to include the original meaning of GNSO Supermajority i.e. 2/3 of Council members of each house so a GNSO Supermajority vote would be 75% of one House and a majority of the other house or 2/3 of Council members of each house.

In addition, a number of overarching issues were identified which were deemed to have an impact on the overall policy development process or related to various stages of the new PDP and therefore needed to be considered once an initial outline of the new PDP would have been completed. These overarching issues consist of:

- Timing
- Translation
- Development of definitions
- Voting thresholds
- Decision-making methodology
- Transition / Implementation of the new PDP

Based on the discussions and deliberations to date, a flow chart which outlines the main elements of the proposed GNSO Policy Development Process can be found in the executive summary.

The WT, supported by ICANN staff, has also developed a first outline of the new Annex A (see section 4) as well as a supporting document that is envisioned to be included in the GNSO Council Operating Procedures as the PDP Manual (see section 5).

Based on the input received on the Initial Report and subsequent discussions, the PDP-WT has updated this report to a Proposed Final Report to allow for further input and feedback from the ICANN Community. Following review and analysis of the public comments received, the PDP-WT is expected to finalize its report recommendations for submission to the Policy Process Steering Committee (PPSC).