

The GNSO Council welcomes this opportunity to respond and provide input on the recommendations by the ICANN's Strategy Panel on Multistakeholder Innovation (MSI Panel), which published its Blueprint on 31 January 2014. As it is the Council's understanding that the outcome of this and the other Strategy Panels will be submitted directly to ICANN's President and CEO Fadi Chehadé for his consideration, this input is both submitted in response to the call for public comment (<http://www.icann.org/en/news/public-comment/strategy-panels-25feb14-en.htm>) and also sent directly to CEO Fadi Chehadé for his consideration as he evaluates the recommendations of the MSI Panel. The focus of our contribution is on those aspects of the recommendations that specifically relate to the GNSO Council's role as manager of the gTLD policy development process. Please note that GNSO Stakeholder Groups and/or Constituencies may submit additional comments on aspects of the recommendations that are specific to their role in the GNSO eco-system.

The initial deliverables for the MSI Panel as set out on the ICANN web-site were set to focus on:

- Examining how Internet policy related to unique identifiers might be best managed in the future;
- Proposing new models for broad, inclusive engagement, consensus-based policymaking and institutional structures to support such enhanced functions; and
- Designing processes, tools and platforms that enable the global ICANN community to engage in these new forms of participatory decision-making.

As many of these areas relate closely to the remit of the GNSO, which is responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains, the GNSO Council as well as its Stakeholder Groups and Constituencies have followed the developments of the MSI Panel closely, including active participation in the session that was held at the ICANN meeting in Buenos Aires. Several GNSO community members also provided input to the Ideascale as well as participating in the webinar that was subsequently organized at the end of January.

As an overarching comment, the GNSO Council would like to point out that several assumptions have been made in this paper concerning potential lack of effectiveness and legitimacy which do not accord with our understanding of the ICANN multistakeholder model and seem to result from the Panel's lack of understanding and failure to examine in

detail the GNSO Policy Development Process and existing policy development mechanisms. The GNSO Council itself acknowledges that there is room for improvement and/or enhancement in the development and management of gTLD policy. Consistent with our bottom up, ongoing improvements commitment, and recognizing this, the GNSO Council has recently embarked on initiatives to enhance and streamline the GNSO Policy Development Process (PDP), focusing on areas such as engaging new volunteers in the PDP process, improving online tools and training and exploring other mechanisms to make policy development more effective and efficient (see <http://gns0.icann.org/en/drafts/pdp-improvements-table-16jan14-en.pdf>). As such, we note several of the proposals of the MSI Panel which are very much in line with our own approach; some of which are actually already in effect.

Having had an opportunity to review the DRAFT blueprint in further detail, the GNSO Council would like to share the following feedback in relation to the proposals that could be directly applicable to the GNSO and its policy development and policy management activities (noting that other parts of the broader ICANN community may have different views or opinions on how these recommendations may apply to their respective activities):

- **Use Expert Networks:** the Blueprint seems to assume that there is a lack of expertise within ICANN, however it is not clear on which basis this assumption is made. The GNSO Council view is that, to the contrary, a great deal of expertise is currently already available and many experts from different backgrounds (technical, IP, civil society, registry/registrar, security, etc.) already actively participate in GNSO policy development activities. Clearly, attracting additional experts or identifying which fields of expertise are currently not represented within GNSO Policy Development activities is always welcome. The PDP Manual already foresees that GNSO PDP Working Groups are expected to actively reach out to individuals and/or organizations that have a known expertise or interest in the subject matter relevant to said PDP WG. In addition, PDP WGs are encouraged; both at the start of their deliberations and throughout the process, to identify whether there is a need for expert briefings to facilitate the deliberations (see GNSO PDP Manual at <http://gns0.icann.org/council/annex-2-pdp-manual-13jun13-en.pdf>). At times, ICANN budget has been cited as a barrier to such additional resources, but in general, the Council has not found this a barrier and has

welcomed ICANN policy staff full engagement in identifying and bringing onboard subject matter experts specific to PDPs.

However, the GNSO Council does recognize that additional outreach and access to expert networks may be beneficial to obtain additional insights and perspectives, especially in those areas where less ‘internal’ expertise may be available. This obviously is a matter with budget implications, and the GNSO Council welcomes the recognition by ICANN of such needed resources to the PDP process.

- ***Embrace Open Data and Open Contracting*** – The GNSO Council would like to point out that all gTLD registry and ICANN accredited registrar contracts are already freely available from ICANN’s web-site (see <http://www.icann.org/en/about/agreements/registrars> and <http://www.icann.org/en/about/agreements/registries>). If it is helpful to certain communities to have this information available in machine-readable, usable and structured formats, the GNSO Council would support this recommendation.

In this section, the term ‘contracts’ appears to refer to both the contractual agreements that ICANN has with gTLD registries and ICANN accredited registrars as well as contracts that ICANN has with third party suppliers. The GNSO Council would like to strongly caution against treating these very different kinds of contracts in a similar way. We believe that the broader community will support this perspective.

Contractual agreements that ICANN has with gTLD registries and ICANN accredited registrars, especially the provisions relating to “Consensus Policies”, which can be developed through multistakeholder participation in a GNSO Policy Development Process are a unique feature of the ICANN model and should not be confused with ‘normal procurement’ contracts for different kinds of ICANN services to the broader community for website development, identification of general contractors, retention of experts for different kinds of supporting services, etc, for which open platforms and crowd sourcing may be appropriate experiments.

Recent trends by ICANN are apparently to not even post those kinds of contracts for public bid, so it is challenging to assume that moving to crowd sourcing to design such bids is a useful approach.

- **Enable Collaborative Drafting** – The GNSO Council is pleased to report that it already makes active use of wikis to collaborate online (see <https://community.icann.org/category/gnso>). Furthermore, PDP WGs make active use of tools such as Adobe Connect which allow for live editing and sharing of documents which have had a major impact on facilitating online collaboration and participation. In considering new tools, a strict requirement and respect for diversity of geo participants must be maintained. Many options ignore the bandwidth limitations and time limitations of the widely distributed participants in ICANN.
- **Crowdsource Each Stage of Decisionmaking** - The GNSO Council notes that GNSO PDP Working Groups already make active use of brainstorming tools such as mind-mapping, public comment forums, workshops as well as outreach to other organizations and fora when opportunities for input and feedback exist via WG members, to encourage and ensure opportunities for input at every step of the PDP. It may also worth pointing out that GNSO PDP Working Groups are open to anyone interested to participate, the only requirement for participation is the completion of a Statement of Interest to ensure a level playing field.

Crowdsourcing is not an appropriate tool to use in the development of consensus policy, which has in effect the force of regulation/binding contract agreements. Policy making in the gTLD space brings a responsibility that requires informed and engagement in not just designing the policy, but in assuming responsibility for its implementation, and its enforcement. The public comment process, which the GNSO follows, and ICANN follows provides appropriate general opportunity to review and comment on policy recommendations. Numerous comments have been submitted to ICANN to call for improvements in the public comment process, which rely on improvements in staff support to summaries; and adjustments to the public comment period.

- **Move from “Stakeholder” Engagement to Global Engagement** – GNSO PDP Working Groups are already topic based rather than Stakeholder Group or Constituency based

(PDP Working Groups tackle a certain issue or problem around which interested parties will gather regardless of affiliation). Also, Stakeholder Groups, such as the gTLD Registry Stakeholder Group already allows for this concept of organizing around topics, see for example the new gTLD Applicant Group (NTAG). Further reviews of the performance of the current structure and its ability to allow for broad involvement and participation are expected to be conducted as part of the upcoming GNSO review. This recommendation is an example of the gap between the Panel, and the practices and realities within ICANN.

Moving to global engagement implies that the communities engaging at ICANN are not hard at work in broadening and deepening participation from interested and relevant parties, This is perhaps a misunderstanding of the Stakeholder Groups strong interest in this broadened engagement. The GNSO Council leaves this input to the key stakeholder communities to comment on.

- ***Impose Rotating Term Limits*** –Term limits for the GNSO Council were introduced during the last GNSO Review (See ICANN Bylaws Article X, Section 3(2) “Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term”). In relation to GNSO PDP Working Groups, as these have a limited life-time and each WG is newly formed, there does not seem to be much purpose to introduce term limits, but the GNSO Council is happy to be convinced otherwise.
- ***Experiment with Innovative Voting Techniques*** – It is very important to point out that GNSO Policy Development decision-making in PDP Working Groups is done on the basis of consensus, NOT voting. This is a very important feature of the GNSO PDP and the multistakeholder process that underpins the GNSO PDP. The GNSO Council believes that consensus based decision-making is actually much more challenging than voting, but is much better designed to ensure broad support to decisions taken. As such great care has been taken to map out the process that needs to be followed to make consensus determinations (see section 3.6 of the GNSO Working Group Guidelines at <http://gns0.icann.org/council/annex-1-gns0-wg-guidelines-08apr11-en.pdf>).

Voting does take place at the GNSO Council level where as the manager of the process, the GNSO Council typically confirms the outcome of a GNSO PDP Working Group through a vote. This is also a requirement per the Bylaws to ensure that when it concerns “Consensus Policies” these are implementable and enforceable on ICANN contracted parties.

Working groups may from time to time, take a sense of the members, and voting occurs at the Constituency/Stakeholder and in some of the Advisory Committees to affirm, or confirm policy statements/positions.

However, ICANN’s processes largely rely on consensus decision making, which, in our view, is a strength of the ICANN model. Moving to crowd sourcing, voting, would greatly stress the collegial nature that we have worked so hard to embed at ICANN. The GNSO Council fails to understand the value of taking this step backward.

- ***Crowdsource Oversight and Develop Standards to Measure Success & Embrace Evidence*** – The GNSO Council has recently initiated a Working Group that has been tasked with exploring opportunities with respect to reporting and metrics recommendations that could better inform policy development via fact-based decision making, where applicable. The GNSO Council is planning to pass on any further information in relation to these recommendations to this Working Group so it can take it into account as part of its deliberations.

We, however, fail to understand the enthusiasm for ‘crowdsourcing’ as a modality proposed to ICANN processes. ICANN GNSO Policy processes, and other parts of ICANN’s work have strong accountability requirements. While we welcome the continued increase in engaged and informed participants in all parts of ICANN, mechanisms for increasing participation must be accompanied by accountability mechanisms.

In conclusion, the GNSO Council notes that most of the proposals made by the MSI Panel that are considered applicable to the GNSO Policy Development Process are either already implemented or existing mechanisms for their further exploration exist which will allow for further review and consideration of these proposals.

We appreciate this opportunity to provide input and would welcome any questions or dialogues in relation to our input. We are committed to the ICANN bottom-up, multi-stakeholder model and remain open to innovation and development ideas that are appropriate and suitable to the consensus based model that we are actualizing within policy management at ICANN.

Sincerely,

Jonathan Robinson

Chair, GNSO Council

For and on behalf of the ICANN GNSO Council