

A review of the Council of the Generic Names Supporting Organization of the Internet Corporation for Assigned Names and Numbers

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Introduction

The Generic Names Supporting Organization (GNSO) is the ICANN body which according to the ICANN bylaws is “responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains”. It was formed as part of the Evolution and Reform Process undertaken by ICANN in 2002.

The policy development process of the GNSO is managed by the GNSO Council. Members of the Council come from six constituencies:

- gTLD Registries (representing all gTLD registries under contract to ICANN);
- Registrars (representing all registrars accredited by and under contract to ICANN);
- Internet Service and Connectivity Providers (representing all entities providing Internet service and connectivity to Internet users);
- Commercial and Business Users (representing both large and small commercial entity users of the Internet);
- Non-Commercial Users (representing the full range of non-commercial entity users of the Internet); and
- Intellectual Property Interests (representing the full range of trademark and other intellectual property interests relating to the DNS).

In addition there are three members appointed by the ICANN Nominating Committee. Current Council members are:

gTLD Registries

Ken Stubbs
P. Colebrook
Cary Karp

ISPC

Greg Ruth
Tony Harris
Tony Holmes

NCUC

Jisuk Woo
Marc Schneiders
Carlos Afonso

Nominating Com.

Alick Wilson
Demi Getschko
Amadeu Abril | Abril

Registrars

Tom Keller
Ross Rader
Bruce Tonkin

CBUC

Philip Sheppard
Marilyn Cade
Grant Forsyth

IP

Lucy Nichols
Niklas Lagergren
Kiyoshi Tsuru

Council meetings are also attended by liaisons from the Government Advisory Committee, the At Large Advisory Committee and the ccNSO. The liaisons do not have voting rights but are an important link between the GNSO and these other bodies.

When the GNSO and other ICANN Supporting Organizations were formed, the bylaws stipulated that a review of their performance and operation was to be undertaken at regular intervals. A review was to answer two questions:

- whether that organization has a continuing purpose in the ICANN structure
- whether any change in structure or operations is desirable to improve its effectiveness

This document is a review of the GNSO Council (but not the GNSO as a whole) in accordance with the ICANN bylaws. It has been conducted under Terms of Reference approved by the ICANN Board. A copy of the Terms of Reference can be found in Appendix 1.

The information, views and recommendations contained in this review are based on two main sources: a review of documentation prepared by GNSO Council, and interviews with Council members and others who have had some interaction with the GNSO Council or the GNSO process. The data that has been used in the analysis is from January 2003 to October 2004. A list of interviewees and those who responded to written questions can be found in Appendix 2.

In addition to this independent review, the GNSO Council has done a self review. This review can be found in Appendix 3. The independent review was conducted without knowledge of the self review by the Council, and the self review was only incorporated as an appendix into the final draft.

In accordance with the Terms of Reference, this report is broken up into two main sections which deal with the two major questions that the review should cover. In addition there is another section which raises a number of issues that need further examination but are outside the Terms of Reference.

Goal 1 “whether that organization has a continuing purpose in the ICANN structure”.

Policy achievements. Has the GNSO Council contributed to ICANN policy development?

Policy achievements of the GNSO Council from January 2003 to October 2004 can be seen in the table below.

Policy area	Specific Topic	Completed/ Work in progress	How was the work undertaken?	Changes to contracts?	Other changes?
Whols	TF recommendations 19 Feb 02	Completed	Task Force	<ul style="list-style-type: none"> • WhoIS data reminder policy • Whols marketing restriction policy • Restored names accuracy policy 	
	Formation of 3 task forces	WIP	Task forces	None to date	None to date
Transfers		Completed	Task force	<ul style="list-style-type: none"> • Inter registrar transfer policy 	
Deletes		Completed	Task force	<ul style="list-style-type: none"> • Changes to RAA 	
New Registry Services		WIP	Council	None to date	None to date
.net successor			Sub-committee (1 from each constituency)		Announcement of process

In 2003 and 2004, the GNSO Council recommended five changes be made to relevant contracts and successfully announced the process for the designation of a successor for the .net registry.

On the one hand it may be said that this seems a small number of policy accomplishments for nearly two years work. However, it is important to note several points about what work was accomplished and how it was accomplished.

Interview data suggests that these policy initiatives are in areas that are important to the constituencies that the GNSO represents. Deletes and Transfers are important issues for internet users in both business and non-commercial settings. Whois data is a critical part of the functioning of the internet. Council members and non-Council members agreed that these areas all had a significant impact on the way that services were provided to users of the internet.

All of the work that has been finalised has been based on a consensus position. While there be some flaws in the PDP process (see the PDP section below), it has been used effectively to allow constituencies to come together to discuss an issue and reach a consensus position. The policy recommendations that were sent to the ICANN Board were all sent with Council votes that show widespread acceptance by the constituency groups.

The places where the Council has been unable as yet to complete work are complex issues. The work that is being undertaken by the Whois taskforces is a good example of this. These issues take a substantial amount of time to work through thoroughly. Rather than attempt to force a quick solution, the Council and the taskforces have opted to work through the issues carefully, gathering data to improve the quality of decision making.

The council in its present form has only been in place for less than two years. The model of policy making and governance that it has adopted is unique, and is to be expected that it will take time to learn to do this effectively.

All of the GNSO Council work was undertaken by volunteers, that is, Council Members are undertaking the work in addition to the, mostly full-time jobs they have with their companies/organisations. Moreover, there is only a limited pool of people with the time and expertise to assist with task forces and other Council work. These people only have a limited amount of time available. For much of the time, the Council and taskforces had limited staff support (see below for more discussion of the level of staff support). That they have achieved so much is a credit to them.

Summary and Recommendations

The Council has worked effectively on issues that are important to the constituencies that comprise the GNSO. While there are undoubtedly ways of improving the efficiency of the process, the Council has made a significant contribution to the ICANN policy process over the last two years.

Recommendations concerning improvements to the efficiency of the Council's working will be found in the following sections.

2. Outreach, geographic diversity and transparency.

Has the GNSO Council contributed to other ICANN core values such as outreach, bottom-up consensus based policy development, geographical diversity and transparency?

Outreach and bottom-up consensus based policy development

In addition to the policy work described above, the Council has been involved in the following outreach activities:

Workshops and Public Forum Presentations

- Rio ICANN meeting March 2003
 - Presented recommendations on inter-registrar transfer policy
 - Presented recommendations on Whois Accuracy and bulk access
- Montreal ICANN meeting June 2003
 - Conducted Whois workshop (2 days)
- Carthage ICANN meeting October 2003
 - Participated in public discussion on wildcard service
 - Conducted Whois workshop
- Rome ICANN meeting March 2004
 - Conducted approval process for gTLD service changes workshop
 - Conducted Whois task force workshops
 - Participated in WSIS workshop
- Kuala Lumpur ICANN meeting July 2004
 - Participated in IDN workshop
 - Participated in WSIS workshop
 - Presented Update on Whois issues

Interaction with other Supporting Organizations

- Rio ICANN meeting March 2003
 - Presentation from Chair of ALAC on purpose of ALAC
 - Appointment of liaisons from GAC, ALAC, ccTLD
- Carthage ICANN meeting October 2003

- GAC working group and GNSO Council and GNSO task force members meet
- Rome ICANN meeting March 2004
 - GAC working group and GNSO Council and GNSO task force members meet
- Kuala Lumpur ICANN meeting July 2004
 - GNSO Council and ccNSO Council meet
 - GAC working group and GNSO council and GNSO task force members meet
 - SSAC addressed council on SSAC report and gave an update on DNSSec

Other outreach activities

- Expert community involvement in Transfer, Whols and Deletes implementation committees (Jan 2003-May 2003)
- Scott Hollenbeck, Verisign, Proreg working group meet with Whols task force (Feb 2003)
- Council's response to the Board on the expansion of the gTLD namespace (Jun 2003)
- SSEC and Verisign address the GNSO Council on the wildcard issue (Sep 2003)
- Verisign address the Whols task force 3 on CRISP (Apr 04)
- Whols task force 3 hold public forum teleconference to solicit input (Jun 04)

In addition to these activities at a Council level, members of the Council also conduct outreach activities through their own constituency groups.

Geographic diversity

The geographic diversity of the Council can be assessed in a two ways: membership participation and Council activity.

Members of the Council are drawn from four of the five ICANN regions, with no representative from Africa. It is also worth noting that there has been only limited participation in the Council from non-English speakers from the Asia Pacific region, and that these have come from the Non-commercial user constituency.

The Council has actively participated in each of the ICANN meetings. In this way over the period since January 2003, the Council has run workshops in every ICANN region. ICANN meetings draw a significant local contingent, and the Council's activities at these meetings are a chance for local people to gain an understanding of the issues that the GNSO Council is dealing with.

Again, in addition to the activities at a Council level, Council members (at least in theory) have access to global constituency groups. Assessing the impact and effectiveness of these is beyond the scope of this report.

Transparency

The Council runs in a very transparent fashion. Unless the Council makes an exception which it has not done in the last two years, all meetings are open. Minutes are posted promptly. Recordings of meetings are available from the website. All reports are available from the website.

Summary and recommendations

Recommendation 1: The Council has made a significant contribution to other ICANN core values such as outreach, bottom-up consensus based policy development, geographical diversity and transparency. It has endeavoured to make good use of the ICANN meetings to conduct outreach activities with other ICANN organizations and with the broader internet community. The Council should plan to expand and enhance these activities.

Recommendation 2: The appointment of liaisons is a good step in building links with other parts of the ICANN structure. Again consideration needs to be given to the best way that these liaisons can be used to raise awareness of Council issues. The crafting of a “role description” or “partnership agreement” may assist with setting clear expectations and maximizing outcomes.

Recommendation 3: While it is healthy that the Council has representation from four of the ICANN regions, the Council should develop a plan for increasing representation so that all regions are covered.

Recommendation 4: Furthermore, consideration needs to be given to ways in which people from non-English speaking backgrounds can participate more actively in Council. This may involve making greater use of face to face time at ICANN meetings (where communication is easier) in addition to telephone conferences. The availability of translations of key documents would also assist, but this would need careful consideration as it could easily become a very expensive exercise.

The Council is already a very transparent organization and all that could be asked is that the high standards be maintained.

Goal 2. “whether any change in structure or operations is desirable to improve its effectiveness”.

3. PDP timelines. Are the timelines relevant?

A full description of the Policy Development Process (PDP) can be found in Annexe A of the ICANN bylaws. In summary, the PDP requires that following a request for a PDP, which can be made by the Council, the Board or an Advisory Committee, the Council should request an issues report which should recommend whether or not a PDP should be initiated. The Council can then choose whether to use a task force or other means to run the PDP. Whichever method is adopted, a report should be published in 50 days. The report should be based on constituency statements, public comments and, in the case of PDPs run by a task force, a vote. Further public comment follows the issuing of the report and council then votes on a final report.

In practice, the PDP has worked quite differently. The table shows the actual time taken for the PDPs that the Council has undertaken.

Policy initiative	Start date	Finish date
New registry services	2 Dec 2003	WIP
Deletes	29 Oct 2002	22 Mar 2003
.net successor operator (this was not strictly a PDP, but did follow the PDP process)	1 April 2004	5 Aug 2004
Whols Initial TF	Nov 2001	6 Feb 2003
Whols TF 1&2 (TF 1 and TF 2 combined due to the interrelatedness of the issues they were considering)	29 Oct 03	WIP
Whols TF3	29 Oct 03	WIP

It is clear from this data that there are serious problems with the PDP timelines. That is, the timeline foreseen in the bylaws is rarely achieved. This is entirely consistent with the interview data. Everyone interviewed felt that the timelines set out for the PDP were overly ambitious for much of the work that the GNSO Council undertakes.

Interviews with those who were involved in the creation of the PDP process suggest that the timelines were always seen as best intentions or stretch targets rather than hard and fast rules. In the nearly two years that the PDPs have been running, it is not surprising that the Council has run up against issues where the enormity of the task was larger than the designers of the PDP had envisaged. It is interesting to note that the bylaws allow changes to the PDP “provided that such procedures are approved by the Board”, and that unless such changes are made, the GNSO Council should comply with the approved process. Although the GNSO Council has approved the extension of timelines for many PDPs, it has not sought Board approval for changes. It must now be appropriate to formalize a more realistic process through Board recognition.

In considering timelines, it must be remembered that the GNSO Council is a globally dispersed team of volunteers. Most of its members receive no time from employers to undertake this work and it must be squeezed in around other commitments. Any timelines must take this reality into account.

Although the timelines have not been kept in most cases, there are pieces of work where the timelines have proved realistic. This has been in cases where issues were not too complex and determining views of constituencies was all that was required of the Council. An example of this is the .net proposal which, while not a formal PDP, did follow the PDP process and was completed within the suggested timelines.

The timelines are definitely not realistic for more complex issues that require research, detailed legal opinion or other information gathering. This is a substantial portion of the Council’s work, and arguably the place where it adds the most value. The work on Whols is a clear example of this. It is important to note that the Council is capable of dealing with these complex issues (as the Whols recommendations presented to date and those being presented at the Capetown meeting demonstrate), but not within the strict timelines of the PDP process as it stands.

Before moving to consider alternatives to the present timelines, it is important to note that, although there was strong feeling that the timelines of the PDP were unrealistic, there was also appreciation for the value that the structure of the PDP brings to the Council’s workings. Some of those who had been involved in earlier DNSO process felt that the PDP provided process clarity which had been missing in previous activity. The unrealistic nature of the present timelines should not be seen as a reason to abandon the PDP altogether. What is needed is a more flexible process that allows for the diversity of the work that the Council undertakes.

There was a fairly strong opinion that it was reasonable to estimate the difficulty of and therefore the amount of time required for a piece of policy work once a scoping study had been undertaken and terms of reference written. Rather than a PDP that stipulated

the same timelines for each policy issue, what is required is one which acknowledges the variety of work that the Council undertakes and sets a timeline for each PDP as it is scoped.

One feature of the PDP that has worked well is the outreach of Council within the GNSO. For all of the policy issues addressed by Council, Council members were able to consult with their constituencies and report back with a constituency position. Constituency reports as required by the PDP exist for all issues. These reports have been compiled for each of the issues that the Council has considered. Preparing these within the timeframe suggested by the PDP has not been unrealistic.

However, there was a sense that the process did not necessarily encourage an approach whereby constituencies were helped to understand the perspectives of others in a way that would assist the building of consensus. Constituency reports reflect the position of that constituency, but there is no process whereby constituencies are encouraged to understand the viewpoints of others.

Another aspect of the PDP that seems to be working well is the public comment period which allows anyone who is interested to comment on reports when they are issued. All of the PDPs have followed this process, and, although the quality and number of comments has varied, each of the PDPs has received substantial comment.

While the public comment period allows comments from anybody, at present there seems to be no formal process whereby other ICANN organizations are requested to comment on reports. This seems a waste of an opportunity to encourage better communication between ICANN organizations on issues that are significant for the internet community as a whole.

Summary and recommendations

Changes are needed to the PDP timelines. There is a need to formalize current practice, not least to ensure that the GNSO operates in accordance with its own bylaws and procedures. The structure of the PDP needs to be maintained, but it needs to acknowledge that different policy issues require different types of work and therefore different timeframes.

Recommendation 5: The Council should seek approval from the Board for a revised policy Development Process. The alternative process should have the following elements:

- Scoping phase (history of the issue, key questions, contractual issues, terms of reference, timelines, milestones including deliverables and check points for legal opinion) which should be done as quickly as feasible, probably within the timeframe of the current issues report
- Policy work (including research, consultation with constituencies, periods for public comment) with timelines set in the scoping phase according to the complexity of the task

- Regular reporting to Council on milestones as established in the scoping phase
- A final report and public comment period as in the current PDP
- A Council vote as in the current PDP

Recommendation 6: The Council should develop a formal process for seeking input from other ICANN organizations for each of the policies it is developing.

Recommendation 7: In addition to these changes, the Council should consider other measures to speed up the consensus process, including the greater use of time at ICANN meetings to discuss issues face to face, and possibly the use of facilitators to move more quickly to understanding of issues and building of consensus.

4. Staff support for policy development. Has there been effective ICANN staff support for policy development?

The ICANN bylaws stipulate that there will be a member of staff to “work on substantive matters” and that ICANN shall “provide administrative and operational support necessary for the GNSO to carry out its responsibilities”.

The GNSO has a Secretariat that it brought across from the DNSO structure. This Secretariat provides administrative and logistical support for the Council, including the organization of meetings, the preparation of agendas and the taking of minutes. There is universal acclaim for this function from all who are involved with the Council.

The provision of staff support for “work on substantive matters” has been far less successful. It was envisaged that this staff function would enable the smooth running of the PDP, in particular by the writing of the required reports. The table below shows the reports that have been written for each of the policy areas where Council has undertaken work.

Policy area	Specific Topic	Completed/ Work in progress	Staff reports	Other reports
Whols	TF recommendations 19 Feb 02	Completed		Task Force wrote report

	Three current TFs (now combined to two)	WIP	2 issues reports	Task Force wrote reports
Transfers		Completed		Task Force wrote report
Deletes		Completed		Task Force wrote report
New Registry Services		WIP	Issues report	Council Chair wrote draft recommendations
.net successor		Completed		Committee chair wrote report

Clearly the provision of staff support has fallen well short of the standards outlined in the bylaws. This is partly understandable given the changes that were made to the ICANN staff structure, the time taken to fill positions, and budget constraints due to unexpected litigation expenses. ICANN did provide a staff member to work with the GNSO Council, but this person also had other responsibilities that made significant claims on time.

While these reasons for the past provision of staff support may be understandable, the inadequate level of support provided has significantly hampered the work of the Council. In an organization that relies on volunteers, it is often difficult to find people with the time and expertise to do the writing required of a policy body. If the GNSO Council and its taskforces are to work at anything like optimal capacity, it is critical that adequate and appropriate staff support is provided.

On a positive note, interviews for staff support positions are being conducted as this report is being written, with the expectation that offers will be made within the next few weeks. Once an appointment has been made, it will be important to “get the individual up to speed” as quickly as possible. This will need to include briefings from the Council and an effective handover from the current staff manager to ensure that the lessons from the past year are not lost.

In addition to the support that needs to be provided by the staff manager, the Council relies on ICANN for legal opinion and other operational advice. The table below lists the participation of ICANN staff members on GNSO Council calls for 2003 and 2004.

	2003	2004
ICANN legal counsel	13 out of 15	2 out of 12
VP Business Operations	3 out of 5	7 out of 12
VP Supporting Organizations	NA	6 out of 12
Staff GNSO policy officer	3 out of 3	12 out of 12
GNSO Secretariat	15 out of 15	12 out of 12

(The number of calls in 2003 differs for each staff member to reflect the timing of their appointment.)

There is a perception amongst Council members that there has been insufficient support from ICANN General Counsel for policy development issues. This lack of support has slowed down the policy process because contractual issues were not understood early in the PDP, the history that brought about the current contract has not been understood, and lack of knowledge of legal issues has led task forces to propose solutions that are not workable in contract.

Under a previous management structure, the ICANN General Counsel was also the operations manager and the policy support manager and was able to answer all questions on any call. The growth in the volume of issues that ICANN needs to deal with and the associated change in the ICANN management structure mean that this model is now neither feasible nor desirable.

The issue is not whether the General Counsel is on every call, but rather that legal advice can be obtained when needed. Having a competent staff policy person involved with every PDP should assist with identification of legal issues and provide a means of obtaining advice when needed. Importantly, the General Counsel (or a member of the legal department) should be involved at the beginning of each PDP to brief the task force on the history of the contract, the contractual issues involved in the problem and to identify places where further legal input may be necessary or useful.

It should be noted that it is not the role of the GNSO Council to draft contracts. The Council works on the policy. The wording of contracts should be left to the ICANN legal team.

Summary and recommendations

Adequate support is critical for an organization where the work is done by volunteers. The GNSO Council has received high quality administrative support through the GNSO Secretariat. Staff support for the policy work of the GNSO Council over the last two years has been inadequate. The reasons are perhaps understandable, but this state of affairs must not be allowed to continue.

Recommendation 8: ICANN should move to put in place a high calibre staff policy support person at the earliest possible opportunity.

Recommendation 9: The Chair of the GNSO Council and VP Supporting Organizations should oversee an effective handover from the current staff support person to ensure that lessons learnt over the past year are not lost.

Recommendation 10: The Chair of the GNSO Council and the VP Supporting Organizations should establish a service level agreement between the GNSO Council and ICANN management that specifies the amount and type of support that is to be provided. Where possible, this should include measures (eg turnaround times for legal opinion, delivery of reports by agreed dates,

minutes posted within a certain number of days). The Chair should consult the Council to ensure the targets meet the needs of the Council and its taskforces. The VP Supporting Organizations and Chair of GNSO Council should meet quarterly to review performance measures and report these to the President.

Recommendation 11: The Council should work with the ICANN General Counsel to establish clear communication channels for the request for and provision of legal opinion. At a minimum this should include detailed legal input at the scoping phase of each PDP. Wherever possible, “check points” for further legal input should be established as part of the scoping study.

5. Policy implementation and compliance. After the completion of policy development has policy implementation, compliance and outcome been effective?

The table below shows the completion and implementation dates of policies that the Council has completed. In addition it shows the status of compliance frameworks for the policies and the systems in place to measure outcomes.

Policy area	Specific Topic	Date completed	Date implemented	Compliance status	Outcome measurement
Whols	• Whols data reminder policy	27 Mar 2003	31 Oct 2004	None in place	None to date
	• Whols marketing restriction policy	27 Mar 2003	12 Nov 2004	None in place	None to date
	• Restored names accuracy policy	27 Mar 2003	12 Nov 2004	None in place	None to date
Transfers	• Inter registrar transfer policy	25 Apr 2003	12 Nov 2004	None in place	None to date
Deletes	• Changes to RAA	24 Jun 2003	21 Dec 2004	None in place	None to date
New Registry Services		WIP			
.net successor		5 Aug 2004		NA	NA

As the table above clearly shows, there have been very long delays between the completion of a policy process and the implementation of the policy. There seem to be two reasons for this.

In some cases, the policy was not able to be implemented without more work by an implementation team. This was because of technical or contractual issues with the policy direction.

In other cases, the lack of available resources in ICANN delayed the implementation of the policy. The successful implementation of policies in the fourth quarter of 2004 suggests that this source of delay may now be resolved.

Overall, it is too early to tell if compliance and outcome measurement have been effective. Not enough time has evolved since implementation to do any testing of compliance. However, there seems to be no compliance and measurement frameworks in place. It is important that the Council work with ICANN operational staff to ensure that there is a compliance and measurement framework for each policy. A key part of this will be the development of a graded system of penalties for policy infringements. As one interviewee put it, “at the moment there is only the death penalty and understandably ICANN is afraid to use it”

Summary and recommendations

Recommendation 12: The Council needs to ensure the viability of implementation of each of the policy recommendations that it makes to the Board.

Recommendation 13: ICANN needs to put in place a compliance function to monitor compliance with policies.

Recommendation 14: The Council needs to work with ICANN operational staff to develop a compliance policy with graded penalties.

Recommendation 15: Council needs to have a built in review of the effectiveness of policies in the policy recommendations that it makes to the Board

6. Demand-based raising of policy issues. Is the current mechanism of alerting the GNSO Council to new policy issues effective?

The table below shows the origination of each of the policy areas that the GNSO has worked on since January 2003.

Policy area	Specific Topic	Initiated by
Whols	TF recommendations 19 Feb 02	GNSO Council
	Formation of 3 task forces	GNSO Council

Transfers		GNSO Council
Deletes		GNSO Council
New Registry Services		ICANN President
.net successor		ICANN VP Supporting Organizations

While this is a small number of issues, it seems that most of the policy work is being initiated by the GNSO Council. If this is coming about because the Council is being made aware of issues through the constituencies, this is not a bad thing. However, it would be useful to complement this with an awareness of the issues that are being raised as complaints within the ICANN structure. The appointment of an Ombudsman will formalize the complaints collection process and provide useful information for the Council. As part of the Ombudsman's role, a report will have to be made to the Board about common and systemic problems. The Council should be able to use this report to identify issues that could be resolved through the use of the PDP.

Although it will be useful to identify other issues through examination of the Ombudsman's report, the Council should be careful that it does not become involved in too many issues at the one time as, even with full staff support, its resources are limited and it needs to be careful not to overstretch.

Summary and recommendations

Recommendation 16: The GNSO Council should utilize the Ombudsman and any reports produced by the Ombudsman as source of systematic analysis of complaints and therefore of issues that may need to be addressed through the PDP.

7. Voting pattern. Does the Council vote as a consensual body?

Since the time of its inception, the Council has voted on a large number of issues, ranging from administrative and procedural matters to matters of significant policy. A full voting record can be found in Appendix 4. The following is a summary of key voting trends:

	2003	2004
Votes taken	50	13
Unanimous votes	29	8

Unanimous except for abstentions	10	4
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With the exception of seven votes in 2003 when the NCUC split its vote, constituencies have always voted as a block except on occasions when a member has abstained or been absent from a meeting without proxy.

From the voting data, it would appear that the Council votes as a consensual body. This would suggest that the Council works to achieve consensus before the vote is taken.

However, without having been party to the discussions on lists, the interaction of members of taskforces and individual contact between Council members, it is impossible to know how this consensus was arrived at. The Evolution and Reform Committee suggested that the Council needed members who were not aligned with any of the constituency groups and who might therefore be able to help bring about consensus by acting as mediators or neutral brokers. It is intended that the Nominating Committee members fill this role. At this stage it is difficult to judge whether they have been successful at this role, and even to judge whether the role is needed. Opinions from those interviewed varied, but most were of the view that the Nominating Committee members did add some value. Many expressed the view that more time was needed before a judgement could be made. Others were of the opinion that the value that the Nominating Committee members could bring was dependent on the individuals involved. Providing the Nominating Committee with clearer guidelines of the sort of individual who might be suitable may improve the effectiveness of the Nominating Committee members to the Council as a whole.

Summary and recommendations

At this stage it is too early to form a definitive view on the effectiveness of the Nominating Committee members on the Council.

Recommendation 17: The Council should continue to explore ways in which the Nominating Committee members can add value to the Council process.

Recommendation 18: The Council should draft “role descriptions” for the Nominating Committee which describe the skills, expertise (especially technical expertise) and attributes that are needed for the Nominating Committee members to be optimally effective members of the Council.

8. Number of constituency representatives. Has the presence of three rather than two representatives per constituency helped or hindered the GNSO Council?

The ICANN bylaws, through the Evolution and Reform Process, created the GNSO out of the DNSO. Based on perceptions of the workings of the DNSO, the bylaws stipulate that each constituency should have two representatives on the Council. The intention was to form a smaller Council in the belief that this smaller group would be more efficient. At the time there was significant push back from those involved in the DNSO. They felt that three representatives were needed if the Council was to undertake its work effectively. As a result, the bylaws contained transition articles which allow for three representatives from each constituency until the conclusion of the ICANN annual meeting in 2003. However, the feeling amongst Council members that the Council needed three representatives from each constituency was so strong that the Board has allowed the Council to continue in this way, but the original intention of the Bylaws has not been changed.

This table shows the number of members actually involved in the meeting and does not include proxy votes

	CBUC	ISCPC	Registrars	gTLD reg'tries	IP	NCUC	Nom Com
16 Jan 03	3	2	2	3	2	1	
20 Feb 03	2	2	3	3	1	3	
11 Mar 03	2	3	3	2	2	1	
25 Mar 03	2	3	3	3	2	2	
17 Apr 03	3	3	2	3	2	2	
22 May 03	3	2	3	3	2	2	
5 Jun 03	3	2	3	3	1	2	
24 Jun 03	3	3	3	3	1	1	0 (only 2 seated)
14 Aug 03	3	2	3	3	1	1	0
25 Sep 03	3	2	3	3	0	1	0
16 Oct 03	2	3	3	2	0	2	0
29 Oct 03	2	3	3	3	2	2	0
20 Nov 03	2	1	3	2	1	1	0
2 Dec 03	3	2	2	3	0	1	0
18 Dec 03	2	2	3	3	0	2	0
22 Jan 04	2	2	3	3	3	1	3
19 Feb 04	3	2	3	3	3	1	2
3 Mar 04	3	3	3	3	3	2	3

1 Apr 04	3	1	2	3	3	1	2
6 May 04	3	1	3	2	0	1	1
16 Jun 04	3	1	3	3	1	2	1
12 July 04	2	2	2	3	3	1	3
20 Jul 04	3	3	3	2	3	1	3
5 Aug 04	3	1	3	3	2	2	3
19 Aug 04	2	3	3	3	1	1	0
9 Sep 04	3	3	1	2	3	1	3
21 Oct 04	3	2	3	3	2	1	0

There is no evidence from the interview data or from other information that the current size of the GNSO Council has reduced its effectiveness. In fact every single person who was interviewed (including those who had previously stated that they believed that the number of representatives should be reduced to two) was either strongly in favour of the current three representatives (a significant majority) or neutral on the issue.

There were a number of reasons given for maintaining three representatives.

- Distribution of workload. Having three representatives means that there are more people to do the work of the Council. In a volunteer organization, this makes sense.
- Attendance at meetings and calls. Again, given the volunteer nature of the Council, having three representatives increases the chances that all constituencies are represented on each call. An examination of the attendance record above supports this view.
- Increasing the geographic diversity of the Council. Having three representatives increases the chances for the Council to achieve active representation from each of the ICANN regions.

However, it is worth noting that three representatives potentially means a large number of people on Council conference calls. This probably does make it more difficult for all members to actively participate, particularly those for whom English is not a strong language or those who come from cultures that do not fit easily with Robert's Rules of Order.

Summary and recommendations.

Recommendation 19: The Council is working well with three representatives from each constituency. No one who is involved with the Council perceives that having three representatives hinders the workings of the Council. The Board should change the bylaws to put in place three representatives from each constituency.

9. Communication to the ICANN community. Are the enabling mechanisms for GNSO Council outreach effective?

Almost everyone who was interviewed felt that the GNSO Council could improve its communication within and outside the GNSO. In particular, there was a very strong feeling from interviewees that the website needs improvement if it is to effectively support the work of the Council. A detailed design brief is beyond the scope of this review, but it is important that this is undertaken.

Summary and recommendations

Recommendation 20: The GNSO Council should overhaul the website so that it better meets the needs of all who are interested in the work of the GNSO.

Other issues

One issue which came up in many of the interviews was concern about the representativeness of the constituencies. Perhaps not surprisingly, many of the constituency representatives and members were concerned that constituencies other than their own were not truly representative of the groups that they claim to represent. This issue is beyond the scope of this review which is focused on the GNSO Council, not the GNSO as a whole. It is however, an extremely significant issue. The review of the GNSO as a whole will need to investigate whether each of the constituencies is truly representative of “the interests globally of the stakeholder communities it purports to represent” as required in the bylaws.

A somewhat related issue is the size of the interest group from which the GNSO draws its participants and therefore its Council members. The problems with which the GNSO grapples are important for all users of the Internet, although most would not know this. The total number of people who take part in GNSO deliberations is small compared to the number of people who will be

impacted by the decisions. A review of the GNSO should investigate ways of increasing the number of people who are involved in constituencies and therefore in the GNSO process.

Finally, the Terms of Reference do not explicitly require a comment on the leadership of the GNSO Council. However, it would be remiss not to mention the extremely high opinion that members of the Council and others who interact with the Council have for Bruce Tonkin. Many, many people expressed the view that the successes that the GNSO Council has achieved in recent times are due in no small part to the hard work and strong leadership provided from the Chair.

END

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Sincere thanks to the people who made themselves available for interviews over the course of this review. I really appreciated the openness with which they were willing discuss the issues. Their belief in what ICANN and the GNSO in particular are trying to achieve is obvious and certainly augurs well for the future.

Special thanks need to be extended to Glen de Saint Gery who assisted with the compilation of data for the report. My task would have been exponentially more difficult without her help.