

To: ICANN Board of Directors
From: GNSO – ALAC/At-Large – New NC Constituency Communities Working Group
Subject: Report on User involvement in the GNSO (Revised 04 March 2009)

Origin of Request

Board Resolution of 11 December 2008

Whereas, the Board has received varying recommendations on registrant and user involvement in the GNSO, and the issue of how to incorporate the legitimate interests of individual Internet users in constructive yet non-duplicative ways remains an open issue that affects GNSO restructuring.

Resolved, (2008-12-11-02) the Board requests that members of the GNSO community work with members of the ALAC/At-Large community and representatives of potential new "non-commercial" constituencies to jointly develop a recommendation for the composition and organizational structure of a Non-Commercial Stakeholder Group that does not duplicate the ALAC and its supporting structures, yet ensures that the gTLD interests of individual Internet users (along with the broader non-commercial community) are effectively represented within the GNSO. This recommendation should be submitted no later than 24 January 2009 for consideration by the Board.

Extract of e-mail from Denise Michel elaborating on the resolution: “...it is important to emphasize that it is not intended to be a referendum on the different approaches that have been advanced by groups working on proposed NCSG charters. Proposed charters are not intended to be within the scope of the 11 December Resolution. When community members formally submit to the Board one or more petitions/charters for NCSG formation (and other Stakeholder Group charters), those efforts will be publicly posted for comment by all members of the community and will subsequently be evaluated by the Board.”

These two statements are somewhat at odds with each other, as the first requests recommendations on the composition and structure of the NCSG, and the second specifically excludes discussion of charters which are the vehicles describing (among other things) the composition and structure of the a SG. The WG is acting on the premise of the Board resolution and on the second statement because we believe that the task of proposing charters for the internal structure for a SG is up to the SG (with appropriate community input and consultation) subject to the Board's approval; and that this group sees the issue of individual user participation as the appropriate area for our recommendation.

Working Group Members

GNSO: James Bladel, Avri Doria, William Drake, Robin Gross, Zahid Jamil, Milton Mueller, Mary Wong

ALAC/At-Large: Carlos Aguirre, Sébastien Bachollet, Beau Brendler, Alan Greenberg, Cheryl Langdon-Orr, Adam Peake, Vanda Scartezini, Baudouin Schombe, Danny Younger¹

New Constituencies: Cheryl Preston², Beau Brendler³

Background

Article X of the ICANN Bylaws defines, inter alia, two constituencies for “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).*

The GNSO reorganization proposal accepted by the Board Governance Committee recommended the creation of stakeholder groups, presumably in some fashion incorporating the current constituencies, but that the stakeholder groups for non-contracted parties be designated as representing commercial and non-commercial *registrants* instead of users.

Several reasons were given for opposing the BGC proposal on this issue including:

- Given ICANN’s Mission and Core Values, it seemed to make little sense to proscribe the involvement of users and those representing their interests in the GNSO, all the more so because the change explicitly removed the possibility of such involvement.
- The formal change from “user” to “registrant” could be easily bypassed, given that registrations are readily available for about US\$9.00 per year – anyone can buy a name. But the negative optics of ICANN formally saying that “User” issues were not welcomed would be great.
- Curiously the term “registrant” was never formally defined in the recommendation and thus had its normal meaning which could include a registrant of a ccTLD domain. Thus the gTLD policy process could include those who exclusively focus on the ccTLD space, but exclude those for whom the gTLD space on Internet exists.

¹ Danny Younger participated in the Working Group but has chosen to disassociate himself from this Report and the recommendations therein, and to issue a separate statement. It is appended to this report.

² Cheryl Preston participated in the Working Group teleconference reviewing the first draft of this report. Due to an e-mail error on behalf of the WG and later due to travel, she did not have an opportunity to review or comment on later drafts prior to the 20 February submission date. She has since supported this report as submitted.

³ Beau Brendler participated in the WG on behalf of the ALAC, but has since filed an Intent to form a new NC constituency.

The Working Group on GNSO Council Restructuring convened by the Board in July recommended that the term “user” be re-instated instead of “registrant”.

This has caused great confusion due to the existence of the At-Large Advisory Committee and its At-Large infrastructure, despite repeated statements that the recommendation did not imply that the ALAC be seated at the GNSO Council or within its stakeholder groups. This current effort has been charged with clarifying this issue.

It should be noted that although the major discussion has focused on the Non-Commercial Stakeholder Group, the move to reinstate the term “user” applied to the Commercial Stakeholder Group as well. This present WG is considering its charter to include that aspect of user involvement. Moreover, it is felt that the term “entity users” in the current Bylaws is overly restrictive - Constituencies and Stakeholder Groups must be allowed to frame their membership rules so as to allow individual members and not solely groups or organizations.

It should further be noted that the intent has always been that the term “user” be wider than “registrant”, and there is no question that registrants are de facto included in this larger basket. The Bylaws implementing the GNSO reorganization should make this explicit.

ALAC vs Users Involvement in the GNSO

The issue of overlap with ALAC/At-Large has often been raised. In fact, the issue should be relatively moot. ALAC has a wide scope crossing all aspects of ICANN. gTLD Policy is of course included, but few current At-Large participants or even ALAC members have the interest to focus on in-depth gTLD policy which is the focus of the GNSO. So the difference is very much one of focus and interest and not one of trying to assign different genetic make-up to the two groups.

Each ALS existed as an organization with interests prior to becoming an ALS. Becoming an ALS added some dimension to their organization. It is possible that any particular At-Large ALS might have a specific interest in gTLD issues which will cause it to join an appropriate Constituency or SG. ICANN does not legislate what else an ALS can do in their non-At-Large activities, and this should be extended to not legislating whether they can participate in GNSO activities. It is not expected that many ALSs will go this route.

Today, there is a tendency for some parties to feel that since individual users, and even many registrants, have no home within the GNSO, that the ALAC should be used as the conduit to address their needs (either through the Issues Report process, or in direct communications with the Board). If such groups have direct access to the GNSO mechanism, this need may well be reduced, since they will be able to act directly instead of through At-Large/ALAC as an intermediary. This WG finds nothing wrong with such a shift and in fact supports it.

With regard to the ALAC itself, and the RALOs, we see no ongoing role with respect to the GNSO, other than what is in place with the existing structure.⁴

It should be noted that just as there is a strong movement within ICANN for cooperation between and among the various Supporting Organizations and Advisory Committees, there will be a need for good communications and cooperation between the various groups representing users within ICANN.

User Participation

In relation to the ALAC, and now in relation to the GNSO, ICANN and its participants have at times used expressions such as “we want to hear from users” or “user participation”. This should not be taken to mean that vast numbers of users must be consulted on all ICANN issues. Rather, there must be mechanisms by which the needs of all users can be factored in when decisions are made and policy is set. Some of this input will come from those who speak on behalf of specific user communities or user interests. Some will come from individuals who have the interest and knowledge to participate in ICANN processes. The typical user may not understand ICANN issues and their subtleties, but that does not mean that they will not be impacted by them.

ICANN is already making some efforts to allow ICANN issues to be understood by those whose lives are not focused on gTLD issues. We encourage this as it will facilitate more input from those who are potentially affected by ICANN policy development.

With regard to GNSO Constituencies and SGs, ICANN should not put in place artificial constraints which preclude involvement of users and those who represent them.

The Problem of Involvement

Although the current Bylaws allow the formation of new Constituencies, none have been formed. By accepting the BGC report, the Board made it clear that it wants to see a real possibility of active involvement in gTLD policy by new groups. Thus the intent is not to just reorganize the current players, but to get more players involved in the rather arcane domain of gTLD domains (pun intended).

To accomplish this, there is no doubt that minimizing the overhead associated with Constituencies and/or Stakeholder Groups, likely with active ongoing support from ICANN (as envisioned in the BGC report, but henceforth rarely mentioned again) is important. Moreover, the model used for each SG and its Constituencies should be well thought out to minimize bureaucracy and overhead.

⁴ Carlos Aguirre raised an issue regarding the previous two paragraphs and the possibility that this would restrict the ability of ALAC to take action on GNSO issues. Unfortunately, there was insufficient time to satisfactorily resolve this issue.

Equally important is that these groups and individuals believe that their efforts have the possibility of impacting outcomes in the realm of gTLD policy. This latter issue is crucial or the large effort needed to participate in the GNSO will not be maintained.

Working Group Recommendations

The following recommendations apply to both the Non-Commercial and Commercial Stakeholder Groups

1. GNSO Constituencies and Stakeholder Groups (however they may ultimately be defined) must be receptive to involvement by and on behalf of users. It is hard to formulate exactly what that means without knowing how the above organizations will be structured. It presumably means that those speaking on behalf of users of any class or group or even of themselves must be allowed to join a Stakeholder Group or to form a Constituency within one.
2. Such involvement in eventual policy working groups is implicitly ensured by the likely rules governing the composition of such groups. However, it is similarly important that the views of such participants have an opportunity to be expressed at the GNSO Council level, and that they effectively participate, in ways that are to be defined by Stakeholder Groups, in the decisions of the Council. This will need to be considered as SG charters are approved.
3. The resolution calls for suggestions so as to ensure that users “are effectively represented within the GNSO”. How effectively they are represented will depend largely on how attractive and how easy it is for them to carry out their mandate, as above, and how effective ICANN is in making the new GNSO structure known and understood by the wider Internet community. Just as ICANN is widely publicizing its new gTLD initiative, the new GNSO organization must be the subject of a concerted public relations effort. Outreach and capacity building will be both required and crucial to success and must be supported by adequate ongoing funding.

Statement of Danny Younger

While I applaud the heroic effort of a scant number of ICANN participants to attempt to respond over the course of the last few days to the Board's 11 December resolution on GNSO Improvements / Implementation and the Role of Individual Users in the GNSO, I am not convinced that the Board is well served by recommendations arrived at in haste that have not been broadly vetted.

The fundamental issue at hand is that the Board is faced with a number of conflicting recommendations on the appropriate role and representation of individual users within ICANN generally (and within the GNSO specifically) that stem from various independent reviews, from the output of GNSO working groups and from commentary on the part of the At-Large Advisory Committee. These are important matters that should not be taken lightly, and any advice tendered on this topic should be the product of considerable reflection and extensive, widespread discussion – yet this, owing to a number of circumstances, has unfortunately not been the case.

Having the ICANN Board asking for advice on the role of individual users within the GNSO could be regarded as somewhat analogous to having the Secretary General of the ITU directing the General Secretariat to examine the role of the individual telephone user within ITU structures. In the case of the ITU, the conclusion could well be reached that there is no role for individual telephone users within ITU structures as the ITU, as a matter of structural policy, only invites participation from sovereign nations, sector members and associates. As such, there is no formal “home” for individual telephone users within the ITU.

What then is, or should be, ICANN's structural policy? Should it include a structural “home” for individual internet users within ICANN? If so, where should that home be? Is there anything to be gained by having multiple “homes” within ICANN for individual internet users, or does that just add unnecessary confusion and diminish productivity? Are the contributions of non-affiliated individual internet users of sufficient pragmatic or policy value to even warrant the creation of an identifiable structure to house this community? Will a public comment venue alone suffice? How likely is it that individual internet users (as opposed to registrants), will ever create their own constituency? These questions deserve a well-considered answer.

You will recall that in ICANN's early days a home was established for individuals' participation in the work of the DNSO – this entity, the DNSO General Assembly, was open to all who were willing to contribute effort to the work of the DNSO. ICANN expected participants therein to be individuals who had a knowledge of and an interest in issues pertaining to the areas for which the DNSO had primary responsibility, and who were willing to contribute time, effort and expertise to the work of the DNSO, including work item proposal and development, discussion of work items, draft document preparation, and participation in research and drafting committees and working groups.

You will also recall that ICANN structurally eliminated this body in the 2002 Reform Initiative: “The purpose of communication among the broader community that [the General Assembly] has served to date can be absorbed by the At Large Advisory Committee recommended in this Report. Until such time as the ALAC is able to function effectively, we recommend that the GNSO Council manage a moderated mailing list open to all for discussion of names policy issues.”

So, having structurally eliminated the first home designed specifically for individual internet users, we now have to ask ourselves if this approach has actually worked to the satisfaction of the board. Compared to a GA list that boasted a subscribership of over 1000 souls, have we in fact seen individual internet users flocking to the ALAC and to its RALOs in equal or greater numbers?

Have we seen the vitality and the substantive discussions that once characterized the GA list fully manifest themselves within the ALAC lists? ...or have we witnessed an ongoing disappointment that does little to beckon to the individual internet user? Although the ALAC Review WG has stated that it regards the ALAC (through the RALO and ALS structure) as “the primary organizational home” for the voices of the individual Internet user, what about the individual users themselves? Do they view the ALAC and its RALOs/ALSs as their home? It sure doesn't look like it, and most RALOs don't even allow for individuals to join as members.

Instead, the ALAC's world is mostly populated by representatives of non-commercial organizations, not individuals per se, who have only a limited interest in ICANN matters. As stated by the Chair of the NARALO in describing his own ALS, “ICANN issues are peripheral to our mission, as they are to the vast majority of the public”. Unlike GA members that were willing to contribute hard work and effort toward DNSO matters (who were willing and eager to actively involve themselves in working groups), most ALAC organizations lack the interest and resolve to even engage in rudimentary policy discussions – when's the last time you saw any substantive policy discussion on an ALAC list?

At issue is whether one would want to live in a home occupied primarily by those with only a peripheral interest... individual internet users with a real interest in GNSO matters (those that we presumably are seeking to attract) would surely want a different roommate.

Accordingly we must ask whether the ALAC/RALO/ALS construct can be tweaked in a way that will provide an inviting home to individual internet users that choose to involve themselves in matters within the GNSO's remit, or if, like a substandard housing unit that should be razed to the ground, the ALAC's structures are simply an unsuitable locale for the community of individual internet users that wish to be active contributors in the GNSO policy arena.

That answer to this question becomes self-evident once we start looking at the primary building block in the ALAC's at-large world – the ALS. At-Large Structures are nothing more than non-commercial organizations. They are exactly like the non-commercial organizations that populate the NCUC, and they both participate to the same degree

(rarely). One could, quite justifiably, argue that they are both sides of the same coin. Of course, self-interested parties within the ALAC will invariably point to the fact that the at-large has a broader remit, and that ALSs (unlike NCUC members) may engage in areas of discussion that extend beyond the GNSO's immediate area of interest... but we all know that this never happens – when's the last time that you heard a lively ALAC discussion on addressing policy or ccTLD policy? It's a bogus argument. What we have is nothing more than the same set of interests parked in two different places within ICANN. You have non-commercial orgs here, you have non-commercial orgs there.

Reading the Board's December resolution, one can only conclude that the Board was rightfully worried about the harm poised by duplicatory structures and did not wish a future within which users wouldn't know exactly where to park their assets. This problem is amenable to a simple solution – you park all the non-commercial orgs in the same spot, and you designate a different spot for individual internet users.

Some might be prompted to ask: “What then is to become of the ALAC?” A better question might be: “If this Advisory Committee is nothing more than a collection of non-commercial orgs, why then don't we also have an Advisory Committee composed of commercial organizations, or an Advisory Committee populated by Intellectual Property interests; why are we discriminating against other communities by granting a special status to the non-commercial world?”

When we consider Advisory Committees as structures, we realize that they exist as such because typically the members therein have no other unique home within ICANN. Governments have no particular home within any Supporting organization, that is why they are members of an AC; the same is true for Root-Server operators... but it is not true for the ALAC – non-commercial orgs do in fact have a home within the SOs, namely within the GNSO's NCSG – the ALAC is an anomaly, a structural mistake, that needs to be eliminated to correct the rampant confusion that it has engendered.

It's somewhat odd that ten years after ICANN's creation we are still asking about the appropriate role for the public in a public interest corporation. In most public interest institutions decisions are made by members who go out of their way establishing rules to keep lobbyists at arm's length. Within ICANN, however, rules have been devised to keep the public at arm's length from the special interest lobbyists that make all the decisions. Don't any of you see something wrong with this picture?

As it currently stands, it is apparent that a “home” needs to be established for those individual internet users that want to engage in the “work” of the GNSO. What we don't need is a home within ICANN for those who only want to participate in a talk-shop environment (like the IGF) – the hive needs the worker bees that can offer a return on investment.

But what distinguishes a worker bee from another bee that only wants to flit about and partake in chit-chat? The answer is this: Those committed to getting work done have a stake in the process. Within the GNSO we have stakeholder communities (which is why

we see work getting done in earnest within the GNSO). Registrants are a stakeholder community; the general population of individual internet users (just like telephone users), are not stakeholders. Accordingly a constituency should be created for registrants (not mere users) within the GNSO.

This will either happen on a pure bottom-up basis (but it likely won't happen as prior leaders of registrant constituency initiatives are no longer willing to take the reins of leadership owing to that which happened in ICANN's past), or it will happen as a result of a decision by fiat per the bylaws: "The Board may create new Constituencies in response to such a petition, or on its own motion, if it determines that such action would serve the purposes of ICANN."

The latter scenario is the one that will need to play out in order to make things right.

The board has asked the community to develop a recommendation *for the composition and organizational structure of a Non-Commercial Stakeholder Group*. This is what needs to be done:

- In terms of composition, the NCSG must include an individual registrant constituency created by the ICANN Board.
- In terms of structure, the NCSG's charter must allow each constituency within the Stakeholder Group to designate its own GNSO Councilor.

I leave it to the Board to decide upon the process by which the ALAC and its redundant non-productive structures will be shut down.