

# **DRAFT – GNSO Council Request to Board to enable full enfranchisement of the GNSO Council’s voting responsibilities**

v5

## **Structure**

This note is structured as follows:

- background
- proposed Council resolution
- proposed by-law change
- proposed GNSO rule of procedure for electronic voting

## **Background**

The current ICANN bylaws state under article X.3.8. “...*the GNSO Council shall act at meetings. Members of the GNSO Council may participate in a meeting of the GNSO Council through use of (i) conference telephone or similar communications equipment, provided that all members participating in such a meeting can speak to and hear one another...*”

This rule has been interpreted by ICANN's general counsel to exclude voting by proxy or electronically. The GNSO Council does not contest this interpretation but seeks to amend the by-law article to enable electronic voting by absent Council members in certain non-discretionary circumstances.

The current bylaw derives from ICANN's original bylaws which were based on certain assumptions:

- Council will regularly make decisions during the course of a Council phone conference that have not had previous discussion;
- Council members act in an individual capacity in deciding themselves how to vote;
- Council members will always be able to join a telephone conference on a clear line.

These assumptions do not accord with the way Council operates today.

- Council usually votes after an issue has been discussed previously;
- The majority of Council members vote on key issues of policy based on direction by their Constituency;
- Indeed where issues have been put to a vote that have not been previously discussed, often Constituencies have been forced to abstain as they had no such direction;
- Council members even when intending to participate in a telephone conference are sometimes unable to obtain a clear line from certain countries;
- The fact that Councillors serve as volunteers who have other full-time responsibilities increase the chances of some Councillors being unable to participate in certain meetings.
- Analysis done by the Council secretariat show that in the four years 2004, 2005, 2006 and 2007 full attendance was recorded only once at the April 12, 2006, teleconference. At other times, when a vote was taken, Council members were disenfranchised.
- There was no noticeable change in the pattern of attendance during the period when proxies were allowed on the former names council.

### ***Proposed Council Resolution***

Whereas

Council members are from time to time disenfranchised from voting by the current ICANN by-laws,

Council requests the Board instruct the General Counsel to make an immediate change in the bylaws to allow electronic voting for Council members, subject to the adopted rules of procedure of the GNSO Council on such voting.

(Note:

- In line with the recommendation on GNSO reform, Council does not propose that the text of the rules of procedure is added to the ICANN by-laws but merely a reference to the rules.
- The rules below would allow electronic voting.
- The ability to use electronic voting negates the need for proxy voting.)

### ***Proposed by-law change***

{to be proposed by the ICANN general counsel}

### ***Proposed GNSO rules of procedure for electronic voting***

#### 1. Definitions

- These rules apply to the members of the ICANN GNSO Council hereafter the Council.
- An e-vote or electronic vote means a vote cast by e-mail or other means of electronic data transmission.

#### 2. Eligibility

- Only Council members may cast an e-vote
- An e-vote may only be used in the context of an act of Council.

#### 3. Effect

- An e-vote does not count towards the establishment of quorum.
- An e-vote counts towards a majority or supermajority vote of Council.

#### 4. Process

- An e-vote **must** take place, and **may only take place**, after an in-person role-call vote when the circumstances described in article 5 occur.
- An e-vote may only be cast by a member absent from the Council meeting.
- An e-vote will be solicited by the Council secretariat and the casting of such will affirm the voter's knowledge of the underlying issue.
- An e-vote by default will start upon receipt of an e-vote solicitation from the secretariat and finish 48 hours after the start of the meeting.
- In exceptional urgency the Chair may reduce this to 24 hours; and in exceptional circumstances such as a need for further consultation the Chair may extend this to 7 days.

#### 5. Circumstances.

An e- vote **must** be used when the voting outcome of an **in-person role-call** vote might be affected by the use of absent votes either related to:

- the success of a motion; or,
- when the level of support might change from majority to supermajority and the attainment of supermajority is material to the subsequent impact of the vote under ICANN by-laws.

6. Conflict of Interest

- The use of e-voting does not in any way change any rule or informal process of Council that would prevent a Council member exercising a vote due to a conflict of interest.

7. Abuse and unintended consequences

- The Council secretariat or any Council member will advise the Council chair at any time on any concern regarding the system of e-voting.
- The Council secretariat will produce a concise annual report in order to monitor the pattern of e-voting and to assess the potential for abuse or unintended consequences.