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Generic Names Supporting Organization

Board Readiness Small Team
Final Report to GNSO Council

Status of This Document

This is the Final Report of the GNSO Council Board Readiness Small Team presented at the Council meeting on 18 September 2025.

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1 Executive Summary

ICANN Board rejection of consensus-based GNSO policy recommendations are a relatively recent, but now consistent feature of the Policy Development Process. The rejection of the community-based, bottom-up recommendations (and the multi-year delays that sometimes result) denigrate the reputation of the multi-stakeholder model of DNS governance.

The effort described in this paper followed from the GNSO Council's ongoing discussions regarding "Board readiness," its shorthand for operation of a Policy Development Process (PDP) that improves the chances of timely ICANN Board adoption of PDP recommendations.

In order to identify possible improvements in the PDP, our team interviewed selected PDP members, chairs, Board liaisons, and policy staff support of PDPs that resulted in Board rejection of the consensus-based recommendations. The interviewees include those who participated in the two Registration Data, the Subsequent Procedures, and the Internationalized Domain Names PDPs. Question lists were created and tailored for each PDP and participant category. In all, we conducted 19 hour-long interviews (including three trial interviews with our own team members).

In our FINDINGS (based on facts and opinions stated by the interviewees), we confirmed that the PDP teams and the Board operate with different objectives in mind and are guided by different, sometimes competing, sets of information. PDP Teams seek to find constructive consensus among the ICANN community groups, while the Board seeks compliance with its Bylaws, its fiduciary duties, and conservation of its budget. There are limits on information sharing.

Traditionally, the Board begins its consideration of policy recommendations months after the PDP team has issued its Final Report and disbanded, and its volunteer members have gotten on with their day-to-day careers and lives. This obviates any chance for meaningful interaction between the PDP team and the Board. (The recent implementation of Board liaisons to PDP teams has improved this situation somewhat.)

During those intervening months, the Board must take on competing considerations of: the competency with which the process was conducted, the risks associated with implementation of the recommendations, and the degree of support for the consensus-based recommendations.

Based on the Findings resulting from the interviews, we make six sets of inter-related RECOMMENDATIONS aiming to improve the likelihood that GNSO policy recommendations will be adopted by the Board in a timely way. The recommendations generally seek to improve information sharing and transparency, improve access to resources, align goals across the organization, and enhance coordination.

We wish to acknowledge the cooperation, trust and good spirits exhibited by the PDP Chairs, participants, Board members, and ICANN Policy Support staff that participated in the interviews.

2   Introduction: Objectives, Methodology, and Clarifications

2.1 Study Objectives

During the 2023 GNSO Council Strategic Planning Session, the GNSO Council agreed that it should seek to limit the likelihood of the Council approving PDP recommendations that the ICANN Board is ultimately unable to adopt. To that end, the Council discussed the desire to submit "Board-ready policy recommendations," to the extent possible.

For the purposes of this exercise, a policy recommendation is considered "Board ready" when the recommendation is likely to achieve Board adoption, i.e., the recommendations that have been approved by the GNSO is likely be considered by the Board to be compliant with the Bylaws and are in the best interests of ICANN.

The Council tasked a Small Team with conducting a study designed to develop a set of recommendations for consideration by the Council and the Board, and intended to inform the Council's work on improving Board readiness. All those who volunteered were included in the Board Readiness team.

2.2 Small Team Methodology

The Small Team conducted its work in the following phases:

(1) Develop a survey/questionnaire related to the Board's rejection/non-adoption of policy recommendations, designed to be administered to selected PDP Chairs, PDP members, ICANN Policy Support Staff, and Board members. Relevant PDPs were determined to include those where the Board rejected a subset of the policy recommendations. Chairs and members were interviewed from the Temporary Specification (Registration Data) Phases 1 and 2; Subsequent Procedures, and IDN PDPs.

   (a) Three separate questionnaires were developed for PDP team Members and Chairs, Board Members, and Policy Support Staff.

   (b) Questions were tested in trial interviews using Board Readiness Team Members who participated in these PDPs as interviewees. Adjustments to the questions were made as a result.

   (c) The interview process was paused after the interviews with Registration Data PDPs to evaluate the efficacy of the questions and determine if changes were required due to differences among the PDPs. Some changes were made as a result.

(2) Administer the survey/questionnaire to selected PDP Chairs, PDP members, ICANN org Support Staff, and Board members. The Small Team conducted its interviews in informal one-on-one settings, which were designed to result in individualized and candid feedback.

(a) Interviewees were provided informational packets prior to the interviews that included: a summary history of the PDP, the list of questions, and a list of the recommendations rejected (or "pended") by the Board.

(b) One Board Readiness Team member was nominated to take notes, which were reviewed and amended by other team members.

(c) Interviewees were advised that: (i) calls were recorded to enable checking of meeting notes and that recording would subsequently be erased, (ii) they would be afforded the opportunity to review the meeting notes before they were included in the record, and (iii) the interview would likely stray from the initial question set as areas of interest arose.

(3) Synthesize the interview results into a set of Findings. The Findings are a listing of facts and opinions expressed by the interviewees and organized by topic (i.e., generally by question in the questionnaire).

(4) Develop a set of Recommendations intended to inform Council work on improving Board readiness. The recommendations were discussed and amended during Board Readiness team meetings and in review of online draft documents.

2.3 A Few Clarifications

The Recommendations section instructs that PDP teams and the Board 'should' or 'must' do something. Of course, these are not directives, but rather are recommendations for the GNSO Council and the Board to consider.

Throughout, you will read 'PDP teams' or simply 'PDPs.' These are shorthand for and synonymous with the 'PDP working groups' that are formed to develop consensus-based recommendations for consideration by the GNSO Council and Board.

Similarly, the report studies instances of ICANN Board 'rejection' of policy recommendations. The correct term is 'non-adoption' of recommendations. Sometimes, recommendations are 'pended,' rather than 'non-adopted.' We chose to use the term rejected for readability and with the realization that non-adopted recommendations are, after all, rejected.

There are certain terms and references unique to the ICANN environment, e.g., 'ODP,' 'PDP,' and references to certain PDPs. They are all searchable terms, just place the word 'ICANN' in front of your search term.

You will see references to PDPs other than those that were the subject of this study because interviewees often reflected on their broad experiences in policy development.

3   Findings

Findings are formed from the statements by the interviewees in response to questions that covered specific PDPs. While some of the answers might be debated by others, there is no question that these opinions, expressed by the interviewees, describe their honest perception of the PDP. The Findings are a combination of observations about the current situations and opinions on what measures should be undertaken.

The Findings are reported more-or-less in the order that the interviews were conducted. There is no organization in the ordering designed to build towards a certain conclusion. Instead, our Small Team reviewed the Findings as they were reported to test whether Recommendations could be developed and supported.

3.1   General Findings Regarding Board Rejection of GNSO Policy Recommendations

- Board rejection of recommendations is somewhat novel and was often a surprise to PDP participants, indicating that this is a timely study. Rejection was not anticipated or expected at the time of the Registration Data Policy Phase I EPDP, but is more typical today.
- Generally, Board reaction to recommendations has not been a PDP team consideration; rather, achieving PDP consensus has been the primary consideration.
- There were two pertinent high-level takes on the recent development of Board rejection of consensus policy recommendations:
  - o   Board rejection and the subsequent, constructive back and forth discussion with the community is a sign of a healthy organization, but consider that
  - o   Rejection of hard fought and won consensus can come across as antithetical and ultimately harmful to the well-being of the multistakeholder model, especially in areas where the community is not convinced the Board was correct in its positions.
- Rejections occur because the PDP team objectives (e.g., reaching consensus) differ from the Board objectives (e.g., compliance with the Bylaws, its fiduciary duty).
  - o   PDP and Board objectives could / should be aligned.
  - o   To achieve that, provide the PDP access to the same legal / finance advice the Board receives, or have a discussion with legal or finance advisors to the Board before making final recommendations.
- When considering policy recommendations, the Board must consider other-than-Council inputs, e.g., GAC, ALAC, ICANN staff (legal, finance). Examples include:
  - o   The ICANN finance estimate of implementation costs for SSAD caused the Board to reflect on its fiduciary duty.
  - o   The ICANN legal position that ICANN is not a data controller surprised the Board and caused the rejection of an EPDP Phase I Purpose for collecting data.
  - o   The GAC input on IGO/INGO policy recommendations caused the Board to pend its decision.

- o   That the Board might examine the minority reports, especially when they are numerous or disagree with "consensus" recommendations (e.g., Registration Data Phase II EPDP).
- PDP teams and the community should take some responsibility for the cost of its recommendations:
  - o   Some Accountability CCWG recommendations were rejected due to cost. (Interviewees sometimes discussed community efforts outside the PDP that was the topic of the interview.)
  - o   Cf., the Registration Data EPDP Phase II recognized the issue and did request cost data and a cost-benefit analysis.
- Board input prior to the final report is sometimes vague as to whether the Board would reject a suggested recommendation, whether via written or Board liaison comment, so the PDP team is not moved to act on that input.
- Board comment is welcome at any time, however organized interaction with the Board should be set for after the initial report so as to not delay the PDP work.

3.2 Board Liaison Role

- A relatively new role that varies by the person selected. It is still evolving from more of a listening role to being an active participant and one conveying the Board's positions. The role will continue to evolve and vary from PDP-to-PDP as Board personnel changes.
- The Board liaison can clarify questions regarding Board written input.
- Requires appropriate balancing that requires clear communication of Board positions in a helpful (i.e., not obstructive) manner.
  - o   Avoid exerting undue influence on the bottom-up process, but
  - o   conveying that, "the Board would look at the recommendation this way."
- The Board liaison can work in partnership with the Chair to develop consensus that is acceptable to the Board.
- The liaison communicates to the Board or Board caucus. It is one input to the Board among others, e.g., staff reports. (Note to reader: Board caucuses are sometimes formed to follow issues in depth and report to the whole Board as necessary. If a PDP is formed to address the same issue, the Board caucus will follow the PDP similarly and report to the Board.)
- The Board liaison consults with staff, more frequently than with the Board or Board caucus.
- The liaison should communicate Board inclinations toward rejections when they are raised and realized, or when legal advice is received by the Board caucus or Board.

3.3 How the Board Receives Information

- The Board primarily receives information from ICANN staff member SMEs. If the Board has questions, they are answered by staff SME reports. Staff provides technical experts to PDPs, interact with the Board, and sometimes pursue their own agendas.
- The Board also receives information from the caucus (if one exists) and the Board liaison.

- The earlier the Board or Board caucus receives and considers information, the better prepared it will be to participate in the PDP process in a timely, meaningful way.
- In addition to the policy recommendations (Initial and Final Reports), the Board receives information from many sources: ICANN legal and finance, Staff SME reports, the GAC and ALAC, the Board liaison, and offline lobbying of Board members.
- Despite recent successes in the Board working with GNSO Council Small Teams to amend recommendations, the Board is reluctant to engage with the PDP teams as they deliberate in order to preserve the bottom-up nature of policy making.
- The Board and PDP team should operate from the same sets of information when formulating or considering policy recommendations (and, as indicated above, they should have the same objectives in mind). Meetings between the PDP leadership and Board (or Board caucus) can result in an information sharing agreement where the Board passes reports it receives on to the PDP.
- The Operational Design Phase (ODP) can result in de facto staff influence on the bottom-up policy-making process.
- The ODP (or an equivalent study) is valuable, but only if undertaken at a time useful to the policy makers and to a degree needed for decision making (and not more).

3.4 Expertise

- Some interviewees, looking across several PDPs, noted that Chairs are required to possess a wide variety of skills to:
  - o   work with the Board and PDP team to resolve differences,
  - o   act with impartiality (which is sometimes lacking, as their own views are proposed in the PDP),
  - o   take into account issues such as human rights implications, and
  - o   control individuals from taking over the discussion.
- Neutral, outside experts could help avoid introduction of unimplementable recommendations by providing operational expertise. If the discussion of issues could be scheduled, it would facilitate the retention of experts for certain periods of time. (Often, after some progress is made, Policy Support staff calls off discussion on an issue when it could be finished.)

3.5 Implementability

- Implementation issues should be developed and discussed in parallel with policy development.
- Staff and PDP leadership often urge members to "concentrate on policy, not implementation."
- The community must take some responsibility for implementability / cost.
- The Registration Data EPDP Phase II did not receive the degree of detailed information for which it was looking.
- ODAs can be used objectively or by Board or staff to justify a particular outcome. Making the same information available to the PDP team would help ensure the information would be used objectively.

- The earlier the group gets information about cost, feasibility, etc., the earlier the group can bake this into their discussions and considerations. Consulting with legal and finance (or having legal and finance staff liaisons) should be part of the policy making process.
- PDP requests for information are often not fulfilled (e.g., historical costs of the previous new TLD round, requests for legal advice regarding prioritization of new TLD applications), which hinders the development of implementable recommendations. There are instances where the Council did not help with PDP requests for information, maybe because the request was lost in other information conveyed during the same presentations.
- Implementability and cost of implementation are top-level ("red-line") concerns for the Board, whose implications cannot be ignored by the Board. The Board has a fiduciary duty to make economically sound decisions.
- Recommendations are reviewed by ICANN legal and finance. The Board cannot pass a policy that violates the Bylaws or the Board's fiduciary duty.
- If a candidate recommendation that is in discussion during the PDP is suspected to create implementation, financial, or legal difficulties, the policy team will bring the problem to the relevant ICANN department(s).
- Two-way communications between the staff and the PDP team can result in timely, easier-to-implement recommendations.
- The Board's first review is the Initial Report, but Board members have advocated for earlier communications.
- Exchanges of letters as a communication method should be avoided, as face-to-face communications are less likely to be misinterpreted.
- The fact that staff intervenes in a PDP discussion indicates substantial thought has gone into the intervention and it should be carefully considered.

3.6 Representative Model vs. Open Model

- The Representative Model has been a huge improvement to define and achieve consensus. Compare the Whois PDP (with 100+ members and 70 people on calls) to the Registration Data EPDP. (They considered similar issues.) It is impossible to work without a representative model.
- Among the negative aspects of the open model: many do not follow the discussion, people come and go; when the Board expresses interest, new people get involved, requiring re-education and re-litigation; it is more likely to deviate from the charter, e.g., Whois had 200+ members, many with "pet issues" that fell outside the charter. In addition, teams are often dominated by those paid to participate and have apparently inexhaustible availability compared to their colleagues. Small teams are often dominated by bullies. Many participants have fixed, extreme views preventing consensus and compromise. This results in recommendations that are not true consensus.
- Positive aspects of the representative model: the entire community is represented for each issue; representatives going back to their communities seems to work; there is process continuity from charter to implementation.
- One interviewee, a proponent of the Open Model, agreed that when put into practice, the Representative model has been demonstrated to reach a constructive consensus in a shorter period of time.

- Getting the right people rather than a large number of people is key. E.g., a large number of people can wash out GAC input.
- There are benefits to an open PDP:
  - Even though a small percentage contribute or attend regularly, working in a "fishbowl" adds transparency.
  - In some cases, a representative model might make consensus development difficult. SubPro is suggested as an example of this.
- PDPs should be carefully cast based upon need, e.g., equal community representation, particular skill or knowledge set, or a broad range of experiences. A representative-plus model was suggested where the representative group was augmented by specific expertise or communities not participating in the ICANN model.

3.7 Charters

- Charters could indicate the approach a PDP should take, i.e., a zero-based policy development or a tweak to existing policy. For example, there was debate as to whether Registration Data Phase I EPDP should start with GDPR and build Whois rules, or tweak Whois rules to meet GDPR requirements.
- In many cases, it is a failing if the PDP does not consider costs; such an analysis would help Board readiness. Perhaps legal and finance liaisons can play a role, so not to set policy in a legal or cost vacuum.
- Overly prescriptive charters can hinder valid policy alternatives or inadvertently create policy. E.g., the Registration Data Phase II EPDP required or "cornered" PDP participants into creating a form of SSAD.
- But open ("laundry list") charters can lead to chaos. The SubPro Charter could have focused on the few things needing fixing or narrow separate charters could have been written.
- Charters are often vague and no one in the chain, except for the PDP itself, has the incentive to adequately test a Charter's clarity and utility. For this reason, it is helpful to have PDP members who also worked on the Charter development to provide clarification.

3.8 GAC – ALAC Advice to the Board

- With the IGO/INGO PDP as an example, PDP teams sometimes develop recommendations that disagree with GAC advice (or anticipated GAC advice). GAC and ALAC advice to the Board that differs with PDP recommendations occurs sometimes even when the GAC and ALAC participate in the PDP. This can cause multi-year delays in policy development.
- The Board can't stop delivery of this Advice, even though the ALAC and GAC (and others) participate in the PDP. (Put another way, those that don't win the day in the policy discussion, seek another audience). However, if issues have been discussed in the PDP and that discussion and the attempted accommodations are sufficiently documented, then the Board can point to it as the issue having been discussed. If there is no new

information in the Advice, then the issue could be considered as addressed. [Or at least that would give the Board a platform for saying so].

- Going forward, the PDP teams should use the same Global Public Interest checklist as the Board.
- Regarding the anticipation of GAC Advice, it is difficult for the GAC liaison to represent the GAC but the liaison participation leads to the GAC discussing the issues earlier, rather than after the publication of the report.
- PDP WG or PDP leadership meetings with the GAC and the community during the PDP deliberations to discuss issues can lead to understanding and reduce conflict when the final report is issued. For example, during the SubPro PDP many GAC concerns were addressed through GAC-PDP team discussions. This was done by presenting to the GAC and getting input at ICANN meetings while the PDP was underway.

4   Recommendations

Based on the interviews and the resulting "Findings," we recommend the following be considered when initiating and conducting PDPs.

4.1   Recommendation 1

1. The PDP team and the Board should have the same set objectives, i.e., "walk in each other's shoes":

    a. The PDPs must take on the Board's duty to ensure compliance with the Bylaws, implementability, and its fiduciary duty to the organization, and

    b. The Board must pay due deference to the hard-won results of the multi-stakeholder deliberations and consensus-based decisions.

4.1.1 Recommendation 1 Rationale

Interviewees cited examples of rejected recommendations including those that the Board indicated violated ICANN Bylaws (e.g., PIC and RVC enforcement) and those that might "bust ICANN's budget" (e.g., a fully implemented Registration Data Retrieval System). Other recommendations might be rejected because they collide with ICANN Board Policy (e.g., a policy recommendation listing legitimate reasons for collecting registration data versus ICANN's view that ICANN is not a Data Controller within the meaning of GDPR). Other fiduciary responsibilities of the Board include consideration of legal risk, a general responsibility to invest responsibly, and ensuring policy recommendations are implementable. Interviewees tell us that PDP teams are generally focussed on reaching consensus only, rather than including the Board perspective (although they often research cost and other operational concerns).

While the Board's current version of the Global Public Interest checklist may not have full community support, the GNSO would do well to use the same yardstick when considering policy recommendation legitimacy.

To the extent possible, the GNSO and its PDP teams should consider the Board's perspective when weighing policy alternatives (more on achieving that aim below).

On the other hand, the Board should also consider the community perspective. There was a sense among several interviewees that, by rejecting certain policy recommendations, the Board did not pay due deference to the multistakeholder model and hard-fought consensus. There seems to be agreement among interviewees that legalistic judgments are sometimes incorrect (such as the argument that PIC and RVC enforcement would violate ICANN Bylaws) and, if considered carefully, recommendations could be passed on to IRTs rather than additionally delaying approval of the PDP. It is viewed that these Board actions in contravention to consensus-supported

recommendations chip away at the legitimacy of the multi-stakeholder model and should be undertaken only after more exhaustive deliberation and community consultation.

4.2 Recommendation 2

2. To accomplish the first recommendation:

    a. The PDP team should have access to legal advice (independent or ICANN legal) during its deliberations regarding any conflicts between the Bylaws and potential recommendations. This might be in the form of an ICANN staff Legal liaison.

    b. The Initial and Final Report recommendation should have concurrence of an ICANN or independent legal advisor that they do not violate the Bylaws.

    c. The Board comment to the Initial Report should indicate the recommendations that, if not amended, the Board will reject (or "pend"). The comment should include the rationale for the rejection and a suggested path for developing an acceptable version (e.g., a Board-PDP collaboration of some type, a reference to certain documentation, the opinion of an appropriate expert). Put another way, move Board consideration from the Final Report to the Initial Report.

    d. Most PDPs do not require ODPs. Whatever financial / operational information that is needed to weigh the efficacy of policy recommendations should be available to the PDP teams as well as to the ICANN staff and Board. When needed, the PDP team should have financial corroboration that recommendations are not fiscally irresponsible and are in concert with the Board's fiduciary duty by having access:

        i. to relevant elements to today's Operational Design Phase, and

        ii. to an ICANN staff financial liaison that can obtain cost analyses and historical cost data, and provide insight into the Board's fiduciary duties.

    e. The GNSO (Council or PDP team) and Board representatives should communicate on areas of potential concern during (rather than after) the PDP.

        i. Areas of concern might be identified by staff support or liaisons, or Board liaisons that report the sense of the Board.

        ii. After the Initial Report, the PDP and Board might form a collaboration (e.g., small team) to work on issues raised by the Board in the Initial Report public comment.

    f. Empower and require the Board liaison to the PDP to coordinate or ensure availability of the steps listed above.

4.2.1 Recommendation 2 Rationale

In the words of one interviewee, "if the Board liaisons are going to attend meetings for three years, they might as well be active." (There is a general understanding that the Board liaison role is relatively new and still evolving.) There are many avenues open to the Board and staff to work constructively with the PDP teams to:

  o   *Indicate Board reaction to developing recommendations, and*
  o   *Provide legal and operational advice that will enable the PDP team to weigh candidate recommendations through the lens of the Board.*

PDP teams often request operations, cost, and legal advice. Often, these requests go unanswered (e.g., historical TLD application processing cost data, legal advice on certain Guidebook provisions).

These recommendations largely speak for themselves, but some elaborations can be made:

  o   *Each PDP does not require a formal ODP (most do not) and the timing of operational and financial information needs will vary across PDPs. Each PDP must take care to carefully word requests for information so that the responses will be meaningful and PDP progress will not be needlessly impeded. This "just right" approach to the compilation of cost information should replace the current ODP as both the PDP and Board should work off the same sets of information.*

  o   *Board input after the Initial Report is published allows the PDP team, since it is still intact, to consider and consult with the Board on its policy recommendations. However, earlier Board input into the PDP process has the risk of slowing progress and having the Board inappropriately influence the bottom-up policy making. Therefore, Board-PDP team collaborations while the PDP is forming its opinions would probably slow and might taint the process. In order to streamline and properly restrain the input, PDP-Board small teams should be limited to the post-Initial Report phase when consensus-based recommendations have been drafted but are not yet passed up for approval. Prior to that time the Board and staff liaisons can pass on the inclinations of Board caucuses and the ICANN legal team.*

  o   *Requiring the Board to clearly state its positions on Bylaw and fiduciary duty compliance at the time of the Initial Report is reasonable, because the Board has the opportunity to keep up with developments during the PDP, has access to the same (or more) operational data and legal analysis as the PDP, and has the same comment period as the rest of the community to formalise its position. This will allow the PDP team to react to Board positions (possibly forming a team to meet with the Board) before the PDP team breaks up after the Final Report is published.*

  o   *Understandably, the Board will not be able to identify in the Initial Report all instances of recommendation rejection (e.g., developing GAC Advice), significant efficiencies might be introduced by earlier Board consideration, potentially improving the effectiveness and reputation of the multi-stakeholder model.*

4.3 Recommendation 3

3. The PDP team and Board should make decisions based on identical sets of information by:

    a. Making staff reports to the Board during the PDP (before and after publication of the Initial Report) available to the PDP team, and

    b. Sharing other information and discussion points the Board receives during the PDP through the Board liaison.

4.3.1 Recommendation 3 Rationale

The study revealed instances where staff experts advised the PDP and also pursued an independent agenda with the Board. A PDP chair and team cannot address Board concerns without being made aware of the information flowing to the Board. In at least one instance, a PDP request to a Board caucus that all reports received would be made available to the PDP team was granted. Sharing of information provides two benefits: ICANN as a role model can only benefit from additional transparency, and it makes no sense (i.e., it is a significant organizational failure) for the Board and the PDP to be operating with different sets of information.

4.4 Recommendation 4

In a separate section, Initial and Final Reports should anticipate (or react to) GAC Advice and (when available) provide detailed reporting of the discussion that addressed GAC issues and included GAC liaison participation. The Board should take that additional information on board and perhaps use it in its decision making to avoid the initiation of a lengthy discussion on the same issues.

4.4.1 Recommendation 4 Rationale

As was pointed out to this Board Readiness team several times, the GAC and ALAC will continue to lobby the Board on their positions that did not win consensus during the PDP, even when GAC and ALAC fully participated in the PDP, and the Board must fully consider those positions.

Since the ALAC and GAC positions will be repeated to the Board during the Board's public comment period, they cannot be discussed with the PDP team as the team will be disbanded. However, the PDP team can, in many instances, anticipate GAC Advice during the Final Report drafting based on GAC participation in the PDP, community interaction between the GAC and PDP team during the PDP, and comment to the Initial Report.

The Final Report can include a section that anticipates GAC Advice, laying out the issue, those participating in the PDP discussion, and the depth of discussion. Reporting in detail

might provide the Board with information sufficient to address the GAC Advice in real time. While we recognize that this additional work might not embolden the Board to act with alacrity, we think it is worth the effort as consideration of GAC advice often adds considerable time to the policy development process and the creation of the additional record might inform the subsequent discussion.

4.5 Recommendation 5

1. Charter drafting should consider the following rules / guidelines:

    a. In cases where there is existing policy, indicate whether we are adjusting existing policy to address a new set of conditions or taking a fresh look at (a *de novo* review of) the policy.

    b. Where the charter is necessarily broad, consider splitting the work into two or more PDPs so that the team expertise and representation can be tailored to the task.

    c. Embed a requirement to consider costs and legal (Bylaw) constraints, keeping in mind that PDPs will require varying amounts of this type of analysis, from substantial to none.

    d. Avoid prescriptive outcomes, i.e., requiring a specific solution. In cases where a specific solution is described, allow the PDP to determine its practicality vis-à-vis other solutions.

    e. Include provisions allowing for two-way communications between the Board and PDP team to address issues such as the need for fiscal responsibility and Bylaw adherence but emphasise the independence of the PDP and explicitly permit community disagreement with the anticipated Board reaction to the recommendations.

    f. Members (one or more) of the Charter Drafting team must be part of the PDP team to provide clarifications and provide an incentive to write the Charter clearly.

    g. Some critical review of the Charter must take place at the PDP outset. It is likely that the PDP members are the only ones motivated to examine the Charter in the requisite detail.

4.5.1 Recommendation 5 Rationale

Several interviewees commented that the PDPs were set up to fail by being too restrictive (Registration Data Phase II) or unfocused (SubPro). Put another way, Registration Data Phase II participants felt they were constrained by the Charter to recommend an elaborate version of a Registration Data Retrieval System even though there was a strong sense that their recommendation was economically not feasible. SubPro participants sensed that the open charter allowed for the introduction of "pet issues" by the myriad of participants (rather than focussing on the problem areas of the previous

TLD round) thereby substantially lengthening the PDP timetable and resulting in unimplementable recommendations.

Another PDP (IDN) relied on those who participated in drafting the Charter to effectively provide clarifications.

Interviewees recognized the strong temptation to attempt to "fix everything" (an impossible task) but the Council can aim to avoid complex tasks that often result in controversial recommendations. Despite this set of recommendations, Charter design will always be a difficult task.

4.6 Recommendation 6

The PDP Team composition and management can positively affect the likelihood of Board adoption:

    a.   Expertise: Teams must include broad ICANN community representation, both by constituency and by expertise. If outside experts must be brought into the team to provide sufficient breadth of expertise, there must be a schedule by topic so that the team makes efficient use of the outside experts' time. In addition, neutral outside expertise might be helpful in areas where the team already has expertise (e.g., legal advice).

    b.   Chairs: Should be selected based upon a set of criteria developed for each PDP but the requisite skillset should always include: (i) the ability to work with the Board and Board liaison to identify areas of difference between the Board and PDP team and develop a resolution path, (ii) the ability to facilitate discussion to ensure equal opportunities to present a viewpoint and manage those who seek to dominate it, and (iii) neutrality. In certain instances, an outside, independent chair should be considered. In addition, formalized training by a qualified entity should be considered in order to have a panel of qualified, independent chairs available.

    c.   Team composition should be a tool for achieving consensus and compromise in a timely manner while ensuring all those in the ICANN community and those affected by the PDP's work have an avenue for making meaningful contributions. Team design is an important and difficult aspect of the PDP process that merits attention and due care at the outset of each PDP.

4.6.1 Recommendation 6 Rationale

Nearly all interviewees recognized that PDP teams almost always lacked some skillset or knowledge necessary to derive acceptable recommendations. While attention is paid to ensuring PDP team membership includes each ICANN constituency / stakeholder group, teams often lack specific expertise: technical expertise is at a premium and operational expertise is even more rare. Attorneys in the discussion often are not used for their legal expertise but for their advocacy of a position. Individual stakeholder groups attempt to

staff PDP teams with the most appropriately skilled representatives but there is not a unified (community-wide) effort to ensure all requisite areas of expertise are included.

The recommendations regarding scheduling of an expert in the discussion is a result of the practice (as pointed out in the interviews) that issue discussion is often cut off after an amount of progress is made or an impasse reached, to be continued again at a later meeting. Scheduling of expert participation requires certain discipline in managing discussions to their completion.

There was a wide variety of opinions when contrasting open versus representative team formats (including hybrids of those models). Nearly all interviewees opined that a Representative Model or small team is more efficient at reaching consensus. Many stated that open teams were often dominated by a few people, those focused on a single issue, or those who were compensated to participate and could outlast others. Some stated that small (i.e., representative) teams were less transparent than large teams where, even if only a few participate, that participation is done in front of many others. Others opined that some PDPs require a broad range of experiences that the open model provides.

5 Appendix

5.1 Interview Questions

The following sets of questions were the questions distributed to the respective interviewees prior to the interview. In some cases, additional follow up questions were asked of the interviewees based on responses that are not listed here as they were contextually based and not asked of all respondents.

5.1.1 Interview Questions to Working Group Members and PDP Chairs

1. Were PDP working group members surprised (or unsurprised) by Board rejection of certain, specific policy recommendations? Why?
2. During the policy-making discussion, did the PDP working group consider Board reaction to potential recommendations (as indicated either by the Board liaison, the public comment process, or otherwise)?
3. In the opinion of PDP working group members, did the PDP working group have the sufficient expertise, resources and information to develop a "Board-ready" set of recommendations?
4. What were the PDP team's expectations of the Board liaison role?
5. How did Board members receive information regarding PDP working group progress, during the Policy Development Process and after recommendations were approved by the Council?
6. Did the PDP structure (e.g., open vs representative), time constraints, meeting frequency, or other administrative aspects foster or deter the development of Board-ready recommendations?

5.1.2 Interview Questions to Board Members

1. How did Board members receive information regarding EPDP working group's progress, during the Policy Development Process and after recommendations were received?
2. What (negatively or positively) surprised Board members in the policy recommendations? At what stage of the EPDP did those surprises occur?
3. Through what channel (reading the EPDP report, reading the summary report, the Board liaison report) did the Board member receive the specific information?
4. To what extent was recommendation "implementability" a concern or requirement? How is it measured during the recommendation evaluation?
5. To what extent is recommendation implementation and operation cost a concern or requirement? How is it measured during the recommendation evaluation?

5.1.3 Interview Questions to ICANN org

1. What is the GNSO policy support team role in informing the Board on PDP substantive issues?
   a. Is the support team proactive in this role or does it provide information on request? I.e.,
      i. What discretion does the support team have to inform the Board on substantive development?
      ii. How often does the GNSO policy support team liaise with a Board liaison or Board caucus?
      iii. How often does the GNSO policy support team liaise with the ICANN org GDS team/liaison, particularly on the implementation feasibility of recommendations?
   b. How has this role varied from PDP to PDP?
      i. IGO/NGO
      ii. Whois
      iii. Registration data
      iv. SubPro
      v. IDN
      vi. Transfer policy
2. If the support team sees a substantive development that will apparently disagree with the Board position, what action, if any, is taken? Take this question:
   a. generally, and
   b. with examples of specific PDPs in mind.
3. Generally, what is the support team's role in developing recommendations likely to receive Board approval, either through direct action or in an influential / indirect manner? Is anything lost (e.g., efficiencies, "better" recommendations) by limitations in that role?
4. How important are each of these in developing or amending previously developed consensus positions that will receive Board approval?
   a. Charter content (e.g., constraints/lack of constraints)
   b. Team composition (i.e., representative vs open)

5.2 Interviewee List

Marc Anderson
Donna Austin
Becky Burr
Roger Carney
Chris Disspain
Avri Doria
Amr Elsadr
Alan Greenberg
Janis Karklins
Cheryl Langdon-Orr
Chris Lewis-Evans

Paul McGrady
Jeff Neuman
Susan Payne
Kurt Pritz
Thomas Rickert
Christa Taylor
Marc Trachtenberg
Alan Woods

ICANN Policy Support Staff (Group Interview)
Eleeza Agopian
Marika Konings
Caitlin Tubergen

5.3 Small Team on Board Readiness Councilors

Justine Chew
Jennifer Chung
Prudence Malinki
Kurt Pritz
Susan Payne
Thomas Rickert