

# Report of Public Comments

<b>Title:</b>	New GNSO Policy Development Process									
<b>Publication Date:</b>	11 July 2011									
<b>Prepared By:</b>	Marika Konings									
<b>Comment Period:</b>		<table border="1"> <tr> <th colspan="2">Important Information Links</th> </tr> <tr> <td colspan="2"><a href="#">Announcement</a></td> </tr> <tr> <td colspan="2"><a href="#">Public Comment Box</a></td> </tr> <tr> <td colspan="2"><a href="#">View Comments Submitted</a></td> </tr> </table>	Important Information Links		<a href="#">Announcement</a>		<a href="#">Public Comment Box</a>		<a href="#">View Comments Submitted</a>	
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Open Date:	9 June 2011									
Close Date:	9 July 2011									
Time (UTC):	24.00 UTC									
<b>Staff Contact:</b>	Marika Konings	<b>Email:</b> Policy-staff@icann.org								
<b>Section I: General Overview and Next Steps</b>										
<p>As part of GNSO Improvements, the Policy Development Process (PDP) Work Team (WT) was tasked to developing recommendations for a new GNSO policy development process. ICANN's policies have wide-ranging impact on how domain names are handled in the gTLD environment, so the method of developing the policies matters. Following review of the comments received on its proposed Final Report and continued deliberations on remaining issues, the PDP-WT submitted its Final Report which contains amongst others forty-seven (47) recommendations, an outline of the proposed new Annex A as well as a supporting document that is envisioned to be included in the GNSO Council Operating Procedures as the PDP Manual, to the GNSO Council for its consideration. Prior to considering the Final Report, the GNSO Council opened this public comment forum to request community input on the Final Report and its recommendations. The GNSO Council will now consider the comments received and decide on next steps, which may result in referring the comments back to the PDP-WT for its consideration and potential revision of the Final Report.</p>										
<b>Section II: Contributors</b>										
<p><i>At the time this report was prepared, a total of four (4) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>										
<u>Organizations and Groups:</u>										
<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>								
GNSO gTLD Registries Stakeholder Group	David Maher	RySG								
INTA Internet Committee	Claudio Di Gangi	INTA								
Intellectual Property Constituency	Steve Metalitz	IPC								
<u>Individuals:</u>										
<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>								
Alan Greenberg		AG								

### Section III: Summary of Comments

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

#### General Comments

The RySG suggests that the term ‘GNSO’ is used in the report instead of ‘Council’ or ‘GNSO Council’ to ‘reflect the fact that it is the GNSO community as a whole that develops policy’. It further recommends a consistent use of either percentage (e.g. 33%) or fraction (1/3) when referring to voting thresholds. In relation to timing, the RySG advocates that sufficient flexibility should be foreseen to ‘allow for bottom-up vetting of issues’ and recommends that the following guidelines are followed:

- There should be at least 30 days for consideration of a motion that is made on a report, if such report differs significantly from a previously published version of the same report.
- All time related requirements in the new PDP should allow for ‘exceptions to provide flexibility for special circumstances’.

INTA welcomes the proposal to develop graphics to depict the new PDP once approved, but recommends that draft graphics are developed and made available for public comment, prior to finalization.

The IPC asks ‘will the adoption of the new PDP procedures set forth in the final report increase or decrease’ the duration of the overall PDP? It notes that the WT may have overlooked opportunities for streamlining such as a separate drafting and voting process on a WG’s Charter. The IPC furthermore asks ‘what commitments can ICANN make to fully staff and resource the “improved” policy development function’ noting that there a number of actions in the new PDP that require staff involvement. It also asks how the proposed PDP will become operational, whether the PDP Manual needs to be approved first by the GNSO Council and what the role of the Standing Committee on Improvement Implementation should play in producing or reviewing the PDP Manual. The IPC furthermore wonders whether the process of developing the proposed new PDP could have been adapted ‘so that more volunteers could have made a more meaningful contribution to its fulfillment, without having to devote considerable time over more than two years to the effort’.

#### Comments on the Recommendations / Sections

Recommendation / Section	Comment	Submitted By
<b>#3 Development of a Policy Development Manual</b> The PDP-WT recommends the development of a Policy Development Process Manual, which will constitute an integral part of the GNSO Council Operating Rules, intended to provide guidance and suggestions to the GNSO and ICANN communities on the overall PDP process, including those steps that could assist the community, working group members, and Councillors in gathering evidence and obtaining sufficient information to facilitate an	Developing a PDP Manual is advisable, but should not hold up policy development efforts. Therefore, an interim working arrangement must be achieved pending adoption of the final PDP Manual.	INTA

effective and informed policy development process.		
<p><b>#4 Request for an Issue Report Template</b>  The PDP-WT recommends that a ‘request for an Issue Report’ template should be developed including items such as: definition of issue; identification and quantification of problems, to the extent feasible; supporting evidence; economic impact(s); effect(s) on competition and consumer trust and privacy and other rights, and; rationale for policy development. Any request for an Issue Report, either by completing the template included in the PDP Manual or in another form, must include at a minimum: the name of the requestor and the definition of the issue. The submission of any additional information, such as the identification and quantification of problems, and other as outlined for example in the template, is strongly encouraged, but not required.</p>	The Template should be limited to defining the issue, identifying problems and providing the rationale for investigating whether policy development is needed. Other items, such as ‘supporting evidence’ and ‘economic impact’ may not be available until the issue is more thoroughly explored.	INTA
<p><b># 5 Issue Scoping</b>  The PDP-WT recommends adopting the proposed Policy Development Process Manual, to provide guidance and suggestions to those parties raising an issue on which steps could be considered helpful in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.</p>	Developing a PDP Manual is advisable, but should not hold up policy development efforts.	INTA
<p><b>#6 Creation of an Issue Report</b>  The PDP-WT recommends that the currently required elements of an Issue Report<sup>1</sup> continue to be required for all future PDPs. However the PDP-WT recommends that only certain of the elements be identified in Annex A of the Bylaws and others in the PDP Manual. More specifically, the Bylaws should continue to require elements a (the proposed issue raised for consideration), b (the identity of the party submitting the issue) and c (how that party is affected by the issue), while elements d (support for the issue to initiate the PDP) and e (recommendation from the Staff Manager) should be added to the PDP Manual. In addition, the PDP-WT notes that element e (recommendation from the Staff Manager) should be split in two parts; the first part dealing with the</p>	<p>The request for the ICANN Staff Manager to express an opinion as to whether the PDP should be initiated may be beyond the responsibilities of ICANN Staff. INTA believes this opinion tends to inject an extra step and would tend to prejudge matters before an appropriate policy airing.</p> <p>By what criteria are staff making the determination on scope and recommendation on initiation of a PDP? These criteria should be spelled out and the Staff Manager’s recommendation should address each of them. In relation to the opinion of the General Counsel, if the determination is made that a</p>	<p>INTA</p> <p>IPC</p>

<sup>1</sup> See provision 2 of Annex A of the ICANN Bylaws

<p>question of whether a PDP is considered “in scope” (see recommendation 22 for the definition of “in scope”) and the second part addressing whether the PDP should be initiated. Although currently included as one element in the ICANN Bylaws, the reality is that these two elements should be treated separately. Furthermore, the PDP-WT recommends including in the PDP Manual a recommendation for the entity requesting an Issue Report to indicate whether there are any additional items it would like to have addressed in the Issue Report. This in turn which could then be taken into consideration by the Staff Manager and/or Council when reviewing the request for an Issue Report. In addition, the PDP Manual should allow for ICANN Staff or the Council to request additional research, discussion, or outreach to be conducted as part of the development of the Issue Report.</p>	<p>proposed PDP is ‘out of scope’, does it have the same significance if it is determined out of scope of ICANN or out of scope of the role of the GNSO?</p>	
<p><b>#23 Mode of operation for a PDP</b> The PDP-WT recommends that even though a Working Group currently forms the basic mode of operation for a PDP, there should be flexibility to accommodate different working methods if deemed appropriate by the GNSO Council, in accordance with the GNSO Operating Rules. For example, in the past use has been made of “Task Forces” as well as a “Committee of the Whole”. Any such new working methods must contain each of the mandatory elements set forth in the ICANN Bylaws and PDP Manual.</p>	<p>Other examples should be provided instead of ‘Task Force’ and ‘Committee of the whole’ which are not considered consistent with the working group model. Instead examples such as ‘drafting teams’ or ‘review teams’ should be added.</p>	<p>RySG</p>
<p><b>#14 No fast-track procedure</b> The PDP-WT discussed the notion of a fast-track procedure extensively but did not come to agreement on whether such a process is truly needed, and if so, what such a fast-track procedure might look like. The PDP-WT recommends that the GNSO Council re-evaluates the need for a fast-track procedure in due time as part of the review of the new PDP, as it is of the view that the new PDP will offer additional flexibility and would allow for ‘faster’ PDPs provided that the necessary resources are available without the need for a formal ‘fast track’ process.</p>	<p>The WT should clarify what recommendations will enable the PDP process to move more quickly. The development of a fast-track process now (rather than waiting for the GNSO to assess whether to create one later) would ensure greater efficiency and timelier decision-making.</p> <p>The concept of monitoring outcomes needs to have an accompanying method to make corrections to a policy if a policy is not working as originally intended, without having to go through the full PDP process. Once the new PDP is implemented, the GNSO Council should</p>	<p>INTA</p> <p>AG</p>

	charter a small group to propose such a change. This should not wait until a full review of the PDP process takes place.	
<p><b>#15 Timeframes for Initiation of a PDP</b></p> <p>The PDP-WT recommends modifying the timeframes currently included in clause 3 of Annex A – “Initiation of a PDP” to reflect current practice and experience. In addition, it proposed to add language to codify the current practice that any voting<sup>2</sup> Council members may request the deferral of the consideration of an initiation of a PDP for one Council meeting.</p>	<p>INTA remains concerned that codifying this practice may result in additional delays. Discretion should be limited in terms of allowing for these delays.</p> <p>This recommendation allows any ‘voting Council’ member to request deferral, excluding the non-voting Nominating Committee appointee to the GNSO Council. Since the deferral is a request to not only defer voting, but to defer discussion, it is reasonable that this NCA, whose only tool is discussion, be able to make a deferral request to allow him or her to further study the issue.</p>	<p>INTA</p> <p>AG</p>
<p><b>#20 Input from SOs and ACs</b></p> <p>The PDP-WT recommends that further explanation on how to involve Advisory Committees or Supporting Organisations in a PDP be included as part of the PDP Manual. Much of this will involve the codification of existing practice. It is the belief of the PDP-WT that input from other SOs and ACs must be sought and treated with the same due diligence as other comments and input processes. In addition, comments from ACs and SOs should receive a response from the WG. This may include, for example, direct reference in the applicable Report or embedded in other responsive documentation or a direct response. The PDP WG is expected to detail in its report how input was sought from ACs and SOs and how, if input was received, such input has been considered.</p>	<p>Request that additional language be added explaining how to best involve the ACs and SOs in a PDP. In addition to explaining how input should be sought, details should be included for the manner and timeframe in which the WG should respond to AC and SO comments.</p>	<p>INTA</p>
<p><b>#23 Mode of operation for a PDP</b></p> <p>The PDP-WT recommends that even though a Working Group currently forms the basic mode of operation for a PDP, there should be flexibility to accommodate different working methods if deemed appropriate by the GNSO Council, in accordance with the GNSO Operating Rules. For example, in the past use has been made of “Task Forces” as well as a “Committee of the Whole”.</p>	<p>The recommendation should clarify who may, or who is responsible for, suggesting and developing such alternate processes, as well as the approvals required. Relying on GNSO Council discretion is insufficient to address the concerns raised.</p>	<p>INTA</p>

<sup>2</sup> The term “voting Council Member” is intentionally used by the PDP-WT to refer to only those persons serving on the GNSO Council that have a vote as opposed to liaisons and others that do not.

<p>Any such new working methods must contain each of the mandatory elements set forth in the ICANN Bylaws and PDP Manual.</p>		
<p><b>#28 Summary and Analysis of Public Comments</b> The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to reflect the current practice that a summary and analysis of the public comments received is to be provided by the staff manager to the Working Group. Such a summary and analysis of the public comments should be provided at the latest 30 days after the closing of the public comment period, absent exigent circumstances. The Working Group shall review and take into consideration the public comments received.</p>	<p>Delays should be avoided by defining and limiting ‘exigent circumstances’.</p>	<p>INTA</p>
<p><b>#29 Guidance on Public Comment Periods</b> The PDP-WT recommends providing further guidance in the PDP Manual on how to conduct public comment periods and review public comments received. Such guidance should include the expectation that public comments are carefully considered and analyzed by the WG; encouraging WGs to explain their rationale for agreeing or disagreeing with the different comments received and, if appropriate, how these will be addressed in the report of the WG, and; other means to solicit input than the traditional public comment forums such as surveys.</p>	<p>In cases where few comments are received, it may be realistic for the WG to respond to every public comment, but when there are large numbers it would be time consuming and not realistic to expect the WG to respond to every single comment. Suggest changing the recommendation to read: ‘encouraging WGs to explain their rationale for agreeing or disagreeing with <del>different comments</del> the main themes of comments received’.</p>	<p>RySG</p>
<p><b>#37 Timing of consideration of Final Report</b> The PDP-WT recommends modifying clause 10 – “Council Deliberations of Annex A” of the ICANN Bylaws to reflect current practice and requirements in the rules of procedure to consider a report if it is received at least eight (8) days in advance of a Council meeting, otherwise the report shall be considered at the next Council meeting. In addition, the PDP-WT recommends adding language to codify the current practice that any voting Council member can request the deferral of the consideration of a final report for one Council meeting.</p>	<p>Allowing as late as 8 days before a Council Meeting for considering a Final Report is completely unworkable.</p> <p>Deferral should only apply to the consideration of the Final Report, and any deferral relating to the initiation of a PDP should require a ‘second’.</p>	<p>RySG  INTA</p>
<p><b>#38 Consideration of Working Group Recommendations</b> The PDP-WT recommends providing additional guidance to GNSO Council in the PDP Manual on</p>	<p>The following two changes are recommended:</p> <ul style="list-style-type: none"> <li>- Add a sentence before the last sentence noting that ‘the Council, in</li> </ul>	<p>RySG</p>

<p>how to treat Working Group recommendations, especially those that have not received full consensus and the expected / desired approach to adoption of some, but not all, or rejection of recommendations. PDP WGs should be encouraged to indicate which, if any, recommendations are interdependent so the GNSO Council can take this into account as part of their deliberations. The Council should be strongly discouraged from separating recommendations that the PDP WT has identified as interdependent. The PDP-WT would like to express its concern about the GNSO Council 'picking and choosing' or modifying recommendations, but recognizes that this is the Council's prerogative. The PDP-WT would like to encourage the GNSO Council that where it does have concerns or would propose changes to recommendations, it passes these concerns and/or recommendations for changes back to the respective PDP Working Group for their input.</p>	<p>its policy process management role, should cautiously handle any reconsideration of WG recommendations to ensure that the WG does not get the impression that their work was in vain. If the Council thinks that a particular recommendation does not have support from any particular group, it should determine whether that group's input was reflected in the final recommendation'</p> <ul style="list-style-type: none"> <li>- Change the word 'encourage' to 'require' in the last sentence.</li> </ul> <p>It would be helpful for the Council to develop standards and definitions to gauge the level of assent along these lines (Strong Consensus, Rough Consensus, No Consensus).</p>	<p>INTA</p>
<p><b>#40 Voting Thresholds</b> The PDP-WT discussed whether the voting thresholds currently in place might need to be reviewed (see also overarching issues) but agrees that this issue should be covered as part of the next overall review of the GNSO. The WT does note that it has proposed two new voting thresholds in relation to the adoption of the WG Charter (see recommendation 18), as well as a new voting threshold for the termination of a PDP (see recommendation 36), and the definition of "Supermajority Vote" (see recommendation 47) .</p>	<p>There should not be any delay in determining fair voting thresholds. The fairness of the processes is directly tied to the voting thresholds and, as such, whether or not the voting thresholds should be revised should not wait for the next GNSO review. Instead the GNSO Council should remand this topic for further consideration by the PDP-WT with a short timeframe for a recommendation.</p>	<p>INTA</p>
<p><b>#44 GNSO Council Review of the PDP Working Group</b> The PDP Work Team notes that several documents, including the PPSC-WG WT and the WG Guidelines, reference a "Working Group Self-Assessment," which all WGs are encouraged to conduct. The Work Team believes that this could be a valuable exercise, and encourages PDP WGs to complete a candid and objective self-assessment at the conclusion of their work. However, the Work Team also notes that there are no ICANN guidelines and recommends that the GNSO Council develops such guidelines after some experience is gained in WG self-assessments.</p>	<p>Basic standards could and should be adopted now as a helpful tool subject to amendment after there is more experience with the new PDP process. This issue should not have to wait for referral to the Standing Committee or additional experience with the PDP process.</p>	<p>INTA</p>

<p><b>Section 3 – Overarching Issues</b></p>	<p>If all the overarching issues are included in the proposed PDP Manual it should say so, if not, it would be helpful to identify which ones are not included and why not.</p>	<p>RySG</p>
<p><b>Section 3 - Consideration of Final Issue Report by GNSO Council</b></p>	<p>Allowing as late as 8 days before a Council Meeting for considering a Final Issue Report is completely unworkable.</p>	<p>RySG</p>
<p><b>Section 3 – Approval of WG Charter</b></p>	<p>Allowing as late as 8 days before a Council Meeting for considering a WG Charter is too short.</p>	<p>RySG</p>
<p><b>Section 3 – Consideration of Final Report by GNSO Council</b></p>	<p>Allowing as late as 8 days before a Council Meeting for considering a Final Report is too short.</p>	<p>RySG</p>
<p><b>Section 3 – Consideration by the Board</b></p>	<p>The recommendation does not take into account Board requirements and needs. Item should be reworded to say ‘The Board shall consider the Recommendations Report as soon as possible according to its requirements but not later than the second meeting at the Board’s next meeting after receipt...’</p>	<p>RySG</p>
<p><b>Section 3 – PDP Document Translation</b></p>	<p>Recommend changing the recommendation to ‘public comments should be received in other languages <del>and</del> where feasible, <b>and when that occurs</b> these comments should also be translated back into <b>English</b>’.</p>	<p>RySG</p>
<p><b>Section 3 – Voting Thresholds</b></p>	<p>The organization of this section is confusion and could be clearer if all items relating to a Vote of Council would be grouped together under one heading. In the last sentence of 5c, it should be sufficient to say ‘the GNSO Supermajority vote threshold will have to be met or exceeded’, as the clause ‘with respect to any contracting party affected by such contract provision’ seems to be irrelevant. Regarding Board Vote, the GNSO recommended Board voting threshold should be consistent with those in the Bylaws. In relation to item 6b, it is recommended to change the timing to at least thirty days for the Council to review the Board Statement.</p>	<p>RySG</p>



<p><b>Section 3 – PDP-WT Conclusion</b></p>	<p>Recommendation to number instead of bulleting the different items in this section.</p> <p>Regarding second bullet on page 38, to ensure flexibility, proposed change to ‘a certain timeframe should be included (e.g. <b>the</b> Board shall within x days submit the board statement to the GNSO Council with guidance on how to cure the identified deficiencies, <b>with an option to extend if necessary</b>’).</p> <p>Regarding third bullet on page 38, as late as eight days before a Council Meeting for considering a Board statement is too short.</p> <p>Regarding the fourth bullet on page 38, suggestion to add ‘If the Board is considering separating recommendations, it should discuss this with the GNSO Council beforehand’.</p> <p>Regarding the first bullet on page 39, if clarification was received by Legal as suggested in this bullet, the paragraph should be updated to reflect that, if not, clarification should be obtained.</p>	<p>RySG</p>
<p><b>Annex A – Section 1 Required Elements of a PDP</b></p>	<p>Because of the importance of the recommendations, it might be useful to require that the recommendations be provided as a separate document from the full report or that they be concisely provided as a distinct section of the report after the Executive Summary.</p>	<p>RySG</p>
<p><b>Annex A – Section 3 Creation of an Issue Report</b></p>	<p>Recommendation to change ‘and more specifically the role of the GNSO as set forth in the PDP Manual’ to ‘and more specifically the role of the GNSO as set forth in the Bylaws’ as the Bylaws are authoritative, not the Manual.</p>	<p>RySG</p>
<p><b>Annex A – Section 4 Initiation of the PDP</b></p>	<p>Recommendation to change the sentence on the Board Request as follows: ‘<b>Except in cases where the Board believes that a PDP is urgently needed, before requesting a PDP, the Board should request the GNSO to provide information regarding the availability of community and staff resources as well as</b></p>	<p>RySG</p>

	<p><b>what GNSO activities may have to be delayed to add a new PDP.</b> If the Board requested an Issue Report <b>for what they consider an urgent need</b>, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP <b>unless resources are not available</b>. No vote is required for such action. <b>If the Board requested a PDP for a matter that is not considered urgent, they should provide guidance regarding what other GNSO activities may be delayed if necessary and make suggestions with regard to how additional resources may be found’.</b></p>	
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**Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

Upon review of the comments received, the GNSO Council will determine who will be responsible for analyzing and addressing these comments. Once the appointed entity has completed its detailed review and analysis of the comments received, the results of that process may be included here.