GNSO Operations Steering Committee
Constituency & Stakeholder Group Operating Work Team

For Work Team Consideration
23 April 2010

Recommendations on Task 1: Enhance existing constituencies by developing recommendations on constituency participation rules, operating principles, and database of members

1. Executive Summary

After several GNSO reviews, the ICANN Board Governance Committee (BGC) created a working group (WG) to consider the results of the reviews and recommend a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications. The BGC WG produced a comprehensive set of recommendations: "BGC WG Report on GNSO Improvements" that were approved by the full Board.[1] This report has been extensively referred to in preparing this Recommendation Document.

As a follow up to the above referred report, the GNSO Council formed two steering committees. The Operations Steering Committee (OSC) formed three work teams, one of which is the OSC Constituency Operations Team, subsequently called the OSC Constituency and Stakeholder Group Operations Team (OSC CSG Work Team).

The Work Team, with ICANN staff support, created a Work Plan and broke it down into Tasks. Task 1, the subject of these recommendations, was split into the following four subtasks:

- Subtask 1: Develop recommendations for a set of participation rules and operating procedures, which all constituencies should abide by;
- Subtask 2: Develop recommendations for clear operating principles for each constituency to ensure that all constituencies function in a representative, open, transparent and democratic manner;
- Subtask 3: Develop recommendations for creating and maintaining a database of all constituency members and others not formally a part of any constituency that is up-to-date and publicly accessible; and
- Subtask 4: Develop a "toolkit" of in-kind staff support and/or services for all constituencies.

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[1] See <http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>.

The Work Team completed the recommendations for Subtask 4, the toolkit of services, ahead of the other subtasks and submitted these recommendations separately to the OSC for review. The OSC approved the recommendations with modifications and submitted them to the GNSO Council, which voted to accept the recommendations on 17 December 2009 and staff work on implementation is underway.

Background

The BGC WG Report mandated the development of the following: "…clear operating principles for each constituency to ensure that all constituencies function in a representative, open, transparent and democratic manner. Operating procedures adopted by constituencies should reflect common principles and follow these guidelines."[2] In particular, the BGC WG was concerned to reduce entry barriers to active participation in Constituencies.[3] The BGC WG's recommendation was for the development of common operating procedures while recognizing some variation as acceptable.[4] The BGC WG recommendations also noted that ICANN is engaged in initiatives to improve accountability and transparency and noted that the GNSO Council and Constituency processes should adhere to the highest standards in this regard.[5] In developing its recommendations the Work Team considered also the ICANN Bylaws, which state at Article II, Subsection 1, "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.[6]

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[2] The BGC summarized this in the following action item at page 46: "Proposed Action Item: The Board requests: (i) The GNSO constituencies, with assistance from Staff as needed, to develop a set of participation rules and operating procedures, consistent with the principles outlined above, which all constituencies should abide by. The ICANN Board should ask the constituencies to develop and publicize common principles within six months; and to implement operating rules and procedures consistent with those principles at that time."

[3] See BGC Report page 42: "It is also important that ICANN minimize the barriers to entry to constituencies for those interested in policy issues. These barriers to entry fall into three groups: information, processes and cost. The information barrier is perhaps the most significant….For many who might be interested in ICANN's policy discussions, another barrier is the myriad of different ICANN processes which can be hard to understand and follow. At present, each constituency has a different set of membership and operating processes, and it is difficult for an individual to have a quantifiable impact on the policy process other than through a constituency. These problems are magnified for those who are not comfortable working in English. One solution is for each constituency to have a clearly communicated set of participation rules and operating principles that are based on common principles developed by the GNSO. These rules then should be made available in a variety of languages so they can be understood by ICANN's global audience."

[4] See BGC Report page 43 "Within certain broad and important guidelines, there can still be room for innovation and differentiation in the detailed procedures developed by each constituency that best meet the needs of that constituency."

[5] See BGC Report page 42: "ICANN is currently engaged in a series of initiatives aimed at further improving levels of accountability and transparency throughout the organization. The GNSO Council and the GNSO constituencies, like all of ICANN's structures, need to ensure that all of their processes adhere to the highest standards. The reviews of the GNSO suggest that there is a need for greater transparency within constituencies and greater consistency across constituency structures..."

[6] See http://www.icann.org/en/general/bylaws.htm.

In developing their recommendations, the Subtask Work Teams considered diverse practices and procedures currently in use by the constituencies and stakeholder groups. A detailed analysis was compiled.[7] In addition, the Subtask 2 Work Team considered approaches to participation and operational rules by other consensus based multi-stakeholder organizations such as those referenced by the BGC Report including the Internet Engineering Task Force (IETF), the World Wide Web Consortium (W3C), the Réseaux IP Européens (RIPE), the Latin American and Caribbean Internet Addresses Registry (LACNIC), the World Internet Technology Services Alliance (WITSA), the International Chamber of Commerce (ICC), and an independent review of Internet governance entities conducted by the Council of Europe.[8]

When the BGC WG made its initial recommendations, the concept of Stakeholder Groups (SGs) as part of the GNSO Council structure had not yet been implemented. Since then SGs have become an essential element of the GNSO Council along with Constituencies. Thus, unless otherwise stated, these recommendations apply to both Constituencies and Stakeholder Groups, referred collectively in the recommendations as "Groups."

2. Recommendations

The following recommendations are arranged in three sections:

- Section 2.1: Recommendations for a set of participation rules and operating procedures, which all Groups shall abide by;
- Section 2.2: Recommendations for clear operating principles for each Group to ensure that all Groups function in a representative, open, transparent and democratic manner; and
- Section 2.3: Recommendations for creating and maintaining a database of all Group members and others not formally a part of any Group that is up-to-date and publicly accessible.

2.1 Participation Rules and Operating Procedures

The following sections address the BGC WG's recommendation that Groups shall establish and abide by a set of participation rules and operating procedures.

2.1.1 Participation Principles

All Stakeholder Groups/Constituencies (here-in-after called Groups) shall adopt the rules

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[7]See: "Revised Constituency Analysis" at: <https://st.icann.org/data/workspaces/icann-osc/attachments/constituency_operations_team:20090710070126-0-21325/original/GNSO%20OSC-CSG%20WT%20Task%201%20Constituency%20Analysis%20V4--%20RrC%20edits%2020070909.doc>.
[8] See <http://www.coe.int/t/dgap/democracy/activities/ggis/Public_participation_internet_governance/Internet_Governance_Report_Souter_May09.pdf>.

below for participation. Such rules and procedures shall be part of their Charters.[9]

a. All Groups shall adopt these rules for participation to encourage openness, transparency and accountability. These rules and any other rules governing participation shall be objective, standardized and clearly stated.[10] For the avoidance of doubt, while commonality is encouraged in the interest of simplification, Groups are not required to have identical rules and variation between Groups is acceptable, as appropriate.

b. Groups shall have their participation rules based on common principles developed by the GNSO. These rules then shall be made available in the five United Nations languages – Chinese, Russian, Arabic, Spanish, and French – so that ICANN's global audience can understand them.[11]

c. All Groups shall strive to improve inclusiveness and representativeness. Groups shall have either a differential fee structure based on the ability to pay, in order to encourage increased representation from those living in less developed economies, or hardship provisions that entitle any potential member to apply for relief from the normal fee scale.[12]

d. All Groups shall strive to remove information barriers and put in place well-structured outreach programs so that many potential stakeholders come to know of their existence and also of the benefits in being part of the ICANN policy process, thereby becoming more aware of the value of joining the GROUP.[13]

2.1.2 Membership[14]

a. All Groups shall make and publish rules and procedures for admission requirements of interested parties as Members in clear and simple terms. Such rules and procedures shall be part of their Charters.

b. All Groups shall abide by rules governing membership, which are based on common principles. All Group members shall have rights, duties and responsibilities and in particular, rights to vote as applicable as per Group membership rules.

c. All Groups must offer membership to natural persons or individuals (if applicable) as well as to entities with legal personality such as corporations. However, any person or organization applying for membership shall meet the membership criteria laid down by the Group with ICANN's approval.

d. All Groups shall stipulate the rights, duties, and responsibilities of its members in clear and simple terms and publish the same.

e. A simple application form shall be devised for membership and it shall be publically available on the Group's website.

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[9] See Board Governance Committee (BGC) GNSO Review Working Group Report on GNSO Improvements, page 45, last paragraph.
[10] Ibid, page 43, paragraph 1.
[11] Ibid, page 42, paragraph 5.
[12] Ibid, page 41, last paragraph.
[13] Ibid, page 42, paragraph 4.
[14] Ibid, page 43, paragraph 2.

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1. Admission criteria shall be predictable and objective and not arbitrary or discretionary. Where eligibility depends on participation in a certain sector of business, then applicants shall be entitled to submit evidence of their participation in that sector.

2. The general membership shall be entitled to object to an application for membership provided that such objection is based on predictable and objective membership criteria. Such an objection shall be published to the Group members.

3. In applying for membership an applicant thereby agrees to abide by the written rules and regulations, including charters and bylaws, of the Group and terms and conditions laid down by it.

f. Status of a new application and admission decision, as far as possible, shall be publically available at the option of the applicant and an applicant shall be advised of any objection to the application, be given the opportunity to ask clarifying questions about the objection, and be given the opportunity to reply with clarification or to reply in general.

g. In case of unfair treatment resulting in the rejection of an application or a dispute, the applicant may lodge a complaint with the ICANN Ombudsman or a mutually agreed upon non-biased neutral third party. The process for lodging a complaint with the Ombudsman is set forth in Article V of the ICANN Bylaws and in the Ombudsman Framework.[15]

h. Every member shall remain in good standing until the Group has decided otherwise as per its Charter provisions. The reasons that such status can be imperiled shall be certain and predictable and objective and not arbitrary or discretionary. In such an event, the member shall be given an opportunity to be heard. Appropriate procedures shall be made for such an eventuality. The affected party shall have right of appeal to a neutral third party.

i. List of members and their contact details shall be publicly available on the Group website. Individual members shall have the right to have publication of address and other contact details withheld to protect their privacy. All members, unless otherwise stated shall be eligible to participate in the business of the Group and have voting rights as applicable.

j. No legal or natural person shall be entitled to join more than one Group as a voting member.

2.1.3 Policy and Consensus

a. All Group members shall be eligible to participate in the Policy work of the Group and to join Committees formed to deal with policy issues and other Group issues, including eligibility of membership in the Group's committees.

b. Groups shall refer to the GNSO Working Group model and guidelines for the purpose of reaching consensus and to improve accessibility, transparency, and accountability all Groups shall establish and publish a consensus-building model or process that is publicly available to their membership and the community. The process or model

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[15] See <http://www.icann.org/ombudsman/documents/ombudsman-framework-26mar09-en.pdf>.

shall be based on the principles of participation, representativeness, process integrity, flexibility, transparency, openness, and other norms common to the GNSO Working Group model. Whatever consensus-building model or process a Group uses, the Group must describe the process and ensure that is publicly available to their membership and the community so it is visible and transparent.

2.2 Operating Principles

The following sections address the BGC WG's recommendations for clear operating principles for each Group to ensure that all Groups function in a representative, open, transparent and democratic manner.

2.2.1 Term Limits

a. No person shall serve as a Group Councilor for more than four consecutive years. A member who has served four consecutive years must remain out of office for one full term prior to serving any subsequent term as a Group Councilor. Any exception to this policy would require approval by the Group membership.

b. No person shall serve as a Group Officer for more than four consecutive years. A member who has served four consecutive years must remain out of office for one full term prior to serving any subsequent term as a Group Officer. Any exception to this policy would require approval by the Group membership.

c. No person shall serve as a Stakeholder Group Executive Committee member for more than four consecutive years. A member who has served four consecutive years must remain out of office for one full term prior to serving any subsequent term as a Stakeholder Group Executive Committee member. Any exception to this policy would require approval by the Group membership.

2.2.2 Executive Committees

a. All Executive Committees must promptly publish action points, decisions, and any resolutions to Group members. It is recommended that prompt publication means within a reasonable period and a guideline is between 72 hours and 1 week of the relevant meeting.

b. All Executive Committees must publish to Group members their rules and procedures, decision making process and criteria.

2.2.3 Committees

a. Groups shall adopt a standard set of rules and procedures to govern Group Committee constitution and operations. Whatever model is adopted, it shall be published to the entire Group membership and maintained.

b. The formation of all Committees shall be made known to the entire Group membership and eligibility to participate shall be open to all members.

c. The fact a Committee has been established and its membership shall be made available to the entire Group membership and shall be published on the Group website.

d. Action points, decisions and any resolutions and final work products shall be made available to the entire Group membership within a reasonable period of any given meeting.

e. Going forward, Groups shall publish to the Group membership a list of all active and inactive Committees and their final decisions, resolutions and final work products.

2.2.4 Communications

a. Group mailing lists shall be open to the entire Group membership and, at the election of the Group in any given case, to the public. The Group may have reserved lists if needed.

b. The outcome of all Group policy decisions shall be open and publicly archived with posting rights limited to members at the election of the Group.

c. Group business, work products, finance and accounts, and submissions to Staff and other ICANN entities shall be made available to the entire Group membership unless there are valid grounds for restricting distribution.

d. All Groups shall have a published Privacy Policy providing for the protection of the private data of members.

2.2.5 Elections

Groups shall publish and maintain a list of all Office holders, past and present, to inform Group members and to provide transparency for term limits.

2.2.6 Voting

a. All Group Charters shall clearly delineate the voting rights of all of their members.

b. All Groups shall permit all voting members in good standing to vote in elections as delineated in their Charters.

c. Members may be entitled to appoint proxies.

d. No legal or natural person shall be entitled to join more than one Group as a voting member.

2.2.7 Charter Amendments

The procedure for amending Group Charters shall be stipulated therein.

2.2.8 Meetings

a. Groups shall adopt simple and accessible basic meeting procedures. Groups also may refer to the GNSO Bylaws, Operating Procedures, and the GNSO Council Working Group Guidelines.

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b. Minutes shall be taken at meetings of the general Group membership and action points, decisions and any resolutions or minutes be published to the entire Group membership within a reasonable period.

2.2.9 Policy

a. Eligibility to participate on Policy Committees shall be open to all members in good standing.
b. Any Member of a Group shall be able to propose the Policy Committee consider a Policy issue in accordance with the Group Charter.
c. Policy Committee meetings shall be open for attendance by all Group members, and, at the election of the Group, to the public.

2.2.10 GNSO Working Group (WG)

a. Any individual participant of a Group shall be entitled to join any GNSO WG in an individual capacity and Groups shall publish and advise all members of the call for WG participants.
b. Groups shall adopt and publish to the Group membership their rules and procedures for selecting and appointing Group representatives to GNSO WGs. It is recommended that these appointments be open to the entire membership to increase opportunities for participation.
c. Group Members may participate in an individual or representative capacity, but Group representatives must advise the entire Group membership of the WG activity from time to time.

2.3 Group Membership Database

The following sections address the BGC WG's recommendations for creating and maintaining a database of all Group members and others not formally a part of any Group that is up-to-date and publicly accessible.

2.3.1 Database Architecture

a. The system must allow users a reasonable level of privacy they desire and/or that is required by their local governments.
b. The data scheme/relationship shall segment database in a hierarchical fashion with segmentation based on various Communities, Stakeholder Groups (SG) and Constituencies. This shall also include Working Groups, drafting teams and other groups that may be used in the GNSO policy development process herein after referred to as Groups.
c. Access to the system could be a link that takes the user to a landing page, which looks similar to the diagram included in this document as Figure 1. As users click on the various boxes they will be taken to the associated member list.
d. Each category of Group will be represented by a link on the main portal contact page. When a link is clicked the user will be taken to another landing page where the

various options for that Group are represented. Depending on the number of layers associated with a given Group there will be additional landing pages one is directed to, eventually reaching a page containing all member or member delegate participants for that Group.

e. A systems operator (Operator) and maintenance resource, as well as a backup shall be provided by ICANN and will be responsible for adding and/or deleting members or member delegates from the various Group member lists. The Operator will be responsible for validating, to the best of his/her ability, the existence of Group members.

f. Individuals and organizations that wish to be a member of a Group can notify the Operator of their member or member delegate status for a given Group. The Operator will then verify the member or member delegate's membership. Once the membership is confirmed, the Operator will send a notification to the member or member delegate providing access to the member database (similar to what we see today on websites such as LinkedIn or Facebook).

g. Once notified by the Operator, member or member delegates can enter their contact details. Contact details will vary based on the type of member (individual or entity), and member type shall be one of the details noted in the database. Examples of contact details are: member type (individual or organization), company name, family name, given name, address, telephone, fax, email, etc.

h. To respect member or member delegate's privacy, the system will allow member or member delegates to select what information is visible to the public. There shall be a minimum amount of information available such as member or member delegates' names, whether they are a voting member, and how they are affiliated with the respective Community, SG or Constituency, except in those cases where doing so creates a hardship or dangerous circumstances for the member or member delegate (to be determined by the privacy policy).

i. The system shall also indicate member or member delegate's status in the Group they are a part of including: whether they hold an Executive, Council, Board, Nominating Committee position and if so what it is; whether they are an active or inactive member or member delegate, a voting member or member delegate, an interested party; and what working groups—if any—they are participating in.

j. The system must also provide features for member or member delegates to self-select communications and alerts they wish to receive and the frequency.

k. The system shall be as scalable as possible, so future functionalities can be added. For example: ability to upload a profile picture, chat, etc.

l. The system's architecture/design shall tie back to other OSC initiatives related to communications.

2.3.2 Storing and Updating Membership Records

a. Membership systems of Groups must ensure appropriate privacy measures for those individuals and organizations that are member or member delegates.

b. Membership records shall be updated by the member or member delegates themselves, and as stated in 2.3.1 above.

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c. Membership in a particular Group would be granted by the Operator. The Operator shall also have the ability to set a member or member delegate to inactive.

d. The Operator shall perform the updates to those holding an executive position in an ICANN community.

2.3.3 GNSO Discussion List

a. The system shall include a discussion list, however a generic "GNSO-discussion list" is not recommended as it has been tried in the past and was abused to the extent that most members of the ICANN community discontinued their use of it.

b. The discussion list format shall be similar to that which is used today, that is, permission for access to the discussion lists shall reside at the various Community, SG and Constituency levels with rights only extended by invitation from the Operator.

c. ICANN shall provide the infrastructure and an IT specialist shall organize it and provide documented requirements.

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3.   Minority Recommendations

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Appendix A Detailed Analysis of Group Operating Principles

1. Executive Committees

We refer to the Staff notes in this regard for their detail. We also refer to the Template Charter and its general descriptions of the type of issues that should be dealt with.[16] Turning to the various divergent practices in current use by Constituencies, as noted by Staff Charters contain generalized descriptions of the responsibilities of Executive Committees and provide for appointments.

However, Charters lack Executive Committee rules and procedures, decision making process and criteria, and provision for publication of minutes, decisions and resolutions to Constituency members.

Executive Committees often operate without transparency. There seems to be a blanket failure to publish minutes, resolutions or minutes. This concern was also noted by the LSE. This is not the right balance for ICANN as an international organization with public trust functions and in light of its core values and bylaw requirements.

In a corporate context, Executive Committees are utilized where an organization has a large or a geographically diverse Board and so can act with the power of the full Board between Board meetings. Utilizing Executive Committees without any Board at all is the worst possible borrowing from company law in terms of transparency.[17] We note that while the ICANN Board may not publish its discussions – it does publish minutes and resolutions. For the avoidance of doubt, we are not suggesting that Constituencies should have Boards. We merely note that internationally accepted standards of Board governance and best practice should be a touchstone for good practice in Executive Committees in their own procedures. This is even more so given ICANN's public trust function and its accountability to the public at large as well as ICANN's own core values and Bylaws.

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[16] See Template: "1.1 Composition, Eligibility, and Terms of Office: Suggestion: What officers and positions comprise the constituency's leadership structure (e.g. Executive Committee); what are the relevant eligibility criteria; and what terms of office apply including limits, staggered terms, resignation, suspension, removal, and vacation? 1.2 Responsibilities: Suggestion: This sub-section describes the roles, duties, and responsibilities of each position identified in 2.1 above including delegated powers and authorities (e.g. facilities, budgets, operating plan, meetings/conferences, web site). 1.3 Decision-Making Processes: Suggestion: What methodologies will the constituency's leadership team utilize in its decision-making processes and in what ways can/does the membership participate? Optionally, voting mechanisms/rules may be described here or referenced only and explained in §8.0."

[17] We note that under English law model articles of association for a private company are contained in the Companies Model Article Regulations 2007. See <www.berr.gov.uk/files/file40794.doc. http://www.companieshouse.gov.uk/companiesAct/implementations/TableAPrivate.pdf>.

It has been noted and we recognize that some Constituencies as a matter of practice do take great pains to communicate the work of committed individuals who volunteer time to serve on the Executive Committees. Practices do differ markedly between Constituencies.

While it may be appropriate for Executive Committees to hold discussions in committee or under Chatham House Rules, they can have no objection to publishing their decisions and resolutions. We recommend, as a minimum; all Constituencies publish minutes or decisions and resolutions of their Executive Committee meetings within a reasonable period**.**

We note the BGC's express stipulation that there should be term limits for Constituency officers, so as to help attract new members and provide everyone with the chance to participate in leadership positions. See below as to Elections. The term limits should expressly apply to those serving on Executive Committees.

2. Committee(s)

We refer to the Template[18] and to the current practices in the Combined Analysis of current practices as well as to Staff comments.[19] We refer to the draft ICANN Working Group Operating Model by the Policy Process Steering Committee,[20] and we also refer to the laudable models of Working Groups developed by the IETF, RIPE, W3C and others.

We believe that in many cases, the BGC's objectives would be served by having Constituencies agree to adopt the ICANN Working Group Operating Model – as finally recommended by the Policy Process Steering Committee to govern Committee process—including Policy and Advisory Committees.

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[18] See Template "3.1Purpose and Function: Suggestion: For each permanent committee (or council) envisioned (e.g. policy development, credentials), what is the purpose of that entity and what are its principal functions?; 3.2 Officers, Eligibility, and Terms of Office: Suggestion: What officers and positions comprise the committee's (or council's) leadership structure; how are they appointed or elected; what are the relevant eligibility criteria; and what terms of office apply including limits, staggered terms, resignation, suspension, removal, and vacation?; 3.3: Responsibilities Suggestion: This sub-section describes the roles, duties, and responsibilities of each position identified in §3.2 above including delegated powers and authorities.; 3.4 Advisory Structures. Suggestion: This sub-section addresses the various types of temporary advisory entities (e.g. working groups, sub-committees, task forces) that might be constituted for each committee (or council); how they are chartered, organized, and populated; and, depending upon each one's function, might define additional roles such as author, rapporteur, secretary, et al.; 3.5 Decision-Making Processes. Suggestion: What methodologies (e.g. consensus, voting) will the committee (or council) and advisory structures utilize in their decision-making processes and in what ways can/does the membership participate? What procedures or processes will be engaged to resolve disagreements?"
[19] See <https://st.icann.org/data/workspaces/icann-osc/attachments/constituency_operations_team:20090710070126-0-21325/original/GNSO%20OSC-CSG%20WT%20Task%201%20Constituency%20Analysis%20V4--%20RrC%20edits%2020070909.doc>.
[20] See <https://st.icann.org/icann-ppsc/index.cgi?wg_team_model>.

In addition we recommend that the formation of a Committee should be made known to the entire constituency membership. The fact a Committee has been established should be published on the Constituency website, where a list of all active and inactive Committees and their work products and resolutions should be publically available.

Final work product, decisions, resolutions and/or minutes should be made available in a timely manner.

We also recommend that Committees should be open to all Constituency members. A concern was noted that this may not be appropriate where specialist technical or professional knowledge or expertise is required to effectively contribute to the work of the Committee. We anticipate that is an exceptional situation however. Even specialized Committees often benefit from lay members. In such exceptional cases, the call to membership should be to all in the Constituency with the relevant expertise. To clarify, our concern is the practice of invitation only, closed Committees formed by appointment, whose existence and work may be unknown to the general membership.

3. Communications

We refer to the Template[21] and also to the BGC's Principles and Guidelines scheduled hereto. We also considered ICANN's role an international multi-stakeholder body and its public trust function and its accountability to the global Internet community at large rather than to any specific members or group of members. We further note the Bylaws requirement that ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, Article III, Subsection 1.

We note that while the BGC expressly stipulated that, "mailing and discussion lists should be open and publicly archived (with posting rights limited to members)" this does not have the support of the constituencies. This is an issue that should be referred back to the BGC.

We note that IETF, RIPE and LACNIC make almost all information publically available, even the work and drafts of small groups of interested parties who wish to influence policy and are attempting to gather momentum.

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[21] See Template: "1.1 Composition, Eligibility, and Terms of Office: Suggestion: What officers and positions comprise the constituency's leadership structure (e.g. Executive Committee); what are the relevant eligibility criteria; and what terms of office apply including limits, staggered terms, resignation, suspension, removal, and vacation? 1.2 Responsibilities: Suggestion: This sub-section describes the roles, duties, and responsibilities of each position identified in 2.1 above including delegated powers and authorities (e.g. facilities, budgets, operating plan, meetings/conferences, web site). 1.3 Decision-Making Processes: Suggestion: What methodologies will the constituency's leadership team utilize in its decision-making processes and in what ways can/does the membership participate? Optionally, voting mechanisms/rules may be described here or referenced only and explained in §8.0."

[21] We note that under English law model articles of association for a private company are contained in the Companies Model Article Regulations 2007. See <www.berr.gov.uk/files/file40794.doc>.

We recommend that situations properly constituting grounds for restricted circulation or publication even within constituencies should be certain and determined in advance by the membership and included in a Disclosure Policy – which can be incorporated by reference in Charters. We note by way of a precedent, ICANN's own Documentary Information Disclosure Policy.[22] We suggest a policy dealing with both documentary and non-documentary information. Any grounds for withholding should be precise and based on predictable criteria e.g. legal advice or trade secrets of members. We also recommend an independent avenue of appeal should be provided for those challenging the implementation or application of the Policy in any instance. This might be provided by a committee of the GNSO Council.

Each Constituency should maintain up-to-date records of all current members, and this information must be available with protection for the contact information of individual members by way of written Privacy Policies.

4. Election of Group Representatives

We recommend that these appointments be voted on by the entire membership of each Constituency. We refer to the comments as to voting and elections herein. We also refer to the work of Subtask 1.1 on common participation rules.

4.1 Elections

We refer to the Template.[23] We refer to our comments below as to voting. As to the Procedures, as described by the Template—we recommend they be standardized and common across Constituencies—there again being no advantage in any variation.

We note the BGC's express stipulation that there should be term limits for Constituency Officers, so as to help attract new members and provide all with the chance to participate in leadership positions. It was observed that some Constituencies have had incumbents in the same or different office for considerable periods. A concern was expressed that the rotation of the same individuals through leadership and office may lead to the capture of Constituencies. Others were less comfortable with this characterization and the point was made that the limited pool of individuals available to fund their own travel and commit the considerable time necessary for leadership roles without remuneration – explained the frequent re-election of those available.

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[22] See <http://www.icann.org/en/transparency/didp-en.htm>.

[23] "7.1.Eligibility for Elected Office. Suggestion: This sub-section might include any general eligibility criteria pertaining to elected positions not elsewhere covered under a particular title (e.g. access to proprietary/confidential information). 7.2 Procedures. Suggestion: This sub-section describes the constituency's roles, responsibilities, processes, rules, and associated timelines for handling nominations, circulations, candidates formal acceptance, and submission of resumes/bios/qualifications; elections (method, use of proxies); and determination of outcome(s) including ties, eliminations, etc."

We note that the BGC recommended a limit of two terms for GNSO Representatives and we would recommend that a similar limit be adopted within Constituencies for all office holders—including those on Executive Committees. We recommend a limit of two years per term and a maximum of two terms per office being a total maximum of four years in any office with the option to sit out a term and begin again. This has the added benefit of simplicity as it matching the Bylaws rules.

We also recommend that as far as possible Constituencies publish on their websites –and make publically available a list of all holders of office and all their respective past and present positions from commencement so that the Constituency members – particularly incoming members – can access this information and to provide transparency for term limits. This was supported by all WG members bar one.

4.2 Voting

This is an area impacting Subtask 1.1 on common participation rules as well as Subtask 1.2 on operating procedures.

We note the Staff's comments to one Constituency – which has members that cannot vote at all. Denying constituency members any vote offends basic democratic and representative principle and practice. The Constituency in question noted there were precedents even in ICANN for non-voting members but provided no examples or detail.

We recommend the rule of one member one vote. If legal or natural persons wish to appoint a collective, trade association or other organization, national or international, to exercise their vote – they can do so by proxy. This is how company law deals with the issue. Natural and legal persons (corporations and partnerships and other structures) are equal under the law in all common law jurisdictions and neither is preferred. The preference for the corporate form and treatment of individuals as somehow second class is wrong in principle. Nor is the negative treatment of individuals common to other Internet governance organizations and we refer to the independent report commissioned by the Council of Europe above.

Further, there are no common law precedents for weighted or ranked voting based on size in corporate or democratic structures. If classes of members and weighted or tiered voting systems are to be permitted, then academic and expert advice needs to be sought as to the same and then any recommendations developed should require the express approval of the Board on recognized principles – to be developed. Displacing the one member one vote principle based on size or revenue would need to be theoretically justified so as not distort democratic or representative principles. We recommend academic work should be commissioned from experts as to appropriate principles and their application.

Given the current system is untested and lacks the hundreds of years of use that corporate models enjoy or, equally valid, alternatively proper independent academic back up and testing of the model -- it will inevitably lead to exclusion and unfairness and be undemocratic and unrepresentative. While innovative structures are laudable in general –

on this sort of crucial element, proper theoretical foundations are required. Organizational theory and governance are now highly developed subjects and so we recommend some resort to the same.

We recommend that no legal (including related parties) or natural person be entitled to vote in more than one Constituency.

5. Finances

In accordance with the BGC's concerns as to openness, transparency and accountability --- some recommended all Constituencies publish their full accounts to members. It was felt that as ICANN had not provided the funds to date, publication should be limited to the membership.

6. Amendments.

The procedure for amending Constituency Charters should be stipulated and standard.

7. Meeting procedure

This refers here to meetings of the constituency general membership. We recommend that as far as possible basic meeting procedure should be simplified. We see no benefit to variations in basic meeting procedure – and an information barrier and extra layer of complexity without real purpose. We recommend that the CSG WT prepare a basic handbook or rule book of recommended meeting procedure – or the adoption of an existing precedent such as Robert's Rules. A precedent of basic meeting procedure is at Annex A.

Alternatively, meetings could function on the GNSO WG model currently under development – unless consensus cannot be reached – at which point the proceedings could be escalated to a formal basic standard meeting procedure. We make this proposal in the spirit of the BGC's Guideline directing emphasis on reaching consensus to achieve objectives and closure on issues.

We note the BGC's concern that procedures and support for policy positions should be clear – in light of this and as a matter of basic good practice minutes should be taken at all meetings and minutes and resolutions published together with levels of consensus or votes.

We recommend that any 5 members can request the Constituency call a general meeting.

8. Policy Development and Records of support for Policy

Where Constituencies have separate Policy Committees – we recommend those Committee's comply with the same minimums as Executive Committees above. We also refer to our recommendations on meetings above. Where consensus calls are employed –

they shall follow the ICANN WG model. Where formal voting is adopted it should be recorded in accordance with the formal standard meeting procedure recommended above.

Where the substantive work of the Constituency on GNSO Policy is undertaken by a Policy Committee, issues arise as to the ability of the membership to participate in the work of the Constituency. We note the Staff has raised this in relation to Working Groups [link]. Standing Policy Committees can operate to exclude the membership and minimize real participation. Ad hoc Committees formed to deal with a particular policy issue, open to the membership are preferable from a participation perspective. Alternatively, we recommend shorter terms of membership as a general rule, one year, but with no limits as to term. We also recommend that these Committees should be flexible, open to all members, able to admit members for temporary or limited periods where their expertise may be required on a given issue and unrestricted in size as appropriate.

We recommend that any member of a Constituency should be able to propose an issue, whether of Policy or otherwise, be examined in Committee and provided 5 members agree, a Committee shall be formed.

9. Participating in Working Groups

Any member of a Constituency should be entitled to join any GNSO Working Group and to participate as a representative of the Constituency or an individual – at their own election. Either way, they should make regular reports to the Constituency as to the work.

Further, Constituencies should advise all members of the formation of GNSO Working Groups and any member should be entitled to join the same – subject to limits on numbers per Constituency.

10. Dealings with Staff: A Code of Practice

A concern was raised as to the Staff's role and function in the GNSO and to whom the Staff answer. Having no independent constitutional role, they must act under the direction of a GNSO entity, have transparent instructions and be accountable to that entity. In practice, the Staff's authorizing mandates are not always made public in a timely fashion, nor are the tasks clearly subject to the direction, supervision or oversight of any entity. Without structural safeguards, transparent mandates and lines of reporting and accountability, Staff may be engaged and informally lobbied by interested parties – circumventing transparency measures. Such practices represent a major challenge to the objectives of GNSO reform but are also relevant to ICANN's compliance with its own core values and its discharge of its public trust function – and its Bylaws. Further, Staff should be protected from such pressures, particularly in relation to Contracted parties who may regard themselves as the employers of the Staff.

Some group members were concerned to identify further evidence of or justification for this concern. All agreed that investigation of the issue was not within our remit however. It was suggested that this may be a matter for the BGC itself or the SIC and we agree and

recommend that this WG formally refer the issue to the BGC and the SIC and ask them to recommend a procedure for instructing and engaging Staff – ideally by published request, mandate, or decision and in each case stipulate to whom Staff should report and who shall supervise them. It was also suggested that Staff should raise this with their superiors and we agree that Staff should themselves require written and published requests, mandates or decisions as authority going forward. However it is within our remit to suggest operating procedures that meet best practice going forward and we think it is appropriate to take this opportunity to recommend certain minimums in the way Constituencies deal with Staff.

We recommend CSG WT prepare a Code of Conduct to govern Constituency dealings with Staff including provision for independent ownership of the Code and for independent adjudication of any complaints by Staff of Code violations.

Schedule I: The BGC Working Group Guidelines

At page 43 the BGC Report sets out the guideline minimums that the operating procedures must observe. These are as follows.
- Mailing and discussion lists should be open and publicly archived (with posting rights limited to members).
- Procedures for developing policy positions should be clear. There should also be publicly available information about how many participants from each constituency were involved in the development of any policy position.
- Constituency processes should encourage participation from stakeholders across the globe. Where possible, relevant documents should be made available in multiple languages.
- There should be term limits for constituency officers, so as to help attract new members and provide everyone with the chance to participate in leadership positions.
- There should be an emphasis on reaching consensus to achieve objectives and closure on issues

Appendix B: Minority Reports

Insert Reports