2 November, 2008

TO: **PPSC members**
FR: **Liz Gasster, ICANN Staff**

RE: **Response to request for a summary of the ICANN Board's recommendations for adopting a working group model and revising the PDP.**

At the 2 November 2008 initial meeting of the PPSC, participants requested a summary of the elements that the Board envisioned would be encompassed in adopting a working group model and a revised PDP. Following are key extracts on those topics from the BGC-WG Report of 3 February 2008 (as approved by the Board).

Please note that the BGC-WG Report requests that these new principles, procedures and rules be developed and presented to the Board within six months. The Report notes that these principles and rules should include but are not limited to the points outlined below. Please note also that sufficient time must also be allotted to solicit and consider public comments on draft rules and procedures developed by the implementation work teams. Please let me know if you would like additional information at this time.

Recommendations for adopting a Working Group (WG) Model

The Board expects the following concepts to be implemented:

1. Working Groups should become the foundation for consensus policy development by the GNSO Council. Such an approach tends to be a more constructive way of establishing agreement than task forces, where discussion can replicate constituency positions rather than explore common ground. There is value in enabling parties to become a part of the process from the beginning. This inclusiveness can have benefits in terms of being able to develop and then implement policies addressing complex or controversial issues.

    Proposed Action Item: The Board requests the Council to take steps immediately to move to a working group model, as described above, for all future policy development work, and other aspects of its work as appropriate.

2. The Council and Staff should work together to develop appropriate operating principles, rules and procedures for the establishment and conduct of GNSO Working Groups. An implementation team comprised of Staff, Council members and GNSO constituency representatives should be established for this purpose, and it should also be tasked with revising the policy development process (PDP). This effort should draw upon the broad and deep expertise within the ICANN community on how lessons learned in other organizations might benefit ICANN. These rules and procedures should consider the following elements:

    - Working groups should be open to anyone interested in joining and offering their insights and expertise. At the same time, safeguards to prevent any single group from "capturing" a working group must be developed. The implementation team should

define a proper balance that invites new stakeholders to participate but that keeps working groups to a manageable size for constructive discussion.

- Notices about the creation of working groups should be posted clearly and as broadly as possible, both inside and outside of the ICANN community, in different languages and as early as possible, to allow greater opportunity for broad participation. In addition, Staff and constituencies should undertake proactive outreach, including in languages other than English.

- A strong, experienced and respected Chair is essential. The Chair – and any Vice-Chair(s) – must play a neutral role by refraining from pushing a specific agenda, ensuring fair treatment for all legitimate views and guaranteeing objectivity in identifying areas of agreement. The Chair should have authority to enforce agreed rules against anyone trying to disrupt discussions, and be able to exclude people in certain cases, with the possibility of an appeal (perhaps to the Council).

- At the outset, the working group or the Council should set a minimum threshold for active support established before a decision can be considered to have been reached. This may involve balancing numeric and distributional components.

- Where such agreement is not possible, a group should strive to reach agreement on points where there is significant support and few abstentions. Support for the points should be well-documented and include the positions and reasoning of those who do not agree.

- Decisions where there is widespread apathy should be avoided. On the other hand, dissenters should not be able to stop a group's work simply by saying that they cannot live with a decision. Instead, they should propose an alternative that would be acceptable to them and could also meet the needs of other members of the working group. When the Chair believes that the working group has duly considered the legitimate concerns of dissenters as far as reasonably possible, the group can decide to record the alternate view(s) and move on to other issues.

- The author(s) of the working group report will play a crucial role in building consensus, and should be distinct from the Chair. The drafting group should ideally comprise a variety of voices, to help ensure that the outcome is constructive and broadly supported.

- There should be a procedure for appealing a decision of the Chair (perhaps to the Council) with respect to the proper application of the agreed rules.

- Anyone joining a working group after it has begun must review all documents and mailing list postings, and agree not to reopen previously decided questions.

- Members of working groups must disclose certain information on standardized Statement of Interest and Declaration of Interest forms, which will be available online for public review.

Proposed Action Item: The Board tasks the Staff to work with the Council and GNSO constituencies to develop a set of working principles, rules and procedures for GNSO working groups, including but not limited to the points above, and to present those principles to the Board within six months. The Board recommends that an

implementation team be established for this purpose, and it should also be tasked with developing the rules and procedures for working groups, as described above. Sufficient time must also be allotted to solicit and consider public comments on draft rules and procedures developed by this team.

3. ICANN Staff must be ready to provide sufficient support to a working group. This should include the option of recruiting and compensating outside experts for assistance on particular areas of work, providing translation of relevant documents, and developing relevant training and development programs. Most important, the budget implications of additional resources for working groups should be factored into the planning cycle to the extent that has not already happened.

    Proposed Action Item: The Board:

    (i) Tasks the Staff with preparing a report on the budget implications of moving to a working group model, including costs associated with using expert input and professional facilitators, any additional travel costs and translation and/or interpretation costs. The report should include an indication of how much funding might be available in the current fiscal year and in future years. This report should be presented to the Board within six months; and

    (ii) Tasks the Staff to work with the Council to put in place, within six months, an initial package of training and development programs and other systems to create a group of skilled chairs and a pool of facilitators familiar with ICANN issues and able to assist with GNSO policy issues (see also Section 5.3, below). This initial package will be augmented to include training on the new working group model and PDP once they are developed by the implementation team and approved by the ICANN Board.

Recommendations for a new Policy Development Process (PDP)

The Board's expectations and proposed action items for improving the PDP include:

1. While the procedure for developing "consensus policies" will need to continue to be established by the Bylaws as long as required by ICANN's contracts, Council and Staff work should together to propose new PDP rules for the Board's consideration and approval. Once approved, the rules would become part of the GNSO Council's operating procedures. They should be subject to periodic review by the Council, which may come back to the Board to recommend changes. The rules should better align the PDP with the contractual requirements of "consensus policies," as that term is used in ICANN's contracts with registries and registrars, and distinguish that procedure more clearly from general policy advice the GNSO may wish to provide the Board. In addition, the Bylaws should clarify that only a GNSO recommendation on a consensus policy can, depending on the breadth of support, be considered binding on the Board, unless it is rejected by a supermajority vote.

    In preparing the new PDP proposal, the implementation team should emphasize the importance of the work that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert research in order to define properly the scope, objective and schedule for a specific policy development goal. The implementation

team should also consider whether there are certain issues, such as the adjustment of timelines for PDP, where the Board could authorize the Council to make the decision.

Proposed Action Item: The Board requests that the GNSO Council and constituencies work with Staff to develop a draft revised Policy Development Process within six months that incorporates the working group approach and is consistent with the considerations outlined above. The implementation team described above should be established for this purpose. The new PDP rules should consider how the GNSO Council's policy development procedures can contain greater flexibility, consistent with ICANN's contractual obligations to registries and registrars.

2. Periodic assessment of the influence of the GNSO Council, including the PDP, is another important component of successful policy development. Frequent self-assessment by the Council and its working groups can lead to immediate improvements in the GNSO's ability to make meaningful policy contributions. The Council should ask each working group to include in its report a self-assessment of any lessons learned, as well as input on metrics that could help measure the success of the policy recommendation.

    Proposed Action Item: The Board requests:

    (i) The Council, with the support of Staff, to implement a self-assessment process for each working group to perform at the end of a PDP, which should contain metrics for evaluating the effectiveness of the policy and any lessons learned from the PDP. Subsequent review by the Council should discuss the extent to which the policy adopted has been implemented successfully and proven effective; and

    (ii) The GNSO Council Chair to present an annual report to the ICANN community on the effectiveness of new GNSO policies using the metrics developed at the end of each PDP. The report should also contain a synthesis of lessons learned from policy development during the year with a view to establishing best practices. The report should be presented annually at an ICANN public meeting each year, and the material should be incorporated into the ICANN Annual Report prepared by Staff.

3. The PDP should be better aligned with ICANN's strategic plan and operations plan. A formal Policy Development Plan should be linked to ICANN's overall strategic plan, but at the same time should be sufficiently flexible to accommodate changes in priority determined by rapid evolution in the DNS marketplace and unexpected initiatives.

    Proposed Action Item: The Board requests:

    (i) The Council, constituencies and Staff to execute, within six months, a more formal "Policy Development Plan" that is linked to ICANN's overall strategic plan, but at the same time is sufficiently flexible to accommodate changes in priority (establishing the above-described implementation team for that purpose); and

    (ii) Staff to propose, within six months, metrics that can bring the PDP more in sync with ICANN's planning.

    It should be noted that sufficient additional time will need to be allotted for the submission and consideration of public comments on the new draft PDP.