

Disclaimer: This summary is not a full and complete recitation of the relevant comments received. It is an attempt to capture in broad terms the nature and scope of the comments. This summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional. The comments may be viewed in their entirety at <http://forum.icann.org/lists/gnso-pdp-final-report/>.

Summary and analysis of public comments for the Policy Development Process Work Team Proposed Final Report

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I. BACKGROUND

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 Initial Report and continued deliberations on remaining issues, the PDP-WT published its Proposed Final Report which contains amongst others forty-eight (48) 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, for community input.

History

On 26 June 2008 the ICANN Board approved a set of recommendations designed to improve the effectiveness of the GNSO, including its policy activities, structure, operations, and communications. The following pertains to the PDP-WT's mission: Revising the PDP: The Policy Development Process (PDP) needs to be revised to make it more effective and responsive to ICANN's needs. It should be brought in-line with the time and effort actually required to develop policy and made consistent with ICANN's existing contracts (including, but not limited to, clarifying the appropriate scope of GNSO "consensus policy" development). 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, the GNSO Council and Staff should propose new PDP rules for the Board's consideration and approval that contain more flexibility. The new rules should emphasize the importance of the preparation 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 properly define the scope, objective, and schedule for a specific policy development goal and the development of metrics for measuring success.

The charter of the PDP-WT is to develop and document a revised GNSO Policy Development Process that achieves the goals established by the ICANN Board. The PDP-WT, with staff assistance, will need to determine what changes to the bylaws will be required. New processes will need to be documented properly to ensure that the bylaws (and any related

operational rules or procedures) are updated accurately. The revised PDP, after review and approval by the PPSC, GNSO Council, and ICANN Board, would replace the current PDP defined in Annex A of the ICANN bylaws.

II. GENERAL COMMENTS and CONTRIBUTIONS

At the closing of the public comment period, seven (7) submissions had been made. The contributors are listed below in alphabetical order (with relevant initials noted in parentheses):

At-Large Advisory Committee by Olivier MJ Crepin-Leblond (ALAC)
 Business Constituency by Steve DelBianco (BC)
 Internet Committee of the International Trademark Association by Claudio di Gangi (INTA)
 gTLD Registries Stakeholder Group by David Maher (RySG)
 Stéphane van Gelder (SVG)
 Registrar Stakeholder Group by Clarke Walton (RrSG)
 The Coalition Against Domain Name Abuse by Yvette Miller (CADNA)

III. SUMMARY & ANALYSIS

The comments received have been summarized and categorized in the table below.

	Comment (Summary)	Who
General Comments relating to		
Bylaws vs. Manual	It would be helpful from an implementation point of view if it would be made clear in the report whether the recommendation relates to the Bylaws (Annex A), GNSO Operating Procedures or the PDP Manual.	RySG, INTA
Streamlining of the Process	ALAC supports the appropriate operating principles, rules and procedures applicable to the new PDP and notes that the different enhancements proposed by the WT should result in thoroughly-researched, well scoped objectives, and are un in a predictable manner that will yield results that can be implemented effectively.	ALAC
Titles for recommendations	Short titles for each recommendation would be helpful to readers to navigate the Final Report (suggestions provided in the submission).	INTA
Transparency and Accountability	Transparency and accountability are the keys to an effective and fair policy development process. The PDP review and the resulting recommendations are important first steps towards the achievement of this goal.	CADNA
Data driven PDPs	PDPs should be based on responsibly documented evidence of an issue to be addressed. A reasonable data-driven threshold for the introduction of a PDP is a necessary step to concentrating community resources on PDPs where there is evidence to justify a PDPs initiation.	RrSG
PDP Summary Guide	The report is not yet a guide for prospective participants in a PDP. The manual is helpful, but too long. A short practical manual on the PDP without references to the WT or recommendation # should be developed.	BC
PDP Flow Chart	The PDP Flow Chart is useful but overly complex. A simplified one for Council initiated work only is needed.	BC

	Showing timelines would also be useful.	
PDP Flow Chart	The PDP Flow Chart should also be included as part of the PDP Manual. The following information should be added though: (1) the required ICANN General Counsel opinion on the 'in scope' nature of the Issue Report as well as (2) the existence of an optional 'Impact Analysis' showing the stage at which this optional Impact Analysis enters the revised process of initiating a PDP.	INTA
PDP Flow Chart	The Council vote box should say "In scope: 33% of each house or 66% of one house".	RySG
Comment relating to Recommendation # (see http://gnso.icann.org/issues/pdp-wt-proposed-final-report-21feb11-en.pdf)		
1 (Who -Request for Issues Report)	What is the rationale for leaving in place the possibility for an Advisory Committee or the Board to request an Issue Report? How does the WT see the GNSO Council cope with such 'outside influences'?	SVG
1 (Who -Request for Issues Report)	The ALAC supports maintaining the three methods for requesting an Issue Report as recommended by the WT.	ALAC
3 (Development of PDP Manual)	The development of the manual should not hold up policy development efforts. An interim working arrangement must be achieved pending adoption of a final Policy Development Process Manual.	INTA
4 (Template – Request for Issues Report)	What use does the WT see for the proposed template if it is not compulsory? Not making it compulsory might result in people taking "short cuts" and not filling in the template.	SVG
4 (Template – Request for Issues Report)	CADNA recommends that the use of the template is made mandatory to ensure that requests for an Issue Report are complete, each indicating "definition of issue, identification of problems, supporting evidence, economic impact(s), effect(s) on competition and consumer trust, and rationale for policy development".	CADNA
4 (Template – Request for Issues Report)	A template can be designed in a flexible manner in order to allow for varying situations and so that use of the template can be required.	RySG
4 (Template – Request for Issues Report)	The template should be limited to defining the issue, identifying problems and providing the rationale for investigating whether policy development is needed. If other elements, such as supporting evidence and economic impact are desirable, these should be explored through an impact analysis.	INTA
4 (Template – Request for Issues Report)	The WT's recommendation for a template that includes a clearly defined problem, well-documented supporting evidence, and a rationale for the use of increasingly very limited resources for the development of policy would be a useful tool.	RrSG
5 (Guidance on Issue Scoping)	Policy Development efforts should not be delayed while a PDP Manual is being finalized and adopted.	INTA
6 (Creation of Issues Report)	It would be helpful to better define what 'in scope means'. It is noted that some of these distinctions are made in other recommendations (#7, #8 and #23), but they should	RySG

	also be made in this recommendation as well.	
6 (Creation of Issues Report)	INTA is concerned that the request for the ICANN Staff Manager to express an opinion as to whether the PDP should be initiated may result in delays. Also, this appears to be beyond the responsibilities of ICANN Staff.	INTA
7 (End result of a PDP)	The RrSG welcomes this recommendation.	RrSG
10 (Timeline Issues Report)	INTA agrees that in most cases the maximum timeframe for the creation of the Preliminary Issue Report should be 45 calendar days. Extensions should generally be limited to an additional 30 calendar days to ensure that requests for Issue Report are addressed in timely manner.	INTA
10 (Timeline Issues Report) & 11 (Comment Period Preliminary Issue Report)	The BC is concerned that the Preliminary Issue Report is being over engineered. It is intended to be short and factual, not solving the issue or adding opinion on its merit. An additional public comment period at this stage is therefore both redundant and a waste of time.	BC
11 (Comment Period Preliminary Issue Report)	INTA agrees that the Preliminary Issue Report should be posted for public comment. INTA would recommend a relatively short commenting window, for example no more than 30 days, to ensure that the initiation of the PDP is not subject to a lengthy delay.	INTA
11 (Comment Period Preliminary Issue Report)	CADNA strongly supports this recommendation as it will incorporate and allow for critical public input much sooner in the PDP and will ensure that no necessary information is missing from the Preliminary Issue Report.	CADNA
12 (Role of workshops)	How can be determined which issues require a workshop and which don't?	SVG
12 (Role of workshops)	The WT should clarify that the GNSO Council may consider workshops, but that it is not required to hold workshops prior to voting on the initiation of a PDP.	INTA
12 (Role of workshops)	Organizing a workshop should not be a mandatory step of the PDP.	BC
13 (Impact Analysis)	The terms 'public interest' and 'consumer trust' should be defined. Any analysis of competition should be performed by qualified competition authorities. Analysis of human rights should be based on international principles of law because of the wide variations of local law in this regard.	RySG
13 (Impact Analysis)	The WT should clarify that the GNSO Council may consider an Impact Analysis, but that it is not required to do so prior to voting on the initiation of a PDP. INTA requests, therefore, the deletion of 'or necessary'. With respect to the elements of the Impact Analysis, INTA is of the opinion that 'human rights' is included in the category of 'the public interest'.	INTA
13 (Impact Analysis)	A possible impact analysis before a vote to start a PDP is an option that will be gamed by parties wishing to delay a new PDP.	BC
13 (Impact Analysis)	The RrSG agrees with this recommendation and believes it would be a prudent step in a PDP.	RrSG
14 (Resources &	How should resources be measured and how can the	SVG

Prioritization)	availability be determined, noting that there is currently no mechanism in place for the GNSO Council to do so.	
14 (Resource & Prioritization)	If the WT has specific guidelines for the GNSO Council to refer to in connection with the process of 'prioritization' then it would be helpful to state those guidelines specifically in the Final Report.	INTA
15 (Fast Track Process)	The WT should clarify what recommendations will enable the PDP to move more quickly. Several mechanisms proposed in the report seem more likely to slow down the PDP instead of making it faster.	INTA
16 (Flexibility) & 38 (deferral of consideration of Final Report)	There is no practice to allow a Councilor to defer a PDP for one meeting, although there is an informal practice of allowing a GNSO SG or Constituency to request through one of its Council representatives that a vote on a motion is deferred for one meeting. Is this what is referred to here?	SVG
16 (Flexibility)	General agreement with the modification of timeframes as proposed, but INTA suggests that a request for deferral would need to be seconded to avoid additional delays.	INTA
16 (Flexibility)	Codifying a practice to delay seems a dangerous precedent. However, if the WT does propose codifying this practice it should make clear that this is not a cumulative right.	BC
18 (Appeals mechanism)	ALAC supports the proposed appeal process, as it is important that all decisions in an organization such as ICANN have due process in place to address such possibilities.	ALAC
19 (Chartering)	Recommendation to change 'Bylaws' at the end of the recommendation to GNSO Bylaws' to make it clear that this is not the same document as is being referenced earlier in the paragraph.	SVG
19 (Chartering)	Recommendation to explicitly state what a 'majority' vote means according to the GNSO Operating Procedures: 'Any modifications to a Working Group Charter made after adoption by the GNSO Council of such Charter, however may be adopted by a majority vote <u>of each house</u> of the GNSO Council.	RySG
19 (Chartering)	INTA agrees that a WG Charter should be required. INTA would suggest setting a reasonable timeframe for the development and approval of the Charter to ensure that this task is completed as soon as possible and does not delay the formation of a WG.	INTA
19 (Chartering)	CADNA supports this recommendation and notes that it is important to ensure that the charter establishes a clear set of goals to work towards in order to be able to properly measure the WGs progress.	CADNA
21 (AC/SO input)	The WT should consider more detailed procedures for communication and responses to the GAC in an effort try to improve the involvement of the GAC and/or GAC members earlier in policy development and implementation efforts. The RySG also suggests that	RySG

	interim procedures be included regarding the involvement of community working groups in a GNSO policy development process until such time that community working group procedures are developed and implemented.	
21 (AC/SO input)	Additional explanation is needed regarding how to best involve the ACs and SOs in a PDP. A clarification regarding how such input ‘must be sought’ would be useful, as well as the manner and timeframe in which the WG should respond to AC and SO comments.	INTA
22 (Public comment after Initiation of PDP)	Complete agreement with this recommendation	SVG
23 (Clarify ‘in scope’)	The RySG agrees that the definition provided by the WT is one definition of ‘in scope’ and that this definition is important. The RySG suggests that the definition of ‘in scope’ with regard to possible consensus policies be included here for clarity.	RySG
23 (Clarify ‘in scope’)	CADNA fully supports this recommendation and notes that with regard to the initiation of a PDP it is import to define how the proposed issue fits within the scope of ICANN’s mission and how it addresses the provisions laid out in the Affirmation of Commitments.	CADNA
24 (Working Methods)	It would be helpful if some examples of possible different working methods are provided.	RySG
24 (Working Methods)	The ALAC is pleased to see that the WT has supported the flexibility suggested by the ALAC as part of its comments on the Initial Report with regard to working methods for policy development.	ALAC
24 (Working methods)	INTA is supportive of the flexibility proposed in the recommendation but it should clarify who may, or who is responsible for, suggesting and developing such alternate processes, as well as the approvals required to implement such processes instead of a Working Group.	INTA
28 (Public comment)	CADNA supports the proposed extension of the public comment period on the Preliminary Issue Report and the Initial Report to a minimum of 30 days.	CADNA
29 (Public Comments)	INTA agrees with this recommendation but further recommends setting a reasonable timeframe, for example 30 days after the closing of the public comment forum, to ensure that comments can be relayed to the WG promptly.	INTA
31 (Implementation / impact)	The RySG suggests that the WT make clear the role of the GNSO with regard to implementation of approved policies by addressing questions such as 1) should the GNSO have approval rights for implementation plans, 2) what should the GNSO do if implementation plans are not consistent with approved policy?	RySG
32 (ICANN Staff Resources)	The RrSG supports this recommendation.	RrSG
34 (Working Group Output)	What would be the recommendation of the WT on the timing of the Initial Report? Expectations for the	SVG

	publication of the Initial Report should be clarified and detailed.	
37 (Termination of a PDP)	Recommendation to reword as follows: ‘... and passes a motion with <u>at least 75% of one house and a simple majority of the other house</u> ’. Noting that if recommendation #48 is approved, ‘or with at least 2/3 of each house’ should also be added.	RySG
38 (Deferral of consideration of Final Report)	Clarification should be added that states that only one delay may be requested regardless of what SG requests the delay.	RySG
38 (Deferral of consideration of Final Report)	INTA supports this recommendation and is of the view that the deferral per the request of one Council member apply only to the consideration of the final report, and that, as indicated in its comments on Recommendation 16, any deferral relating to the initiation of a PDP should need to be seconded.	INTA
39 (WG Recommendations)	Why is the WT concerned with the GNSO Council accepting some but not other recommendations? Isn’t that what is expected from the GNSO Council? Suggested correction to last sentence of the recommendation: remove ‘there’.	SVG
39 (WG Recommendations)	INTA supports recommendation 39, but only if it is clarified that unanimity is not the ICANN policy standard, but rather consensus, even if it is only ‘rough consensus’ at times. Additionally, the recommendation should make clear that the GNSO Council can consult with the WG for their input whenever concerns or changes occur, but that the WGs input does not automatically govern. The GNSO Council should be able to consider the composition of WGs, including the level of representation in WGs and whether they may be either underrepresented or overrepresented, and any related lack of participation.	INTA
39 (WG Recommendations)	CADNA supports this recommendation.	CADNA
40 (Board Report)	INTA supports this recommendation.	INTA
40 (Board Report)	CADNA agrees that all reports to the ICANN Board concerning a PDP should be publicly disclosed.	
41 (Voting Thresholds)	Whether or not the voting thresholds should be revised should not wait for the next GNSO review, the GNSO Council should remand this topic for further consideration by the WT with a short timeframe for a recommendation.	INTA
42 (Board Vote)	Preference for option 1, the ‘narrow sense’ interpretation: the Board cannot choose to ignore a GNSO Council vote as it sees fit.	SVG
42 (Board Vote)	The RySG supports the ‘narrow’ interpretation of what ‘act’ means (the Board cannot declare a recommendation as a Consensus Policy under the applicable ICANN Contracts if that recommendation was not approved by the required GNSO voting threshold) and suggests that the Bylaws be modified to make it clear.	RySG
42 (Board Vote)	Provision 13f should be amended to make clear that,	INTA

	absent the appropriate voting threshold by the GNSO Council, the Board cannot act on its own to initiate policy, and that the matter should be remanded to the GNSO Council for further consideration or termination of the PDP if the Council so decides.	
45 (Review of WG)	Guidelines for WG self-assessment should be developed and these should be included in the final PDP Manual.	INTA
48 (Definition of Supermajority)	Proposal for rewording as current proposal is considered confusing: 'The WT recommends that the definition of a 'GNSO Supermajority vote' is redefined as 2/3 of the Council members of each house or 75% of one house and a majority of the other house'.	RySG
Overarching Issues		
Translation	The ALAC is satisfied that the WT has recognized the importance of translation to facilitate the participation of non-English speakers and supports the WT recommendations in this regard.	ALAC
Voting Thresholds	The WT should recommend something in relation to the voting thresholds, especially in relation to the 'low' voting threshold to request an Issue Report, and not put this back to the GNSO Council to deal with as part of its prioritization efforts.	SVG
Voting Thresholds	Further changes to the voting thresholds should simplify not add complexity to an already overly complex structure.	BC
PDP Manual		
5.9 PDP Outcomes and Processes	CADNA strongly recommends that the PDP Team be required to engage in the collection of information from outside advisors and experts but would like to see the addition of a provision that would ensure that those selected are of a neutral position.	CADNA
5.11 Preparation of Final Report	CANA would like further information about how the comments will be evaluated and what would be required to deem them appropriate for inclusion. An additional report on how comments were considered should be required as well. CANADA also proposes that the Final Report be required to be posted for public comment as a [Draft] Final Report.	CADNA

IV. NEXT STEPS

The Policy Development Process Work Team is expected to consider all the relevant comments as part of their deliberations and efforts to complete its report.