



# JJN SOLUTIONS

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JJN Solutions, LLC

◆+1.202.549.5079

◆[www.jjnsolutions.com](http://www.jjnsolutions.com)

◆[Jeff@jjnsolutions.com](mailto:Jeff@jjnsolutions.com)

January 22, 2021,

Dear ICANN,

Thank you for the opportunity to provide comments to the Operational Design Phase Form Concept Paper v2.0. Some of the comments below were presented during the webinar on January 13, 2021.

Version 2 of the paper contains a number of improvements from the original, and I believe that we are getting closer to establishing the basis for the ICANN board to have a comprehensive understanding of the ramifications on the organization from the implementation of larger scale programs resulting from policy recommendations of the GNSO's policy development process (PDP).

With this in mind, please find below a few comments aimed at improving v2.0.

I. Purpose of the ODP

Although it seems clear that the intent of ODP is to examine the costs, resources and capital needed by ICANN to implement policies promulgated by the GNSO, ICANN should make it explicit in the actual ODP documentation that the ODP is not a mechanism to examine the contracted parties house design or implementation of any policies. The impact of any policies on registries and registrars is a key element reserved for discussion in the PDP itself, and subsequently in an Implementation Review Team after the policies are approved. I believe that ICANN org agrees with this principle, but it needs to be reflected in the documentation itself so that there is no ambiguity in the future.

II. Proposal to Replace GNSO Liaison to ICANN org's ODP team

We support the elimination of the highly bureaucratic Design Feedback Group described in the original paper. However, the replacement of this group with allowing only one person to interact directly with ICANN org in the ODP, takes our concerns to the other extreme. Namely, placing the burden on one person selected by the GNSO Council to serve as the sole contact between ICANN org and the GNSO community that is responsible for providing feedback and input into the ODP is too great of a burden for one person. In addition, it needs to be made clear that any community members serving on the ODP team must have the requisite experience and expertise to understand not only each of the recommendations made through the PDP, but must also be able to convey the intent, substance and meaning underlying those recommendations. At the same time, the need to be able to spot any issues that arise through the ODP which should have input from either the PDP working group, the GNSO Council and/or the ICANN community. Finally, these persons must understand the underlying facts, figures, and assumptions that informed the recommendations so that re-litigating the substance does not occur.



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For these reasons, we would propose establishing a small committee of experts to assist ICANN in the ODP, when needed. This committee will should have at least three, but not more than five, members consisting of (A) one or two members from the PDP working group leadership team, (B) the GNSO Council liaison to the PDP working group, and (C) a person selected by the GNSO Council, presumably through its' Standing Selection committee. All persons serving on this committee must do so in a neutral capacity, and understand they are not there to advocate for anything other than the faithful adherence to the PDP outcomes and to ensure that any issues which arise are properly conveyed back to the GNSO Council and the community. In the event that either the PDP Working Group Leadership team or the GNSO Council Liaison to PDP Working Group is unable or unwilling to serve in the ODP, replacement of those person(s) should be made by the genus GNSO Council in consultation with the PDP Working Group leadership Team.

The rationale for this particular group of people is that between the PDP Working Group leadership and the GNSO Liaison, the ODP should have all the experience and expertise to spot all material issues that arise and be able to detect potential inconsistencies with the PDP recommendations. Having an additional person selected by the GNSO Council that was not involved in the working group provides independence that is needed to ensure that where a conflict arises between the PDP leadership team and ICANN org, neutral guidance can be provided. In addition, having at least three persons ensures that the burden of keeping the GNSO Community informed while at the same time being able to spot any community issues is shared. This will also allow for sufficient coverage if one person is busy, sick, on holiday, etc.

### III. Early Engagement of ICANN org

We wanted to take this opportunity to thank ICANN org for taking a more active role in the policy development process, where appropriate. However, we still need to empower ICANN org staff to contribute to the policy development process where there is likely to be an impact on ICANN org itself. We note that a number of ICANN staff have attended meetings of the Subsequent Procedures PDP for at least the past two years. That said, those persons still mostly take an observer role presumably for fear of interfering with the PDP. On occasion, some feedback is provided. However, as evidenced by the very comprehensive comments by ICANN org to the draft final report, most of which the working group was hearing for the first time, we must do better to get that feedback earlier in the process.

By endorsing the ODP, we are not saying that feedback from ICANN staff must wait until this group is established. To the contrary, ICANN staff must participate earlier to ensure that any recommendations by a PDP are feasible to implement. Providing this feedback late in the process or after the fact is too late, and causes friction between ICANN org and the community. Feedback must be provided early to harmonize the community's desire to approve certain policies with ICANN's ability to actually implement and enforce them. Finally, active participation ensures not only understanding of the actual recommendations, but also more importantly, the purpose for, and objectives of, the recommendations. Thus, ICANN staff should be free to recommend alternative means to achieving those objectives in a manner that is feasible for ICANN to implement. This will help solidify trust between the community and ICANN org.



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JJN Solutions supports the recommendation of requiring ICANN Org to appoint an operational Staff Liaison to PDP Working Groups, who will attend PDP Working Group meetings, liaise with ICANN Policy and Implementation Staff, and advise, in consultation with the WG Chair(s), on when the ODP should commence.

### IV. Miscellaneous

- Under “timing considerations”, we believe there is a typo that should be corrected. Namely, the sentence should read “The natural trigger point for an ODP is the point where the genus of counsel has transmitted its recommendations report to the **ICANN Board...**”
- In the chart of rules and responsibilities:
  - With respect to the PDP working group, the first bullet point states “using consensus to develop policy recommendations through multistakeholder processes.” Although PDP working groups strive to achieve consensus on each of its recommendations, the reality is that some recommendations will have strong support but significant opposition. Technically, the GNSO Council has the discretion of whether to approve recommendations that may not have “consensus” support. Therefore we recommend removing the words “Using consensus” from that sentence.
  - If the proposal for a committee as stated above is adopted, the GNSO Council row in the chart would need to be amended.
- Although visual charts are useful to understand process flows, in this case we would recommend eliminating the chart on page 10. A lot of confusion has been caused with the seemingly endless loops of arrows that created an unintended perception of the roles and responsibilities of each of the players.

We would like to thank ICANN for greatly improving many of the aspects of the ODP Concept Paper and look forward to seeing (and implementing) the final draft.

Sincerely,

Jeffrey J. Neuman