Background on GNSO Restructuring Working Group Report

This document is intended to give a **very** abbreviated background to the GNSO Restructuring Working Group Report. It is targeted at people in the At-Large community who have not been closely following the GNSO Council Restructuring drama over the last year or so. Unfortunately, the story is quite complex.

The story is told in the form of questions and answers. The first draft of this document was written by Alan Greenberg, the current Liaison from the ALAC to the GNSO. Although an attempt was made to keep this review as balanced as possible, no doubt some personal prejudices have crept in.

1. What is the GNSO?

   The GNSO is ICANN's Generic Names Supporting Organization. In short, it is currently composed of various "Constituency groups", each representing some class of Internet supplier or user. Each Constituency within the GNSO names people to represent them on the GNSO Council. The GNSO Council also includes people appointed by the ICANN Nominating Committee. The GNSO Council is the main body within ICANN which recommends new policies related to Generic Top Level Domains (gTLDs). Most TLDs that do not represent specific countries or territories are gTLDs. Some common examples are .com, .org, .net, info and .biz.

   The new policy which will soon allow the creation of many new gTLDs (both ASCII and IDN) was a product of the GNSO Council. Last year the ALAC initiated a process to eliminate Domain Tasting. It was the GNSO Council that was formally responsible for looking at the issue, and ultimately deciding to recommend that the Board adopt a new policy to (hopefully) eliminate Domain Tasting.

   The Domain Tasting policy is a special kind of Policy called a "Consensus Policy". Once a Consensus Policy is recommended by the GNSO and adopted by the Board, it MUST be implemented by Registries and Registrars, even if it conflicts with the terms of their contracts with ICANN.

2. What does the GNSO Council look like now?

   There are six constituencies:
   - gTLD Registries (RyC);
   - gTLD Registrars (RrC);
   - Commercial and Business Users (BC);
   - Internet Service and Connection Providers (ISPC);
   - Intellectual Property (IPC);
   - Non-Commercial Users (NCUC).

   Each Constituency elects three people to sit on the GNSO Council. In addition, the Nominating Committee appoints three councillors. The end result is a 21 person Council, with one of the councillors being elected as Chair. The Council also includes one non-voting Liaison from the ALAC and one from the GAC.

The Registries and Registrars together are referred to as "Contracted Parties", because they are required to have contracts with ICANN. The other four constituencies are the "Non-Contracted Parties"

3. People talk a lot about GNSO voting. What is that all about?

[For the remainder of this document, the "GNSO Council" will be referred to as the Council or simply the GNSO.]

Although with the increased use of Working Groups intended to reach consensus voting will be less important, it expected that voting will continue to be relevant within the GNSO. Currently each councillor (excluding Liaisons) has a single vote, but those votes from the RyC and RrC have a weight of two. As a result, when votes are counted, the RyC and RrC together have a total count of 12 (2 constituencies, 3 councillors each, each voted weight 2). And the BC, IPC, ISPC and NCUC also have 12 (4 constituencies, 3 councillors each, each voted weight 1). The three NomCom councillors each have a vote with a weight of 1. The rationale goes back to the issue of consensus policies. The Registrars and Registries sign contracts saying that if a new consensus policy is adopted, they must follow it. Effectively, their contracts are automatically changed when such a policy is passed. So they have been given "almost" half of the votes on Council. A consensus policy can still be passed without their agreement, but it takes a stronger effort by those who want it. (In fact, the situation is more complex than that, because the Registrars and Registries may not agree on whether a specific Consensus policy is good or bad, and depending on how large a majority passes the policy on Council, it may be making it more or less difficult for the Board to disagree and not adopt it anyway.) Note that the "rationale" for this balanced council (excluding NomCom) is not universally thought to be a good thing.

If you do the calculation, you will find that the RyC and RrC each have about 22% of the votes and BC, IPC, ISPC, NCUC and NomCom each have 11%.

4. So why are things being changed?

All ICANN bodies are subject to a periodic external review (just as the ALAC is currently under review). A few years ago, the GNSO was reviewed, and one of the recommendations was that the Council be reorganized. When the evaluation went to the Board committee to decide what to do (following extensive community consultation), it was recommended that the new Council should consist of four "Stakeholder Groups":
- Registries
- Registrars
- Commercial Registrants
- Non-commercial Registrants

Each Stakeholder Group would have four councillors, and in addition, there would be three NomCom appointees (just as there are now). Each councillor would have one vote and there would be no weighting.

Each Stakeholder Group (SG) could have one or more constituencies. To start with, all of the SG except the Commercial one would have just their one existing constituency. The Commercial SG would include the current BC, IPC and ISPC.

If you do the arithmetic, each of the SG would have about 21% of the vote, and the NomCom would have about 16%.

The council is still balanced between contracted and non-contracted parties. But in this new model, there was also a balance between commercial and non-commercial SG. However, note that the non-contracted parties were now only "domain registrants" and not the more general "user".

There was also a minority report from the Board committee that recommended a very similar scheme, but with 5 councillors in the commercial SG, and 3 in the non-commercial SG. This still maintained the contracted/non-contracted balance, but no longer had a balanced commercial/non-commercial balance.

5. So what is all the fuss about?

   From At-large's point of view, the change from user to registrant was a major issue. With the advent of the new concept of SG, there would be the opportunity to get more "user oriented" people involved with the GNSO. This made sense to us because, even if discussions about gTLDs can be very complex, the decisions made will ultimately impact real users. Their representatives should have the opportunity to participate. Note that we are not talking about ALAC or the formal ICANN "At-Large" participating directly in the GNSO – the ALAC is a Board advisory committee with **far** wider scope than just gTLDs, and we want to keep it that way. But rather, other user-oriented representatives and groups could participate. A good example is that a world-wide group of consumer advocates might form or join a constituency.

   The Board committee was not willing to change Registrant back to User.

   Some of the other groups were also quite unhappy. The Registrars and Registries has lost a small amount of voting power (22% to 21%), but were quite willing to accept the new proposal(s).

   The non-commercial users were quite happy with the majority proposal, since they had gained significant voting power (11% to 21%). However, in the minority proposal (5+3), they would have 16%, still above their previous 11%, but no longer at parity with the commercial side, who would then have 26%. And parity between commercial and non-commercial would have a great impact, not only from a voting point of view, but how the non-commercial group was perceived within ICANN and how the ICANN's commercial/non-commercial balance was viewed outside of ICANN.

6. What happened next?

A "joint users" proposal was created by the three commercial constituencies, NCUC and ALAC. This proposal would have 6 councillors from the Registries and Registrars (3 each), 6 for the Commercial SG, and 6 for non-commercial (including NCUC and ALAC being a place-holder for other future user-oriented participants). The question of whether there would be NomCom appointees was not definitively stated. Since this joint user proposal definitively advocated users rather than registrants, it met the prime ALAC requirement. It also gave a balance between commercial and non-commercial, which supported our long-term interest in getting more user-oriented people involved in the GNSO and giving them real power.

Since this no longer preserved parity between the contracted and non-contracted parties, this was not acceptable to Registrars and Registries. NomCom councillors were not involved in the proposal, but clearly the option without NomCom would probably be less pleasing to them. ALAC also strongly favoured NomCom councillors, Some day in the future, when the non-commercial SG represented a wide range of user positions, perhaps the NomCom presence on the GNSO might not be needed. But for the moment, ALAC felt that they carried a significant responsibility to represent the public interest. Since ICANN bodies are supposed to be reviewed every three years, it could be left to a future review to decide if a NomCom presence was still needed.

And that was how it was left with the Board about to make a decision.

7. And the Board's decision was?

At the Paris meeting, the Board adopted all of the Board committee proposals, EXCEPT for the actual structure of the GNSO. It chartered a small working group composed of one person from each constituency, one from NomCom appointees, and one from each of the ALAC and GAC (who have Liaison to the GNSO). The group was given one month to come to consensus, with no extensions, or the Board would make a decision. And no one could be sure what direction that decision would take.

ALAC chose to have their current Liaison represent ALAC on the WG, with a small advisory group made up of the ExCom members who were available for this task, and one other committee member who volunteered.

8. So what happened next?

To begin, the group decided that the only proposal that could go to the Board was one that was virtually unanimous – so our definition of "consensus" was 100%. The working group met via teleconference 6 times for about 1.5 hours each. Overall, there were about 650 e-mails exchanged. Although some headway was made, it did not look like consensus was possible. Half way through, a new bicameral model was proposed where there were in fact two councils (contracted and non-contracted) which would sometimes meet separately, and sometimes together. In essence, it would be similar to many national governments where there are two houses each of

which develops laws separately, and they somehow come to an agreement to merge them into a single law that is then passed by all.

When meeting together, each "house" as the two half-councils came to be known, would have the same number of overall votes, but they could have different number of councillors on each. This at least partly addressed one of the commercial users' problems of starting with three constituencies. Within each house, there would be parity between its two SG. For various reasons, this model was at least partially acceptable to most parties. It appeared that a voting scheme could be developed that would require specific percentages of votes on either side, which would get around the need for equal numbers of councillors. There were two major issues with it. The two separate houses and the need to somehow rationalize their positions that they developed individually seemed overly complex and would likely increase the time needed to reach closure on any given issue. GNSO work was already a heavy burden on councillors, and the policy development process was already far longer than some of us would prefer. Moreover, having two houses and a joint Council would require more people willing to take on the challenge of chairing these groups. The other issue was that it was unclear how NomCom appointees would fit into this model, and it became very clear that some working group participants felt very strongly that there should not be any NomCom appointees at all.

It was suggested that perhaps there could be one council, but keep the split voting scheme. Ultimately this was accepted by all. This yielded a not too complex solution.

However, in trying to iron out all of the details, the Working group ran out of time. At the end of the last conference call, it was unclear if in the remaining 36 or so hours, full agreement could be reached. Quite unexpectedly, with just a few problems, it was. It must be noted that nearly half of the e-mails exchanged by the WG were sent AFTER the last conference call.

The issue of NomCom appointees was partially addressed, but not completely to everyone's satisfaction, as can be seen in the final report. The issue of the size of each SG was also not addressed, but ultimately left to the Board to decide, within certain constraints. A number of other issues were also not resolved, but it was felt that they were not crucial and could be resolved over the coming months. These included the process of selecting a Council chair and Board members (the latter was partially resolved, but some problems were discovered after the fact).