Internet Corporation for Assigned Names and Numbers

At-Large Advisory Committee

ALAC DRAFT STATEMENT TO THE BOARD OF ICANN

ON THE

STRUCTURE OF THE GNSO COUNCIL

Note on Translations

The At-Large Advisory Committee wishes to convey to the Board of Directors its views below regarding the structure of the GNSO Council and of the GNSO Constituencies as part of the programme of improvements and reforms to that Supporting Organisation.

Due to the tight time constraints, the ALAC statement appended to the report of the Working Group on GNSO Council Restructuring was written by a small subset of ALAC members, specifically by our representative on the working group Alan Greenberg and an advisory group consisting of Cheryl Langdon-Orr, Sébastien Bachollet, Vanda Scartezini and Izumi Aizu. A copy of the original statement is attached to this document.

Having discussed the statement with the full committee, we are pleased to report that the statement has now been ratified by the committee as a whole.

Over and above the earlier ALAC statement, the Committee feels that a number of issues need to be clarified and commented on.

Mutual Respect
The fact that the Working Group came very close to presenting a unanimous position is truly remarkable, and is an indication of the commitment and flexibility of *all* of the members. We do find it regrettable that a number of the constituency statements that accompanied the report made rather disparaging remarks about the ALAC representative (as well as the Nominating Committee member). We readily acknowledge that we do not have the history in ICANN that the other members of the DNSO/GNSO have. However the we believe that the "newcomers" negotiated in good faith according to the needs and desires of the bodies/groups that they represented, and we feel it was quite improper to single them out because of a few years less history and because in some cases, we had different views of how the GNSO should evolve.

GNSO Evolution after Restructuring
We also may differ from some of the current constituencies on how the GNSO should evolve after the new structure is implemented. As noted in the BGC report, the process for forming new constituencies has been in the By-Laws as long as the GNSO has existed. But it has never happened, presumably due to the (real or perceived) heavy burden of "self-forming" and then ongoing management. Within the new structure, it may be even more difficult, due to a potential for the existing constituencies to believe that they can represent all viewpoints, thus eliminating the need for new constituencies.

In the case of the NCSG, the problem is particularly severe. As had been pointed out by the NCUC, *"in the world of non commercial internet users and registrants, the level of specific interest in matters that come under the remit of ICANN and specifically the GNSO is only a small part of their general community and constituency areas of concern and interest."* This has certainly been the case within At-Large. Most At-Large Structures (ALSs) existed prior to being involved with ICANN. They became an ALS because there was reasonable overlap with their original mandate and that of ICANN At-Large. But ICANN is not their only or even their prime reason for existing, and in some cases, ICANN falls low on their priority list of things to devote time to.

So expecting a group to self-form and become a new GNSO constituency is expecting a lot. If it is to happen at all, there are several things that must facilitate this:

- ICANN (and the stakeholder groups) will have to make it as easy as possible to create and operate new constituencies. The requirements they must meet must be reasonable and applied with consistency.

- These new entities must feel comfortable that they will be able to participate in the Policy Development Process as discretely identifiable bodies, at a level comparable to (and not subservient to) the long-established players (of course factoring in size). Without that guarantee, there is little reason for them to make the considerable effort needed to enter into GNSO processes.

- The new addition level of hierarchy moving from GNSO→Constituency to GNSO→Stakeholder Group→Constituency (or as per the consensus proposal GNSO→House→Stakeholder Group→Constituency) must be managed to minimize the need for additional complexity and additional volunteer effort. Thin layers will be, in our opinion, absolutely mandatory.

If the above can be accomplished within the new Non-commercial Stakeholders Group, the non-commercial rebirth envisioned in section 5.3 of the BGC report may actually happen.

ALAC statement appended to the Report of the Working Group On GNSO Council Restructuring

The ALAC is pleased to have been a part of this working group, and particularly pleased that it has proposed a structure that is reasonably satisfactory to all parties. Such an outcome was not at all guaranteed, and all participants and their constituencies and advisors should be complimented for the diligence, flexibility, good faith and fortitude that they have shown. Rob Hoggarth deserves particular credit for his part in this endeavour.

We were included in this working group as a result of the ICANN By-Law mandated ALAC Liaison to the GNSO. However, a prime goal throughout the process has been to ensure that the estimated 1.3 billion Internet users have some measure of formal representation during the gTLD policy development process. Participating in this process is quite a different role than that of the ALAC, which can advise the Board after the fact. To be clear, the ALAC does not see itself involved in the gTLD PDP in any was other than its current Liaison and Board Advisory role. Nor do we see or advocate any formal role for the overall At-Large organization.

Until there is a more representative user-oriented presence in the Non-Commercial Stakeholders Group (NCSG), ALAC will be pleased to work with ICANN encouraging the user communities around the world to form and participate in new Non-Commercial Constituencies within the NCSG. And until such new Constituencies can speak for themselves, we are willing to play an integral role in the design, structural development and implementation of this Stakeholder Group.

Throughout the Working Group activities, we have supported the effort to maintain the presence of Nominating Committee Appointees (NCAs) in the GNSO. Perhaps in the future, when the NCSG and to some extent the Commercial Stakeholders Group have a diverse and widely representative set of Constituencies, NCAs may no longer be needed, but until that time, their presence is essential to at least partially offset the majority of the councillors who are representing their business interests.

Comments on the Working Group Proposal

ALAC generally supports the outcome of this extensive process, but we wish to make the following specific comments.

1. The Board is encouraged to take a minimalist approach in determining the size of each Stakeholders group. The BGC report rightfully proposed to have the new Council smaller then its predecessor. Particular focus should also be given to ensuring that the lone NCA in each house is not unreasonable overwhelmed or effectively denied speaking rights. The current ratio of 1 NCA for each 6 constituency councillors seems reasonable, but one of the suggested options is a ratio of 1 to 18! Similarly, the number of councillors in each house should not be so unbalanced as to allow the larger one to dominate (in shear numbers) in discussion.

2. It is troublesome that in the proposal, one of the NCAs has been disenfranchised. Although no solution was found acceptable to all parties, it sets a very unfortunate precedent within ICANN.

3. The process described to name the GNSO Chair is unwieldy and fraught with conflicts. It requires the Nominating Committee to identify an appointee who has the skills and willingness to Chair the GNSO. Such a person may also need to have sufficient experience with the GNSO so as to immediately understand its processes and constraints. Yet it may turn out that this person will not be Chair, but rather a non-voting Council

member. As a NCA to the Council, one of the often cited characteristics is that the person be from outside ICANN and not have a history of being associated with GNSO constituencies. It is quite unclear how the Nominating Committee can fulfill all of these requirements in a single person, or that many volunteers will be found willing to volunteer for such a position.

4. To date, no attention has been placed on transition processes, or whether this new council can become active prior to its detailed policies and practices being developed.

5. It is, in our opinion, unfortunate, that Board elections do not include all Councillors (including all NCAs) in each election (presumably with some level of weighted voting to offset the disparate numbers.

6. Regarding a GNSO Council or House vote to remove an NCA, the Board is encourage to change the By-Laws to require that should a Board ever be put in the position of ratifying a removal for cause, that it be required, at the same time, to name a replacement until such a time as a future Nominating Committee can identify