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Policy Development Process Work Team

Updated Final Report & Recommendations

STATUS OF THIS DOCUMENT

This document is the Updated Final Report of the Policy Development Process Work Team concerning the development of, and transition to, a new GNSO policy development process. This Updated Final Report has been prepared following review of public comment on the Initial, the Proposed Final Report and the Final Report and has been submitted to the GNSO Council for its review and approval on [DATE].

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Table of Contents

| | | |
|----------|--|------------|
| 1 | EXECUTIVE SUMMARY | 3 |
| 2 | APPROACH TAKEN & PROPOSED RECOMMENDATIONS | 8 |
| 3 | OVERARCHING ISSUES | 27 |
| 4 | NEW GNSO PDP – BASIS FOR NEW ANNEX A | 40 |
| 5 | POLICY DEVELOPMENT PROCESS MANUAL | 47 |
| | ANNEX A - PUBLIC COMMENT FORUM ON THE INITIAL REPORT | 64 |
| | ANNEX B – PUBLIC COMMENT FORUM ON THE PROPOSED FINAL REPORT | 106 |
| | ANNEX C – PUBLIC COMMENT FORUM ON THE FINAL REPORT | 131 |
| | ANNEX D - BACKGROUND | 132 |
| | ANNEX E - WORKING GROUP CHARTER | 134 |
| | ANNEX F - THE WORKING GROUP | 137 |
| | ANNEX G – THE RECOMMENDATIONS | 139 |

1 Executive Summary

- The Policy Development Process Work Team (PDP-WT) was tasked by the Policy Process Steering Committee (PPSC) to be 'responsible for developing a new policy development process that incorporates a working group approach and makes it more effective and responsive to ICANN's policy development needs'. The primary tasks of the PDP-WT were to develop:
 - 1 Appropriate operating principles, rules and procedures applicable to a new policy development process; and
 - 2 An implementation/transition plan.
- This **Updated** Final Report presents the PDP-WT's views and recommendations in relation to tasks 1 and 2. The proposed recommendations seek to:
 - Codify existing practices and procedures already utilized by the GNSO community in policy development processes (PDPs);
 - Clarify existing rules, methods and procedures set forth in the ICANN Bylaws and GNSO Council's Operating Procedures
 - Suggest new approaches, methods and procedures to be used in the new policy development process.
- To this end, the PDP-WT has developed dozens of recommendations to improve the existing PDP process. Some of the key recommendations of the new PDP include:
 - Recommending the use of a standardized "Request for an Issue Report Template" (recommendation 4)
 - The introduction of a "Preliminary Issues Report" which shall be published for public comment prior to the creation of a Final Issues Report to be acted upon by the GNSO Council (recommendations 10 & 11).
 - A Requirement that each PDP Working Group operate under a Charter (recommendation 18)

- 73 ○ Dialogue between the GNSO Council and an Advisory Committee in the event that an
74 the GNSO Council decides not to initiate a PDP following an Issues Report requested by
75 such Advisory Committee (recommendation 17)
76 ○ Changing the existing Bylaws requiring a mandatory public comment period upon
77 initiation of a PDP to optional at the discretion of the PDP Working Group
78 (recommendation 21)
79 ○ Clarification of 'in scope of ICANN policy process or the GNSO' (recommendation 22)
80 ○ Changing the timeframes of public comment periods including (i) a required public
81 comment period of no less than 30 days on a PDP Working Group's Initial Report and (ii)
82 a minimum of 21 days for any non-required public comment periods the PDP WG might
83 choose to initiate at its discretion (recommendation 27)
84 ○ Maintaining the existing requirement of PDP Working Groups producing both an Initial
85 Report and Final Report, but giving PDP Working Groups the discretion to produce
86 additional outputs (recommendation 33)
87 ○ A recommendation allowing for the termination of a PDP prior to delivery of the Final
88 Report (recommendation 36)
89 ○ Guidance to the GNSO Council on the treatment of PDP WG recommendations
90 (recommendation 38)
91 ○ New procedures on the delivery of recommendations to the Board including a
92 requirement that all reports presented to the Board are reviewed by either the PDP
93 Working Group or the GNSO Council and made publicly available (recommendation 39)
94 ○ The use of Implementation Review Teams (recommendation 42)
95 ○ A redefinition of 'GNSO Supermajority vote' to include the original meaning of GNSO
96 Supermajority i.e. 2/3 of Council members of each house so a GNSO Supermajority vote
97 would be 3/4 of one House and a majority of the other house or 2/3 of Council members
98 of each house (recommendation 47)

99 For a complete overview of all the recommendations, please see Section 2.
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For purposes of its discussions, the PDP-WT divided the policy development process into the separate distinct stages and initially considered each of these stages consecutively. The details of the discussion on each of these stages can be found in the Initial Report (see <http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf>).

In addition, a number of overarching issues that are present in multiple stages of the policy development process, including timing, translation, development of definitions, voting thresholds and decision-making methodology, were also discussed following the review of the five different stages (see section 3).

The WT, supported by ICANN staff, has developed a first outline of the new Annex A (see section 4) as well as a supporting document that is envisioned to be included in the GNSO Operating Procedures as the PDP Manual (see section 5).

In section 2, you will find an overview of the recommendations of the PDP-WT. For further background information on how these recommendations were developed, you are strongly encouraged to review the [Initial Report](#), the [proposed Final Report](#), the [Final Report](#), the WT's review of the public comments (see Annex A) and the WT's [deliberations on the outstanding issues](#), to appreciate the deliberations of the PDP-WT that form the basis for these recommendations.

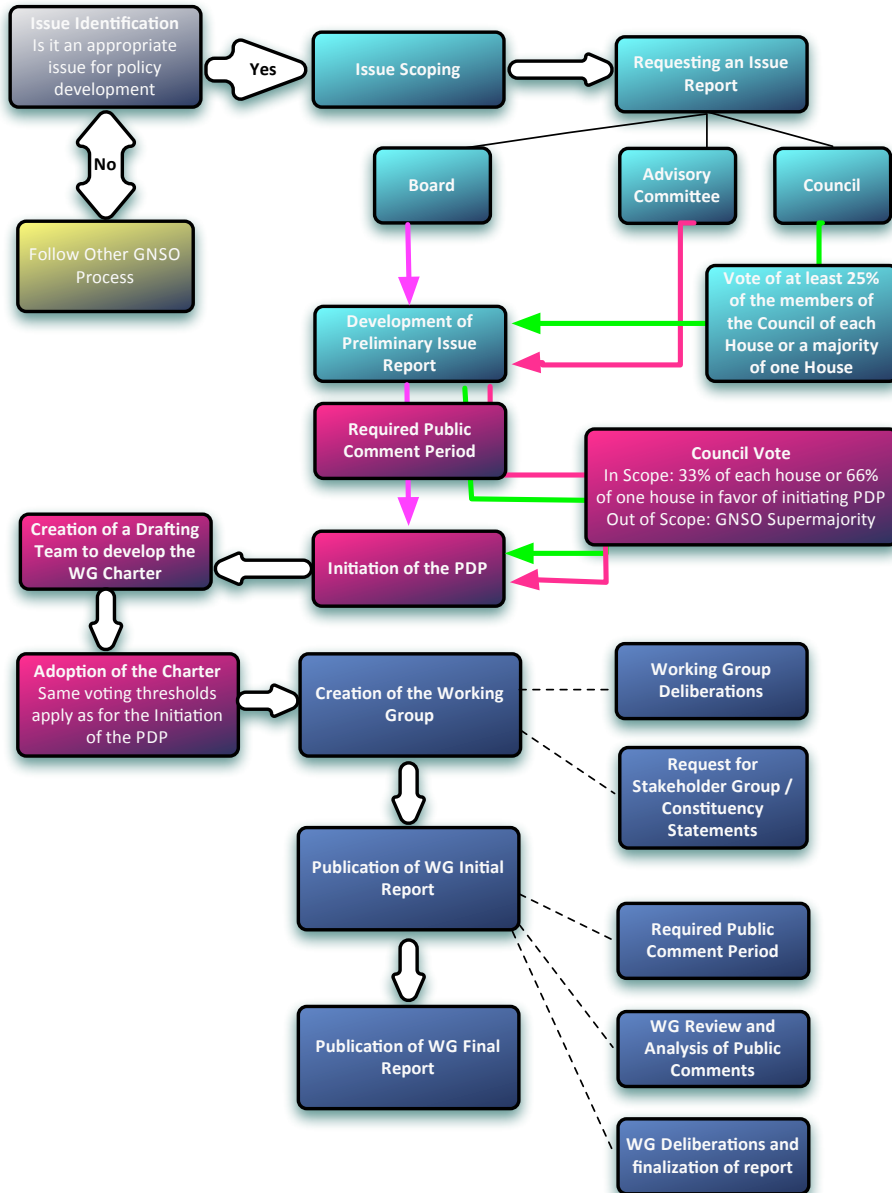
To facilitate visualization of the new PDP, the WT has also developed a flow chart that includes that provides a high-level overview of the main elements of the new PDP that can be found hereunder¹.

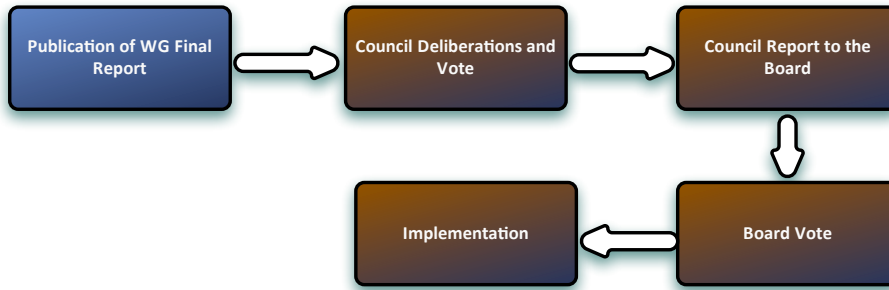
This report has unanimous consensus support of the PDP-WT.

¹ It is the expectation that once the new PDP has been adopted, ICANN Staff will develop graphics, which are intended to be descriptive of the approved process and serve to facilitate understanding of the approved process.

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Stage I - Planning and
Request of the Issues Report

Stage II - GNSO Council
Review of the Issues Report
and Initiation of a PDP

Stage III - Working Group

Stage IV - Voting and
Implementation

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2 Approach taken & Proposed Recommendations

Following the publication of the [Initial Report](#) and a subsequent public comment period, the WT reviewed and addressed the comments received (see [public comment review tool as well as Annex A](#)). In addition, the WT discussed the outstanding issues it had not been able to cover in time for the Initial Report and updated the recommendations accordingly. In order for the ICANN Community to review these updated recommendations, especially those not included in the Initial Report, the WT published a [Proposed Final Report](#) for public comment. Following review of the public comments received (see [public comment review tool as well as Annex B](#)), the WT updated the report where deemed appropriate and finalized the report for submission to the GNSO Council. [The GNSO Council decided to conduct a public comment period on the Final Report before considering the report and its recommendations. Following the closing of the public comment period, the GNSO Council decided to request the PDP-WT to review the comments received and determine whether changes would need to be made to the report based on the comments submitted. The PDP WT reviewed the comments received \(see \[public comment review tool as well as Annex C\]\(#\)\) and has updated its report as deemed appropriate. This Updated Final Report is now submitted to the GNSO Council for its consideration.](#) Upon approval by the GNSO Council, the recommendations would be forwarded to the ICANN Board for its review and approval as appropriate.

The PDP WT agreed to divide the policy development process into the following separate stages and consider each of these stages consecutively:

- Stage 1 – Planning and Request for an Issues Report
- Stage 2 – GNSO Council Review of the Issues Report and Initiation of the Policy Development Process
- Stage 3 – Working Group
- Stage 4 – Voting and Implementation

• Stage 5 – Policy Effectiveness and Compliance

Each of these stages were then broken down into related issues areas that were discussed by the PDP-WT. The following sections provide an overview of these deliberations, including proposed recommendations to address issues identified. To encourage input from the members of the WT, a number of surveys were conducted to solicit feedback. For further details on the surveys and interim notes, please visit the PDP-WT Workspace:
<https://community.icann.org/display/gnsoppsc/PDP-WT+Home>.

For each of these stages a number of recommendations were developed (see hereunder) that form the basis of the proposed new GNSO Policy Development Process. These recommendations are provided below. Please note that in order to make this section of the document concise, most of the context for the recommendations have been removed and the PDP-WT urges the community to read the [Initial Report](#) for further context on the recommendations. It has been indicated for each of the recommendations whether these have been incorporated into the proposed new Annex A of the ICANN Bylaws (“B”) and/or the PDP Manual (“M”).

Stage 1 – Planning and Request for an Issues Report

Recommendation 1. Who can request an Issue Report (B)

- Although a request for a GNSO Issues Report has never been issued directly by the ICANN Board, or any Advisory Committee (other than the At-Large Advisory Committee), the PDP-WT recommends that the current three mechanisms for initiating a request for an Issue Report (Board request, Advisory Committee Request or GNSO Council Member Request) should be maintained.

Recommendation 2. Definition of ‘Raising an Issue’ and ‘Initiating a PDP’ (B)

- The current language in Annex A of the Bylaws contains several references to the term “PDP” which over the years have been the source of confusion. The phrase “initiating a PDP”

is currently used to refer to initiating an issue report, for example, and is also used to refer to the process of formally establishing Task Forces or working groups. Therefore, the PDP-WT has distinguished the two concepts into (1) Raising an Issue and (2) Initiating a PDP. The PDP-WT has recommended clarification of this language in the Bylaws and whenever such terms are used by the community.

Recommendation 3. Development of a Policy Development Manual (M)

- The PDP-WT recommends the development of a Policy Development Process Manual, which will constitute an integral part of the GNSO Operating Rules, intended to provide guidance and suggestions to the GNSO and ICANN communities on the overall PDP process, including those steps that could assist the community, working group members, and Councillors in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.

Recommendation 4. Request for an Issue Report Template (M)

- The PDP-WT recommends that a 'request for an Issue Report' template should be developed including items such as: definition of issue; identification and quantification of problems, to the extent feasible; supporting evidence; economic impact(s); effect(s) on competition and consumer trust and privacy and other rights, and; rationale for policy development. Any request for an Issue Report, either by completing the template included in the PDP Manual or in another form, must include at a minimum: the name of the requestor and the definition of the issue. The submission of any additional information, such as the identification and quantification of problems, and other as outlined for example in the template, is strongly encouraged, but not required.

Recommendation 5. Issue Scoping (M)

- The PDP-WT recommends adopting the proposed Policy Development Process Manual, to provide guidance and suggestions to those parties raising an issue on which steps could be

considered helpful in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.

Recommendation 6. **Creation of an Issue Report (B/M)**

- The PDP-WT recommends that the currently required elements of an Issue Report² continue to be required for all future PDPs. However the PDP-WT recommends that only certain of the elements be identified in Annex A of the Bylaws and others in the PDP Manual. More specifically, the Bylaws should continue to require elements a (the proposed issue raised for consideration), b (the identity of the party submitting the issue) and c (how that party is affected by the issue), while elements d (support for the issue to initiate the PDP) and e (recommendation from the Staff Manager) should be added to the PDP Manual. In addition, the PDP-WT notes that element e (recommendation from the Staff Manager) should be split in two parts; the first part dealing with the question of whether a PDP is considered “in scope” (see recommendation 22 for the definition of “in scope”) and the second part addressing whether the PDP should be initiated. Although currently included as one element in the ICANN Bylaws, the reality is that these two elements should be treated separately. The WT also notes that it would be appropriate to change ‘Staff Manager’ to ‘ICANN Staff’ in this context. Furthermore, the PDP-WT recommends including in the PDP Manual a recommendation for the entity requesting an Issue Report to indicate whether there are any additional items it would like to have addressed in the Issue Report. This in turn which could then be taken into consideration by the Staff Manager and/or Council when reviewing the request for an Issue Report. In addition, the PDP Manual should allow for ICANN Staff or the Council to request additional research, discussion, or outreach to be conducted as part of the development of the Issue Report.

Recommendation 7. **Outcomes of a PDP (M)**

² See provision 2 of Annex A of the ICANN Bylaws

- The PDP-WT recommends better information and communication with Working Group members on the potential outcomes of a policy development process. There are more potential outcomes of the PDP process than just the formation of “consensus policies” as defined under the applicable gTLD Registry and Registrar agreements. Acceptable outcomes also include the development of best practices, recommendations to other supporting organizations, recommendations that no changes are necessary, recommendations for future policy development, recommendations for additional research or study, etc. If known in advance, this information could be included in the Charter of a Working Group or in the Council’s instructions to a WG. The PDP Manual should clearly advise the Council and Working Group members of these other potential outcomes.

Recommendation 8. Scope – General Counsel’s opinion (B/M)

- The PDP-WT recommends retaining the requirement for obtaining the opinion of the ICANN General Counsel’s office in the Issues Report as to whether a proposed PDP is within the scope of the GNSO. Further details regarding the opinion of counsel are expected to be included in the PDP Manual as opposed to the Bylaws. For more clarification of the meaning of “in scope” please see Recommendation 22 below.

Recommendation 9. Role of ICANN Staff (M)

- The PDP-WT recommends that additional guidance on the different roles ICANN staff can perform, as outlined in the GNSO Working Group Guidelines, is to be included in the PDP Manual.

Recommendation 10. Timeframe for delivery of Preliminary Issue Report (B)

- The PDP-WT recommends the modification of timeframes included in clause 1 – Creation of an Issue Report in Annex A in relation to the development and delivery of an issues report as follows:
Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board;
(ii) a resolution from the GNSO Council; or (iii) a duly supported request from an Advisory

Committee, the Staff Manager will create a report (a “Preliminary Issue Report”). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report, which request should be discussed with the Requestor.

Recommendation 11. **Mandatory Public comment period on Preliminary Issue Report (B)**

- The PDP-WT recommends that that there is a mandatory public comment period that follows the publication of a Preliminary Issue Report and before the GNSO Council is asked to consider the initiation of a PDP. Such a Public Comment period would, among other things, allow for additional information that may be missing from the Preliminary Issue Report, or the correction or updating of any information in the Preliminary Issue Report. In addition, this would allow for members of the ICANN Community to express their views to the Council on whether or not to initiate a PDP. Depending on the comments received, ICANN staff would include public inputs and any necessary corrections to the Preliminary Issue Report turning it into the Final Issue Report and/or summarize the comments received for Council consideration. If no comments are received on the Preliminary Issue Report, the content of the Final Issue Report should be substantially similar to the Preliminary Issue Report.

Recommendation 12. **Role of workshops prior to initiating a PDP (M)**

- The PDP-WT recognizes the value of workshops on substantive issues prior to the initiation of a PDP. It is therefore recommending that information on the potential role of workshops and information gathering events be provided in the PDP Manual. In addition, the PDP-WT recommends that the GNSO Council should consider requiring such a workshop, on-line or face-to-face, on a specific issue during the planning and initiation phase for a specific issue, when deemed appropriate. The PDP-WT does not recommend mandating the use of workshops prior to initiating a PDP. Furthermore, the PDP-WT recommends that, if a workshop is held, invitations and/or announcements for workshops are communicated as broadly as possible.

Recommendation 13. **Consideration of Resources (M)**

- The PDP-WT believes that the GNSO Council should take into full account the resources available, both volunteers from the community as well as ICANN staff, when making its decision on whether or not to initiate a PDP.

Recommendation 14. **No fast-track procedure (B/M)**

- The PDP-WT discussed the notion of a fast-track procedure extensively but did not come to agreement on whether such a process is truly needed, and if so, what such a fast-track procedure might look like. The PDP-WT recommends that the GNSO re-evaluates the need for a fast-track procedure in due time as part of the review of the new PDP, as it is of the view that the new PDP will offer additional flexibility and would allow for 'faster' PDPs provided that the necessary resources are available without the need for a formal 'fast track' process.

Stage 2 - GNSO Council Review of the Issues Report and Initiation of the Policy Development Process

Recommendation 15. **Timeframes for Initiation of a PDP (M)**

- The PDP-WT recommends modifying the timeframes currently included in clause 3 of Annex A – “Initiation of a PDP” to reflect current practice and experience. In addition, it proposed to add language to codify the current practice that any Council members may request the deferral of the consideration of an initiation of a PDP for one Council meeting.

Recommendation 16. **Flexibility (M)**

- The PDP-WT recommends that further guidance be included in the PDP Manual on how to deal with situations where further flexibility is required e.g. additional research, ensuring that the Council provides clear indications on expected timing of next steps.

Recommendation 17. **Appeals mechanism for Advisory Committees (M)**

- The PDP-WT recommends that if the GNSO Council votes to not initiate a PDP following an Issue Report requested by an Advisory Committee (AC), the AC or its representatives should have the opportunity to meet with representatives of the GNSO to discuss the rationale for the rejection and why the AC feels that reconsideration is appropriate⁴. Following this meeting, the AC may submit a statement to the GNSO Council requesting a re-vote on the initiation of a PDP and giving its rationale for such a request. This process may be followed just once for any given Issue Report.

Recommendation 18. **Chartering of a Working Group (M)**

- The PDP-WT recommends updating clause 7 of Annex A of the ICANN Bylaws to reflect that a charter is required for all Working Groups, and to specify the voting threshold that should apply to the adoption of the working group charter which is identical to the one that applies to the initiation of the PDP. 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

⁴ In particular those meeting with the AC should include members of the GNSO Council that voted against the initiation of the PDP.

of the GNSO Council (as such term is currently defined in article X, section 3 of the ICANN Bylaws).

Recommendation 19. Link to new PDP in GNSO Working Group Guidelines (M)

- The PDP-WT recommends that a link to the new Annex A and the PDP Manual, once finalized and approved, are included in the GNSO Working Group Guidelines, as these two documents provide an overview of the requirements for PDP WGs.

Recommendation 20. Input from SOs and ACs (M)

- The PDP-WT recommends that further explanation on how to involve Advisory Committees or Supporting Organisations in a PDP be included as part of the PDP Manual. Much of this will involve the codification of existing practice. It is the belief of the PDP-WT that input from other SOs and ACs must be sought and treated with the same due diligence as other comments and input processes. In addition, comments from ACs and SOs should receive a response from the WG. This may include, for example, direct reference in the applicable Report or embedded in other responsive documentation or a direct response. The PDP WG is expected to detail in its report how input was sought from ACs and SOs and how, if input was received, such input has been considered.

Recommendation 21. Optional public comment period after the Initiation of a PDP (M)

- Taking into account the required public comment period on the Preliminary Issue Report (see recommendation 11), the PDP WT considers it no longer necessary to require a public comment period on the initiation of a PDP. However, a WG may, at its discretion, decide to conduct a public comment period at the start of their deliberations to obtain input on issues raised in the Charter.

Recommendation 22. Clarification of 'in scope' (B)

- The PDP-WT recommends modifying clause 3 – Initiation of a PDP to clarify that within scope means 'within scope of ICANN's mission and more specifically the role of the GNSO' as

opposed to within scope of the contracted parties' definition of "consensus policies"⁵. Furthermore, the PDP-WT recommends that issues raised should be mapable against specific provisions in the ICANN Bylaws, the Affirmation of Commitments and/or ICANN's Articles of Incorporation. This information should be included in the request for an Issue Report⁶ and should be added as a category in the Issue Report request template.

Stage 3 – Working Group

Recommendation 23. Mode of operation for a PDP (M)

- The PDP-WT recommends that even though a Working Group currently forms the basic mode of operation for a PDP, there should be flexibility to accommodate different working methods if deemed appropriate by the GNSO Council, in accordance with the GNSO Operating Rules. For example, in the past use has been made of "Task Forces" as well as a "Committee of the Whole". Any new working methods or groups must contain each of the mandatory elements set forth in the ICANN Bylaws and PDP Manual.

Recommendation 24. Information for PDP Working Groups (M)

- The PDP-WT recommends that each PDP WG will be strongly encouraged to review and become familiar with the GNSO Working Group Guidelines and the PDP Manual (once published), which includes further information and guidance on the functioning of GNSO Working Groups.

⁵ See for example section 3.3.4 of the Registrar Accreditation Agreement (<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm>) or section 3.1 b of the .com Registry agreement (see <http://www.icann.org/en/tlds/agreements/verisign/registry-agmt-com-22sep10.htm>).

⁶ The WT notes that the ICANN Office of the General Counsel opines formally on the scope as part of the Issue Report.

Recommendation 25. **Communication with different ICANN Departments (M)**

- The PDP-WT recommends that further guidance should be included in the PDP Manual on the mechanisms and protocols for Working Groups to communicate with different ICANN departments. It may be necessary for PDP Working Groups to consult with the General Counsel's office, Compliance, Operations, Finance, etc. The PDP-WT recommends that ICANN policy staff serve as the official intermediaries between a Working Group and the various ICANN departments, provided that a procedure is in place which allows for escalation via the WG Chair if the WG is of the opinion that communication is hindered through the involvement of ICANN policy staff.

Recommendation 26. **Alignment with ICANN's Strategic Plan (M)**

- The PDP-WT recommends that the initiation of a PDP may include consideration of how ICANN's budget and planning can best accommodate the PDP and/or its possible outcomes, and, if applicable, how the proposed PDP is aligned with ICANN's Strategic Plan.

Recommendation 27. **Duration of Public Comment Periods (B/M)**

- The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to change the duration of the public comment period on the Initial Report from 20 days to a minimum of thirty calendar days. This same minimum should also apply to the public comment period on the Preliminary Issue Report, while other public comment periods that a WG / GNSO Council opt to have as part of a PDP should have a minimum duration of 21 days. The minimum durations for the Preliminary Issue Report and Initial Report should be included in the ICANN Bylaws while the minimum requirement of 21 days for other public comment periods should be included in the PDP Manual. Further guidance on the recommended duration, for example taking into account overlap with ICANN meetings, should be included in the PDP Manual.

Recommendation 28. **Summary and Analysis of Public Comments (M)**

- The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to reflect the current practice that a summary and analysis of the public comments received is to be provided by the staff manager to the Working Group. Such a summary and analysis of the public comments should be provided at the latest 30 days after the closing of the public comment period, absent exigent circumstances. The Working Group shall review and take into consideration the public comments received.

Recommendation 29. **Guidance on Public Comment Periods (M)**

- The PDP-WT recommends providing further guidance in the PDP Manual on how to conduct public comment periods and review public comments received. Such guidance should include the expectation that public comments are carefully considered and analyzed by the WG; encouraging WGs to explain their rationale for agreeing or disagreeing with the comments received and, if appropriate, how these will be addressed in the report of the WG, and; other means to solicit input than the traditional public comment forums such as surveys.

Recommendation 30. **Implementation, Impact and Feasibility (M)**

- The PDP-WT recommends that PDP WGs be required to provide input on issues related to implementation on all policy recommendations. This input could include a discussion of the impacts of the policy, both positive and negative, including but not limited to economic, competition, operations, privacy and other rights, scalability and feasibility. When appropriate the following should be considered:
 - Recommend the inclusion of implementation guidelines as part of the Final Report;
 - Consultation with the WG / Council on the draft implementation plan;
 - The creation of an implementation team that consists of representatives of the WG, amongst others, which would be tasked to review / provide input during the implementation phase

All reports should include a statement on the WG discussion concerning impact of the proposed recommendations, which could consider areas as noted above. Further guidance on this issue is to be included in the PDP Manual.

Recommendation 31. ICANN Staff Resources (M)

- The PDP-WT recommends that staff resources needed or expected in order to implement the policy recommendations should be evaluated as part of the WG recommendations, and as part of the Council's review of those recommendations. This could be included as part of the feasibility analysis and/or impact statement (see also recommendation 30).

Recommendation 32. Stakeholder Group and Constituency Statements (M)

- The PDP-WT recommends amending clause 7 of Annex A of the ICANN Bylaws to reflect the practice that Stakeholder Group / Constituency statements are requested by the Working Group and the timeline for submission should start from that point instead of the initiation of the PDP. It should be noted in the PDP Manual that a WG can request Stakeholder Group / Constituency statements more than once if so desired.

Recommendation 33. Mandatory Working Group Output (B)

- The PDP-WT recommends that PDP Working Groups continue to be required to produce at least an Initial Report and a Final Report, noting that additional outputs can be produced if desirable.

Recommendation 34. Initial Report vs. Final Report (B)

- The PDP-WT does note that the description of the difference between an Initial Report and a Final Report as currently described in the Bylaws is not in line with actual practice, and recommends that this language is updated to reflect that an Initial Report may reflect the initial ideas of a WG which are then finalized, in combination with review and analysis of the public comment period in the second phase leading to the Final Report.

Recommendation 35. **Mandatory Public Comment Period on Initial Report (B)**

- The PDP-WT recommends that a public comment period on the Initial Report remains mandatory. Additional guidance on further optional public comment periods, e.g. when there are substantial differences between the Initial Report and Final Report are to be included as part of the PDP Manual.

Recommendation 36. **Termination of a PDP prior to publication of a Final Report (M)**

- The PDP recommends that a provision be added to the PDP Manual to allow for the termination of a PDP prior to the publication of a Final Report if the GNSO Council finds significant cause and passes a motion with a Supermajority vote, as defined in the ICANN Bylaws, in favour of termination.

Stage 4 – Voting and Implementation

Recommendation 37. **Timing of consideration of Final Report (M)**

- The PDP-WT recommends modifying clause 10 – “Council Deliberations of Annex A” of the ICANN Bylaws to reflect current practice and requirements in the rules of procedure to consider a report if it is received at least eight (8) days in advance of a Council meeting, otherwise the report shall be considered at the next Council meeting. In addition, the PDP-WT recommends adding language to codify the current practice that any Council member can request the deferral of the consideration of a final report for one Council meeting.

Recommendation 38. **Consideration of Working Group Recommendations (M)**

- The PDP-WT recommends providing additional guidance to GNSO Council in the PDP Manual on how to treat Working Group recommendations, especially those that have not received full consensus and the expected / desired approach to adoption of some, but not all, or rejection of recommendations. PDP WGs should be encouraged to indicate which, if any, recommendations are interdependent so the GNSO Council can take this into account as part of their deliberations. The Council should be cautious and is strongly discouraged from

separating recommendations that the PDP WT has identified as interdependent. The PDP-WT would like to express its concern about the GNSO Council 'picking and choosing' or modifying recommendations, but recognizes that this is the Council's prerogative. The PDP-WT would like to encourage the GNSO Council that where it does have concerns or would propose changes to recommendations, it passes these concerns and/or recommendations for changes back to the respective PDP Working Group for their input.

Recommendation 39. **GNSO Council Report to the Board (B/M)**

- The PDP-WT recommends that all reports to the ICANN Board concerning a PDP should be publicly disclosed. In addition, it notes that the GNSO Council is responsible for the Board Report either as author of the report or by approving the report before it is sent to the Board. Board Reports on PDPs should be delivered from the GNSO Council directly to the Board and if any summaries or addenda are needed by request of the Board, those should be assembled by the GNSO council (upon consultation of the Working Group if necessary). If feasible, the Board Report should be delivered to the Board within 21 days following the adoption of the Final Report. The PDP-WT discussed at length the current practice of ICANN Policy Staff submitting a separate report to the Board, which is not disclosed to the community and is drafted without the aid of the Council or applicable PDP Working Group. The PDP-WT unanimously believes that these reports should not be kept confidential. If ICANN Policy Staff would like to submit a separate report related to a PDP to the Board or is requested to do so, it should be done in an open and transparent matter and disclosed to the community at the same time it is delivered to the Board. The PDP-WT notes that there might be cases where certain confidential information cannot be publicly disclosed due to its privileged nature. Nevertheless, even in those circumstances, as much information as possible, without disclosing business confidential information, must be provided. This may include a description by ICANN Staff of the general nature of such information and the rationale for its non-disclosure.

Recommendation 40. **Voting Thresholds (B/M)**

549 ▪ The PDP-WT discussed whether the voting thresholds currently in place might need to be
550 reviewed (see also overarching issues) but agrees that this issue should be addressed by the
551 GNSO when deemed appropriate and/or necessary. The WT does note that it has proposed
552 two new voting thresholds in relation to the adoption of the WG Charter (see
553 recommendation 18), as well as a new voting threshold for the termination of a PDP (see
554 recommendation 36), and the definition of “Supermajority Vote” (see recommendation 47) .
555

556 Recommendation 41. **Board Vote (B)**

557 ▪ The PDP-WT recommends that the provisions in relation to the Board Vote in the ICANN
558 Bylaws remain essentially unchanged, but recognizes that the current provision 13f⁷ is not
559 clear especially in relation to what ‘act’ means. Following further review and clarification by
560 ICANN Staff (see <http://forum.icann.org/lists/gns0-ppsc-pdp/docUUZkcHBh3A.doc>), the WT
561 recognizes that provision 13f relates to when the Board can reject (‘act’) a GNSO
562 recommendation, if the GNSO recommendation was not adopted by a GNSO Supermajority.
563 The WT notes that the current placing of provision 13f is confusing and therefore
564 recommends to clarify this section by linking provision 13f to 13b, and make it clear that in
565 both instances the desired next steps would be further discussion with the GNSO Council as
566 outlined in provisions 13 c, d and e. In addition, an explanation needs to be added in the
567 PDP Manual to clarify that all recommendations, including those not recommending new or
568 changes to Consensus Policies, should be communicated to the Board.
569

570 Recommendation 42. **Implementation Review Team (M)**

571 ▪ The PDP-WT recommends the use of WG Implementation Review Teams, when deemed
572 appropriate, which would be responsible in dealing with implementation issues. A PDP WG
573 should provide recommendations for whether a WG Implementation Review Team should
574 be established and any other recommendations deemed appropriate in relation to such a

⁷ From the ICANN Bylaws – 13 Board Vote f. In any case in which the Council is not able to reach GNSO Supermajority vote, a majority vote of the Board will be sufficient to act.

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Review Team (e.g. composition) as part of its Final Report. ICANN Staff should inform the GNSO of its proposed implementation of a new GNSO recommended policy. If the proposed implementation is considered inconsistent with the GNSO Council's recommendations, the GNSO Council may notify the Board and request that the Board review the proposed implementation. (see also recommendation 31)

Stage 5 – Policy Effectiveness and Compliance

Recommendation 43. Periodic Assessment of PDP Recommendations / Policy (M)

- The PDP-WT notes that a periodic assessment of PDP recommendations and/or policy is important. WGs should be encouraged to include proposed timing, assessment tools and metrics for review as part of their Final Report.

Recommendation 44. GNSO Council Review of the PDP Working Group (M)

- The PDP Work Team notes that several documents, including the PPSC-WG WT and the WG Guidelines, reference a "Working Group Self-Assessment," which all WGs are encouraged to conduct. The Work Team believes that this could be a valuable exercise, and encourages PDP WGs to complete a candid and objective self-assessment at the conclusion of their work. However, the Work Team also notes that there are no ICANN guidelines and recommends that the GNSO develops such guidelines after some experience is gained in WG self-assessments.

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Recommendation 45. Periodic Assessment of the overall PDP Process (M)

- The PDP-WT notes that the periodic assessment of the overall PDP process is important, noting that a certain threshold of completed PDPs should be met before an overall review is carried out. The WT does not have a specific view on whether the PPSC or a new Standing Committee should be responsible for such a periodic assessment.

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Recommendation 46. **Review of the Working Group Model (M)**

- The PDP-WT recommends that such an overall review also includes the review of the Working Group Model in the context of the PDP, which should assess whether there are stages in the PDP that are more suitable for Working Groups and those that might be more suitable for formal advice from Stakeholder Groups and Constituencies.

Other

Recommendation 47. **Definition of GNSO Supermajority (B)**

- The WT recommends that the definition of a 'GNSO Supermajority vote' be redefined in the ICANN Bylaws as 2/3 of the Council members of each house or 3/4 of one House and a majority of the other house.

Specifically, Section 3.9(c) of Article X, should be modified from:

"c. Initiate a PDP Not Within Scope: requires an affirmative vote of more than 3/4 of one House and a majority of the other House ("GNSO Supermajority");

to:

"c. Initiate a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority."

And a new stand-alone definition of GNSO Supermajority should be included at the end of Section 3.9 as follows:

"3.9 g. A "GNSO Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a majority of the other House."

In addition, the WT recommends the consistent use of either percentage or fraction when referring to voting thresholds, and has opted for using fraction in the context of the PDP voting thresholds.

Recommendation 48. Simplify Section 3.9 of Article X (B)

- In the last sentence of section 3.9 Article X of the ICANN Bylaws, it should be sufficient to say 'the GNSO Supermajority vote threshold will have to be met or exceeded' as the clause 'with respect to any contracting party affected by such contract provision' is irrelevant. As a result, the WT recommends that this provision is updated accordingly.

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643 In addition, a number of overarching issues were identified which were deemed to have an
644 impact on the overall policy development process or related to various stages of the new PDP
645 and therefore needed to be considered once an initial outline of the new PDP would have been
646 completed. These overarching issues consist of:

647

- 648 • Timing
- 649 • Translation
- 650 • Development of definitions
- 651 • Voting thresholds
- 652 • Decision-making methodology
- 653 • Transition / Implementation of the new PDP

654

655 Based on the discussions and deliberations to date, a flow chart which outlines the main
656 elements of the proposed GNSO Policy Development Process can be found in the executive
657 summary.

658

659 The WT, supported by ICANN staff, has also developed a first outline of the new Annex A (see
660 section 4) as well as a supporting document that is envisioned to be included in the GNSO

661 Operating Procedures as the PDP Manual (see section 5).

662

663 Based on the input received on the Initial Report, Final Report and subsequent discussions, the
664 PDP-WT has finalized its report for submission to the GNSO Council.

665

666

667

3 Overarching Issues

In addition to the five stages discussed in the previous sections of this report, the PDP-WT also identified a number of ‘overarching issues’ which were deemed to have an impact on the overall policy development process or related to various stages of the new PDP and therefore needed to be considered once an initial outline of the new PDP would have been completed. These overarching issues consist of:

- Timing
- Translation
- Development of definitions
- Voting thresholds
- Decision-making methodology
- Transition / Implementation of the new PDP

It should be noted that this section contains the deliberations of the WT on these issues, which did not all result into recommendations for the new Annex A or PDP Manual (it has been indicated in the text where the deliberations specifically relate to one of the recommendations in section 2).

The initial deliberations on a number of these issues can be found in the Initial Report (see <http://gnso.icann.org/issues/pdp-initial-report-31may10-en.pdf>). On the basis of these initial deliberations, the review of the public comments received on the Initial Report as well as the proposed Final Report and further discussions, the PDP-WT has reached the following conclusions.

1. Timing (B/M)

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Deleted: At the Council meeting following the receipt of a Final Issue Report; provided that the Issue Report is received at least eight (8) calendar days prior to the GNSO Council meeting. If the Issue Report is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council shall consider the Issue Report at the subsequent meeting following the next GNSO Council meeting. At the written request of any Stakeholder Group or constituency, for any reason, consideration of the Issue Report may be postponed by not more than one (1) meeting, provided that that such Stakeholder Group or constituency details the precise rationale for such a postponement. Consideration of the Issue Report may only be postponed for a total of one (1) meeting, even if multiple Stakeholder Groups or constituencies request postponement.

697 Based on the different recommendations that have timing included, the following timeline
698 would be applicable to every PDP, noting the flexibility in a number of the different stages.
699

| Task | Duration |
|--|---|
| Development of Preliminary Issue Report | Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a resolution from the GNSO Council; or (iii) a duly supported request from an Advisory Committee. (See Recommendation 10) |
| Public Comment Period on Preliminary Issue Report | Minimum of 30 Days (See Recommendation 27) |
| Submission of Final Issue Report, including summary of comments received | Within 30 days of the closing of the public comment forum, though the Staff Manager may request an extension of that 30-day time for delivery based upon the considerations set forth in the PDP Manual. (Recommendation 11) |
| Consideration of Final Issue Report by GNSO Council | <u>At the request of any Council member, for any reason, consideration of the Issue Report may be postponed by not more than one (1) meeting, provided that that the Council member details the precise rationale for such a postponement. Consideration of the Issue Report may only be postponed for a total of one (1) meeting, even if multiple Council members request postponement.</u> (See Recommendation 15) |
| Development of WG Charter | Council may set timeline for delivery of WG |

| | |
|---|--|
| | Charter at its discretion considering existing resources (both Volunteer and ICANN staff). Such a timeframe should be realistic, but at the same time ensure that this task is completed as soon as possible and does not unnecessarily delay the formation of a Working Group |
| Approval of WG Charter | The Council shall consider whether to approve the proposed Working Group Charter at the Council meeting following the Chair's receipt of the proposed Working Group Charter; provided that the proposed Working Group Charter is received at least eight (8) calendar days prior to the GNSO Council meeting. If the proposed Working Group Charter is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council shall consider the proposed Working Group Charter at the meeting after the next GNSO Council meeting. |
| Formation of WG | To determined by the GNSO Council at its discretion considering existing resources (both Volunteer and ICANN staff). |
| Working Group | Milestones / timetable may be included in Charter if deemed appropriate by the GNSO Council. |
| Request for Constituency / Stakeholder Group Statements on issues presented in the Charter. | 35 days (See Recommendation 32) |

| | |
|---|---|
| Public Comment Period on the Initial Report | Minimum of 30 days (See Recommendation 27) |
| Consideration of Final Report by GNSO Council | <u>The GNSO Council is strongly encouraged to consider the recommendations within the Final Report at the next meeting after the Final Report is forwarded to the Council Chair, provided that the Final Report is forwarded to the Council Chair at least eight (8) calendar days prior to the GNSO Council meeting. If the Final Report is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council should consider the Final Report at the meeting after the next GNSO Council meeting. At the request of any Council member, for any reason, consideration of the Final Report may be postponed for no more than one (1) meeting, provided that that such Council member details the precise rationale for such a postponement. Consideration of the Final Report may only be postponed for a total of one (1) meeting, even if multiple Council members request postponement.</u> (See Recommendation 37) |
| Approval of Council Recommendations Report to the Board | If feasible, at the next GNSO Council meeting following adoption of the Final Report (See Recommendation 39) |
| Consideration by the ICANN Board | <u>The Board will meet to discuss the GNSO Council recommendation as soon as feasible,</u> |

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but preferably not later than the second
meeting after receipt of the Board Report from
the Staff Manager.▼

Given the greater flexibility introduced in to the process, and the variable time periods in which a Working Group has to complete its work, it might be worth pointing out that based on review of recent PDPs the average length varies between 350 – 550 days.

2. Translation (M)

The PDP-WT considered a number of issues related to translations, including: (i) what translations should be provided at each stage of the policy development process, (ii) how will translations impact timing / delay e.g. in relation to a public comment period, and (iii) how to assess the success and/or additional needs for translation?

The following are ICANN's current translation principles:

ICANN will provide timely and accurate translations, and move from an organisation that provides translation of texts to one that is capable of communicating comfortably with a range of different languages. The translation framework comprises a four-layer system:

- The bottom layer contains those specific documents and publications that address the organisation's overall strategic thinking. They will be translated into an agreed block of languages.*
- The next layer contains a class of documents that ICANN undertakes to provide in different languages to allow interaction within ICANN processes by non-English speakers.*
- The third layer comprises documents suggested by ICANN staff as being helpful or necessary in ongoing processes; and documents requested by the Internet community for the same reasons. These documents will be run through a*

translation approval system.

- The top layer is where the community is encouraged to use online collaborative tools to provide understandable versions of ICANN materials as well as material dynamically generated by the community itself. ICANN will provide the technology for community editing and rating, and a clear and predictable online location for this interaction to occur. It will also seek input from the community to review the tools.

English will remain the operating language of ICANN for business consultation and legal purposes.

Every effort will be made to ensure equity between comments made in languages other than English and those made in English. If it is not possible to arrange the release of particular documents in the agreed languages at the same time, then each language will be provided with the same time period in which to make comments.

ICANN will adopt the International Organisation for Standardisation's 639-2 naming system for identifying and labelling particular languages⁸.

PDP-WT Conclusion:

- The WT recognizes the importance of translation to facilitate participation of non-English speakers in the GNSO Policy Development Process. At the same time, the WT acknowledges the costs and timing implications that might result from enhanced translation of documents. Furthermore, the WT wants to emphasize the importance of a coherent and consistent approach across ICANN as an organization when it comes to translation. Awaiting and encouraging an overall ICANN policy on

⁸ See <http://www.icann.org/en/transparency/acct-trans-frameworks-principles-23jun07.htm#trans>

translation, the WT recommends the following in relation to the GNSO Policy Development Process:

1. At a minimum the following PDP outputs should be translated in the 5 UN languages:
 - Working Group Charter (including any amendments)
 - Executive Summary of Initial, Final or any other report that is put out for public comment, including recommendations (if not included in the Executive Summary)
2. Public comments should be received in other languages, where feasible and when that occurs, these comments should also be translated back into English.
3. ICANN is encouraged to consider whether the use of volunteers to assist with translation is appropriate and practical as a cost-cutting measure while it is considering the enhancements of the translation strategy, which is part of the overall strategic plan.

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3. Development of Definitions (B)

PDP-WT Conclusion: the WT recommends that, where appropriate, definitions are added to the new Annex A and PDP Manual based on the PDP-WT discussions and recommendations. These would include definitions related to “PDP”, “in scope”, “Consensus Policies”, “Working Groups”, etc.

4. Voting thresholds (B)

The WT discussed whether the voting thresholds as adopted as part of the new GNSO bi-cameral structure in 2009 are still appropriate and effective. Overall, the PDP-WT decided to substantially keep the existing thresholds intact and added a couple of others. Below are listed the thresholds recommended by the PDP-WT followed by some notes by the PDP-WT.

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1. Raising an Issue: Council initiation: one-fourth (1/4) of the members of the Council of each house or a majority of one house.

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2. Initiating PDP:

a. More than one-third (1/3) of the Council members of each House; or More than two-thirds (2/3) vote of one House if within scope

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b. GNSO Supermajority Vote required if not in scope (two-thirds (2/3) of the Council Members of each House or three-fourths (3/4) of one House and a majority of the other house)

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3. Vote on Approving the Charter (as recommended by the WT – see recommendation 19)

a. More than one-third (1/3) of the Council members of each house; or More than two-thirds (2/3) of one House if within Scope

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b. GNSO Supermajority vote required if not in scope

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4. Vote to terminate a PDP (as recommended by the WT – see recommendation 37)

5. Vote of Council (From Article 10, Section 3, #9)

a. Approve a PDP Recommendation without a GNSO Supermajority – requires an affirmative vote of majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation

b. Approve a PDP Recommendation with a GNSO Supermajority – requires an affirmative vote of a GNSO Supermajority; and

c. Approve a PDP Recommendation Imposing New obligations on certain Contracting Parties: where an ICANN contract provision specifies that “a two-thirds vote of the council” demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded with respect to any contracting party affected by such contract provision.

6. Board Vote

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- 845 a. The Board will meet to discuss the GNSO Council recommendation as
846 soon as feasible after receipt of the Board Report from the Staff
847 Manager.
- 848 b. In the event that the Council reached a GNSO Supermajority Vote, the
849 Board shall adopt the policy according to the GNSO Supermajority Vote
850 recommendation unless by a vote of more than two-thirds (2/3) of the
851 Board determines that such policy is not in the best interests of the
852 ICANN community or ICANN.
- 853 c. In the event that the Board determines not to act in accordance with
854 the GNSO Supermajority Vote recommendation, the Board shall (i)
855 articulate the reasons for its determination in a report to the Council
856 (the "Board Statement"); and (ii) submit the Board Statement to the
857 Council.
- 858 d. The Council shall review the Board Statement for discussion with the
859 Board within twenty (20) calendar days after the Council's receipt of the
860 Board Statement. The Board shall determine the method (e.g., by
861 teleconference, e-mail, or otherwise) by which the Council and Board
862 will discuss the Board Statement.
- 863 e. At the conclusion of the Council and Board discussions, the Council shall
864 meet to affirm or modify its recommendation, and communicate that
865 conclusion (the "Supplemental Recommendation") to the Board,
866 including an explanation for its current recommendation. In the event
867 that the Council is able to reach a GNSO Supermajority Vote on the
868 Supplemental Recommendation, the Board shall adopt the
869 recommendation unless more than two-thirds (2/3) of the Board
870 determines that such policy is not in the interests of the ICANN
871 community or ICANN.
- 872 f. In any case in which the Council is not able to reach GNSO
873 Supermajority vote, a majority vote of the Board will be sufficient to act.

876 g. When a final decision on a GNSO Council Recommendation or
877 Supplemental Recommendation is timely, the Board shall take a
878 preliminary vote and, where practicable, will publish a tentative
879 decision that allows for a ten (10) day period of public comment prior to
880 a final decision by the Board
881

882 **PDP-WT Conclusion:**

- 883 a) The PDP-WT agreed that the existing voting threshold 1 for 'Raising an Issue' is
884 appropriate, as the initial gauge should continue to be low.
- 885 b) The PDP-WT discussed voting threshold 2 'Initiating a PDP' and discussed whether a
886 higher voting threshold should apply if staff recommended against the initiation of a
887 PDP (as opposed to the ICANN General Counsel opining that the PDP is not "in scope" as
888 set out in recommendation 23). Most agreed that no higher voting threshold should be
889 required, as it would otherwise give staff indirectly a vote in the process. PDP-WT
890 members discussed the issue of prioritization and the role the current threshold, which
891 is considered low by some, plays in creating work the community and staff has difficulty
892 keeping up with. Some where of the opinion that keeping the threshold as it currently is
893 would be appropriate. Others considered there to be a strong relationship between this
894 threshold and the prioritization effort the GNSO is currently undertaking and were of
895 the opinion that if there is no effective prioritization this threshold may need to be
896 raised in order to avoid GNSO community and staff overload. No consensus was reached
897 on how best to address this issue and therefore no recommendation is presented.
- 898 c) The WT recommends that the definition of a 'GNSO Supermajority vote' is redefined as
899 two-thirds (2/3) of the Council members of each house or three-fourths (3/4) of one
900 House and a majority of the other house. (see recommendation 47)
- 901 d) In line with recommendation 19, the WT recommends the proposed voting threshold for
902 the adoption of a WG charter (voting threshold number 3 above), noting that this would
903 require every WG to have a charter. In cases where two or more competing charters
904 would be proposed, the GNSO Council Chair should facilitate a meeting between the

proponents of the different charter to determine whether a compromise charter can be developed ahead of the GNSO Council vote. If no compromise is found, the two or more competing charters are put forward for GNSO Council consideration whereby the charter with the most votes is adopted. Any modifications to a Working Group Charter may be adopted by a simple majority vote of the GNSO Council.

- e) In relation to voting threshold 4 – Vote of the Council, the WT confirms its earlier conclusion that the Council should be strongly discouraged from separating recommendations that a PDP Working Group has identified as interdependent. (see recommendation 38)
- f) In relation to 4c, it was noted that only registrars have a clause in their agreement that specifies that “a two-thirds vote of the council” demonstrates the presence of a consensus. Registries have a general definition of consensus in their agreements. A staff memorandum circulated to the group (see <http://forum.icann.org/lists/gnso-ppsc-pdp/msg00359.html>) recommends the standardization of ‘all of the voting requirements for all registries and all registrars in order to adopt Consensus Policies that would be enforceable against them.’ In addition, ICANN Staff proposed that the PDP-WT recommend that the GNSO Supermajority Vote apply in all instances where the GNSO Council intends to adopt Consensus Policies to be enforceable against all registrars and registries’. Some argued that the current wording could also imply the lower threshold vote and this clarification would ensure that the higher threshold would apply, while others argued this might be a lower standard than currently applicable as ‘consensus’ in the registry agreement does not only relate to the vote of the GNSO Council. No consensus was reached within the PDP-WT to adopt the ICANN Staff recommendation.
- g) In relation to 6a, the WT discussed whether it would be possible to word this provision in a positive way (instead of noting how many are needed to reject, note how many are needed to approve).
- h) In relation to 6b, the WT highlighted the importance of the board statement with info on why something was rejected. The WT discussed whether a timeframe should be included as to when the board is required to submit its statement to the GNSO Council

and it was suggested that a certain timeframe should be included (e.g. Board shall within x days submit the board statement to the GNSO Council with guidance on how to cure the identified deficiencies). However, in the end, the WT did not consider it within its remit to dictate timeframes that apply to Board and opted not to include a proposed timeframe in the new Annex A.

- i) In relation to 6c, the WT agreed to consider including a similar timeframe as for earlier discussed items (i.e. consider at next meeting if received 8 days ahead of the meeting, or at the following meeting if not received 8 days ahead of the meeting).
- j) The WT also discussed whether the board should be able to pick and choose recommendations or whether they should be adopted or rejected 'en block' as has been current practice. Most agreed that the board should only be able to adopt or reject the GNSO Council recommendations as a whole as policy development is supposed to be done at the SO level, not by the board. However, the WT did not consider it within its remit to prescribe what the Board must or should do when considering the GNSO Council recommendations, but noted that the GNSO Council could include a message to this end when submitting its report to the Board.
- a) The WT discussed 6f and noted that there were different interpretations of what 'will be sufficient to act' means. Some members of the contracted parties interpret this as meaning that without supermajority vote of the Council, the Board can act and adopt the recommendations with a majority vote, but these would not be binding on the contracted parties. Other members of the non-contracted parties were of the opinion that it meant that the board could act and adopt policy recommendations that would be enforceable on contracted parties even without a supermajority vote of the GNSO Council. Following further review and clarification by ICANN Staff (see <http://forum.icann.org/lists/gnsoppsc-pdp/docUUZkcHBh3A.doc>), the WT recognizes that provision 13f relates to when the Board can reject ('act') a GNSO recommendation, if the GNSO recommendation was not adopted by a GNSO Supermajority. The WT notes that the current placing of provision 13f is confusing and therefore recommends to clarify this section by linking provision 13f to 13b, and make it clear that in both

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instances the desired next steps would be further discussion with the GNSO Council as outlined in provisions 13 c, d and e. (see recommendation 41).

- b) The WT discussed 6g and the meaning of 'timely'. Some suggested this could mean time-sensitive, critical or urgent. The question was raised who makes the assessment on whether something is timely? Most agreed that it would be the role of the ICANN Board to make this assessment, although the GNSO Council could make a recommendation to this end. It should be noted that this specific provision is not included as part of the proposed new Annex A.

- c) The WT agreed to add a new voting threshold for the termination of a PDP (see recommendation 36).

- d) Overall, the WT agreed that the existing voting thresholds should be addressed by the GNSO when deemed appropriate and/or necessary.

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5. Decision-making methodology (M)

The PDP-WT recommends that PDP Working Groups are required to use the decision-making methodology that is outlined in the [GNSO Working Group Guidelines](#), which were adopted by the GNSO Council, at least for a certain period of time, following which its effectiveness and usability could be reviewed and assessed as part of the overall review of the new PDP.

6. Transition (B)

The WT agreed that following the adoption and implementation, the new PDP should apply to all issued raised and PDPs initiated after the date of adoption. In addition, the WT recommends that, upon review by the GNSO Council, existing PDP Working Groups may be transitioned to the new policy development process.

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4 New GNSO PDP – Basis for new Annex A

Based on the PDP-WT recommendations and deliberations, the PDP-WT, with the support of ICANN Staff, has developed the outline below of a new Annex A which is intended to replace the current Annex A contained in the ICANN Bylaws.

Annex A – GNSO Policy Development

The following process shall govern the GNSO policy development process (“PDP”) until such time as modifications are recommended to and approved by the ICANN Board of Directors (“Board”). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO Council (“Council”) or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
- c. Formation of a Working Group or other designated work method;
- d. Initial Report produced by a Working Group or other designated work method;
- e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;

- 1024 f. Council approval of PDP Recommendations contained in the Final Report, by the
1025 required thresholds;
1026 g. PDP Recommendations and Final Report shall be forwarded to the Board through a
1027 Recommendations Report approved by the Council]; and
1028 h. Board approval of PDP Recommendations.

1029

1030 Section 2. Policy Development Process Manual

1031

1032 The GNSO shall maintain a Policy Development Process Manual (PDP Manual) within the
1033 operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall
1034 contain specific additional guidance on completion of all elements of a PDP, including those
1035 elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments
1036 thereto are subject to a twenty-one (21) day public comment period, as well as Board oversight
1037 and review, as specified at Article X, Section 3.6.

1038

1039 Section 3. Requesting an Issue Report

1040

1041 *Board Request.* The Board may request an Issue Report by instructing the GNSO Council
1042 ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a
1043 request for an Issue Report, the Board should provide a mechanism by which the GNSO Council
1044 can consult with the Board to provide information on the scope, timing, and priority of the
1045 request for an Issue Report.

1046

1047 *Council Request.* The GNSO Council may request an Issue Report by a vote of at least one-fourth
1048 (1/4) of the members of the Council of each House or a majority of one House.

1049

1050 *Advisory Committee Request.* An Advisory Committee may raise an issue for policy development
1051 by action of such committee to request an Issue Report, and transmission of that request to the
1052 Staff Manager and GNSO Council.

Section 3: Creation of an Issue Report

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (a “Preliminary Issue Report”). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a) The proposed issue raised for consideration;
- b) The identity of the party submitting the request for the Issue Report;
- c) How that party is affected by the issue, if known;
- d) Support for the issue to initiate the PDP, if known;
- e) The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN’s mission, policy process and more specifically the role of the GNSO as set forth in the [Bylaws](#).
- f) The opinion of [ICANN Staff](#) as to whether the Council should initiate the PDP on the issue

Upon completion of the preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN website for a public comment period of no less than 30 days

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

1085

1086 Section 4: **Initiation of the PDP**

1087

1088 The Council may initiate the PDP as follows:

1089

1090 **Board Request:** If the Board requested an Issue Report, the Council, within the timeframe set
1091 forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

1092

1093 **GNSO Council or Advisory Committee Requests:** The Council may only initiate the PDP by a vote
1094 of the Council. Initiation of a PDP requires a vote as set forth in [Article X, Section 3, paragraph](#)
1095 [9\(b\) and \(c\)](#) in favor of initiating the PDP.

1096

1097 Section 5: **Reports**

1098

1099 An Initial Report should be delivered to the GNSO Council and posted for a public comment
1100 period of not less than 30 days, which time may be extended in accordance with the PDP
1101 Manual. Following the review of the comments received and, if required, additional
1102 deliberations, a Final Report shall be produced for transmission to the Council.

1103

1104 Section 6. **Council Deliberation**

1105 Upon receipt of a Final Report, whether as the result of a working group or otherwise, the
1106 Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council
1107 deliberation on the matter in accordance with the PDP Manual .

1108

1109 The Council approval process is set forth in [Article X, Section 3, paragraph 9\(d\) through \(g\), as](#)
1110 [supplemented by the PDP Manual](#).

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1112 Section 7: **Preparation of the Board Report**

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1114 If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a
1115 Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN

1116 Board,▼

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1118 Section 8. **Board Approval Processes**

1119 The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but
1120 preferably not later than the second meeting after receipt of the Board Report from the Staff
1121 Manager. Board deliberation on the PDP Recommendations contained within the
1122 Recommendations Report shall proceed as follows:

1123 a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted
1124 by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board
1125 determines that such policy is not in the best interests of the ICANN community or
1126 ICANN. If the GNSO Council recommendation was approved by less than a GNSO
1127 Supermajority Vote, a majority vote of the Board will be sufficient to determine that
1128 such policy is not in the best interests of the ICANN community or ICANN.

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1129 b. In the event that the Board determines, in accordance with paragraph a above, that the
1130 policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority
1131 vote is not in the best interests of the ICANN community or ICANN (the Corporation),
1132 the Board shall (i) articulate the reasons for its determination in a report to the Council
1133 (the "Board Statement"); and (ii) submit the Board Statement to the Council.

1134 c. The Council shall review the Board Statement for discussion with the Board as soon as
1135 feasible after the Council's receipt of the Board Statement. The Board shall determine
1136 the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and
1137 Board will discuss the Board Statement.

1138 d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm
1139 or modify its recommendation, and communicate that conclusion (the "Supplemental
1140 Recommendation") to the Board, including an explanation for the then-current

1143 recommendation. In the event that the Council is able to reach a GNSO Supermajority
1144 Vote on the Supplemental Recommendation, the Board shall adopt the
1145 recommendation unless more than ~~two-thirds (2/3)~~ of the Board determines that such
1146 policy is not in the interests of the ICANN community or ICANN. For any Supplemental
1147 Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of
1148 the Board shall be sufficient to determine that the policy in the Supplemental
1149 Recommendation is not in the best interest of the ICANN community or ICANN.

1151 Section 9. **Implementation of Approved Policies**

1152
1153 Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give
1154 authorization or direction to ICANN staff to work with the GNSO Council to create an
1155 implementation plan based upon the implementation recommendations identified in the Final
1156 Report, and to implement the policy. The GNSO Council may, but is not required to, direct the
1157 creation of an implementation review team to assist in implementation of the policy.

1159 Section 10. **Maintenance of Records**

1160
1161 Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will
1162 maintain on the Website, a status web page detailing the progress of each PDP issue. Such
1163 status page will outline the completed and upcoming steps in the PDP process, and contain links
1164 to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

1166 Section 11: **Additional Definitions**

1167 [TO BE DETERMINED]

1169 Section 12: **Applicability**

1170 The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs
1171 initiated after [insert date of adoption]. For all ongoing PDPs initiated prior to [insert date], the

1173 Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A
1174 for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be
1175 feasibly transitioned to these updated procedures, the PDP shall be concluded according to the
1176 procedures set forth in Annex A in force on [insert date prior to adoption].

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5 Policy Development Process Manual

As outlined before, in order to enhance flexibility of the Policy Development Process, the PDP-WT proposes to incorporate the details as well as further guidance on how to manage a PDP in a Policy Development Process Manual that would become an integral part of the GNSO Operating Procedures. Below is the WT proposed form of a PDP Manual that contains the main elements based on the recommendations outlined in the previous chapters.

5.1 PDP Manual - Introduction

These guidelines and processes supplement the requirements for PDPs described in Annex A of the ICANN Bylaws [insert link].

5.2 Requesting an Issue Report

As outlined in Annex A of the ICANN Bylaws, a request for an Issue Report may be initiated upon Board, Council or Advisory Committee request.

Requests for an Issue Report by the Board or by an Advisory Committee do not require any GNSO Council action, but are to be reviewed by Staff and prepared in accordance with Section 5.4 below.

5.3 Planning for Initiation of a PDP

Consistent with ICANN's commitment to fact-based policy development, the GNSO and Staff are encouraged to provide advice in advance of a vote on the request for an Issue Report specifying any additional research, discussion, or outreach that should be conducted as part of the development of the Issue Report, in order to ensure a balanced and informed Issue Report.

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1209 | The GNSO is encouraged to consider scheduling workshops on substantive issues prior to the
1210 | initiation of a PDP. Such workshops could, amongst others; facilitate community understanding
1211 | of the issue; assist in scoping and defining the issue; gather support for the request of an Issue
1212 | Report, and/or; serve as a means to gather additional data and/or information before a request
1213 | is submitted. Where appropriate, the GNSO Council should consider requiring such a workshop
1214 | during the planning and initiation phase for a specific issue. To the extent such workshops are
1215 | utilized by the GNSO, the invitations and/or announcements for workshops should be
1216 | communicated as broadly as possible.

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1217 |
1218 | The GNSO Council should take into full account the resources available, both volunteers and
1219 | staff, when making its decision on whether or not to initiate a PDP.

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1221 | 5.4 Recommended Format of Issue Report Requests

1222 |

1223 | The recommended format of requests for Issue Reports under paragraphs (b) and (c) of Section
1224 | 2 is described below:

1225 |

| Request for Issue Report | |
|---|--|
| Name of Requestor: | |
| Name of Stakeholder Group/Constituency/Advisory Committee (if applicable) in support of request: | |
| Please provide rationale for policy development: | |
| Brief explanation of how issue affects your SG / Constituency / Advisory Committee: | |
| Suggestions on specific items to be addressed in the Issue Report (if any): | |
| Please provide a concise definition of the issue presented and the problems raised by the issue, including quantification to the extent feasible: | |

| | |
|--|--|
| What is the economic impact or effect on competition, consumer trust, privacy and other rights: | |
| Please provide supporting evidence (if any): | |
| How does this issue relate to the provisions of the ICANN Bylaws, the Affirmation of Commitments and/or ICANN's Articles of Incorporation: | |
| Date Submitted: | |
| Expected Completion Date: | |

1228

1229 Any request for an Issue Report, either by completing the template or in another form, must
1230 include at a minimum: the name of the requestor and the definition of the issue. The submission
1231 of any additional information, such as the identification and quantification of problems, and
1232 other as outlined for example in the template, is strongly encouraged.

1233

1234 5.5 Creation of the Preliminary Issue Report

1235

1236 Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a
1237 properly supported motion from the GNSO Council; or (iii) a properly supported motion from an
1238 Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue Report"). In the
1239 event the Staff Manager determines that more time is necessary to create the Preliminary Issue
1240 Report, the Staff Manager may request an extension of time for completion of the Preliminary
1241 Issue Report, which request should be discussed with the Requestor.

1242

1243 In the event that the Issue Report was initially requested by the Board or an Advisory
1244 Committee, the requestor shall be informed of any extension of time for completion of the Issue
1245 Report. Any request for extension of time should include consideration of the complexity of the
1246 issue, the extent of research and outreach recommended, and the ICANN Staff workload.

1247

1248 The following elements should be considered in the Issue Report:

- 1249 a) The proposed issue raised for consideration;
- 1250 b) The identity of the party submitting the request for the Issue Report;
- 1251 c) How that party is affected by the issue, if known;
- 1252 d) Support for the issue to initiate the PDP, if known;
- 1253 e) The opinion of the ICANN General Counsel regarding whether the issue proposed for
- 1254 consideration within the Policy Development Process is properly within the scope of
- 1255 the ICANN's mission, policy process and more specifically the role of the GNSO. In
- 1256 determining whether the issue is properly within the scope of the ICANN policy
- 1257 process, General Counsel's opinion should examine whether the issue:
- 1258 a. is within the scope of ICANN's mission statement, and more specifically the
- 1259 role of the GNSO;
- 1260 b. is broadly applicable;
- 1261 c. is likely to have lasting value or applicability, albeit with the need for
- 1262 occasional updates;
- 1263 d. is likely to enable ICANN to carry out its commitments under the Affirmation
- 1264 of Commitments;
- 1265 e. will establish a guide or framework for future decision-making;
- 1266 f. will implicate or affect an existing ICANN policy.
- 1267 f) The opinion of ICANN Staff as to whether the Council should initiate the PDP on the
- 1268 issue
- 1269

1270 5.6 Public Comment on the Preliminary Issue Report

1271

1272 Upon completion of the preliminary Issue Report, the preliminary Issue Report shall be posted

1273 on the ICANN website for a public comment period of no less than 30 days. When posted for

1274 Public Comment, Staff is encouraged to translate the executive summary of Preliminary Issue

1275 Reports into the six UN languages to the extent permissible under the ICANN translation policy

and the ICANN budget, though the posting of any version in English shall not be delayed while translations are being completed.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

The summary and analysis and the Final Issue Report are expected to be delivered to the Chair of the GNSO Council within 30 days of the closing of the public comment forum, though the Staff Manager may request an extension of that 30-day time for delivery.

5.7 Initiation of the PDP

The Council may initiate the PDP as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the paragraph below, shall note for the record the confirmation of receipt of the Issue Report and the formal initiation of the PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in [Article X, Section 3, paragraph 9\(b\) and \(c\)](#) in favor of initiating the PDP.

Timing of vote on Initiation of the PDP. The Council should endeavour to vote on whether to initiate the policy development process at the next scheduled Council meeting following the receipt of a Final Issue Report; provided that the Issue Report is received at least eight (8) calendar days prior to the GNSO Council meeting. If the Issue Report is forwarded to the GNSO

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1306 Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council
1307 meeting, the Council should endeavour to vote on the initiation of the PDP at the subsequent
1308 GNSO Council meeting. At the request of any Council member, for any reason, consideration of
1309 the Issue Report may be postponed by not more than one (1) meeting, provided that that the
1310 Council member details the precise rationale for such a postponement. Consideration of the
1311 Issue Report may only be postponed for a total of one (1) meeting, even if multiple Council
1312 members request postponement.

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1313
1314 Upon consideration of the Issue Report the GNSO Council may, when necessary, vote to suspend
1315 further consideration of the Issue Report. Any motion to suspend further consideration of the
1316 Issue Report shall fail if the votes in favor of continuing consideration of the Issue Report is
1317 sufficient to initiate a PDP under Article X Section 9.b or 9.c of the Bylaws, as appropriate. The
1318 basis for suspension could include prioritization reasons such as insufficient Staff or community
1319 support available due to other ongoing PDP work, requests for additional data and requests for
1320 additional discussion. The GNSO Council is expected to use this procedure sparingly, and should
1321 generally endeavour to vote on the initiation of a PDP within 90 calendar days of the receipt of
1322 the Final Issue Report. Any decision to suspend consideration of the Final Issue Report is to be
1323 accompanied by a proposed timeline for further consideration, including a timeline for a vote on
1324 the initiation of the PDP.

1325
1326 In the event that the GNSO Council does not approve the initiation of the PDP, not including the
1327 possible suspension of further consideration of the Issue Report as described above, any
1328 Councillor may appeal the denial, and request that the GNSO Council hold a renewed vote on
1329 the initiation of the PDP at the next subsequent GNSO Council meeting.

1330
1331 In the event that the GNSO Council does not approve the initiation of the PDP following an Issue
1332 Report requested by an Advisory Committee (AC), the AC or its representatives should have the
1333 opportunity to meet with representatives of the GNSO, and in particular, those voting against
1334 the initiation of the PDP, to discuss the rationale for the rejection and why the AC feels that

reconsideration is appropriate. Following this meeting, the AC may submit a statement to the GNSO Council requesting a re-vote and giving its rationale for such a re-vote. This process may be followed just once for any given Issue Report.

As part of its decision on the initiation of the PDP, the GNSO Council may include consideration of how ICANN's budget and planning can best accommodate the PDP and/or its possible outcomes, and, if applicable, how the proposed PDP is aligned with ICANN's Strategic Plan.

5.8 Development and Approval of the Charter for the PDP

Upon initiation of the PDP, a group formed at the direction of Council should be convened to draft the charter for the PDP Team. The Council should indicate the timeframe within which a draft PDP Charter is expected to be presented to the Chair of the GNSO Council. Such a timeframe should be realistic, but at the same time ensure that this task is completed as soon as possible and does not unnecessarily delay the formation of a Working Group. The elements of the Charter should include, at a minimum, the following elements as specified in the GNSO Working Group Guidelines: Working Group Identification; Mission, Purpose and Deliverables; Formation, Staffing and Organization, and; Rules of Engagement.

The Council should consider whether to approve the proposed PDP Charter at the Council meeting following the Chair's receipt of the proposed PDP Charter; provided that the proposed PDP Charter is received at least eight (8) calendar days prior to the GNSO Council meeting. If the proposed PDP Charter is forwarded to the GNSO Council Chair within the eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council should endeavour to consider the proposed PDP Charter at the meeting after the next GNSO Council meeting.

The same voting thresholds that apply to the initiation of the PDP also apply to the approval of the proposed PDP Charter. Specifically, the proposed PDP Charter is to be approved with an affirmative vote of vote of more than one-third (1/3) of the Council members of each House or

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more than two-thirds (2/3) vote of one House in favour of approval of a Charter for a PDP within scope; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a GNSO Supermajority Vote as set forth in [Article X, Section 3, paragraph 9\(c\)](#) in favour of approving the PDP Team Charter is specified to approve the PDP Charter.

Once approved, modification of any PDP Charter is discouraged, absent special circumstances. Approved charters may be modified or amended by a simple majority vote of each House.

In exigent circumstances, upon approval of the initiation of the PDP, the GNSO Council may direct certain work to be performed prior to the approval of the PDP Charter.

5.9 PDP Outcomes and Processes

Upon approval of the PDP Charter, the GNSO Council may form a working group, task force, committee of the whole or drafting team (the “PDP Team”), to perform the PDP activities. The preferred model for the PDP Team is the Working Group model due to the availability of specific Working Group rules and procedures that are included in the GNSO Operating Rules and Procedures. The GNSO Council should not select another model for conducting PDPs unless the GNSO Council first identifies the specific rules and procedures to guide the PDP Team’s deliberations which should at a minimum include those set forth in the ICANN Bylaws and PDP Manual. The PDP Team is required to review and become familiar with the GNSO Working Group Guidelines, which also apply to PDP Working Groups (see <http://gnso.icann.org/council/annex-1-gnso-wg-guidelines-07apr11-en.pdf>), which includes further information and guidance on the functioning of GNSO Working Groups.

Once formed, the PDP Team is responsible for engaging in the collection of information. If deemed appropriate or helpful by the PDP Team, the PDP Team may solicit the opinions of outside advisors, experts, or other members of the public. The PDP Team should carefully

1397 consider the budgetary impacts, implementability, and/or feasibility of its proposed information
1398 requests and/or subsequent recommendations.

1399

1400 The PDP Team should formally solicit statements from each Stakeholder Group and
1401 Constituency in the early stages of the PDP. Stakeholder Groups and Constituencies should at a
1402 minimum have 35 days to complete such a statement from the moment that the statement is
1403 formally requested by the PDP Team. If appropriate, such statements may be solicited more
1404 than once by the PDP Team throughout the PDP process. The PDP Team is also encouraged to
1405 formally seek the opinion of other ICANN Advisory Committees and Supporting Organizations, as
1406 appropriate that may have expertise, experience, or an interest in the PDP issue. Solicitation of
1407 opinions should be done during the early stages of the PDP.

1408

1409 In addition, the PDP Team should seek input from other SOs and ACs. Such input should be
1410 treated with the same due diligence as other comments and input processes. In addition,
1411 comments from ACs and SOs should receive a response from the PDP Team. This may include,
1412 for example, direct reference in the applicable Report or embedded in other responsive
1413 documentation or a direct response. The PDP Team is expected to detail in its report how input
1414 was sought from other SOs and ACs.

1415

1416 The PDP Team is encouraged to establish communication in the early stages of the PDP with
1417 other departments, outside the policy department, within ICANN that may have an interest,
1418 expertise, or information regarding the implementability of the issue. The Staff Manager is
1419 responsible for serving as the intermediary between the PDP Team and the various ICANN
1420 departments (finance, legal, compliance, etc.). The PDP Team Chair may escalate to the Vice
1421 President of Policy if the PDP Team is of the opinion that such communications have been
1422 hindered through the involvement of ICANN policy Staff. ICANN Staff may perform additional
1423 distinct roles for a PDP Team as requested and appropriate (see [GNSO Working Group](#)
1424 [Guidelines](#) for further details).

1425

This Section illustrates the types of outcomes that are permissible from a PDP. PDP Teams may make recommendations to the GNSO Council regarding:

- i. Consensus policies
- ii. Other policies
- iii. Best Practices
- iv. Implementation Guidelines
- v. Agreement terms and conditions
- vi. Technical Specifications
- vii. Research or Surveys to be Conducted
- viii. Advice to ICANN or to the Board
- ix. Advice to other Supporting Organizations or Advisory Committee
- x. Budget issues
- xi. Requests for Proposals
- xii. Recommendations on future policy development activities

At the same time, a PDP Team may also conclude that no recommendation is necessary.

The Staff Manager is responsible for coordinating with the Chair(s) of the PDP Team to supervise and to carry out the PDP activities as necessary or appropriate, including, without limitation, making available the standard technical resources for the PDP Team, scheduling and attending PDP Team meetings, drafting and publishing PDP reports for public comment, and providing expertise where needed.

5.10 Publication of the Initial Report

After collection and review of information, the PDP Team and Staff are responsible for producing an Initial Report. The Initial Report should include the following elements:

- Compilation of Stakeholder Group and Constituency Statements
- Compilation of any statements received from any ICANN Supporting Organization or Advisory Committee
- Recommendations for policies, guidelines, best practices or other proposals to address the issue
- Statement of level of consensus for the recommendations presented in the Initial Report
- Information regarding the members of the PDP Team, such as the attendance records, Statements of Interest, etc.
- A statement on the WG discussion concerning impact of the proposed recommendations, which could consider areas such as economic, competition, operations, privacy and other rights, scalability and feasibility.

These elements may be included as content within the Initial Report or by reference to information posted on an ICANN website (such as through a hyperlink).

The Initial Report should be delivered to the GNSO Council and posted for a public comment period of not less than 30 days. If such a public comment period would coincide with an ICANN Public Meeting, the PDP Team is strongly encouraged to extend the public comment period a minimum of seven (7) days. Any public comment period on items other than the Issue Report and Initial Report shall be for a minimum of 21 days. The PDP Team is encouraged to explore other means to solicit input than the traditional public comment forum such as, for example, the use of a survey which might allow for asking more targeted questions.

5.11 Preparation of the Final Report

At the end of the public comment period, the Staff Manager will prepare a summary and analysis of the public comments received for the Working Group. Such a summary and analysis of the public comments should be provided at the latest 30 days after the closing of the public

comment period, absent exigent circumstances. The Working Group shall review and take into consideration the public comments received. Following this review, the Staff Manager, in close coordination with the PDP Team, shall add those comments deemed appropriate for inclusion to the Initial Report. In addition, the Staff Manager and the PDP Team may update the Initial Report if there are any recommendations within the Initial Report that require modification to address comments received through public comment. Such a revised Report shall be put forward for consideration by the PDP Team. The Staff Manager and the PDP Team are not obligated to include all comments made during the comment period, including each comment made by any one individual or organization.

The PDP Team is expected to deliberate as appropriate to properly evaluate and address comments raised during the public comment period. This should include the careful consideration and analysis of the public comments; explaining the rationale for agreeing and disagreeing with the different comments received, and, if appropriate, how these will be addressed in the report of the PDP Team. Following the review of the comments received and, if required, additional deliberations, the PDP Team is expected to produce a Final Report for transmission to the Council. The analysis of the comments by the PDP Team is expected to be included or referenced as part of the Final Report.

While the Final Report is not required to be posted for public comment, in preparing the Final Report, the PDP Team should consider whether the Final Report should be posted for public comment as a [Draft] Final Report, with the goal of maximizing accountability and transparency with regards the PDP, especially when substantial changes have been made compared to the contents of the Initial Report. When posted for Public Comment, Staff should consider translating the executive summaries of the Initial Reports and Draft Final Reports into the six UN languages, to the extent permissible under the ICANN translation policy and the ICANN budget, though the posting of any version in English is not to be delayed while translations are being completed. Upon completion of the Public Comment period, if any, and incorporation of any additional comments identified therein, or if no further comment period is necessary, the Final

1513 Report is to be forwarded to the GNSO Council Chair to begin the GNSO Council deliberation
1514 process.

1515
1516 In addition to any required public comment periods, the PDP Team may seek public comment on
1517 any item that the PDP Team notes it will benefit from further public input. The PDP Team does
1518 not have to seek approval from the GNSO Council to seek public comment on interim items. The
1519 minimum duration of a public comment period that does not concern the Initial Report is twenty
1520 (21) days.

1521
1522 Each recommendation in the Final Report should be accompanied by the appropriate consensus
1523 level designation (see section 3.6 – Standard Methodology for Making Decisions in the [GNSO](#)
1524 [Working Group Guidelines](#)).

1525 1526 **5.12 Council Deliberation**

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1528 The GNSO Council is strongly encouraged to consider the recommendations within the Final
1529 Report at the next meeting after the Final Report is forwarded to the Council Chair, provided
1530 that the Final Report is forwarded to the Council Chair at least eight (8) calendar days prior to
1531 the GNSO Council meeting. If the Final Report is forwarded to the GNSO Council Chair within the
1532 eight (8) calendar days immediately preceding the next GNSO Council meeting, the Council
1533 should consider the Final Report at the meeting after the next GNSO Council meeting. At the
1534 request of any Council member, for any reason, consideration of the Final Report may be
1535 postponed for no more than one (1) meeting, provided that that such Council member details
1536 the precise rationale for such a postponement. Consideration of the Final Report may only be
1537 postponed for a total of one (1) meeting, even if multiple Council members request
1538 postponement. The GNSO Council may, if deemed appropriate, schedule a separate session with
1539 the PDP Team to discuss the Final Report and ask any clarifying questions that might arise.
1540

The GNSO Council is expected to vote on the recommendations contained in the Final Report. Approval of the PDP recommendations contained in the Final Report requires an affirmative vote meeting the thresholds set forth at Article X, Section 3(9) d – f.

In the event that the Final Report includes recommendations that did not achieve the consensus within the PDP Team, the GNSO Council should deliberate on whether to adopt them or remand the recommendations for further analysis and work. Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report, it is recommended that the GNSO Council take into account whether the PDP Team has indicated that any recommendations contained in the Final Report are interdependent. The GNSO Council is strongly discouraged from itemizing recommendations that the PDP Team has identified interdependent or modifying recommendations wherever possible. In the event the GNSO Council expresses concerns or proposes changes to the PDP recommendations, it may be more appropriate to pass these concerns or recommendations for changes back to the respective PDP Team for input and follow-up.

5.13 Preparation of the Board Report

If the PDP Recommendations contained in the Final Report are approved by the GNSO Council, the GNSO Council may designate a person or group responsible for drafting a Recommendations Report to the Board. If feasible, the Recommendations Report to the Board should be submitted to the Board in time for consideration at the next GNSO Council meeting following adoption of the Final Report. Staff should inform the GNSO Council from time to time of the format requested by the Board. These GNSO Council Reports supplement any Staff Reports that may highlight any legal, implementability, financial, and other operational concerns related to the PDP recommendations contained in the Final Report. In order to enhance ICANN's accountability and transparency, Staff is encouraged to publish its Staff Reports with minimal redactions wherever possible, without jeopardizing information that may be protected under attorney/client or other legal privileges.

1572

1573 5.14 GNSO Council Role in Implementation

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1575 Upon a final decision of the Board adopting the GNSO PDP policy, the Board may, as
1576 appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to
1577 create an implementation plan based upon the implementation recommendations identified in
1578 the Final Report, and to implement the policy in as timely a fashion as possible. The GNSO
1579 Council may, but is not required to, direct the creation of an Implementation Review Team to
1580 assist Staff in developing the implementation details for the policy. In its Final Report, the PDP
1581 Team should provide recommendations to the GNSO Council on whether an Implementation
1582 Review Team should be established and any other recommendations deemed appropriate in
1583 relation to such an Implementation Review Team (e.g. composition).

1584

1585 ICANN Staff should inform the GNSO of its proposed implementation of a new GNSO
1586 recommended policy. If the proposed implementation is considered inconsistent with the GNSO
1587 Council's recommendations, the GNSO Council may notify the Board and request that the Board
1588 review the proposed implementation. Until the Board has considered the GNSO Council request,
1589 ICANN Staff should refrain from implementing the policy, although it may continue developing
1590 the details of the proposed implementation while the Board considers the GNSO Council
1591 request.

1592

1593 5.15 Termination of PDP prior to Final Report

1594 The GNSO Council, may terminate a PDP prior to the publication of a Final Report only for
1595 significant cause, upon a motion that passes with a Supermajority Vote in favour of termination.
1596 The following are illustrative examples of possible reasons for a premature termination of a PDP:

1597

- 1598 1. **Deadlock.** The PDP Team is hopelessly deadlocked and unable to identify
1599 recommendations or statements that have either the strong support or a consensus
1600 of its members despite significant time and resources being dedicated to the PDP;

2. **Changing Circumstances.** Events have occurred since the initiation of the PDP that have rendered the PDP moot or no longer necessary; or
3. **Lack of Community Volunteers.** Despite several calls for participation, the work of the PDP Team is significantly impaired and unable to effectively conclude its deliberations due to lack of volunteer participation.

If there is no recommendation from the PDP Team for its termination, the Council is required to conduct a public comment forum first prior to conducting a vote on the termination of the PDP (as described above).

5.16 Amendments or Modifications of Approved Policies

Approved GNSO Council policies may be modified or amended by the GNSO Council at any time prior to the final approval by the ICANN Board as follows:

1. The PDP Team is reconvened or, if disbanded, reformed, and should be consulted with regards to the proposed amendments or modifications;
2. The proposed amendments or modifications are posted for public comment for not less than thirty (30) days;
3. The GNSO Council approves of such amendments or modifications with a SuperMajority Vote of both Houses in favour.

Approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue.

5.17 Periodic Assessments of Approved Policies

Periodic assessment of PDP recommendations and policies is an important tool to guard against unexpected results or inefficient processes arising from GNSO policies. PDP Teams are

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1631 encouraged to include proposed timing, assessment tools, and metrics for review as part of their
1632 Final Report. In addition, the GNSO Council may at any time initiate reviews of past policy
1633 recommendations.

1634

1635 **5.18 Miscellaneous**

1636

1637 This Manual may be updated by the GNSO Council from time to time following the same
1638 procedures as applicable to amendments to the GNSO Operating Rules and Procedures.

1639

1640 In the event of any inconsistencies between the ICANN Bylaws or this Manual, the terms of the
1641 ICANN Bylaws shall supersede.

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Annex A - Public Comment Forum on the Initial Report

A public comment forum was held on the Initial Report, which ran from 31 May to 30 September (see <http://www.icann.org/en/announcements/announcement-2-31may10-en.htm>). A summary of the comments received can be found [here](#). In addition, the WT developed a public comment review tool to facilitate review and discussion of the comments received as well as providing an overview of how the different comments have been addressed in this report. You can review the public comment review tool hereunder.

PDP WT – Public Comments Review Tool - Updated 11 November 2010

| | Comment (Summary) | Who | WG Response | Recommended Action/Change |
|----------------------------|--|------|---|---|
| General Issues | | | | |
| Working Group Model | Prior to formally institutionalizing the WG model, the PDP WT should undertake or commission a review of whether the WG model is in fact optimal for addressing PDP issues | ALAC | There are some concerns from the ALAC if the PDP would mandate the WG model as there are known weaknesses, e.g. uneven representation. It was suggested that the PDP-WT could call for the evaluation of the WG model which should assess whether there are stages in the PDP that are more suitable for WGs and those that might be more suitable for formal advice from SGs / Constituencies. It was also noted that new models might emerge, therefore, the PDP should not be restricted to only | <ul style="list-style-type: none">▪ Recommend review of WG model for PDP▪ Ensure a structure that is flexible enough to accommodate different working methods, possibly requiring some core principles |

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| | | | WGs but leave flexibility for future adoption of alternative mechanisms. The WT debated whether there should be overall principles that any method should contain such e.g. representativeness. | |
| Evidence / data | PDPs should be based on responsibly document evidence of an issue to be addressed. A reasonable data-driven threshold for introduction of a PDP is a necessary step. | RrSG | The basis of the comment is that anecdotal evidence is not sufficient, there should be a push to provide as much information as possible. The question was raised whether there are certain areas where there should be some flexibility. It was suggested that in those cases additional efforts should be made to gather information, but if there is community agreement, this might be circumvented. Some noted that the GNSO is the manager of the process and should have the discretion to make these kinds of decisions, a black/white rule would not make sense here. | None |
| Stage 3 – 3a | ICANN was established with parameters for good reasons – to keep the organization from overreaching and causing disruption, to clearly define its role, etc. If the GNSO is willing to continue accepting every issue that's raised, whether in scope or not, ICANN will continue to | RrSG | Some noted that not every issue that is raised at the GNSO Council level is a gTLD policy issue, e.g. Internet Governance, DNS Cert. Not every issue that is raised will meet the GNSO scope test. | |

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| | experience the difficulties it does now. Setting reasonable boundaries about scope should not be difficult. | | | |
| Stage 3 – 3b | No potential outcomes should be dictated as part of the PDP, though the SG agrees a requestor should identify potential outcomes if possible, without bias. | RrSG | As the comment is in line with the views expressed in the report, no further discussion needed. | None |
| Stage 3 – 3c | The proposed suggestion (if there is not sufficient information available, an issue does not pass to the next stage) is a reasonable one. Proceeding blindly on policy development without sufficient information is irresponsible. | RrSG | As the comment is in line with the views expressed in the report, no further discussion needed. | None |
| Stage 3 – 3d | The RrSG agrees that a variety of alternatives should be employed to address issues of concern to the community. A PDP may or may not be the appropriate method. | RrSG | As the comment is in line with the views expressed in the report, no further discussion needed. | None |
| PDP and other activities | It is important to distinguish between what constitutes a PDP and ‘other’ GNSO Council activities that might also result in creation of WGs or development of charters but for which no formal process has been defined at this point in time. | BXL meeting | The WT discussed that although it might be helpful to provide further details on the significance of a PDP and when a PDP is supposed to be utilized to distinguish it from ‘other’ GNSO activities. | <ul style="list-style-type: none"> Develop introductory paragraph on what constitutes a PDP to be added to the report. |

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| GNSO Council / GNSO | Need to distinguish between GNSO Council and GNSO as these are not synonyms | BXL meeting | The WT agreed with this comment and will update the report accordingly. | <ul style="list-style-type: none"> Review report and verify that the terms GNSO Council and GNSO are used correctly |
| By-laws | By-laws should provide high-level overview of PDP process, with further details going into rules of procedure. | BXL meeting | The WT agreed that the by-laws should provide a high-level overview of the PDP process by outlining the main principles and constraints in the by-laws, while other elements would be incorporated in the rules of procedure. | <ul style="list-style-type: none"> Ensure that any draft by-law language follows this principle |
| PDP Flow Chart | <p>The RySG notes that the PDP Flowchart shows the 'Initiation of a PDP' prior to the 'Creation if a Drafting Team to develop the WG Charter'. In recent GNSO PDPs, it has appeared to be helpful to have a draft charter prepared before initiating the PDP; that then makes it easier to decide whether a PDP should be initiated because the desired objectives and deliverables are defined.</p> <p>For 'Adoption of the Charter', the "Same voting thresholds apply as for the Initiation of the PDP". The voting thresholds for initiating a</p> | RySG | <p>The WT noted that the flowchart did not allow for the flexibility that might be needed in this case and it expressed its support for the flexibility of having a draft of the charter prepared before or after initiation of the PDP. Further guidance on such flexibility should be provided in the rules of procedure.</p> <p>The WT pointed out that by applying the default threshold, the vote to adopt a charter would be higher than the actual initiation of a PDP which could result in possible gaming (i.e. those opposed to initiating the PDP could block the adoption of the charter). The WT did agree that modifications to the charter should be adopted by a simple majority</p> | <ul style="list-style-type: none"> Update recommendation 19 by adding that modifications to a WG charter may be adopted by a simple majority vote of the GNSO Council |

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| | PDP are as follows: To initiate a PDP within scope requires an affirmative vote of more than 33% of each House or more than 66% of one House. To initiate a PDP not within scope requires an affirmative vote of more than 75% of one House and a majority of the other House ("GNSO Supermajority"). It might be simpler to apply the default threshold, a simple majority of each house. | | vote of the GNSO Council. | |
| Relating to Recommendation #⁹ | | | | |
| 1 (Who -Request for Issues Report) | The PDP ought to address the manner in which unaffiliated groups and individuals can properly raise issues they would like to be considered. For instance, a funneling mechanism through which issues are vetted and/or passed to the GNSO or AC or relevant constituencies likely to have similar concerns, may be considered. | INTA | The WT did discuss this question as part of its deliberations. In its view, if the issue would be considered important enough, it would be picked up by one of the constituencies or stakeholder groups. In addition, if there is no interest from constituencies or stakeholder groups to take up the issue, the unaffiliated group or individual can reach out to the Board or one of the Advisory Committees to get the issue raised. | |
| 1 (Who -Request | It is appropriate that the current | Mary | Noted and agreed. The WT agrees with | |

⁹ Please note that the numbering refers to the numbering of the recommendations as marked in the Initial Report

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| for Issues Report) | mechanisms for initiating a request for an Issues Report be maintained and not expanded. The language of the current Recommendation may itself create further confusion. For example, is it the WT's intention to equate the necessary action as between the GNSO Council and an AC? If so, that would have been clearer had the recommended language for (b) (where the Council raises an issue) read "raise an issue for policy development" (as it currently reads in relation to ACs) rather than simply "raise an issue". Another option might simply be to re-title Section 1 of Annex A of the latest ICANN Bylaws, to read "Raising an Issue for Consideration Before Initiation of a PDP" (instead of just "Raising An Issue", which is the current wording.) A separate section dealing with Board initiation of a PDP (bypassing an Issues Report and Council vote) should then be added. In similar vein, the words "Issue Raised by the Board" in Section 3(a) of Annex A should be amended to read "Initiation of PDP by the Board". | Wong | the clarification and will take the recommendation into account when reviewing the proposed new Annex A. | |
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| 2 (Language – Request for Issues Report) | Although this was presumably not part of the WT’s charge, striking the “members present” language should be reviewed against other parts of the Bylaws (and any other applicable rules to ICANN constituent bodies, offices, committees, teams and groups, as the case may be) to see if similar problems present themselves in those situations and respects. A template for requesting an Issues Report would be useful, but ought not to be mandatory. | Mary Wong | The WT notes that this will be addressed in the new Annex A. The WT agrees that the use of a template is to be recommended but not mandatory. | |
| 3 (How – Request for Issues Report) | Support for recommendation 3 and suggests that said Manual will also be open for public comment as it is developed. | INTA | Noted. The WT confirmed that it does have the intention to put out the manual or rules of procedure (which might be a more appropriate term) for public comment in due time. | |
| 3 (How – Request for Issues Report) | How are the contents of the PDP Manual/Guidebook going to be developed? Note also that Recommendation 5 appears to duplicate Recommendation 3. | RySG | The WT discussed that the rules of procedure would together with the by-laws form one whole, with the by-laws outlining the basic (mandatory) principles and the rules of procedures providing the details including examples and optional steps. Normally the WT report should provide the ingredients for the rules of procedure which might be further worked out by the WT with the support | |

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| | | | of ICANN staff. | |
| 4 (How – Request for Issues Report) | Some basic template detail should probably be mandatory, including for instance a statement as to why the issue is important to the relevant constituency. | INTA | The WT did discuss as part of its deliberations whether a template or certain elements of the template should be mandatory, but the WT is of the opinion that its use should be strongly recommended, but not mandatory. The WT also noted that in combination with some of the other recommendations, such as additional research and discussion in advance of making a request would contribute to making additional information available in support of a request for an issues report. | |
| 4 (How – Request for Issues Report) | Issues for consideration should be raised through an electronic/online process that is linked to relevant sections of the PDP Manual. | INTA | The WT agreed that it might be worth exploring in due time, but as a ‘nice to have’, not a mandatory function. | |
| 4 (How – Request for Issues Report) | The RrSG believes this is a responsible step toward making future policies based on evidence and facts. A template that includes a clearly defined problem, well-documented supporting evidence, and a rationale for the use of increasingly very limited resources for development of policy, would be a useful tool. | RrSG | The WT agreed noting that there the limited resources apply both to staff as well as community volunteers. | |
| 4 (How – Request | Any manual or guidebook should | RrSG | The WT noted that limited resources | |

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| for Issues Report) | encourage that ICANN participants are mindful and respectful of ICANN's limited resources. | | apply both to staff as well as community volunteers. | |
| 4 (How – Request for Issues Report) | The RrSG looks forward to a continued discussion of what would constitute a reasonable threshold for initiating a PDP. | RrSG | Noted, and this will be covered in further detail in the discussion on 'overarching issues' that addresses voting thresholds. | |
| 3, 4 & 5 (How – Request for Issues Report & Issue Scoping) | A manual and/or guidelines would be helpful. It is not clear at this point how, and by whom, these manuals and guidelines will be developed. They ought to be a community process. Similarly, suggestions for identifying potential outcomes and ways to define the issue should be accomplished with community input. Recommendation #5 seems repetitive in light of previous recommendations. Are there specific issues or concerns that were not addressed by, say, Recommendation #3, that the WT intended be addressed here? | Mary Wong | Noted and agreed. The content of the manual will be open for community input as the basic outline for such a manual is expected to be part of the draft Final Report. Agreed, but recommendation #5 is the result of a different discussion and therefore does serve a specific purpose. | |
| 6 (Creation of Issues Report) | Should there be certain requirements for which elements an Initial Report should contain, e.g. draft recommendations / | BXL Meeting | The WT is of the opinion that certain elements should be encouraged, but not necessarily mandated. | |

| | conclusions? | | | |
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| 6 (Creation of Issues Report) | In some cases it might be useful to do additional research, hold discussions or conduct outreach before an Issues Report is requested, so it might be useful to include this possibility in the manual/guidebook. | RySG | Noted | |
| 6 (Creation of Issues Report) | The Bylaws should not be complicated with too much detail, particularly (in this regard) the precise contents of an Issues Report. The WT recommendation that this be taken up as part of the preparation of the manual and guidelines is a good way of ensuring that sufficient guidance is given such that an Issues Report will serve as both a precise and informative document upon which to base a vote to initiate a PDP (or not.) | Mary Wong | Noted and agreed. | |
| 7 (End result of PDP) | The RrSG welcomes this recommendation. Issues should be met with the solution that most appropriately resolves them. | RrSG | Noted | |
| 7 (End result of PDP) | Although other outcomes are possible, the focus of a PDP should be foremost on the development of | BXL meeting | The WT noted that although nothing prevents issues that are not focused on developing consensus policies going | |

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| | consensus policies relating to issues that are within the 'picket fence'. | | through a PDP, other GNSO processes that might be applicable (as indicated with 'follow other GNSO process' in the diagram) should be encouraged. Some noted that the reason for using a PDP could be that its outcome cannot easily be dismissed by the Board. | |
| 7 (End result of PDP) | The fact that potential outcomes of a PDP can be other than the development of consensus policies ought to be further highlighted to the ICANN community, in line with the WT's recommendation. | Mary Wong | Noted and agreed. | |
| 8 & 9 (Role of ICANN staff) | The General Counsel's role in opining whether a proposed PDP is "within scope" is both useful and necessary, thus the WT's recommendation in this respect should be followed. It would, additionally, be helpful if ICANN staff's function with respect to a particular Issues Report (e.g. whether technical expertise was provided or sought) could be included, where possible. The proposed manual/guidelines could further explore this question. | Mary Wong | Noted. The WT agrees with the suggestion and proposes to include a description of the role of ICANN Staff in the Manual. | Include description of the role of ICANN staff in the PDP Procedure Manual. |
| 10 (Timeline Issues Report) | Maximum time frames in the current PDP in the Bylaws have for | RySG | Agreed | |

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| | the most part have had to be ignored because they were unrealistic for many issues. Timeframes are better put into the manual/guidebook instead of any Bylaws. The practice of asking Staff to provide estimates of time needed has worked fairly well in GNSO history and better accommodates the variability of issue complexity. | | | |
| 10 (Timeline Issues Report) | It may be possible to combine options (c) and (d); for example, prescribing the time frame (minimum to maximum) in the Bylaws, with the added provision that if ICANN staff requests a modification of the time frame, then the estimate requirements in (d) be provided as soon as possible upon the request for an Issues Report. | Mary Wong | Noted. This seems in line with the WT's current thinking and will be taken into account when finalizing the recommendation. | |
| 11 (Community Input) | INTA agrees with this position as it would allow relevant stakeholders and community members to have input on new issues that may not be reflected in the Issues Report. | INTA | Noted | |
| 11 (Community Input) | Considering the nature of ICANN as a multi-stakeholder, consensus- | Mary Wong | Noted | |

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| | building organization, the recommendation for a mandatory public comment period, after the preparation of an Issues Report and prior to the Council vote in favor (or not) of a PDP, should be implemented. | | | |
| 12 (Role of workshops) | What is meant by a workshop? Workshops traditionally have been held at ICANN international meetings but those are held only three times a year. Note that drafting teams have been used successfully in the GNSO in recent years for several purposes including drafting charters, developing recommendations for consideration before initiating a PDP, etc. Does the WT see a place for DTs in the PDP process and, if so, what would that be? | RySG | The workshop / DTs mentioned in the report were optional not mandatory. Workshops would be intended to introduce an issue to the community and see if there is community interest, while a DT seems more appropriate if there is a certain product that is expected / needed. The WT is open to considering other mechanisms such as briefings or webinars that might be used in between ICANN meetings. Workshops do not need to be organized by ICANN; an interested party could also undertake such an effort to socialize an issue. | <ul style="list-style-type: none"> Recommend that invitations / announcements for workshops or other events are communicated as broadly as possible. |
| 12 (Role of workshops) & 13 (Impact Analysis) | This should be discussed, and possible processes recommended, by those tasked with preparing the relevant manual/guidelines. | Mary Wong | Noted | |
| 13 (Impact Analysis) | INTA generally agrees with this recommendation with the caveat that more detailed guidance should be in the Manual on what | INTA | These comments (also other ones made in relation to this issue) are in line with the comments expressed by the WT in its report. | |

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| | constitutes 'appropriate or necessary' and how the GNSO Council should consider and use such analyses. The design of such studies so early in the process might be flawed or could bias the outcome or decision on whether to proceed with a PDP. Public comment period could provide adequate bases for parties to argue or support undue fiscal hardship economic impact. | | An Issues Report might include recommendations for further study or impact analysis which is then subsequently considered by the Council. Although the Council could also request a study or impact analysis as a separate step from the PDP. Some suggested that an impact analysis as part of a PDP should be preceded by an Issues Report. | |
| 13 (Impact Analysis) | The RrSG agrees with this recommendation and believes it would be a prudent step in a PDP. It recommends that the PDP-WT add to this recommendation that impact analyses include, to the extent possible, an assessment of the impact to: the operations of registries, registrars and service providers; ICANN as an entity (including ICANN's revenue); end-users and customers of the DNS. | RrSG | See above | |
| 13 (Impact Analysis) | Further consideration should be given on how the request for an impact analysis could be abused to delay a decision on the initiation of a PDP and how this can be avoided | BXL meeting | Some disagreed with this comment, noting that it is important that the potential impact an issue might have before starting a PDP. If there is a concern to start a PDP, it might be even | |

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| | | | <p>more reason to conduct an impact analysis. Some noted that there is a potential under the guise of studies or impact analysis to delay moving forward with a PDP.</p> <p>The WT noted that this kind of issue should be handled by the Council as part of its role as manager of the process, also noting that launching an impact analysis would require resources and co-ordination from policy staff.</p> | |
| 13 (Impact Analysis) | The RySG believes that this is a very constructive recommendation. | RySG | Noted | |
| 14 (Prioritization) | The RrSG supports this recommendation and looks forward to a continued discussion of prioritization methods. | RrSG | <p>The WT noted that it is not clear yet what will come out of Council's prioritization effort. It was pointed out that is not only the number of PDPs that are running simultaneously, but also all the other initiatives, Working Groups, Work Teams and Drafting Teams that are going on, especially those with tight deadlines. It was suggested that one of the solutions is to get more people involved to share the workload.</p> <p>The WT noted that the Council hasn't considered yet how to deal with future issue and has focused for now on the ongoing projects. It might therefore be appropriate for the WT to give more</p> | <ul style="list-style-type: none"> ▪ Reword in the report that it is not only PDPs, but also other initiatives that need to be taken into account when prioritizing ▪ Change some of the terminology (managing workload) |

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| | | | consideration to this. Another issue that was identified is that as WGs progress, the interest in the issue seems to disappear resulting in fewer volunteers trying to finish the task. This becomes especially apparent when a new 'hot' topic is launched which attracts many new volunteers at the expense of other efforts. | |
| 14 (Prioritization) & 15 (Fast Track Process) | Given the possibility of unexpected or urgent issues that can arise from time to time, it will be difficult for the GNSO Council to accomplish a truly meaningful prioritization of the various tasks (including a PDP.) It would be unfortunate if a particularly important issue (e.g. as demonstrated by strong support for a PDP amongst numerous constituencies or committees) could not be pursued due to a lack of resources. Specific indicators (e.g. level of support; existence of third party economic impact studies) could be identified as aids to the GNSO Council when determining prioritization or initiation of PDPs. A "fast track" procedure would be a useful option. However, as | Mary Wong | The WT would favor some kind of prioritization even if it would be a simple method like 'first in, first out'. The WT suggests exploring how other organizations prioritize as this might serve as an example. It was pointed out that it is not only PDPs that create workload, but especially other initiatives and working groups. The WT is of the opinion that activities should be limited to what the volunteer community and staff resources can sustain. The WT debated three different options to manage workload: <ul style="list-style-type: none"> - Put PDPs on temporary hold - Develop elaborate calendar with timeframes and set milestones for WGs. If any milestones are missed, the Council should review why milestones are missed and address issue. | |

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| | identified by the WT, due consideration needs to be given to questions relating to gaming and ensuring broad (and diverse) participation. | | <ul style="list-style-type: none"> - Acknowledge at the start of a PDP what resources are available and which other initiatives contend for the same resources. <p>The WT agrees that a fast track procedure would be a useful option.</p> | |
| 15 (Fast Track Process) | For issues that need urgent attention, the ALAC supports the development of a streamlined process which will require less volunteer and staff time, and less elapsed time. | ALAC | To be discussed in further detail at one of the upcoming meetings. (see separate note) | |
| 15 (Fast Track Process) | INTA agrees that, under certain circumstances, emergency procedures (requiring by-law amendment) may be necessary. INTA concurs with a sunset period that requires a subsequent (full) PDP procedure to confirm or adapt any temporary policy. | INTA | | |
| 15 (Fast Track Process) | Recent experiences in the GNSO have demonstrated the need for such a procedure so the RySG supports this recommendation. But it should be recognized that some issues will be too complex to adequately cover in a fast-track process so it would be helpful if there were some guidelines that | RySG | | |

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| | could be used to decide when to consider a fast track procedure. | | | |
| 16 (Flexibility) | INTA agrees with the proposed modified language set out in the report, but suggests that the clarifying language ' calendar ' days be inserted in sub-clause 'b'. | INTA | Agreed and should be updated | ▪ Update in report |
| 16 & 17 (Flexibility) | Where a PDP is initiated by Board action, it is not clear what (if any) role public comment (which, as recommended, should be provided after the issuance of an Issues Report) would play in this regard. As such, the 8 calendar days proposed by the WT may be either unnecessary (if the Council has no choice but to act on the Board's instruction) or insufficient (if public comment is to be considered.) The recommendation that a Stakeholder Group or constituency may defer a vote on a PDP for no more than one meeting, and needs to detail its reasons for such a request, is necessary to ensure timely action on issues of importance, and minimize gaming or other similarly strategic actions. | Mary Wong | A PDP requested by the Board will also start with the development of an Issue Report, followed by a comment period. | |
| 18 (Appeals) | For the reasons stated by the WT in | Mary | Noted | |

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| mechanism) | its report, requiring the Council to state its reasons in the absence of a formal appeal mechanism would help ensure transparency and accountability. | Wong | | |
| 19 & 20 (Chartering) | The WT's rationale and recommendations regarding, in particular, the nomenclature for, participation in, and chartering processes for, a Working Group (as opposed to a "task force") are timely and should be adopted. | Mary Wong | Noted | |
| 21 (AC/SO input) | It is encouraging that AC/SO cooperation is being contemplated on a more formal basis and will be institutionalized. | ALAC | Noted, the recent CWG Rec6 might serve as a model. Further examples to promote AC/SO cooperation were also included in the notes relating to this issue. | |
| 21 (AC/SO input) | The WT's recommendation that further consideration be given as to how to further involve other SOs and ACs in the PDP process are welcome and should be adopted. | Mary Wong | Noted | |
| 22 (timeframe for taking a decision) | This recommendation presumably applies to situations where the Council (as opposed to Councilors representing particular Stakeholder Groups or constituencies) believe a vote should be deferred, e.g. in order to obtain expert advice. To ensure timely action (one way or | Mary Wong | Agreed and the WT will incorporate this in the recommendation. As a general rule, a vote can be deferred to the next Council meeting but for a maximum of three meetings. | Incorporate suggestion in the recommendation. |

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| | the other), however, it does not seem advisable to leave the question of how long such a deferral can last unanswered. Similarly, the question of whether a certain threshold of Council members is required before a deferral is confirmed is also important. To leave these questions to guidelines may not be the optimal solution, although it is certainly better than the current lack of guidelines and clarity. The WT may wish to explore the possibility of at least requiring that a deferral be made for no longer than the next Council meeting (unless the reason for the deferral reveals the need for a longer deferral period, in which case there should be a maximum time limit set, to be amended only upon further vote of the Council.) | | | |
| 23 (Public Comment Period after Initiation) | INTA believes that the public comment period must be mandatory, noting that the public comment period is ample and the scope of comments is not restricted to the WG's initial questions. | INTA | Some suggested it should be recommended, but not mandatory. Some suggested that this should be considered in combination with the public comment period on Issues Report. Should one of the two or both be mandatory? If there is a public comment period, the WG should | <ul style="list-style-type: none"> Clarify section in the report as outlined in the notes. |

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| | | | <p>have the opportunity to ask specific questions, but should also solicit input on the issues within the scope of that WG. Most agreed that there shouldn't be an obligation for a WG to respond to comments that are outside of scope of the WG. The WT supported that a public comment period on the issues report should take place. The second public comment period after the initiation of the PDP would then be optional, unless no public comment period had taken place on the Issues Report in which case it would become 'highly recommendable'.</p> <p>It was pointed out that the Council and/or WG both have the flexibility to run additional public comment periods as deemed appropriate.</p> <p>The WT discussed how comments on the Issues Report would need to be dealt with and noted that this would depend on the nature of the comments received: some might require updating of the Issues Report, some might be passed on the Council for further consideration and some might be passed on to the WG for consideration.</p> | |
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| 23 (Public Comment Period after Initiation) | The function – and nature – of public comments in relation to a Working Group (WG) request after its initiation can be different from public comments solicited and received in response to an Issues Report. As such, a public comment period should be mandatory, unless the WG specifically deems it – and documents its reasons – unnecessary. Even so, this should not preclude the WG from initiating a public comment period at some later point in its processes. | Mary Wong | | |
| 24 (Clarify ‘in scope’) | INTA agrees with the proposed language | INTA | Noted | |
| 24 (Clarify ‘in scope’) | The RrSG found this language to be confusing and would appreciate clarification from the WT. With regard to the general issue, it believes that ICANN’s role should be limited to that of a technical coordination body and avoid mission creep. Furthermore, the GNSO should not confuse policy development with policy implementation. | RrSG | It was noted that ‘in scope’ is frequently used, but also frequently misunderstood. It was suggested that there is a general feeling amongst registrars that if something bad is happening on the Internet that ICANN is supposed to be doing something about it. ICANN has a role to play, but it is not the ‘end all – be all’ target for complaints about the Internet. Further clarification of ‘scope’ might therefore be helpful. The WT agreed that issues should be readily able to be mapped to ICANN’s mission or AoC | <ul style="list-style-type: none"> Update report to include that issues identified should be mapable to provisions in the by-laws, incl. annexes or AoC |

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| | | | at the outset of a PDP, and if it is not clear where an issue falls, then it is a problem that needs to be further considered. It was suggested that the (| |
| 24 (Clarify 'in scope') | Further review of 'in scope' definition by ICANN legal Counsel, including consideration of how 'scope' is defined elsewhere in the by-laws (such as Article 10, section 1) which might form the reference point. At the same time, further details / examples on what 'in scope' in practice means might be included in the rules of procedure or PDP handbook. | BXL meeting | The WT noted that it might be difficult to come up with examples. | |
| 24 (Clarify 'in scope') | The WT's recommendation to clarify the "in scope" question, to distinguish this issue from that of "consensus policy", is necessary and should be adopted. | Mary Wong | | |
| 25 (Maximize effectiveness of WGs) | INTA agrees with the proposed recommendation | INTA | Noted | |
| 25 (Maximize effectiveness of WGs) | Development of a "cheat sheet" for WGs could facilitate implementation of this recommendation | RySG | It was pointed out that the WG Guidelines do include a chairs check sheet for first meeting. The WT expressed support for providing training on the WG Guidelines to new Working Groups, incl. PDP WGs. It was also | |

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| | | | pointed out that there is a placeholder in the GNSO WG Guidelines to include specific details concerning PDP WGs, which could also be translated in a presentation or cheat sheet in due time. Some expressed concern about cheat sheets as certain details and/or links with other provisions might be left out. Some suggested that an annotated index might be more appropriate (e.g. if you want to know about issue x, look at section y). The WT did agree that further information on WG basic should be provided to make it easier for newcomers, while at the same time encouraging review of the complete WG Guidelines. | |
| 26 (Communication with ICANN departments) | INTA agrees that such inquiry is worthy and that mechanisms for communication with ICANN departments should be clearly established. | INTA | Noted. WT agreed to change language in report to make it a firm recommendation instead of a suggested approach. | ▪ Update language to reflect recommendation instead of suggested approach. |
| 26 (Communication with ICANN departments) | Clarification over appropriate and available means and channels of communication with various ICANN departments, will be necessary and should be developed. | Mary Wong | | |
| 27 (Link with strategic plan & | The initiation of a PDP might include consideration of how | INTA | Noted and agreement with comment. | ▪ Reflect comment in report. |

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| budget) | ICANN’s budget and planning can best embrace the PDP and/or its possible outcomes, the priority must be on ensuring that GNSO policy development can address the public’s needs, and ICANN should adequately budget and plan to meet those requirements. | | | |
| 27 (Link with strategic plan & budget) | The fact that policy issues do not arise in organized fashion according to a calendar (budgetary or otherwise) renders it practically impossible to implement a single process to determine how best to link a PDP with an overall strategic plan or central budget (e.g. the fact that emergency and fast track processes are being considered demonstrates this.) It is important, however, that financial constraints not be the major factor curtailing the initiation, timing or workings of a PDP. Much responsibility therefore devolves by default to the GNSO Council in its current role as manager of overall GNSO processes and work. It would be helpful, however, if through the Issues Report and constituency/stakeholder group | Mary Wong | | |

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| | input as well as SO and AC feedback prior to and during a PDP, as much detailed information (such as costs, timing and the need for further expert analysis) can be provided to the Council, to assist its deliberations as to whether to initiate a PDP, and (if applicable) to the WG once a PDP is initiated and a charter approved. Suggestions as to what and how such information could consist of and be compiled could be made part of the manual/guidelines under consideration. | | | |
| 28 / 29 (Public comment) | INTA agrees with the extension of timing for public comments, but believes the minimum should be 45 days to ensure that all members of the public have adequate time to comment. In addition, there may be circumstances under which more than 45 days is necessary, either because of the likely interest in the issue, or the calendaring of the request, and that provision should be made for extending the period for public comment under certain defined circumstances. | INTA | See below | |

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| 28 (Public comment) | Timeframes are better placed in the manual / guidebook than in the Bylaws because the former are much easier to change as needed. GNSO experience to date has shown that flexibility is often needed; in that regard, it might be better to suggest comments periods of 20 to 30 days, the latter being preferred if possible. | RySG | The WT agreed that there needs to be flexibility and suggested that the absolute minimum should be noted in the by-laws (21 days), while the guidebook should indicate reasonable parameters, for example taking into account when a public comment period coincides with a public comment period. The guidebook could also indicate what the recommended length is for a 'typical' public comment period (30 days), noting that there is flexibility to extend but also taking into account the overall milestones and target dates of the WG as outlined in its Charter. | <ul style="list-style-type: none"> Reflect WT position in the report and update recommendation accordingly. |
| 28, 29 & 30 (Public Comment) | Given ICANN's reliance on volunteer input and the importance of public comments, the proposed extension of a public comment period to 30 days is welcome and should be adopted. Although it might not be feasible to expect a WG to review and acknowledge all public comments received, nor would it be fair to add unnecessarily to ICANN staff workload, it is still important that the WG have easy access to all public comments submitted. The recommended language should | Mary Wong | | |

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| | therefore be amended such that, at a minimum, the ICANN staff manager must provide, a full list of all public comments received and an indication of which comments were deemed appropriate to be included in the summary and analysis provided to the WG, and which not. | | | |
| 31 (Implementation / impact) | The first option seems like it could have value but it is not clear that it would be practical in some PDPs. It may depend on what is meant by implementation guidelines, so that may need some clarification. For example, the New gTLD PDP contained implementation guidelines but they were at a fairly high level; if the final report had to contain more detail, the PDP would have taken considerably longer than the 1.5 years it lasted. And we have seen that the implementation process has taken even longer than the PDP took. To the extent possible, it would be helpful to consult with WGs during the implementation process, but for PDPs that last a long time, WG membership tends to change a lot | RySG | Taking into account the comments made in relation to recommendation 31 and 42, the WT noted that there seems to be general support for the concept of an implementation team, noting the need for flexibility on when and how such a team should be used. | |

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| | <p>so that reality needs to be considered. Also, it is important to do that in a way that does not too easily provide an avenue for redoing recommendations in cases where some parties may not have been totally satisfied with the results unless there is strong justification for doing so. Consultation with the GNSO should definitely happen during the implementation plan development. The GNSO Council should mainly be a channel through which that happens.</p> <p>In cases where an implementation team is formed, it would be useful to include members of the WG as possible.</p> | | | |
| <p>31 (Implementation / impact)</p> | <p>To the extent that a WG can provide recommendations as to implementation, they would doubtless be useful. A WG ought in all cases to consider including these as part of its report, and should also consider whether to recommend the formation of an implementation team, which should consist of a broad base of participants and preferably include</p> | <p>Mary Wong</p> | | |

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| | at least a few WG members. Recognizing the periodic difficulty of distinguishing between “policy” and “implementation”, it would be helpful (particularly in soliciting public comment) also if a WG could indicate which issues discussed or raised crossed the line, in its view, from one to the other. | | | |
| 32 (Staff resources) | The RrSG concurs with this recommendation and encourages adoption of this provision as part of the PDP reform. | RrSG | Noted | <ul style="list-style-type: none"> Update recommendation to include language that encourages staff to provide that information. |
| 32 (Staff resources) | The RySG strongly supports this recommendation. | RySG | Noted | |
| 33 (Constituency Statements) | The RySG thinks this is a good change. It might also be a good idea to note that in some cases constituency statements may be requested more than once. | RySG | Noted, this flexibility is also acknowledged in the report. | |
| 33 (Constituency Statements) | The WT’s note that the lack of a statement from a constituency or Stakeholder Group may reflect that group’s belief as to the relative importance of that issue to it, or simply the group’s current | Mary Wong | | |

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| | workload, is important as it recognizes that there are numerous stakeholders in the ICANN community with varying interests in different issues. The reliance on volunteer participation and the recent increase in overall GNSO workload has also taken its toll on volunteer time and resources. Regardless of the amendment to Clause 7, therefore, the WT's suggestion of additional follow-up with constituencies and Stakeholder Groups should be incorporated into the proposed manual and/or guidelines, and perhaps included as part of the charter for all WGs tasked with a PDP, where possible. | | | |
| 34, 35, 36 (WG Output) & 37 (WG Recommendations) | The WT's recommendations in these respects make sense and should be adopted. | Mary Wong | | |
| 36 (Public Comment period Initial Report) | INTA agrees that such a public comment period should be mandatory. Optional additional comment periods may be useful in certain circumstances, such as when a final report differs substantially from the Initial | INTA | Noted and in line with the recommendations. | |

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| | Report. | | | |
| 38 (WG Recommendations) | The RrSG has no currently formed position on this issue, but agrees it is an issue that deserves attention and looks forward to contributing to further discussion. | RrSG | The WT noted that the different comments in relation to this recommendation express different points of view. In its discussion, some suggested that recommendation that have full consensus of the WG, cannot be altered or picked / chosen by the WG. Some suggested that the WG should have the obligation to indicate if there are interdependencies between recommendations to the Council. Most agreed that it should not be the Council's job to change recommendations, especially those that have consensus. Some suggested that the Council does make the final call and weigh the different recommendations and pick which ones they send to the Board. Some expressed concern about recommendations that would come out of a WG that is unbalanced, but it was noted that the issue of balance should be addressed at the WG level before recommendations are even developed. | |
| 38 (WG Recommendations) | It is important to note that WGs do not necessarily have balanced representation. In contrast, the Council structure is designed to facilitate balanced representation of the stakeholder groups. Assuming that Councilors are consulting with their SGs and constituencies, Council decisions should reflect the consensus or lack thereof of the broader GNSO community and hopefully the broader ICANN Community as applicable. | RySG | | |
| 38 (WG Recommendations) | No, the GNSO Council should not have the flexibility to 'pick and choose' recommendations. It is very important for PDP Final Reports to give an objective description of the level of each consensus for each opinion / recommendation. | Naomasa Maruyama | | |

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| 38 (WG Recommendations) | The Council should not be able to “pick and choose” recommendations, where these have not received full consensus within a WG, without at least fully documenting its reasons for doing so. In such a case, Council members should also indicate for the record whether it consulted with his/her constituency and Stakeholder Group as well as the outcome of such consultations. Where WG recommendations have not received full consensus, the WG report should indicate the actual level of support each recommendation received and (subject to a WG participant’s consent) a list of WG members in support of, or against, particular recommendations. | Mary Wong | | |
| 39 (Board Report) | ALAC strongly supports this recommendation. | ALAC | Noted | |
| 39 (Board Report) | INTA’s view is that Staff should be allowed to provide its opinion to the Board, in an open, and non-confidential manner. Staff may be in a better position than most to decipher positive and negative | INTA | It was noted that there should be flexibility for issues for which confidential information has been provided by staff to the board, noting that this should not become an excuse to not make information public. | <ul style="list-style-type: none"> ▪ Reword the recommendation to clarify that staff can have its say but in an open and transparent manner |

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| | suggestions and recommendations and should be heard in this capacity. | | | <ul style="list-style-type: none">▪ Reflect in recommendation that in cases where privileged/ confidential information is concerned, ICANN staff should indicate that privileged advice was given and as much information as possible should be provided without breaking attorney-client privilege. |
| 39 (Board Report) | The RySG suggests rewording this sentence along the lines of the following: "Reports on PDPs should be delivered from the GNSO Council to the Board and any summaries needed should be approved by the Council after consultation with the Working Group (if necessary)". This would more clearly allow the Council to enlist GNSO policy staff support in preparing and delivering summaries and reports while still leaving approval of such to the Council in its representative | RySG | | <ul style="list-style-type: none">▪ Update recommendation to reflect suggestion made by RySG |

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| | capacity of GNSO Community members. In relation to the last sentence, as this initial report illustrates, reports need to be much more concise. Detailed background and supporting information can be referenced as appendices or attachments. | | | |
| 39 (Board Report) | All reports to the Board should be public. ICANN staff may be requested by the GNSO Council to assist in providing summary and analysis to the Board, but (as recommended by the WT) ultimate responsibility for the content of such summary and analysis should lie with the Council, who should work with the relevant WG to determine the need for and extent of ICANN staff assistance. | Mary Wong | Noted and agreed (see also previous comment) | |
| 40 (Agreement of the Council) | Although not presumably within the scope of this WT, it should be noted that the actual procedures regarding absentee voting in the GNSO Council Operating Rules are currently being clarified. The WT should take note of the official interpretation (if any) of the | Mary Wong | WT to review new procedures in further detail in future meeting (see http://gnso.icann.org/council/docs.html). | |

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| | pertinent part of the Rules, and review whether or not to revisit this issue in light of it. | | | |
| 41 (Board Vote) | Should there be a Board vote for recommendations that are not changes to existing or recommendations for new consensus policies, recognizing that a PDP might have different outcomes? | Brussels meeting | The WT agreed that any recommendations adopted as the result of a PDP should be communicated to the Board, noting that some recommendations might have cost implications or an impact on staff resources. The same process should apply as for the adoption of consensus policies. | <ul style="list-style-type: none"> Update report to reflect that all recommendations adopted as a result of a PDP should be communicated to the Board. |
| 42 (Implementation) | INTA agrees with the recommendation to create an implementation review team as it will ensure that policy is implemented as agreed to in other stages of the process. | INTA | Noted. The WT supports that a PDP WG should provide guidance if needed and appropriate on how an implementation DT might be composed, but this should not be binding or obligatory. | <ul style="list-style-type: none"> Update recommendation to reflect that WG may provide guidance on the composition of an implementation DT. |
| 42 (Implementation) | The RrSG has no objection to this recommendation, but it should be considered in the context of the RrSG's other comments about an overtaxed staff and volunteer community. | RrSG | | |
| 42 (Implementation) | Should there be a provision for when a sub-element is determined not to be final -- or not to be finished in terms of its policy implementation and that sub- | BXL meeting | | |

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| | element needs to be returned to the Council for further work. At the same time, if there is a certain oversight by the Council / WG on implementation, how can you avoid stakeholders trying to influence the implementation process? Appropriate safeguards would need to be in place to avoid gaming. Potential concerns with WG transforming into Implementation Review Team (anti-trust); staff should be responsible for implementation. | | | |
| 42 (Implementation) | The RySG supports the idea contained in the first sentence of the recommendation and suggests that the recommended composition of such review team be made in the WG final report. The review team then could serve as an ongoing resource for the GNSO Council and ICANN implementation staff. | RySG | | |
| 42 (Implementation) | A WG Implementation Review Team would likely facilitate implementation efforts, and could act as the main conduit between the GNSO Council and ICANN staff | Mary Wong | | |

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| | charged with actual implementation of adopted policy recommendations. If a WG has included implementation recommendations as part of its report, the Implementation Review Team should ensure that these recommendations are either followed or amendments/departures from them justified. In addition, ICANN staff should consult regularly with the Team and update it frequently on the status of implementation efforts, as well as refer questions that might raise policy issues to it promptly, for review as to whether these should be referred to the Council. | | | |
| 43 / 44 (Review of policy and WG) | Providing a policy now on these issues might create an avenue to appeal policy decisions rather than provide meaningful insights. Other aspects of the report already address avenues for measuring whether specific policy implementations are successful. Review can be positive and beneficial, but the multiple layers of review and assessment | INTA | The WT noted that for an individual PDP the WG may/should provide recommendations on which steps should be taken to review and measure the outcome. | |

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| | proposed may be overly extensive and might hinder the PDP process. | | | |
| 45 (Review of PDP process) | A periodic review of the effectiveness of the PDP Process would probably be beneficial. It may be that this review should be undertaken after a threshold number of PDPs have been completed. | | The WT agreed that a periodic review of the overall PDP process would be appropriate, as also acknowledged in the Affirmation of Commitments, noting that a certain thresholds of completed PDPs should be met before an overall review is carried out. There was support for a Standing Committee being responsible for such a review, but there was no strong view whether the PPSC should be this Standing Committee or whether a new body should be created. | |
| Overarching Issues | | | | |
| | Without firm recommendations or, in some cases, any roadmap suggesting the direction of the WT's discussions to date on a particular overarching issue, it is difficult for the public to comment. INTA hopes that the public will have another opportunity to comment upon any recommendations relating to the overarching issues before the Council considers them. | INTA | Noted, another public comment forum is foreseen on the draft Final Report. | |
| Timing | INTA agrees that an overall assessment of timing needs to be | INTA | Noted, the draft Final Report will include an overview of the overall timing, noting | ▪ Include overview of overall timing of new |

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| | conducted. It hopes that the public will have a further opportunity to comment on any overarching timing recommendations that may be propounded following this public comment period. | | that it will be difficult to give a precise number of days due to the flexibility built in the different stages. As noted above, another public comment forum is foreseen on the draft Final Report. | PDP in draft Final Report |
| Translation | INTA believes that provisions in the new PDP relating to translations should, where possible, be consistent with the translation policy being developed by ICANN. | INTA | WT agrees, but notes that there currently is no ICANN translation policy. | |
| Translation | INTA does not support the idea of utilizing volunteers to translate key documents or public comments, however, it may support the role of a volunteer editorial group that would review professionally prepared translations to ensure that the translations use technically terms correctly. The qualifications for volunteers seeking to participate on a translation editorial review group should be outlined and how and by whom those individuals would be selected. | INTA | Noted | |
| Translation | Further consideration should be given to how the proposed translation of key documents and | INTA | The WT agrees that when public comment periods are run in other languages, the same amount of time to | <ul style="list-style-type: none"> Update Report to reflect support for this concept. |

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| | public comments will impact the new timelines proposed for public comment periods. Fairness and inclusion dictate that non-English speakers should have the same length of time to comment on initial reports. Providing translations of public comments may improve inclusiveness, but may have a negative effect on the efficiency of the PDP. | | submit comments should be allocated to the other languages. | |
| Definitions | INTA hopes that the public will have a further opportunity to comment on any proposed definitional changes once the PDP-WT has an opportunity to complete its work on this overarching issue. | INTA | Noted, another public comment forum is foreseen for the draft Final Report. | |
| Voting Thresholds | INTA agrees that a higher voting threshold should not apply if ICANN staff recommends against initiating a PDP. | INTA | Noted | |
| Voting Thresholds | The PDP-WT should make recommendations about how to handle competing WG charters and supports the proposal that in the case of competing charters, the Council should select the charter by majority vote. | INTA | The WT agrees and discussed the following approach: In cases where two or more competing charters would be proposed, the GNSO Council Chair should facilitate a meeting between the proponents of the different charters to determine whether a compromise charter can be developed ahead of the | <ul style="list-style-type: none"> Update report accordingly |

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| | | | GNSO Council vote. If no compromise is found, the two or more competing charters are put forward for GNSO Council consideration whereby the charter with the most votes is adopted. | |
| Voting Thresholds | INTA supports the recommendation that a majority of both houses should be required to change administrative elements of an approved charter, but that a supermajority should be required to modify the charter questions themselves. | INTA | Noted, but after further discussion, the WT is of the view that any modifications to the charter should be adopted by a simple majority vote of the GNSO Council. | |
| Transition | INTA hopes that the public will have a further opportunity to comment on any proposed recommendations relating the transition to the new PDP. Of particular note will be the recommendations relating to (1) the timeline for the adoption of the new PDP, and (2) the effect of that adoption on working groups already convened under the 'old' PDP. | INTA | Noted | |

Marika Konings 14/9/11 15:26
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Annex B – Public Comment Forum on the Proposed Final Report

A public comment forum was held on the proposed Final Report, which ran from 21 February to 1 April (see <http://www.icann.org/en/announcements/announcement-3-21feb11-en.htm>). A summary of the comments received can be found [here](#) . In addition, the WT developed a public comment review tool to facilitate review and discussion of the comments received as well as providing an overview of how the different comments have been addressed in this report. You can review the public comment review tool hereunder.

Marika Konings 16/9/11 09:37
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| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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, SFO Meeting | Noted and agreed. | Update Report to reflect whether each recommendation relates to Bylaws or PDP Manual. |
| 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 run in a predictable manner that will yield results that can be implemented effectively. | ALAC | Noted. | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| Titles for recommendations | Short titles for each recommendation would be helpful to readers to navigate the Final Report (suggestions provided in the submission). | INTA | Noted and agreed. | Update/add short titles for each recommendation. |
| 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 | Noted. | |
| 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 | Noted and agreed. However, the WT proposes that such a summary is developed once the report has been finalized and approved by the GNSO Council. | Develop summary / guide to new PDP following approval of new PDP by GNSO Council. |
| PDP Flow Chart | The PDP Flow Chart is useful but overly complex. A simplified one for Council initiated work only is needed. Showing timelines would also be useful. | BC | Noted and agreed. The WT notes that different versions of the flow chart may be developed which would show different levels of | Update / modify PDP Flow Chart for Final Report |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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 | detail for each of the steps in the process. The WT recommends, however, that this is done at the end of the process, following adoption by the Board, so that a final and professionally developed graphics can be included in the PDP Manual | |
| 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 | The WT did discuss whether the existing practice should be changed, but agreed not to do so. Even though to date this possibility to request an Issue Report has only been used by the ALAC, the WT wants to keep this option open for other Advisory Committees to make use of if deemed appropriate. | No change |
| 1 (Who -Request for Issues Report) | The ALAC supports maintaining the three methods for requesting an Issue Report as recommended by the WT. | ALAC | Noted. | No change |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|---|--|-------|--|---|
| 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 | Noted, but the WT notes that it is unlikely that the manual will hold up the process as it is being developed in parallel to the recommendations and proposed Bylaw changes. Furthermore, the manual will not require board approval (only board oversight) while the new Annex A will need to be approved by the ICANN Board. | No change |
| 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 | The WT takes note of the comments received and suggests that certain elements of the template should be made mandatory while at the same time leaving sufficient flexibility to address different situations. Following additional deliberations, the WT agreed to make the ‘name of the requestor’ and the ‘definition of the issue’ required elements of any request for an Issue Report. Submission of additional information is strongly encouraged, but not required. | Update recommendation accordingly. |
| 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 | | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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 | | |
| 5 (Guidance on Issue Scoping) | Policy Development efforts should not be delayed while a PDP Manual is being finalized and adopted. | INTA | Noted, see also response above (#3). | No change |
| 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 also be made in this recommendation as well. | RySG | Noted and agreed. | Update recommendation to reflect comment. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--------------------------------------|---|------|--|--|
| 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 | The WT does not understand why the request for the ICANN Staff Manager to express an opinion would cause delay as it reflects current practice. Also, the WT considers it appropriate for ICANN Staff to express its opinion, especially at this early stage, on whether or not to initiate a PDP. The WT would like to point out that this staff opinion is in no way binding and can be disregarded by the GNSO Council if it would choose to do so (and has done so in the past). | No change |
| 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 | The WT notes that there seems to be a misconception with regard to the Preliminary Issue Report. The WT would like to clarify that the Preliminary Issue Report is the final report, if no comments are received (it is not an outline, | Clarify what the Preliminary Issue Report is and isn't in the Final Report. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--|--|-------|--|--|
| 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 | or initial draft). The comment period is intended to address any issues or information that has been overlooked or is incorrect in the Preliminary Issue Report, and provide input to the GNSO Council for its consideration of the Issue Report and decision on whether or not to initiate a PDP. It is not intended to discuss approaches or solutions to the issue. | |
| 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 | WT agrees that a workshop is not required, but might be advisable in certain cases. In any event, it would be up to the GNSO Council to determine whether a workshop is needed / helpful | Clarify that workshop is not required, but might be advisable in certain cases. |
| 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 | | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|------------------------|---|-------------|--|--|
| 12 (Role of workshops) | Organizing a workshop should not be a mandatory step of the PDP. | BC | prior to the initiation of a PDP. | |
| 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 | The WT notes the concerns and issues identified with the current wording of the recommendation. Following further discussion, the WT noted that 'impact analysis' might not be the appropriate terminology as it concerns here an assessment prior to the initiation of a PDP, not the assessment of the impact of potential new policies or recommendations for which the term 'impact assessment' would be appropriate. The WT therefore suggests changing the recommendation to reflect that it concerns a scope assessment or 'scope sanity check' to determine whether the issue is in scope for ICANN / GNSO to address by assessing it against existing mechanisms such as the AoC and ICANN Bylaw. The WT also notes | Update recommendation to reflect comments and WT's subsequent discussion. |
| 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) | Who would undertake the impact assessment? Are human rights part of ICANN's mission? | SFO Meeting | | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--|--|------|--|-----------------------------|
| 13 (Impact Analysis) | Support for dropping the "impact on Human Rights" from the list of issues in Recommendation #13, as it is adequately covered in other areas. | RrSG | that such a 'scope assessment' would not be mandatory and at the request of the Council if deemed appropriate. | |
| 14 (Resources & Prioritization) | How should resources be measured and how can the availability be determined, noting that there is currently no mechanism in place for the GNSO Council to do so. | SVG | The WT notes that in its view it is not the role of WTs or WGs to set the community priorities, but that it is the responsibility of the GNSO Council to do so. The WT also notes that there are currently only a limited number of PDPs going on, non-PDP related issues take up the majority of resources. | No change |
| 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 | | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|---|---|------|---|-----------------------------|
| 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 | The WT is of the view that a better informed, well-scoped PDP in combination with substantial work and data gathering at the pre-PDP stages will allow for more effective and hopefully quicker PDPs. If the GNSO Council does see the need for the development of a fast track mechanism, it could take action to develop such a mechanism for example by tasking the recently created Standing Committee to look into this issue. | No change |
| 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 | The WT notes that it is indeed this informal practice that is referred to. | No change |
| 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 | The WT agrees that this should not be a cumulative practice, there should only be one deferral. WT disagrees that this should be | No change. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|------------------------|---|------|---|---|
| 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 | clarified in the PDP rules. It would be up to the GNSO Council to determine its operational rules in relation to deferral of votes, but in relation to consideration of the Issue Report the WT is of the opinion that it should not be deferred for more than one meeting. | |
| 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 | Noted. | No change |
| 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 | The WT notes that there are no GNSO Bylaws, but suspects that the commenter is referring to the section on the GNSO in the ICANN Bylaws instead of Annex A. | Review recommendation and clarify language if needed. |
| 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 of each house of the GNSO Council. | RySG | Noted and agreed. | No change |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|-----------------|---|-------|--|--|
| 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 | The WT notes that there might be difficulties with setting a fixed timeframe, as the time to develop will depend on the availability of volunteers as well as the complexity of the issue. The WT would support inserting language such as 'as soon as possible' but wants to ensure sufficient flexibility to allow for different circumstances. The WT would like to point out that the GNSO Council can always set a timeline for a drafting team to develop a Charter if it would like to do so. | Review recommendation and update accordingly. |
| 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 | Noted. In addition, the WT would like to point out that further guidance on what should be in the Charter is included in the GNSO Working Group Guidelines. | No change |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--|---|------|--|--|
| 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 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. | RySG | The WT notes that it has not considered CWG in the context of PDPs. The WT does agree that more detailed procedures for communication and responses to the GAC might be helpful, but is the view that it is not within the remit of this WT to develop, but should be for the GNSO Council and GAC to develop jointly on a more general level. | No change |
| 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 | Taking note of this comment, the WT agreed to update the recommendation to reflect that PDP WGs should detail in their report how input was sought from others and how this input has been considered. | Review recommendation and update accordingly. |
| 22 (Public comment after Initiation of PDP) | Complete agreement with this recommendation | SVG | Noted | No change |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--------------------------------|---|-------|--|--|
| 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 | Noted and agreed. Some suggested that a clear distinction between the two types of 'in scope' might be helpful, such as for example, GNSO scope and consensus policy scope. | Review recommendation and update accordingly by adding a footnote to relevant sections in registry / registrar agreements that define consensus policy. |
| 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 | Noted | No change |
| 24 (Working Methods) | It would be helpful if some examples of possible different working methods are provided. | RySG | The WT noted that it would not be in the remit of the WT to develop new working methods, but that this would be the responsibility of the GNSO Council as outlined in the PDP Manual. The WT agrees that examples from previous experiences can be added for illustrative purposes (Task Force, Committee of the Whole). | Review recommendation and update accordingly. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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 | Noted. | No change |
| 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 | The WT notes that the PDP Manual outlines that the GNSO Council may select a different working method if it 'first identifies the specific rules and procedures to guide the PDP Team's deliberations which should at a minimum include those set forth in the ICANN Bylaws and PDP Manual'. | No change |
| 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 | Noted. | No change |
| 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 | Noted and agreed, absent exigent circumstances. | Review recommendation and update accordingly. |
| 29 (Public Comments) | The WG 'shall' review (delete 'responsible for reviewing') | SFO Meeting | Noted and agreed. | Review recommendation and update accordingly. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--|--|------|-------------------|---|
| 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 | Noted and agreed. | Staff should inform the GNSO Council of its proposed implementation of a new GNSO recommended policy. If the proposed implementation is inconsistent with the GNSO Council's recommendations, the Council may notify the Board and request that the Board review the proposed implementation. Until the Board has considered the GNSO request, Staff should refrain from actually implementing the policy, although it may continue developing the details of the proposed implementation while the Board considers the GNSO Council request. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 34 (Working Group Output) | What would be the recommendation of the WT on the timing of the Initial Report? Expectations for the publication of the Initial Report should be clarified and detailed. | SVG | Noted. The WT believes it is better to be less specific in this regard. The Charter for the WG typically specifies the initial timing of the initial report. It is incumbent upon the WG chair and the Council liaison to update the Council and communicate any changes in the proposed timeline for the Initial Report. | No change. |
| 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 | Following additional discussion, the WT supported leaving the recommendation as is, but agreed to add the words 'as defined in the ICANN Bylaws' following the word 'supermajority' to ensure that it is clear what is meant and to avoid having multiple, possibly different, definitions of supermajority. | Change as suggested. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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 | Noted. WT disagrees that this should be clarified in the new PDP rules. It would be up to the GNSO Council to determine its operational rules in relation to deferral of votes, but in relation to consideration of the Issue Report the WT is of the opinion that it should not be deferred for more than one meeting. | No change. |
| 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 | Noted. The WT disagrees that the deferral needs to be seconded because this would dilute the ability of a Stakeholder Group to duly consider a proposed PDP recommendation. It is preferable to leave this issue to the Council to determine as appropriate under its operating rules and procedures. | No Change. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|-------------------------|---|-----|--|--|
| 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 | Noted. This issue was extensively considered by the WT prior to the publication of the Draft Final Report. Since the Council's role is to manage the process, and not to make policy, the GNSO Council should not be changing recommendations designated as "interdependent" by the WG without referring the issue back to the WG to consider. | No Change, except to remove "there" in the last sentence of the recommendation. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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 | As outlined in the report, the GNSO Working Group Guidelines outline the standard methodology for decision-making, including designation of level of consensus. These guidelines also outline the procedures for addressing under- or overrepresentation. The WG does recommend that the decision-making methodology as prescribed by the GNSO Working Group Guidelines is used for a certain period of time 'following which its effectiveness and usability could be reviewed and assessed as part of the overall review of the new PDP'. | No change |
| 39 (WG Recommendations) | CADNA supports this recommendation. | CADNA | Noted. | No Change. |
| 40 (Board Report) | INTA supports this recommendation. | INTA | Noted. | No Change. |
| 40 (Board Report) | CADNA agrees that all reports to the ICANN Board concerning a PDP should be publicly disclosed. | | Noted. | No Change. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
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| 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 | Noted and agreed. However, there has not been sufficient experience with the current voting thresholds to determine whether a change is warranted. The Council should revisit this in the future when it deems appropriate, perhaps during the next GNSO review cycle. | No change. |
| 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 | Following further review and explanation of the staff memo on this issue (see http://forum.icann.org/lists/gnsoppsc-pdp/msg00628.html), the | Modify provision 13 to make clear that this section and especially provision 13f relates to the rejection of GNSO recommendations and clarify that discussion between the Board and GNSO Council is desirable both when the Board rejects a GNSO |
| 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 | WT agreed that the current provision 13f should be seen in the context of when the Board is able to reject a GNSO recommendation (either as explained in 13b if the GNSO | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|-----------------|--|------|--|---|
| 42 (Board Vote) | Provision 13f should be amended to make clear that, 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. | INTA | recommendation is adopted by a GNSO Supermajority or as explained in 13f if the GNSO recommendation was not adopted by a GNSO Supermajority). The WT noted that this provision does not provide the option for the board to adopt a recommendation that was not adequately supported by the GNSO as this whole section only relates to rejection of the Board of GNSO recommendations. The WT noted that the current placing of provision 13f is confusing and that it would make more sense to link it closer to provision 13 b, as in both instances the desired next steps would be further discussion with the GNSO as outlined in provisions 13 c, d and e. | supermajority recommendation or a GNSO recommendation that was not adopted by supermajority. |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|---|--|------|--|-----------------------------|
| 45 (Review of WG) | Guidelines for WG self-assessment should be developed and these should be included in the final PDP Manual. | INTA | Noted. The issue of group assessments are relevant to all GNSO Council chartered committees, working groups and drafting teams, and is not unique to those involved in PDPs. This issue should be referred to the new GNSO Council Standing Committee on Improvements Implementation after there is more experience with the new PDP process. The WT suggests that an assessment mechanism might explore whether the WG accomplished what it set out to do in the charter. | No change. |
| 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 | Noted. The WT agrees with the clarification so long as it does not change the substance of the threshold. | Change as suggested. |
| Overarching Issues | | | | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|--------------------------|--|------|--|-----------------------------|
| 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 | Noted. | No Change. |
| 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 | The current voting thresholds to initiate a PDP were developed as part of a carefully crafted compromise that led to the recent GNSO restructuring. There is insufficient support within the WT to recommend a change and there is not enough data connected to this issue to justify a change at this time. | No Change. |
| Voting Thresholds | Further changes to the voting thresholds should simplify not add complexity to an already overly complex structure. | BC | Noted. | No Change. |
| PDP Manual | | | | |

| | Comment (Summary) | Who | WG Response | Recommended Action / Change |
|---|---|-------|--|---|
| 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 | Noted. The WT notes that there are budgetary constraints involved with requiring the collection of information from experts. In addition, the WT does not agree that outside advisors should be neutral. A PDP WG may welcome the input of an expert even if it not neutral so long as the PDP WG is aware of the expert's viewpoint on the issue. | No Change. |
| 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. CANDA also proposes that the Final Report be required to be posted for public comment as a [Draft] Final Report. | CADNA | The PDP WG is responsible for properly viewing and analyzing the public comments. | PDP WG should be required to use a public comment tool that notes the WG response to comments and recommended changes as a result. |

Annex C – Public Comment Forum on the Final Report

A public comment forum was held on the Final Report, which ran from 9 June to 9 July 2011 (see <http://www.icann.org/en/public-comment/pdp-final-report-09jun11-en.htm>). A summary of the comments received can be found [here](#). In addition, the WT developed a public comment review tool to facilitate review and discussion of the comments received as well as providing an overview of how the different comments have been addressed in this report. You can review the public comment review tool [hereunder](#).

[To be inserted following completion of public comment review tool]

Annex D - Background

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 [GNSO Improvements Report](#), approved by the Board, identified the following key objectives:

- Maximize the ability for all interested stakeholders to participate in the GNSO’s policy development processes;
- Ensure that recommendations can be developed on gTLD “consensus policies” for Board review and that the subject matter of “consensus policies” is clearly defined;
- Ensure that policy development processes are based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively;
- Align policy development more tightly with ICANN’s strategic and operations plans; and
- Improve communications and administrative support for GNSO objectives.

The Board emphasized the need to improve inclusiveness and representativeness in the GNSO’s work while increasing its effectiveness and efficiency. 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.

This mandate arises not from a change in the mission or role of the GNSO, but from the accumulation of experience with the current PDP and the decisions that have been made by the ICANN Board concerning an organizational restructuring of the GNSO.

The PDP-WT's mission is closely related to that of the parallel Working Group Work Team (WG-WT) also chartered by the PPSC. The charter of the WG-WT is to "[d]evelop a new GNSO Working Group Model that improves inclusiveness, improves effectiveness, and improves efficiency". The two PPSC Work Teams are expected to work independently, but in consultation with each other.

For further details please visit [the GNSO Improvements Home Page](#).

ANNEX E - Working Group Charter¹⁰

I. TEAM CHARTER/GOALS:

The GNSO Council's responsibility in recommending substantive policies relating to generic top-level domains is a critical part of ICANN's function. The mechanism by which the GNSO makes such recommendations to the ICANN Board of Directors is through the GNSO Policy Development Process (PDP) set forth in the ICANN Bylaws. The PDP Work Team is responsible for developing a new policy development process that incorporates a working group approach and makes it more effective and responsive to ICANN's policy development needs. The primary tasks are to develop:

1. Appropriate operating principles, rules and procedures applicable to a new policy development process; and
2. An implementation/transition plan.

Specifically, the GNSO Improvements Report approved by the ICANN Board recommended that a new PDP:

1. Be better aligned with the contractual requirements of ICANN's consensus policies as that term is used in its contracts with registries and registrars and clearly distinguishes the development of "consensus policies" from general policy advice the GNSO Council may wish to provide to 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.

¹⁰ Updated following the adoption of resolution 20010428-2

2. Emphasize the importance of the work that must be done before launching a working group or other policy development 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.
3. Be more flexible than the current model, containing timelines that are consistent with the task.
4. Provide for periodic assessment to determine the effectiveness of revised rules, processes, and procedures on policy development work including self-reporting by each working group of any lessons learned, as well as input on metrics that could help measure the success of the policy recommendation. In addition the GNSO Council Chair should 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.
5. Better align the PDP process with ICANN's strategic plan and operations plan. The Council, constituencies and staff should publish an annual "policy development plan" for current and upcoming work, to better align resources with strategic objectives, and to create a stronger nexus between the work plan of the GNSO Council and the ICANN planning process. The plan should be linked to ICANN's overall strategic plan, but be sufficiently flexible to accommodate changes in priority determined by rapid evolution in the DNS marketplace and unexpected initiatives.
6. Contain rules, processes and procedures that are more effective and efficient and that meet consensus policy requirements as detailed further in the Report, to include specifying certain policy activities that should be done, including: research, consultation with constituencies, periods for public comment, timelines consistent with the complexity of the task, regular reporting to the Council as established in the scoping phase, and a final report and public comment period as in the current PDP.

The PDP Team shall work independently from, but in close consultation with, the Working Group Team of the Policy Process Steering Committee (PPSC). The Policy Development Process Team shall be responsible for making recommendations concerning the development of and transition to a new PDP for the GNSO Council's review.

ANNEX F - The Working Group

- Following the adoption of the charter by the GNSO Council, a call for volunteers was launched. The following individuals are part of the PDP-WT. Statements of Interests can be found [here](#).

| NAME | AFFILIATION | Meetings Attended (Total # of meetings: 67) |
|----------------------------|------------------------|--|
| Jeff Neuman (Chair) | RyC | 62 |
| James Bladel | Registrar | 61 |
| Paul Diaz | Registrar | 56 |
| Alan Greenberg | ALAC | 53 |
| Tatyana Khramtsova | Registrar | 45 |
| Wolf-Ulrich Knoblen | ISP | 43 |
| David Maher | RyC | 42 |
| Avri Doria | NCA/NCSG ¹¹ | 37 |
| Alex Gakuru | NCUC | 34 |
| Marilyn Cade | Individual | 17 |
| Gabriel Pineiro | NCUC | 9 |
| Brian Winterfeldt | IPC | 9 |
| Mike Rodenbaugh | CBUC | 8 |
| Sophia Bekele | Individual | 6 |
| Bertrand de la Chapelle | Individual | 4 |
| Robin Gross ¹² | NCUC | 3 |
| John Berard ¹³ | CBUC | 3 |
| Jean-Christophe Vignes | Registrar | 3 |
| Liz Williams ¹⁴ | CBUC | 2 |
| Tony Harris | ISP | 1 |
| Cheryl Langdon-Orr | ALAC (Alternate) | 1 |

¹¹ NCA until 26 Oct 09, NCSG after

¹² Joined WT in September 2010

¹³ Joined WT in January 2011

¹⁴ Resigned from WT in January 2011

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| | | |
|----------------------------|-----|---|
| Zbynek LoebI | IPC | 1 |
| Kristina Rosette | IPC | 1 |
| Jaime Wagner ¹⁵ | ISP | 1 |
| J. Scott Evans (Observer) | IPC | 0 |
| Antonio Tavares | ISP | 0 |

To view the attendance sheet, please click [here](#).

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¹⁵ Resigned from WT June 2009

Annex G – The Recommendations

Stage 1 – Planning and Request for an Issues Report

Recommendation 1. Who can request an Issue Report (B)

- Although a request for a GNSO Issues Report has never been issued directly by the ICANN Board, or any Advisory Committee (other than the At-Large Advisory Committee), the PDP-WT recommends that the current three mechanisms for initiating a request for an Issue Report (Board request, Advisory Committee Request or GNSO Council Member Request) should be maintained.

Recommendation 2. Definition of ‘Raising an Issue’ and ‘Initiating a PDP’ (B)

- The current language in Annex A of the Bylaws contains several references to the term “PDP” which over the years have been the source of confusion. The phrase “initiating a PDP” is currently used to refer to initiating an issue report, for example, and is also used to refer to the process of formally establishing Task Forces or working groups. Therefore, the PDP-WT has distinguished the two concepts into (1) Raising an Issue and (2) Initiating a PDP. The PDP-WT has recommended clarification of this language in the Bylaws and whenever such terms are used by the community.

Recommendation 3. Development of a Policy Development Manual (M)

- The PDP-WT recommends the development of a Policy Development Process Manual, which will constitute an integral part of the GNSO Operating Rules, intended to provide guidance and suggestions to the GNSO and ICANN communities on the overall PDP process, including those steps that could assist the community, working group members, and Councillors in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.

Recommendation 4. **Request for an Issue Report Template (M)**

- The PDP-WT recommends that a 'request for an Issue Report' template should be developed including items such as: definition of issue; identification and quantification of problems, to the extent feasible; supporting evidence; economic impact(s); effect(s) on competition and consumer trust and privacy and other rights, and; rationale for policy development. Any request for an Issue Report, either by completing the template included in the PDP Manual or in another form, must include at a minimum: the name of the requestor and the definition of the issue. The submission of any additional information, such as the identification and quantification of problems, and other as outlined for example in the template, is strongly encouraged, but not required.

Recommendation 5. **Issue Scoping (M)**

- The PDP-WT recommends adopting the proposed Policy Development Process Manual, to provide guidance and suggestions to those parties raising an issue on which steps could be considered helpful in gathering evidence and obtaining sufficient information to facilitate an effective and informed policy development process.

Recommendation 6. **Creation of an Issue Report (B/M)**

- The PDP-WT recommends that the currently required elements of an Issue Report¹⁶ continue to be required for all future PDPs. However the PDP-WT recommends that only certain of the elements be identified in Annex A of the Bylaws and others in the PDP Manual. More specifically, the Bylaws should continue to require elements a (the proposed issue raised for consideration), b (the identity of the party submitting the issue) and c (how that party is affected by the issue), while elements d (support for the issue to initiate the PDP) and e (recommendation from the Staff Manager) should be added to the PDP Manual. In addition, the PDP-WT notes that element e (recommendation from the Staff Manager)

¹⁶ See provision 2 of Annex A of the ICANN Bylaws

should be split in two parts; the first part dealing with the question of whether a PDP is considered “in scope” (see recommendation 22 for the definition of “in scope”) and the second part addressing whether the PDP should be initiated. Although currently included as one element in the ICANN Bylaws, the reality is that these two elements should be treated separately. The WT also notes that it would be appropriate to change ‘Staff Manager’ to ‘ICANN Staff’ in this context. Furthermore, the PDP-WT recommends including in the PDP Manual a recommendation for the entity requesting an Issue Report to indicate whether there are any additional items it would like to have addressed in the Issue Report. This in turn which could then be taken into consideration by the Staff Manager and/or Council when reviewing the request for an Issue Report. In addition, the PDP Manual should allow for ICANN Staff or the Council to request additional research, discussion, or outreach to be conducted as part of the development of the Issue Report.

Recommendation 7. **Outcomes of a PDP (M)**

- The PDP-WT recommends better information and communication with Working Group members on the potential outcomes of a policy development process. There are more potential outcomes of the PDP process than just the formation of “consensus policies” as defined under the applicable gTLD Registry and Registrar agreements. Acceptable outcomes also include the development of best practices, recommendations to other supporting organizations, recommendations that no changes are necessary, recommendations for future policy development, recommendations for additional research or study, etc. If known in advance, this information could be included in the Charter of a Working Group or in the Council’s instructions to a WG. The PDP Manual should clearly advise the Council and Working Group members of these other potential outcomes.

Recommendation 8. **Scope – General Counsel’s opinion (B/M)**

- The PDP-WT recommends retaining the requirement for obtaining the opinion of the ICANN General Counsel’s office in the Issues Report as to whether a proposed PDP is within the scope of the GNSO. Further details regarding the opinion of counsel are expected to be

included in the PDP Manual as opposed to the Bylaws. For more clarification of the meaning of “in scope” please see Recommendation 22 below.

Recommendation 9. Role of ICANN Staff (M)

- The PDP-WT recommends that additional guidance on the different roles ICANN staff can perform, as outlined in the GNSO Working Group Guidelines, is to be included in the PDP Manual.

Recommendation 10. Timeframe for delivery of Preliminary Issue Report (B)

- The PDP-WT recommends the modification of timeframes included in clause 1 – Creation of an Issue Report in Annex A in relation to the development and delivery of an issues report as follows:
Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a resolution from the GNSO Council; or (iii) a duly supported request from an Advisory Committee, the Staff Manager will create a report (a “Preliminary Issue Report”). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report, which request should be discussed with the Requestor.

Recommendation 11. Mandatory Public comment period on Preliminary Issue Report (B)

- The PDP-WT recommends that that there is a mandatory public comment period that follows the publication of a Preliminary Issue Report and before the GNSO Council is asked to consider the initiation of a PDP. Such a Public Comment period would, among other things, allow for additional information that may be missing from the Preliminary Issue Report, or the correction or updating of any information in the Preliminary Issue Report. In addition, this would allow for members of the ICANN Community to express their views to the Council on whether or not to initiate a PDP. Depending on the comments received, ICANN staff would include public inputs and any necessary corrections to the Preliminary Issue Report turning it into the Final Issue Report and/or summarize the comments received

for Council consideration. If no comments are received on the Preliminary Issue Report, the content of the Final Issue Report should be substantially similar to the Preliminary Issue Report.

Recommendation 12. Role of workshops prior to initiating a PDP (M)

- The PDP-WT recognizes the value of workshops on substantive issues prior to the initiation of a PDP. It is therefore recommending that information on the potential role of workshops and information gathering events be provided in the PDP Manual. In addition, the PDP-WT recommends that the GNSO Council should consider requiring such a workshop, on-line or face-to-face, on a specific issue during the planning and initiation phase for a specific issue, when deemed appropriate. The PDP-WT does not recommend mandating the use of workshops prior to initiating a PDP. Furthermore, the PDP-WT recommends that, if a workshop is held, invitations and/or announcements for workshops are communicated as broadly as possible.

Recommendation 13. Consideration of Resources (M)

- The PDP-WT believes that the GNSO Council should take into full account the resources available, both volunteers from the community as well as ICANN staff, when making its decision on whether or not to initiate a PDP.

Recommendation 14. No fast-track procedure (B/M)

- The PDP-WT discussed the notion of a fast-track procedure extensively but did not come to agreement on whether such a process is truly needed, and if so, what such a fast-track procedure might look like. The PDP-WT recommends that the GNSO re-evaluates the need for a fast-track procedure in due time as part of the review of the new PDP, as it is of the view that the new PDP will offer additional flexibility and would allow for 'faster' PDPs provided that the necessary resources are available without the need for a formal 'fast track' process.

Stage 2 - GNSO Council Review of the Issues Report and Initiation of the Policy Development Process

Recommendation 15. Timeframes for Initiation of a PDP (M)

- The PDP-WT recommends modifying the timeframes currently included in clause 3 of Annex A – “Initiation of a PDP” to reflect current practice and experience. In addition, it proposed to add language to codify the current practice that any Council members may request the deferral of the consideration of an initiation of a PDP for one Council meeting.

Recommendation 16. Flexibility (M)

- The PDP-WT recommends that further guidance be included in the PDP Manual on how to deal with situations where further flexibility is required e.g. additional research, ensuring that the Council provides clear indications on expected timing of next steps.

Recommendation 17. Appeals mechanism for Advisory Committees (M)

- The PDP-WT recommends that if the GNSO Council votes to not initiate a PDP following an Issue Report requested by an Advisory Committee (AC), the AC or its representatives should have the opportunity to meet with representatives of the GNSO to discuss the rationale for the rejection and why the AC feels that reconsideration is appropriate¹⁷. Following this meeting, the AC may submit a statement to the GNSO Council requesting a re-vote on the initiation of a PDP and giving its rationale for such a request. This process may be followed just once for any given Issue Report.

Recommendation 18. Chartering of a Working Group (M)

- The PDP-WT recommends updating clause 7 of Annex A of the ICANN Bylaws to reflect that a charter is required for all Working Groups, and to specify the voting threshold that should

¹⁷ In particular those meeting with the AC should include members of the GNSO Council that voted against the initiation of the PDP.

apply to the adoption of the working group charter which is identical to the one that applies to the initiation of the PDP. 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 of the GNSO Council (as such term is currently defined in article X, section 3 of the ICANN Bylaws).

Recommendation 19. Link to new PDP in GNSO Working Group Guidelines (M)

- The PDP-WT recommends that a link to the new Annex A and the PDP Manual, once finalized and approved, are included in the GNSO Working Group Guidelines, as these two documents provide an overview of the requirements for PDP WGs.

Recommendation 20. Input from SOs and ACs (M)

- The PDP-WT recommends that further explanation on how to involve Advisory Committees or Supporting Organisations in a PDP be included as part of the PDP Manual. Much of this will involve the codification of existing practice. It is the belief of the PDP-WT that input from other SOs and ACs must be sought and treated with the same due diligence as other comments and input processes. In addition, comments from ACs and SOs should receive a response from the WG. This may include, for example, direct reference in the applicable Report or embedded in other responsive documentation or a direct response. The PDP WG is expected to detail in its report how input was sought from ACs and SOs and how, if input was received, such input has been considered.

Recommendation 21. Optional public comment period after the Initiation of a PDP (M)

- Taking into account the required public comment period on the Preliminary Issue Report (see recommendation 11), the PDP WT considers it no longer necessary to require a public comment period on the initiation of a PDP. However, a WG may, at its discretion, decide to conduct a public comment period at the start of their deliberations to obtain input on issues raised in the Charter.

Recommendation 22. Clarification of 'in scope' (B)

- The PDP-WT recommends modifying clause 3 – Initiation of a PDP to clarify that within scope means 'within scope of ICANN's mission and more specifically the role of the GNSO' as opposed to within scope of the contracted parties' definition of "consensus policies"¹⁸. Furthermore, the PDP-WT recommends that issues raised should be mapable against specific provisions in the ICANN Bylaws, the Affirmation of Commitments and/or ICANN's Articles of Incorporation. This information should be included in the request for an Issue Report¹⁹ and should be added as a category in the Issue Report request template.

Stage 3 – Working Group

Recommendation 23. Mode of operation for a PDP (M)

- The PDP-WT recommends that even though a Working Group currently forms the basic mode of operation for a PDP, there should be flexibility to accommodate different working methods if deemed appropriate by the GNSO Council, in accordance with the GNSO Operating Rules. For example, in the past use has been made of "Task Forces" as well as a "Committee of the Whole". Any new working methods or groups must contain each of the mandatory elements set forth in the ICANN Bylaws and PDP Manual.

Recommendation 24. Information for PDP Working Groups (M)

- The PDP-WT recommends that each PDP WG will be strongly encouraged to review and become familiar with the GNSO Working Group Guidelines and the PDP Manual (once

¹⁸ See for example section 3.3.4 of the Registrar Accreditation Agreement (<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm>) or section 3.1 b of the .com Registry agreement (see <http://www.icann.org/en/tlds/agreements/verisign/registry-agmt-com-22sep10.htm>).

¹⁹ The WT notes that the ICANN Office of the General Counsel opines formally on the scope as part of the Issue Report.

published), which includes further information and guidance on the functioning of GNSO Working Groups.

Recommendation 25. Communication with different ICANN Departments (M)

- The PDP-WT recommends that further guidance should be included in the PDP Manual on the mechanisms and protocols for Working Groups to communicate with different ICANN departments. It may be necessary for PDP Working Groups to consult with the General Counsel's office, Compliance, Operations, Finance, etc. The PDP-WT recommends that ICANN policy staff serve as the official intermediaries between a Working Group and the various ICANN departments, provided that a procedure is in place which allows for escalation via the WG Chair if the WG is of the opinion that communication is hindered through the involvement of ICANN policy staff.

Recommendation 26. Alignment with ICANN's Strategic Plan (M)

- The PDP-WT recommends that the initiation of a PDP may include consideration of how ICANN's budget and planning can best accommodate the PDP and/or its possible outcomes, and, if applicable, how the proposed PDP is aligned with ICANN's Strategic Plan.

Recommendation 27. Duration of Public Comment Periods (B/M)

- The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to change the duration of the public comment period on the Initial Report from 20 days to a minimum of thirty calendar days. This same minimum should also apply to the public comment period on the Preliminary Issue Report, while other public comment periods that a WG / GNSO Council opt to have as part of a PDP should have a minimum duration of 21 days. The minimum durations for the Preliminary Issue Report and Initial Report should be included in the ICANN Bylaws while the minimum requirement of 21 days for other public comment periods should be included in the PDP Manual. Further guidance on the recommended duration, for example taking into account overlap with ICANN meetings, should be included in the PDP Manual.

Recommendation 28. Summary and Analysis of Public Comments (M)

- The PDP-WT recommends modifying clause 9 of Annex A of the ICANN Bylaws to reflect the current practice that a summary and analysis of the public comments received is to be provided by the staff manager to the Working Group. Such a summary and analysis of the public comments should be provided at the latest 30 days after the closing of the public comment period, absent exigent circumstances. The Working Group shall review and take into consideration the public comments received.

Recommendation 29. Guidance on Public Comment Periods (M)

- The PDP-WT recommends providing further guidance in the PDP Manual on how to conduct public comment periods and review public comments received. Such guidance should include the expectation that public comments are carefully considered and analyzed by the WG; encouraging WGs to explain their rationale for agreeing or disagreeing with the comments received and, if appropriate, how these will be addressed in the report of the WG, and; other means to solicit input than the traditional public comment forums such as surveys.

Recommendation 30. Implementation, Impact and Feasibility (M)

- The PDP-WT recommends that PDP WGs be required to provide input on issues related to implementation on all policy recommendations. This input could include a discussion of the impacts of the policy, both positive and negative, including but not limited to economic, competition, operations, privacy and other rights, scalability and feasibility. When appropriate the following should be considered:
 - Recommend the inclusion of implementation guidelines as part of the Final Report;
 - Consultation with the WG / Council on the draft implementation plan;

- The creation of an implementation team that consists of representatives of the WG, amongst others, which would be tasked to review / provide input during the implementation phase

All reports should include a statement on the WG discussion concerning impact of the proposed recommendations, which could consider areas as noted above. Further guidance on this issue is to be included in the PDP Manual.

Recommendation 31. ICANN Staff Resources (M)

- The PDP-WT recommends that staff resources needed or expected in order to implement the policy recommendations should be evaluated as part of the WG recommendations, and as part of the Council's review of those recommendations. This could be included as part of the feasibility analysis and/or impact statement (see also recommendation 30).

Recommendation 32. Stakeholder Group and Constituency Statements (M)

- The PDP-WT recommends amending clause 7 of Annex A of the ICANN Bylaws to reflect the practice that Stakeholder Group / Constituency statements are requested by the Working Group and the timeline for submission should start from that point instead of the initiation of the PDP. It should be noted in the PDP Manual that a WG can request Stakeholder Group / Constituency statements more than once if so desired.

Recommendation 33. Mandatory Working Group Output (B)

- The PDP-WT recommends that PDP Working Groups continue to be required to produce at least an Initial Report and a Final Report, noting that additional outputs can be produced if desirable.

Recommendation 34. Initial Report vs. Final Report (B)

- The PDP-WT does note that the description of the difference between an Initial Report and a Final Report as currently described in the Bylaws is not in line with actual practice, and recommends that this language is updated to reflect that an Initial Report may reflect the

initial ideas of a WG which are then finalized, in combination with review and analysis of the public comment period in the second phase leading to the Final Report.

Recommendation 35. Mandatory Public Comment Period on Initial Report (B)

- The PDP-WT recommends that a public comment period on the Initial Report remains mandatory. Additional guidance on further optional public comment periods, e.g. when there are substantial differences between the Initial Report and Final Report are to be included as part of the PDP Manual.

Recommendation 36. Termination of a PDP prior to publication of a Final Report (M)

- The PDP recommends that a provision be added to the PDP Manual to allow for the termination of a PDP prior to the publication of a Final Report if the GNSO Council finds significant cause and passes a motion with a Supermajority vote, as defined in the ICANN Bylaws, in favour of termination.

Stage 4 – Voting and Implementation

Recommendation 37. Timing of consideration of Final Report (M)

- The PDP-WT recommends modifying clause 10 – “Council Deliberations of Annex A” of the ICANN Bylaws to reflect current practice and requirements in the rules of procedure to consider a report if it is received at least eight (8) days in advance of a Council meeting, otherwise the report shall be considered at the next Council meeting. In addition, the PDP-WT recommends adding language to codify the current practice that any Council member can request the deferral of the consideration of a final report for one Council meeting.

Recommendation 38. Consideration of Working Group Recommendations (M)

- The PDP-WT recommends providing additional guidance to GNSO Council in the PDP Manual on how to treat Working Group recommendations, especially those that have not received full consensus and the expected / desired approach to adoption of some, but not all, or

rejection of recommendations. PDP WGs should be encouraged to indicate which, if any, recommendations are interdependent so the GNSO Council can take this into account as part of their deliberations. The Council should be cautious and is strongly discouraged from separating recommendations that the PDP WT has identified as interdependent. The PDP-WT would like to express its concern about the GNSO Council 'picking and choosing' or modifying recommendations, but recognizes that this is the Council's prerogative. The PDP-WT would like to encourage the GNSO Council that where it does have concerns or would propose changes to recommendations, it passes these concerns and/or recommendations for changes back to the respective PDP Working Group for their input.

Recommendation 39. GNSO Council Report to the Board (B/M)

- The PDP-WT recommends that all reports to the ICANN Board concerning a PDP should be publicly disclosed. In addition, it notes that the GNSO Council is responsible for the Board Report either as author of the report or by approving the report before it is sent to the Board. Board Reports on PDPs should be delivered from the GNSO Council directly to the Board and if any summaries or addenda are needed by request of the Board, those should be assembled by the GNSO council (upon consultation of the Working Group if necessary). If feasible, the Board Report should be delivered to the Board within 21 days following the adoption of the Final Report. The PDP-WT discussed at length the current practice of ICANN Policy Staff submitting a separate report to the Board, which is not disclosed to the community and is drafted without the aid of the Council or applicable PDP Working Group. The PDP-WT unanimously believes that these reports should not be kept confidential. If ICANN Policy Staff would like to submit a separate report related to a PDP to the Board or is requested to do so, it should be done in an open and transparent matter and disclosed to the community at the same time it is delivered to the Board. The PDP-WT notes that there might be cases where certain confidential information cannot be publicly disclosed due to its privileged nature. Nevertheless, even in those circumstances, as much information as possible, without disclosing business confidential information, must be

provided. This may include a description by ICANN Staff of the general nature of such information and the rationale for its non-disclosure.

Recommendation 40. Voting Thresholds (B/M)

- The PDP-WT discussed whether the voting thresholds currently in place might need to be reviewed (see also overarching issues) but agrees that this issue should be addressed by the GNSO when deemed appropriate and/or necessary. The WT does note that it has proposed two new voting thresholds in relation to the adoption of the WG Charter (see recommendation 18), as well as a new voting threshold for the termination of a PDP (see recommendation 36), and the definition of “Supermajority Vote” (see recommendation 47).

Recommendation 41. Board Vote (B)

- The PDP-WT recommends that the provisions in relation to the Board Vote in the ICANN Bylaws remain essentially unchanged, but recognizes that the current provision 13f²⁰ is not clear especially in relation to what ‘act’ means. Following further review and clarification by ICANN Staff (see <http://forum.icann.org/lists/gnso-ppsc-pdp/docUUZkcHBh3A.doc>), the WT recognizes that provision 13f relates to when the Board can reject (‘act’) a GNSO recommendation, if the GNSO recommendation was not adopted by a GNSO Supermajority. The WT notes that the current placing of provision 13f is confusing and therefore recommends to clarify this section by linking provision 13f to 13b, and make it clear that in both instances the desired next steps would be further discussion with the GNSO Council as outlined in provisions 13 c, d and e. In addition, an explanation needs to be added in the PDP Manual to clarify that all recommendations, including those not recommending new or changes to Consensus Policies, should be communicated to the Board.

Recommendation 42. Implementation Review Team (M)

²⁰ From the ICANN Bylaws – 13 Board Vote f. In any case in which the Council is not able to reach GNSO Supermajority vote, a majority vote of the Board will be sufficient to act.

- The PDP-WT recommends the use of WG Implementation Review Teams, when deemed appropriate, which would be responsible in dealing with implementation issues. A PDP WG should provide recommendations for whether a WG Implementation Review Team should be established and any other recommendations deemed appropriate in relation to such a Review Team (e.g. composition) as part of its Final Report. ICANN Staff should inform the GNSO of its proposed implementation of a new GNSO recommended policy. If the proposed implementation is considered inconsistent with the GNSO Council's recommendations, the GNSO Council may notify the Board and request that the Board review the proposed implementation. (see also recommendation 31)

Stage 5 – Policy Effectiveness and Compliance

Recommendation 43. Periodic Assessment of PDP Recommendations / Policy (M)

- The PDP-WT notes that a periodic assessment of PDP recommendations and/or policy is important. WGs should be encouraged to include proposed timing, assessment tools and metrics for review as part of their Final Report.

Recommendation 44. GNSO Council Review of the PDP Working Group (M)

- The PDP Work Team notes that several documents, including the PPSC-WG WT and the WG Guidelines, reference a "Working Group Self-Assessment," which all WGs are encouraged to conduct. The Work Team believes that this could be a valuable exercise, and encourages PDP WGs to complete a candid and objective self-assessment at the conclusion of their work. However, the Work Team also notes that there are no ICANN guidelines and recommends that the GNSO develops such guidelines after some experience is gained in WG self-assessments.

Recommendation 45. Periodic Assessment of the overall PDP Process (M)

- The PDP-WT notes that the periodic assessment of the overall PDP process is important, noting that a certain threshold of completed PDPs should be met before an overall review is

carried out. The WT does not have a specific view on whether the PPSC or a new Standing Committee should be responsible for such a periodic assessment.

Recommendation 46. Review of the Working Group Model (M)

- The PDP-WT recommends that such an overall review also includes the review of the Working Group Model in the context of the PDP, which should assess whether there are stages in the PDP that are more suitable for Working Groups and those that might be more suitable for formal advice from Stakeholder Groups and Constituencies.

Marika Konings 16/9/11 09:25

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Other

Recommendation 47. Definition of GNSO Supermajority (B)

- The WT recommends that the definition of a 'GNSO Supermajority vote' be redefined in the ICANN Bylaws as 2/3 of the Council members of each house or 3/4 of one House and a majority of the other house.

Specifically, Section 3.9(c) of Article X, should be modified from:

"c. Initiate a PDP Not Within Scope: requires an affirmative vote of more than 3/4 of one House and a majority of the other House ("GNSO Supermajority");

to:

"c. Initiate a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority."

And a new stand-alone definition of GNSO Supermajority should be included at the end of Section 3.9 as follows:

"3.9 g. A "GNSO Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a majority of the other House."

In addition, the WT recommends the consistent use of either percentage or fraction when referring to voting thresholds, and has opted for using fraction in the context of the PDP voting thresholds.

Recommendation 48. Simplify Section 3.9 of Article X (B)

- In the last sentence of section 3.9 Article X of the ICANN Bylaws, it should be sufficient to say 'the GNSO Supermajority vote threshold will have to be met or exceeded' as the clause 'with respect to any contracting party affected by such contract provision' is irrelevant. As a result, the WT recommends that this provision is updated accordingly.