

## **ANNEX 2: Policy Development Process Manual**

### **1. PDP Manual - Introduction**

These guidelines and processes supplement the requirements for PDPs described in Annex A of the ICANN Bylaws <http://www.icann.org/en/general/bylaws.htm#AnnexA>.

### **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.

### **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.

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

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

### **4. Recommended Format of Issue Report Requests**

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

<b>Request for Issue Report</b>	
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:	

Any request for an Issue Report, either by completing the template 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.

## **5. Creation of the Preliminary 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, which request should be discussed with the Requestor.

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

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. In determining whether the issue is properly within the scope of the ICANN policy process, General Counsel's opinion should examine whether the issue:
  - a. is within the scope of ICANN's mission statement, and more specifically the role of the GNSO;
  - b. is broadly applicable;
  - c. is likely to have lasting value or applicability, albeit with the need for occasional updates;
  - d. is likely to enable ICANN to carry out its commitments under the Affirmation of Commitments;
  - e. will establish a guide or framework for future decision-making;
  - f. will implicate or affect an existing ICANN policy.
- f) The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue

## 6. Public Comment on the Preliminary Issue Report

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. When posted for Public Comment, Staff is encouraged to translate the executive summary of Preliminary Issue 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.

## 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 Final Issue Report is received at least eight (8) calendar days prior to the GNSO Council meeting. If the Final Issue Report 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 vote on the initiation of the PDP at the subsequent GNSO Council meeting. At the request of any Council member, for any reason, consideration of the Final Issue Report may be postponed by not more than one (1) meeting, provided that the Council member details the rationale for such a postponement. Consideration of the Final Issue Report may only be postponed for a total of one (1) meeting, even if multiple Council members request postponement.

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

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

In the event that the GNSO Council does not approve the initiation of the PDP following a Final Issue Report requested by an Advisory Committee (AC), the AC or its representatives should have the opportunity to meet with representatives of the GNSO, and in particular, those voting against 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.

## **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 more than one-third (1/3) of the Council members of each House or 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.

## **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://gns0.icann.org/council/annex-1-gns0-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 consider the budgetary impacts, implementability, and/or feasibility of its proposed information requests and/or subsequent recommendations.

The PDP Team should formally solicit statements from each Stakeholder Group and Constituency in the early stages of the PDP. Stakeholder Groups and Constituencies should at a minimum have 35 days to complete such a statement from the moment that the statement is formally requested by the PDP Team. If appropriate, such statements may be solicited more than once by the PDP Team throughout the PDP

process. The PDP Team is also encouraged to formally seek the opinion of other ICANN Advisory Committees and Supporting Organizations, as appropriate that may have expertise, experience, or an interest in the PDP issue. Solicitation of opinions should be done during the early stages of the PDP.

In addition, the PDP Team should seek input from other SOs and ACs. Such input should be 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 PDP Team. This may include, for example, direct reference in the applicable Report or embedded in other responsive documentation or a direct response. The PDP Team is expected to detail in its report how input was sought from other SOs and ACs.

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

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.

## **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.

## **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 Report is to be forwarded to the GNSO Council Chair to begin the GNSO Council deliberation process.

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

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

## **12. Council Deliberation**

The GNSO Council is strongly encouraged to allow sufficient time for Stakeholder Group, Constituency and Councillor review of the Final Report prior to a motion being made to formally adopt the Final Report. However, the GNSO Council is also encouraged to take formal action on a Final Report in a timely manner, and preferably no later than the second GNSO Council meeting after the report is presented. 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 such Council member details the 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. The GNSO Council may, if deemed appropriate, schedule a separate session with the PDP Team to discuss the Final Report and ask any clarifying questions that might arise.

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.



### 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.

### 14. GNSO Council Role in Implementation

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

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. Until the Board has considered the GNSO Council request, ICANN Staff should refrain from implementing the policy, although it may continue developing the details of the proposed implementation while the Board considers the GNSO Council request.

### 15. Termination of PDP prior to Final Report

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

1. **Deadlock.** The PDP Team is hopelessly deadlocked and unable to identify recommendations or statements that have either the strong support or a consensus 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).

## **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.

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

## **18. Miscellaneous**

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

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

**\*\*END OF ANNEX 2\*\***