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ATRT2 GNSO PDP Evaluation Study

Draft Report

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1. Introduction and Executive Summary

1.1 Introduction

The current version of this document is a draft; intended to assist the immediate needs of those responsible for drafting, considering and finalizing the ATRT2 draft section on the GNSO PDP. The statistics provided will almost certainly be updated in the final version. Also, two sections of the document, not obviously necessary to those responsible for drafting the ATRT2 draft material, will not appear in this document but will appear in the final version of the report.

This document is an attempt to assist ICANN's ATRT2 in its assessment of the GNSO Policy Development Process (PDP). ATRT2 was convened, in part, to review the GNSO Council PDP with a view toward identifying its strengths and weaknesses, differences between defined process and actual practice, and the extent to which it incorporates the views, advice and needs of all stakeholders, both those active in ICANN and those not typically present for ICANN deliberations. In addition, the ATRT2 review will examine the participation of the GAC in the PDP, how the ICANN PDP compares with similar multi-stakeholder processes, and the extent to which the PDP fulfils the mission of ICANN in developing sound policies in the public interest while at the same time meeting the needs of all stakeholders. The ATRT2 will also identify those areas where the PDP does not help fulfill ICANN's mission and need further investigation and change. This document is the product of survey work and other research conducted in August and September 2013.

1.2 Findings Presented to ATRT2

1.2.1. The role of the GAC in the PDP needs reconsideration.

The GAC represents an important set of stakeholders in any policy development process related to domain names. However, for reasons documented later in the report, the GAC rarely participates in any PDP. It should be noted that there are other Advisory Committees (eg ALAC) that routinely participate in the GNSO. The GAC has a history of successful collaboration in other areas of ICANN, for instance in ccNSO working groups and participation in AoC reviews, and therefore there is good practice to build upon.

The consequence of the GAC not participating in GNSO PDPs is that lengthy processes may be completed, negotiations and agreements reached and only after this process is largely completed are concerns raised by the GAC. Our research also shows that while there are several windows of opportunity for GAC to provide advice during PDPs, those opportunities are not taken. This needs to be addressed. Our work has found that there appears to be no structural barriers which prevent the GAC's participation in the PDP (for instance, we believe that no changes to the Bylaws are required). Instead, a more well-defined and structured relationship between the working groups and the GAC would help the GAC identify which issues are meaningful to governments and help the working groups identify topics where they must give early notification to the GAC. Interaction between the GAC and the working groups and the GAC must move from "opportunities" to being a structured part of the process.

1.2.2 Global Participation Trends Risk Legitimacy

There is clear and unimpeachable statistical evidence that three of ICANN's regions simply play no meaningful part in the PDP. If global legitimacy is a core value of the policy that comes out of the PDPs, the GNSO risks that legitimacy by not making significant efforts to assertively be more inclusive of viewpoints from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.

Beside the quantitative data, there is additional qualitative evidence that the PDP, as a model for building consensus policy, does not match the cultural or participation models of other regions. There is some statistical support for the view that language is a genuine barrier to participation in PDPs. For example, 97% of comments submitted in any PDP public comment period are in English – and none of these comments are ever translated for consumption by non-English speakers. One interviewee pointed out that it was impossible to gain widespread input from their region, as the documents were not available in their language.

Those questioned spoke perfect English (even if it was not their mother tongue) and participate actively in the process. Further research is required into understanding the reasons why stakeholders from outside of North America and Europe do not participate.

Resolving this issue is not simply a matter of outreach, although several interviewees mentioned that it would be helpful if the outreach efforts tied more closely into recruitment for working groups or made use of community leaders in the regions. Beside matters of operational practice (time difference, resource availability, support for diverse languages, etc.) the collaboration and discourse model built into the current PDP has a distinctly Western approach and fails to take into account other cultural approaches to developing and building consensus policies. ICANN needs to reform its outreach activities to nurture and support working group participants from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.

In addition, there needs to be a reconsideration of the underlying collaboration and discourse model and potential adjustments made to support participants who are not used to working collaboratively using that model. Failure to recruit, involve and support those participants potentially risks the global legitimacy of the policies built using the PDP.

1.2.3 Demands on Regular Participation are Too High

Our research shows that fully engaged participation in PDPs requires an extraordinary set of demands on participants (individuals, organisations, businesses and governments). So much so that the participation pattern in the last five years show a “one and done” attitude by the vast majority of people who participate in working groups. This trend has resulted in a small number of participants, who have economic and other support for their ongoing engagement in working groups, to dominate attendance records. This has a set of clear implications for policy development, not least of which is that there is a very small pool of potential participants who can lead, moderate and bring to completion the difficult work of guiding participants and policy through the PDP. Having such a small pool poses both accountability, credibility, and resource risks for the policy development process. In response, the current PDP needs to be examined to find ways to break up the enormous commitment into component parts. It may be possible to further modularize the PDP and make it possible for participation in ways other than full participation in a working group. Even the comment process is seen as a difficulty: our survey research found that a large majority of stakeholders who had connections to businesses, constituencies or stakeholder groups reported that it was very difficult to craft, discuss, get agreement and approval for submission of comments in the time frames provided by the PDP. If stakeholders feel that they cannot commit to the demands of full working group participation and also have difficulty responding to comment periods, then they are effectively alienated from the policy development process itself. ICANN needs to examine the potential for alternative participation models in the PDP.

1.2.4 Commitment to the Process is Essential

In isolation, the PDP is a multi-stakeholder, consensus-driven, public policy development process. However, the PDP in the GNSO does not work in isolation from other parts of ICANN. Our surveys show that many people are concerned about the interactions between the work products of the PDP and other parts of the organization. Specifically, there have been a significant number of responses that expose concern about policy built through long

collaboration and negotiation, being changed or challenged by other parts of ICANN “after-the-fact.” In particular, concern was raised that the Board could – and has – changed proposed policy, or accepted alternative implementation of policy; thus, overruling the work of the PDP. Others pointed to those, who did not get the results they wished out of the long work of the PDP, moving the GAC, GNSO Council, or ICANN Board to lobby for changes in substance or implementation after the PDP was completed. Outside of the essential fairness issues that are evident in these concerns, there are more important transparency issues at stake. A change made by the Board to a consensus-driven policy created by committed, often volunteer, participants in bottom-up stakeholder engagement process is always open to questions about why and how those changes were made. This has become such a prevalent concern that, in one very recent working group, participants challenged others in the working group on the issue of whether they were truly committed to the process – or, if they simply intended to wait the process out and then “lobby” for the results they wanted in other parts of the organization. Some of our survey respondents indicated that cynicism about other participant’s commitment to the PDP was a barrier to their own participation. While, in our opinion, this is not a structural problem, there needs to be process and procedure applied to ensure that other parts of the organization do not inadvertently subvert the accountability and transparency of the PDP.

1.3 Major Issues of Concern Raised

Part of the methodology for this research was direct interaction with stakeholders of the PDP and the policy outputs of the PDP. While not a comprehensive listing, the following gives the reader a taste of the major concerns raised in our interviews.

1.3.1 Time commitment, bandwidth of participants, too great a workload for participants

- “The breadth and depth of the commitment creates volunteer fatigue”
- “Returns are extremely low and speculative, and the investment is huge, especially if you have a job”

1.3.2 Lack of support by GAC/Staff (the policy process outside the policy process)

- “The GAC needs to participate. It’s concerning that we have fought so hard for the multistakeholder model in WCIT. When it comes to participate in this model, governments are absent”
- “Now we have brilliant capture of the PDP process. IP issues are put forward as registrant/public interest. If not successful, they go to the GAC or staff. It perverts the PDP process, rendering it ineffective”

1.3.3 Participation levels, need for early engagement, participation costs

- “If you look at PDPs conducted by ICANN, a very small number participate.”
- “Participants on calls who are from developing countries have to deal with 3-5 drops in an hour long conference call”

1.3.4 Length of duration of PDPs

- “If you want to have an impact on the PDP you have to do weekly calls for 6-12 months, most of which are useless / not effective. The whole thing is extremely offputting”
- “There’s no way I’d allow a member of my staff to participate – it would be 18 months”

1.3.5 Implementation – lack of transparency, staff driven.

- “Once it gets to implementation, then it goes cockeyed”
- “Everything after PDP is a question of implementation. Much too much staff driven, politicised”

1.3.6 Other Issues Raised

- Complexity of the process
- System favours English language speakers
- Working groups are being loaded up with advocates (due to abolition of mandatory constituency participation)

- Structure of constituencies – does not reflect the arrangements in developing countries, is anachronistic
- Quality and timing of public comment
- Interaction with other constituencies

1.4 Suggested Improvements from Interviewees

Just as the interviewees identified core issues for the PDP, so too did they offer suggestions. A wide range of improvements was suggested. This list highlights the most popular suggestions made to us during our conversations with stakeholders of the PDP.

- Management of the process
 - Training, facilitation, management training for WG chairs, a more structured approach from the outset with timeframes and deliverables. Don't take too long.
- Facilitate engagement by those without English as a first language
 - Publish consultation documents in other languages
- Break PDPs down into manageable chunks
 - Example of IRTP was given as a successful model.
- More face to face meetings
 - Especially when issues get log-jammed.
- Better communications, summaries
 - "Uber technical language" puts people off. "It's very transparent, open, but the question is, how many people actually do understand?" One interviewee suggested an "informal blog" to update people on the progress of PDPs
- Restructure the constituencies
 - Constituencies, as currently structured, are very developed-country orientated. Interviewees pointed out that there are experts in developing countries, but no ready match with GNSO constituencies in which they can participate.
- Devise PDP charters more inclusively, to balance stakeholder interests
 - Get more stakeholders involved in drafting the charter
- Classify issues more effectively
 - For example "merits a PDP" and "faster track, simpler issue – no PDP required"
- Change the outreach strategy, to make use of community leaders in the regions
 - Open PDPs to more stakeholder groups / mandate participation from stakeholder groups

Other suggestions:

- Outside intervention to break logjams
- More flexible timelines
- ICANN should fund participants from developing countries
- Staff as independent secretariat
- Reduce time commitment for participants
- Specific place in ICANN meetings to get public comments on PDPs
- Assign experts to PDPs – to answer questions, do research (all published)
- Better/longer comment processes
- Capacity building for new participants
- Ensure comments are reflected in the output
- Fact based white papers
- All policy should pass a public interest test, like RFC 1591
- Be AGILE – aim for the simplest, working solution

1.5 Looking Ahead

The landscape of the GNSO and other ICANN constituencies will change with new gTLDs. The distinctions will become blurred between the stakeholder groups - registries will be registrars will be IPC or BC members will be ccNSO members.

Some interviewees viewed the current, open, system as vulnerable to capture as new players move into the space. These new entrants may want the GNSO and its component parts to behave in the same way as other organisations with which they are familiar. Interviewees predict that new players will be impatient with the lack of speed and the unique ways of doing things, and could easily "take over" council in a short period by placing hard working, competent people across the various GNSO constituencies. This has the potential to impact on the GNSO PDP.

1.6 Acknowledgement

The authors of this report would like to acknowledge the passion, commitment and energy of the many volunteers -- without whom the PDP would simply not exist or function. Many donate hours of their time week by week over multi-year processes. They deserve the thanks and recognition of the communities they serve.

Certainly our research was both informed and inspired by the many stakeholders of the PDP that we had the chance to talk to in a very short period of time. Their involvement and commitment came through in every interview. And, while huge differences of opinion on how to improve the PDP were always going to be evident, we were impressed by every interviewee's desire to "get this right." With respect, we thank them for the time and energy they willingly gave us during this research.

2. Purpose and Methodology Overview

2.1 Purpose of Study

In September 2009, ICANN and the United States Department of Commerce (DOC), in recognition of the conclusion of the Joint Project Agreement, and to institutionalize ICANN's technical coordination of the Internet's domain name and addressing system (DNS) signed an Affirmation of Commitments (AOC)¹. ICANN commits, under the auspices of the AOC to ensuring that its decision-making reflects the public interest, and is accountable to all stakeholders. Toward this end, the AOC calls for ICANN to periodically review progress toward its four key organizational objectives, namely:

1. Ensuring accountability, transparency and the interests of global Internet users
2. Preserving security, stability and resiliency of the DNS
3. Promoting competition, consumer trust and consumer choice
4. WHOIS policy

These periodic reviews of ICANN's execution of its core tasks are conducted by review teams, including the Accountability and Transparency Review Teams (ATRT), which are aimed at ensuring accountability, transparency and the interests of global Internet users.² The first ATRT (ATRT1) reviewed three key aspects of the AOC namely, the ICANN board of directors, the Government Advisory Council (GAC), and public input into the ICANN policy development process.

As per the AOC, a second ATRT (ATRT2) was constituted to conduct a follow on review on that done by ATRT1. Specifically, the ATRT2 is examining ICANN's activities to ensure they are accountable, transparent, and consistent with the public interest. The ATRT2's work is focused on paragraph 9.1 of the AOC, under which ICANN commits to maintaining and improving robust mechanisms for public input, accountability, and transparency to ensure that the outcomes of its decision-making reflect the public interest and is accountable to all stakeholders. Specifically, ICANN commits to assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.

ICANN Bylaws explicitly give GNSO responsibility for developing generic Top Level Domain (gTLD) policy recommendations. Toward this end, the GNSO Council oversees gTLD policy development by the GNSO, and approves GNSO policy recommendations. Upon ratification by the ICANN Board of Directors, GNSO policy recommendations are implemented by ICANN staff, often with support from the GNSO.

Although policy may be developed by the GNSO using a variety of mechanisms, the formal Bylaws-mandated Policy Development Process (PDP) must be used for developing policy, often referred to as 'Consensus Policy', which if ratified, is automatically incorporated by reference into the contracts of gTLD Registries (those entities that operate gTLDs under contract with ICANN) and Registrars (those entities accredited by ICANN to distribute domain name registrations within gTLDs). The PDP is also used in other cases when the rigor of its methodology is desired due to the complexity of the issue and/or the number of strongly held and conflicting views held on the issue is high.

Against this background, the ATRT2 was convened to review the GNSO Council PDP with a view toward identifying its strengths and weaknesses, differences between defined process and actual practice, and the extent to which it

¹ <http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm>

² <http://www.icann.org/en/about/aoc-review/atrt>

incorporates the views, advice and needs of all stakeholders, both those active in ICANN and those not typically present for ICANN deliberations. In addition, the ATRT2 review will examine the participation of the GAC in the PDP, how the ICANN PDP compares with similar multi-stakeholder processes, and the extent to which the PDP fulfils the mission of ICANN in developing sound policies in the public interest while at the same time meeting the needs of all stakeholders. The ATRT2 will also identify those areas where the PDP does not help fulfill ICANN's mission and need further investigation and change.

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3. A Review of the Existing GNSO PDP

The current GNSO PDP became active on 8 December 2011. Given that the majority of PDPs analyzed in this report existed, at some stage of their process, prior to 8 December 2011, it is necessary to include a brief overview of the PDP that existed before that date as well as more comprehensive documentation on the current PDP.

3.1 Historical background

The previous PDP was documented in detail in Annex A of the ICANN Bylaws. It consisted of the following elements:

1. Raising an Issue
2. Creation of the Issue Report
3. Initiation of PDP
4. Commencement of the PDP
5. Composition and Selection of Task Forces
6. Public Notification of Initiation of the PDP
7. Task Forces
8. Procedure if No Task Force is Formed
9. Public Comments to the Task Force Report or Initial Report
10. Council Deliberation
11. Council Report to the Board
12. Agreement of the Council
13. Board Vote
14. Implementation of the Policy
15. Maintenance of Records
16. Additional Definitions

Annex A of the Bylaws was the sole official documentation of the GNSO PDP, and therefore described each step in considerable detail. In addition to the official documentation of the PDP, the GNSO community had, over time, developed an informal set of practices and procedures associated with managing PDPs.³

On 26 June 2008, the ICANN Board approved a set of recommendations designed to improve the effectiveness of the GNSO, including its policy activities.⁴ The Board explained that the mandate to update the PDP “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”.⁵ The key objectives of the review were to:

- 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

³ See p. 3 of Policy Development Process Work Team Final Report & Recommendations, 2011, <http://gnso.icann.org/en/issues/pdp-wt-final-report-final-31may11-en.pdf>

⁴ Ibid, p. 131

⁵ Ibid, p. 132

- Improve communications and administrative support for GNSO objectives.⁶

The PDP Work Team tasked with developing recommendations for a revised PDP approached its work by dividing the PDP into five phases:

- 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 Compliance⁷

Note that under this division, the PDP is considered to start with the planning for an Issues Report (Stage 1), but is “initiated” in Stage 2. Further, implementation (Stage 4) is not considered the final phase of the PDP. Rather, compliance (Stage 5) was considered part of the PDP.

The following two sections, 3.2 and 3.3, describe the formal documentation, ICANN Bylaws Annex A and GNSO PDP Manual, that resulted from the review of the PDP that was initiated in 2008.

3.2 PDP as referenced in the ICANN Bylaws

This section describes the GNSO PDP that was approved by the ICANN Board in December 2011.

The GNSO PDP as defined in Section 1 of Annex A, GNSO Policy Development Process, of the ICANN Bylaws lists eight “essential elements” of the PDP. These are listed, paraphrased in active voice, below:

1. The ICANN Board, GNSO Council or Advisory Committee requests a Final Issue Report
2. The GNSO Council formally initiates the Policy Development Process
3. The GNSO Council forms a Working Group or designates another work method for managing the development of a report on the issue that is the subject of the PDP
4. The Working Group, or another work method, produces an Initial Report
5. The Working Group, or another work method, produces a Final Report, which is forwarded to the GNSO Council for deliberation
6. The GNSO Council, following the required thresholds, approves the PDP Recommendations contained in the Final Report
7. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council
8. The ICANN Board approves the PDP Recommendations

Note that implementation is not included as one of the essential elements of the PDP. Implementation is, however, included as Section 10 of Annex A. The Bylaws, therefore, appear to suggest that implementation *can* be an element of a PDP, but that implementation is not essential to a PDP. Note, too, that compliance, which was included in Stage 5 of the PDP Work Team’s five-phase review of the PDP, is also not included as an essential element of the PDP.

⁶ Ibid, p. 131

⁷ Ibid, p. 8

Section 2 states that the GNSO is to maintain a PDP manual that contains “specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws”. The contents of the PDP Manual will be described in Section 3.3 of this report to the ATRT2.

Sections 3 to 9 of Annex A loosely follow the sequential steps of the GNSO PDP and are a mix of descriptions of outcome-oriented steps (Sections 4 and 6) and process-oriented guidelines (Sections 3, 5, 7, 8 and 9):

- Section 3. Requesting an Issue Report
- Section 4. Creation of an Issue Report
- Section 5. Initiation of the PDP
- Section 6. Reports
- Section 7. Council Deliberation
- Section 8. Preparation of the Board Report
- Section 9. Board Approval Processes

Section 4, Creation of an Issue Report, describes the fulfillment of the first “essential element” of the PDP: the request for an Issue Report. Section 4 also describes the Issues Report phase as a multi-step process, summarized below, as a numbered list for clarity:

1. The Staff Manager creates a Preliminary Issue Report.
2. ICANN staff publish the Preliminary Issue Report on the ICANN website for public comment.
3. The Staff Manager summarizes and analyzes the public comments received, if any.
4. The Staff Manager creates a Final Issue Report that incorporates the feedback received during the public comment period.
5. The Staff Manager forwards the Final Issues Report, with a summary and analysis of public comments received, to the Chair of the GNSO Council.

Section 5 briefly describes the two ways the GNSO Council can initiate a PDP, following the receipt of the Final Issue Report: if the Board requests an Issues Report, no vote is needed; otherwise, a Council vote is required.

Notably, the third “essential element” of the PDP described in Section 1 of Annex A, the formation of a Working Group or alternative working method, is not given its own standalone section in Annex A of the Bylaws. Instead, that element is described in the GNSO PDP Manual (see Section 3.3 below).

Section 6 combines the fourth and fifth essential elements of the PDP: the creation of an Initial Report and a Final Report by the Working Group or by an alternative working method.

Section 7, Council Deliberation, differs slightly from the sixth essential element of the PDP, Council approval. It shifts the focus from the outcome (approval of the Final Report), to process (deliberation of the report).

Section 8, Preparation of the Board Report, differs from the activity described as the seventh essential element of the PDP, which focuses on the forwarding of the report, rather than the preparation of the report. Although the difference seems minor, the difference in focus has the potential to cause confusion for less-experienced participants in the GNSO PDP.

As with Sections 7 and 8, Section 9 changes the focus from outcome (Board approval in the eighth and final essential element of the PDP) to process (Board process for approval).

The final four sections of Annex A are:

- Section 10. Implementation of Approved Policies
- Section 11. Maintenance of Records
- Section 12. Additional Definitions
- Section 13. Applicability

As noted earlier, it is interesting to note that implementation is not considered one of the essential elements of the PDP, but is still documented as part of the overall PDP description. The inclusion of Section 11, Maintenance of records, is significant, as it places a requirement on ICANN staff to publicly document each step in a PDP, including upcoming steps. There is no reference to compliance as a stage of the PDP in the Bylaws.

3.3 PDP as defined in the GNSO Operations Manual

This section discusses the PDP as defined in version 2.7 of the GNSO PDP Manual.⁸

The GNSO Operations Manual includes 18 sections to describe the PDP in more detail than in the ICANN Bylaws. Below is a list of those sections. The bold text marks the seven sections associated with the eight essential elements of the PDP listed in Section 1 of Annex A of the ICANN Bylaws:

1. PDP Manual - Introduction
- 2. Requesting an Issue Report**
3. Planning for Initiation of a PDP
4. Recommended Format of Issue Report Requests
- 5. Creation of the Preliminary Issue Report**
6. Public Comment on the Preliminary Issue Report
- 7. Initiation of the PDP**
8. Development and Approval of the Charter for the PDP
9. PDP Outcomes and Processes
- 10. Publication of the Initial Report**
- 11. Preparation of the Final Report**
- 12. Council Deliberation**
- 13. Preparation of the Board Report**
14. GNSO Council Role in Implementation
15. Termination or Suspension of PDP Prior to Final Report
16. Amendments or Modifications of Approved Policies
17. Periodic Assessments of Approved Policies
18. Miscellaneous

The eighth essential element, Board approval, is not included in the GNSO Operational Manual as it would be outside the GNSO's scope to define the Board's approval process.

Section 3, Planning for Initiation of a PDP, introduces the idea of holding workshops before the "initiation of a PDP", in part to "gather support for the request of an Issue Report". The use of the term "initiation of a PDP" in this context is problematic, given the more official use of "initiation of a PDP" in the Section 1 of the ICANN Bylaws to describe the *formal* initiation of a PDP following the GNSO Council's consideration of an Issue report. The more

⁸ <http://gns0.icann.org/council/annex-2-pdp-manual-13jun13-en.pdf>

informal use of the term here could be confusing to those not already well versed in the stages of a PDP.⁹ Although not explicitly stated, the idea of holding workshops seems to be limited to GNSO-initiated PDPs, as there appears to be no documented process for enabling other ACs or SOs to communicate with the GNSO prior to an AC or SO making a request for an Issue Report. In addition, it appears that potential workshops would need to be held as physical events as part of one of ICANN's three meetings per year.

Section 4, Recommended Format of Issue Report Requests, is a detailed description of the form to be used when carrying out the Request for an Issue Report documented in Section 2. It is not clear why this descriptive section has been separated from its parent process, Section 2, by the intervening Section 3, on Planning for Initiation of a PDP.

Section 5, Creation of the Preliminary Issue Report, expands on the description of the activity of the same name described in Section 4 of Annex A of the ICANN Bylaws. In particular, it provides guidelines to help ICANN's General Counsel determine whether or not the issue described in the Issue Report is properly within the scope of ICANN's mission, policy process and more specifically the role of the GNSO.

Section 6, Public Comment on the Preliminary Issue Report, provides more detail on the Public Comment process. In Annex A of the Bylaws, the Public Comment process is included as the last two paragraphs of Section 4, Creation of the Preliminary Issue Report. The GNSO PDP Manual version of the Public Comment encourages ICANN Staff to translate the Preliminary Issue Report into all six official UN languages, but that completion of such translations are not to delay the posting of the original English version, and, by inference, the launch of the Public Comment period. There is no accompanying recommendation discussing how to handle the possibility that delayed publication of translated versions could negatively affect the ability of non-English speakers to digest the summary in their own language and then comment in time in English.

Section 7, Initiation of the PDP, expands significantly on the brief description given in Section 5 of Annex A of the ICANN Bylaws. In particular, it details the timeframe the GNSO Council should use for voting on whether to initiate a PDP and under what circumstances a suspension of further consideration of the Final Issue Report can be permitted. Section 7 also describes how, if the GNSO Council decides not to initiate a PDP, any GNSO Councilor can appeal the decision or, if an AC requested the Issue Report, the AC can discuss the decision with the Council and request a re-vote.

Section 8, Development and Approval of the Charter for the PDP, contains procedural details not included at all in the Bylaws. The section describes how the GNSO is to convene a group to develop a draft Charter for the PDP Team, what elements must be included in the draft Charter, a timeframe within which the GNSO Council is expected to consider the proposed Charter, and voting thresholds to approve the PDP Charter.

Similar to Section 8, Section 9, PDP Outcomes and Processes, contains details of process not included at all in the ICANN Bylaws: the working methods of the team responsible for developing the Final Report. Interestingly, although, in 2008, the ICANN Board requested that the PDP Work Team review the PDP with the aim of replacing the Task Force model of development with one of Working Groups, the GNSO PDP Manual, while strongly recommending the use of Working Groups, provides the GNSO Council with the option of using other designated

⁹ The PDP Work Team established in 2008 to make recommendations on a revised PDP had highlighted the confusing use of the term "initiation of the PDP" in the 2008 version of the ICANN Bylaws and suggested that "initiation of the PDP" only refer to the formal initiation that follows the GNSO Council's deliberation on the Issue Report. The use of the term in Section 3 of the GNSO PDP Manual, in relation to holding workshops prior to a request for an Issue Report has been made, however, suggests that this confusion has not been entirely eliminated.

working methods. The alternative methods mentioned in the section are: “task force, committee of the whole or drafting team”. The Manual, however, does not include information on why the Council may choose to use a non-Working Group method, or under what conditions it may be appropriate. Because of the possibility that a Working Group is not formed, the Manual introduces the new umbrella term, “PDP Team”, to describe the group formed to perform the PDP activities, regardless of its specific format.

Section 9 also describes some of the ways the PDP Team is to collect information that will inform the Final Report. In particular:

- The PDP Team may solicit the opinions of outside advisors, experts, or other members of the public
- The PDP Team should formally solicit statements from each Stakeholder Group and Constituency in the early stages of the PDP
- 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

Section 9 describes how the PDP Team is to work with ICANN Staff on the PDP work, including escalation procedures.

Section 9 also provides an illustrative list of the types of recommendations (if any at all) that a PDP Team may make in the Final Report:

- 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

Section 10, Publication of the Initial Report, provides more detail on what content must be developed during the Report process described in Section 6 of Annex A of the ICANN Bylaws. The specified elements of an Initial Report:

- 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.

Section 11. Preparation of the Final Report, describes how the PDP Team and ICANN Staff manager are to prepare the Final Report following the close of the Public Comment period for the Preliminary Report. There is a brief mention of this activity in the second and final sentence of Section 6 of Annex A of the ICANN Bylaws.

3.4. Supplementary documentation of the PDP

In addition to the legal requirements specified in the ICANN Bylaws and the details elaborated in the GNSO Operations Manual, there are also visual flowcharts produced by ICANN Staff to provide an overview of the PDP.

The GNSO PDP webpage,¹⁰ last updated 20 August 2013, contains the following graphic at the top of the page:



Figure 1: PDP flowchart at the top of the GNSO website's page describing the PDP ¹¹

Note the graphic's filename has a date of 4 June 2013, but the graphic itself contains a reference to the PDP being revised (present tense) during 2010. The summarized process contained in the graphic contains a slightly different set of key steps in the PDP to those included as main section headings in Annex A of the ICANN Bylaws and the GNSO Operations Manual. For example, the "Request for Stakeholder Group/Constituency Statements" step in the graphic is taken from one part of the description of the PDP, Section 9, PDP Outcomes and Processes, in the GNSO Operations Manual.

A further series of flowcharts on the same webpage provides an overview of a different series of PDP steps. Below is the top level series of steps. The full set of detailed flowcharts are included as Annex 2.

¹⁰ <http://gns0.icann.org/en/node/31379/>

¹¹ <http://gns0.icann.org/files/gns0/images/pdp-1000x597-04jun13-en.png>



Figure 2: The first in an 8-flowchart series at the bottom of the GNSO website’s page describing the PDP ¹²

3.5. The 39 key steps of the GNSO PDP

Given the variations of definitions and boundaries of the key phases of the GNSO PDP described in the sections above, to fully understand how the PDP works, it is important to provide a comprehensive list of all the steps of the PDP. This has been achieved by combining the information from both the ICANN Bylaws and PDP Manual. The list of the 39 individual steps, or actions, of the GNSO PDP, as documented, are listed below:

1. *(If Issue Report request is being considered by GNSO)* Hold workshop on issue
2. Request Issue Report
3. Create preliminary Issue Report
4. Call for public comments on preliminary Issue Report
5. Comment on preliminary Issue Report
6. Summarize & analyze public comments
7. *(If comments received require Issue Report adjustments)* Write second, “Final” version of Issue Report
8. *(If Issue Report was requested by ICANN Board)* Decide to initiate a formal PDP
9. *(If Issue Report was requested by GNSO Council or AC)* Decide to initiate a formal PDP
10. Develop PDP Charter
11. Approve PDP Charter
12. Form Working Group *(preferred)* or other designated working method
13. PDP Team formally solicits statements from each Stakeholder Group and Constituency
14. Stakeholders submit formal statements to PDP Team
15. PDP Team solicits input from other SOs & ACs
16. SOs & ACs submit input to PDP Team
17. PDP Team establishes contact with ICANN departments outside the policy department
18. PDP Team develops recommendations on the issue that is the subject the PDP
19. Create Initial Report
20. Call for public comments on Initial Report
21. Comment on Initial Report
22. Summarize & analyze public comments
23. Prepare Final Report
24. *(Optional but recommended)* Publish Draft version of Final Report for public comment
25. *(If Draft Final Report published for public comment)* Comment on Draft Final Report
26. *(If Draft Final Report published for public comment)* Summarize & analyze public comments
27. Forward Final Report to GNSO Council
28. *(Optional but strongly recommended)* Review Final Report
29. Deliberate & vote on Final Report recommendations

¹² <http://gns0.icann.org/files/gns0/images/general-overview-650x139-14may12.jpg>

30. (If recommendations in Final Report have been approved by GNSO Council) Prepare Recommendations Report for the ICANN Board
31. *(Optional?)* Write Staff Report
32. Forward Board Report to the ICANN Board
33. Approve PDP recommendations
34. *(If some recommendations not adopted)* Explain non-adopted recommendations to GNSO Council
35. *(If some recommendations not adopted)* Discuss Board Statement
36. *(If some recommendations not adopted)* Forward Supplemental Recommendation to ICANN Board
37. (If some recommendations not adopted) Approve PDP Supplemental Recommendation
38. *(Optional)* Establish Implementation Review Team
39. Implement PDP recommendations

DRAFT

4. Environmental Analysis

4.1. The changing environment of the Internet

During ICANN's lifetime, the number of Internet users has expanded from 360 million (in 2000) to 2.4 billion¹³. An early adopter of the Internet, North America had 30% of the world's Internet users in 2000, and the highest Internet penetration rate per capita (31% approx.). By 2013, despite continuing to have the highest regional Internet penetration rate (78%), North America's share of global Internet users has reduced to 11.4%, compared with 45% Asia, 22% Europe and 11% Latin America. Internet penetration rates remain comparatively low in Africa (16%), Asia (28%), Middle East (40%) and Latin America (43%), suggesting that these are the Internet growth markets for the coming decade. According to the Broadband Commission (2012), the number of Internet users accessing the web mainly in Chinese will overtake Internet users using predominantly English by 2015¹⁴.

As the Internet has assumed greater importance as a driver of economic growth, and as more of our life is spent online, the public profile of Internet issues has increased. Whereas, a decade ago, it was rare to see a mainstream news story about the Internet, the past 2 years have seen mass popular demonstrations against Internet-related legislative proposals such as ACTA, SOPA and PIPA, and widespread news coverage of allegations made by Edward Snowden relating to project PRISM.

A decade ago, Internet policy discussions were primarily focused on basic access, and the costs of interconnection charges particularly for those in developing countries. Today, issues of content, including the balance between national security and individuals' privacy, and complex cross-border, cross-cultural issues of freedom of expression. These may seem a million miles away from ICANN and its technical function. However, the management of the world's Internet addressing system has always been a divisive issue, and some countries have consistently called for the greater internationalization of decisions relating to management of the Internet root.

ICANN was first established as a mechanism to transition management of the root zone from the US Government to the private sector¹⁵. The centrality of the contracted parties (gTLD domain name registries and registrars) to the GNSO policy development process stems from that original goal.

4.2. Trends in multistakeholder models of governance

The concept of multistakeholder governance is not unique to the Internet environment. For example, the 1992 Earth Summit in Rio prompted recognition of the need to involve multiple stakeholders if sustainable development goals were ever to be achieved. One of the outcomes of this recognition was the development of a project, A Framework For Multi-stakeholder Processes, that, in 2000 and 2001, developed "a common yet flexible framework for various types of multi-stakeholder processes".¹⁶ The project outcomes were published as a book, and included the following early definition of what multistakeholder models should aim to be:

The term multi-stakeholder processes describes processes which aim to bring together all major stakeholders in a new form of communication, decision-finding (and possibly decision-making) on a

¹³ Source: Internet World Stats, <http://www.internetworldstats.com/stats.htm>

¹⁴ See <http://www.broadbandcommission.org/Documents/bb-annualreport2012-flyer.pdf>

¹⁵ US Government White Paper, "Management of Internet Names and Addresses", 1998 <http://www.icann.org/en/about/agreements/white-paper>, "Finally, the U.S. Government believes that it would be irresponsible to withdraw from its existing management role without taking steps to ensure the stability of the Internet during its transition to private sector management."

¹⁶ <http://www.earthsummit2002.org/msp/project.html>

particular issue. They are also based on recognition of the importance of achieving equity and accountability in communication between stakeholders, involving equitable representation of three or more stakeholder groups and their views. They are based on democratic principles of transparency and participation, and aim to develop partnerships and strengthened networks among stakeholders.¹⁷

The concept the Internet community prefers to call “multistakeholder governance” also has a number of alternative names. In the sphere of political science, the terms “public policy networks”, “global public policy networks”, “global governance” and “governing without government” are some of the terms that have been used to describe similar multi-actor governance models. The family of multistakeholder governance terms has received a lot of attention since the beginning of the century, as political scientists, civil society activists and others began to be aware of a need to develop new ways to manage increasingly multi-dimensional issues in an increasingly global world.¹⁸ The world of Internet governance has, however, tended to isolate itself from this wider discussion, having fixed its gaze on the precise term, “multistakeholder governance”. As a result, the Internet community has largely tended to overlook the developments and debates happening in the wider networked governance discussions and forge its own path towards developing effective governance mechanisms.

The use of the term “multistakeholder governance” in the Internet environment originated during the World Summit on the Information Society (WSIS), 2003-2005, and described the way that Internet organizations, such as the Internet Society, Internet Engineering Task Force¹⁹ develop policy from the bottom up. It “just worked” – delivering “rough consensus and running code”.²⁰ In response to a push from some governments to pull management of the domain name system into an intergovernmental framework, multistakeholder governance was offered up as an attractive alternative – supported by the US and a number of EU member states – associated with delivering openness, innovation and growth.

From the WSIS process emerged the Internet Governance Forum (IGF), a non-decision making, non-policy making forum for dialogue. The IGF was to embody multistakeholder principles, with government, business and civil society participating in the discussions, and the program setting (through the Multistakeholder Advisory Group) on an equal footing.

Soon, many Internet organizations, including ICANN, began to rebrand as multistakeholder. Not only did this capture the fact that government, civil society and business all participated in the process, the term also provided legitimacy for processes and organizations which had enormous effective power over Internet policy. Last year, even the ITU claimed multistakeholder credentials.²¹

¹⁷ Chapter 1, p. 2, *Multi-stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict*, <http://www.earthsummit2002.org/msp/book.html>

¹⁸ For a representative selection of articles on networked governance discussions, see J Roloff, 2008, “A life cycle model of multi-stakeholder networks”, *Business Ethics: A European Review*, 17(3): 311-325; D Stone, 2008, “Global Public Policy, Transnational Policy Communities, and Their Networks”, *The Policy Studies Journal*, 36(1): 19-38; P Dobner, 2009, “On the Constitutionability of Global Public Policy Networks”, *Indiana Journal of Global Legal Studies*, 16(2): 605-619.

¹⁹ For example, see remarks by Lawrence E Strickling at Transportation, Maritime Affairs and Communications Forum, 13 September 2013, <http://www.ntia.doc.gov/speechtestimony/2013/remarks-assistant-secretary-strickling-11th-transportation-maritime-affairs-and>

²⁰ David Clark, see “A cloudy crystal ball – visions of the future”, 1992, p551

²¹ “I was pleased because ITU – which it is my privilege to lead – can truly be said to have invented the concept of multi-stakeholderism.” Hamadoun Toure, Opening Remarks to IPI Policy Forum, 26 September 2012, <http://www.itu.int/en/osg/speeches/Pages/2012-09-26.aspx>

ICANN and its processes have been influential over other processes. For example, its real-time transcriptions of meetings, audio and web-casting, and remote participation facilities have been adopted within the IGF, and other processes such as the Commission for Science and Technology for Development's Working Group on Internet Governance, and the ITU's WCIT and WTPF. Central to ICANN's policy making are volunteers. A review of the current work schedule at ICANN, including PDPs, is a tribute to the thousands of hours donated by many volunteers over extended periods.

Within ICANN, the GNSO's Policy Development Process is emblematic of the organization's bottom-up, multistakeholder credentials, and its continuing legitimacy as the coordinator for global domain name policies. The model of multistakeholder governance, despite having many advocates, has proved to be controversial, even during the non-decision making IGF. As a method for policy-making, multistakeholder governance still has a number of unanswered questions: what are the "respective roles"²² of each stakeholder when it comes to making decisions? How, if at all, should a multistakeholder process differentiate between those with a representative capacity, such as governments, and other organizations or individuals who participate on their own behalf?

In order to have legitimacy and credibility as a bottom-up multistakeholder governance process, the PDP should involve all stakeholders, whether "on an equal footing" or "in their respective roles".

4.3. Trends in ever-expanding internet governance calendars

During the ICANN meeting in Singapore (2011), there was a discussion about "volunteer fatigue".

It's not that the number of processes has increased, it's that the intensity has increased. In terms of meetings, the growth and vibrancy of national and regional IGF meetings is a notable development since 2007. While it is highly unlikely that one organization or individual would attend each regional or national IGF, because the IGF discussions have historically focused on the management of Critical Internet Resources or CIRs (ICANN, TLD registries, RIRs), governments, and business representatives (such as ICC BASIS, and other representative bodies) civil society have played an active role as organizers of local and regional IGFs. This provides a substantial increase in the Internet Governance workload for these actors, many of whom also travel to and contribute to panel sessions in other local

²² Tunis Agenda, passim uses "all stakeholders in their respective roles", which suggests that some stakeholders have different roles to others. See <https://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

and regional IGFs.

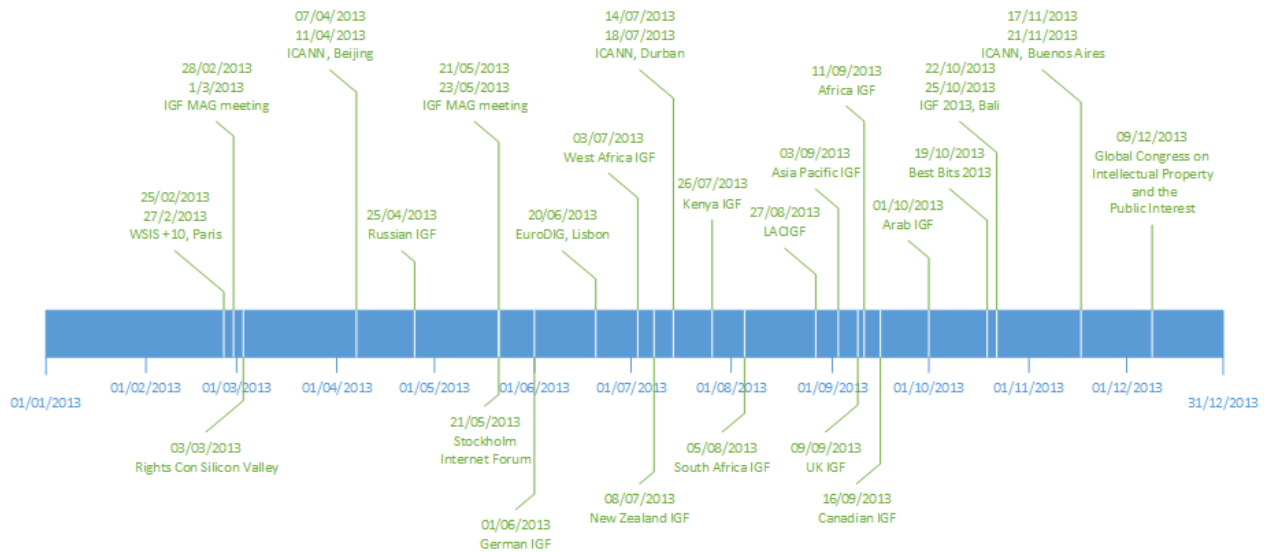


Figure 3: The Internet Governance Year, 2013.

Since the first WSIS process in 2003, the number of external organizations which now have regular Internet Governance agendas has also increased. ITU Plenipotentiary, OECD Ministerial, WSIS + 10 all have substantial Internet Governance agenda items. In many countries and organizations, the same people from government, civil society, CIR, business representatives, are covering numerous processes including ICANN.

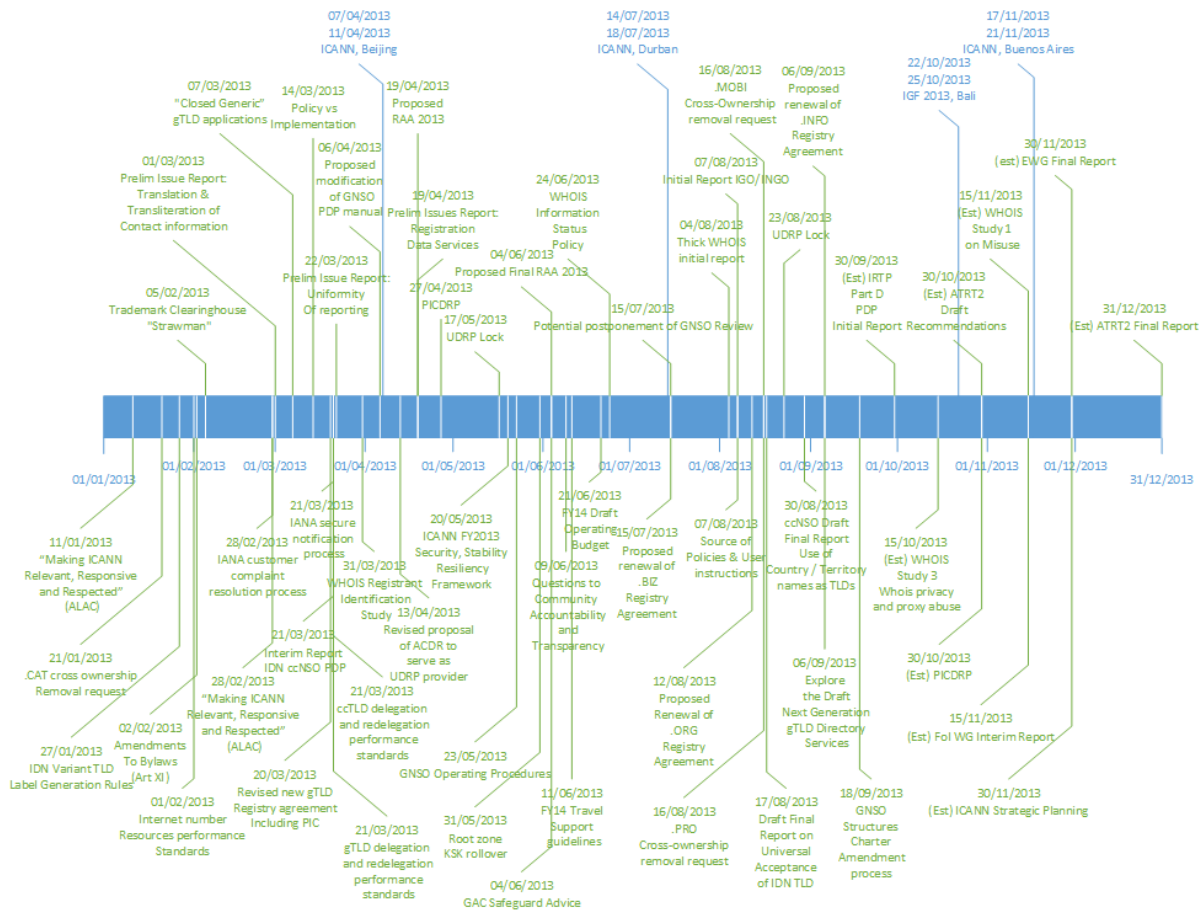


Figure 4

Within ICANN itself, the level of activity is intense. For example, to September 2013, there have been 49 public comment periods, with a further 10 anticipated to be run before the end of the year. This rate of public comment periods seems fairly consistent since 2007, when ICANN’s archives begin. Not all of those public comments relate to GNSO processes, or even to policy. However, the ICANN public site does not clearly label public comments as relating to a PDP, and a number of other public comments relate to key policy issues (such as new gTLDs).

Despite the increased level of activity, the number attending ICANN meetings and those actively involved in the process has remained steady for the past 5 years. In many organizations and governments, the same person is responsible for coordinating responses to public comments, in addition to their other Internet Governance duties.

The increasing Internet governance activity, combined with cut-backs as a result of the financial crises, reduce the time available for key stakeholders to participate in bottom up processes such as the GNSO PDP.

4.4 Trends in participation

This report documents gaps in participation in recent GNSO PDPs. However, it is important to contextualize these gaps by first exploring participation concepts and trends in the wider world.

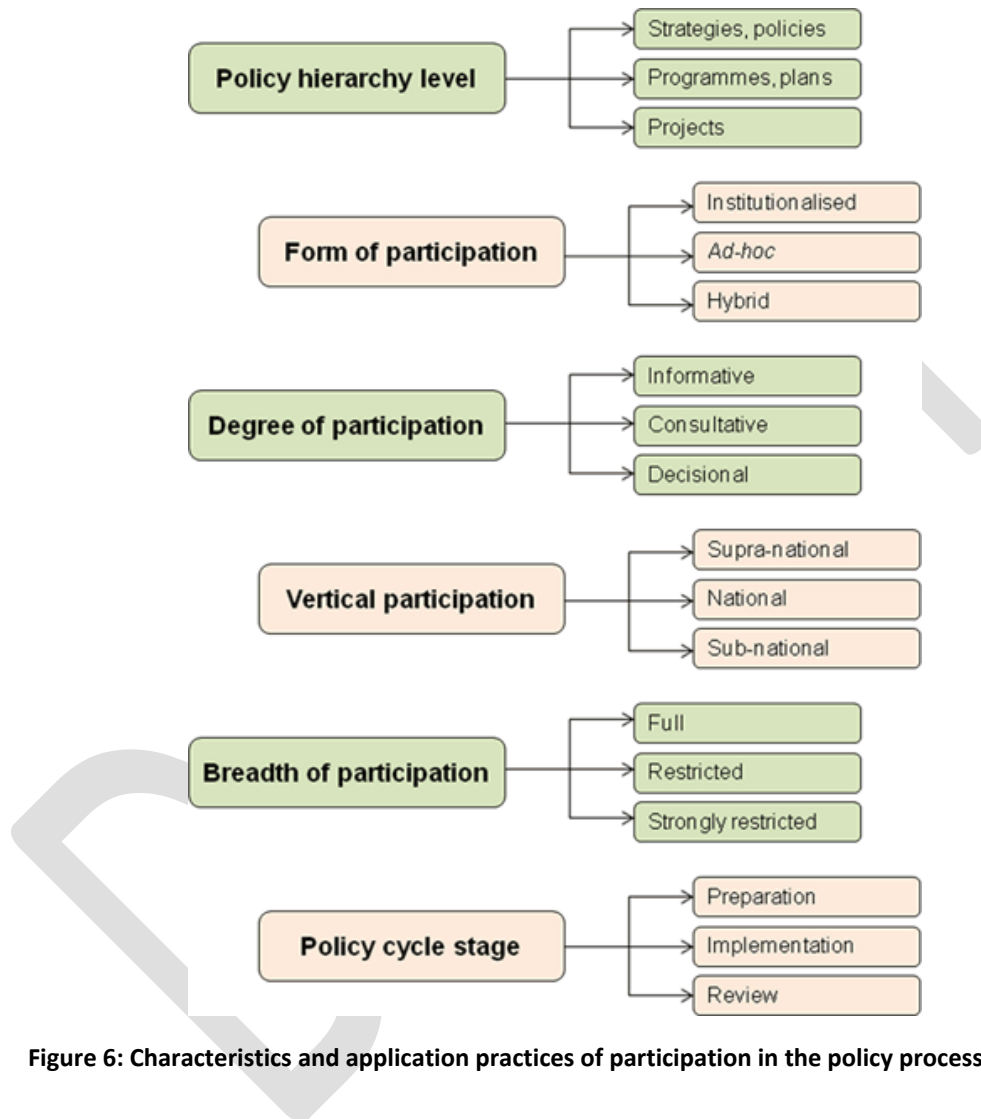


Figure 6: Characteristics and application practices of participation in the policy process²⁷

Participation problems appear at all levels of scale, from local community development projects to national elections. National elections require a very minimal level of participation only every few years, yet, in the UK and

²⁷ W Zwirner, G Berger & M Sedlacko 2008, *Participatory Mechanisms in the Development, Implementation and Review of National Sustainable Development Strategies*, http://www.sd-network.eu/?k=quarterly%20reports&report_id=10

USA, the most recent elections attracted voter turnouts of 65.1%²⁸ and 57.5%²⁹ respectively. In Australia, where it is illegal not to vote in an election, the 2010 national election could only manage a 93% turnout.³⁰

There is a difference, however, between those who choose not to participate and those who would participate if they were encouraged and/or barriers to their participation were removed. As Ife and Tesoriero have stated:

“A conscious decision not to participate is those people’s right. This is very different from non-participation that results from a lack of opportunity or support to participate, which is a failure on the part of a system to realize the right to participate”.³¹

Löhr et al. (2004) identified three barriers to participation:

- Lack of expertise
- Language problems in international networks
- Resources required to participate, such as time, energy and travel funds

Looking at the issue of non-participation from another angle, what can be done to support and encourage participation? Ife and Tesoriero have identified the five conditions that can encourage greater participation. These are listed below, along with some discussion about their applicability to participation in the GNSO PDP:

1. People will participate if they feel the issue or activity is important

A number of the recent GNSO PDPs have been on issues that are very narrowly defined and technical in nature. For example, the division of ITRP policy issues into a number of smaller PDPs. While ITRP is an important issue, its niche topic may be responsible for its associated PDPs attracting relatively few participants. In contrast, an issue like the transliteration and translation of contact information may have a wider appeal to users of non-ASCII scripts.

2. People must feel their action will make a difference

It may be the case that a newcomer to ICANN may choose not to participate in a Public Comment period for an Initial Report because they think that commenting at that late stage of the PDP is unlikely to have an impact on the final outcome.

3. Different forms of participation must be acknowledged and valued to enable people to contribute in ways that best suit their needs (for example, online participation for those who can’t travel)

ICANN routinely provides for remote participation via a variety of models. A tool as simple as electronic mail makes it possible to “time-shift” work and allow those with limited bandwidth to participate.

4. People must be enabled to participate and be supported in their participation (for example, timing of online meetings and financial assistance to offset costs of participation)

In terms of the GNSO PDP, scheduling varying times for teleconferences may enable those in diverse time zones to participate, where teleconferences scheduled at the same time of day may prevent some potential participants from being able to join.

²⁸ <http://www.ukpolitical.info/Turnout45.htm>

²⁹ <http://bipartisanpolicy.org/library/report/2012-voter-turnout>

³⁰ <http://www.aec.gov.au/faqs/Elections.htm#turnout>

³¹ p. 156, J Ife & F Tesoriero, 2006, *Community Development: Community-based Alternatives in an Age of Globalisation*, 3rd edn, Pearson Education Australia, Frenchs Forest, NSW.

5. Structures and processes must not be alienating (for example, real-time meetings favour those who think quickly and are native speakers of the language of the meeting)³²

The recommendation in the GNSO PDP Manual that ICANN translate the executive summaries of reports made available for Public Comment is a good example of a process aimed at reducing barriers of participation for non-English speakers.

Renn et al have identified three different types of knowledge that participants can bring to a process:

- knowledge based on common sense and personal experience
- knowledge based on technical expertise
- knowledge derived from social interests and advocacy³³

³² Ibid, pp. 157-158

³³ p. 190, O Renn, T Webler, H Rakel, P Dienel & B Johnson, 1993, "Public participation in decision making: A three-step procedure", *Policy Sciences*, 26: 189-214.

4.5 Policy development models

As noted in section 3, there are variations amongst both the two official documents that define the GNSO PDP—the ICANN Bylaws and the GNSO Policy Manual—and the two main flowcharts used to illustrate the main steps of the policy. This section presents some alternative ways others have used to model policy processes.

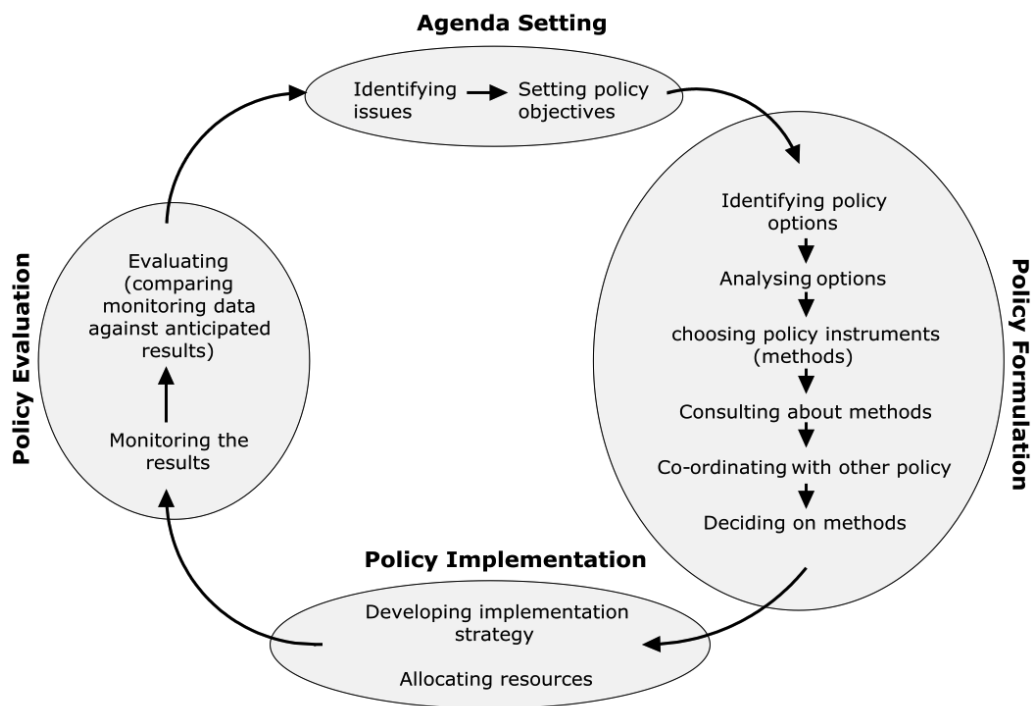


Figure 7: A simple four-phase cycle of policy development³⁴

In the above figure, note there is only one reference to participation—consulting—which occurs in the “Policy Formation” phase. The simple grouping of more detailed steps of the policy process into four steps makes it easy to understand the lifecycle of the process at a glance. Comparing this to the GNSO PDP stages, where the GNSO Council and ICANN Board decisions are, depending on the document, listed as distinct elements in the PDP, we see that decision making in Figure 7 is grouped under “Policy Formulation”. For those less familiar with ICANN’s structure and processes, the diagram above, which prioritizes process clarity over organizational responsibility for particular elements, might be a more appropriate framework for understanding the PDP.

³⁴ p. 13, A Fenton, 2010, *Creating Futures Regional Policy Development Processes – Opportunities for use of Creating Futures tools*, <http://www.creatingfutures.org.nz/assets/CF-Uploads/Publications/Creating-Futures/Regional-Policy-Development-Processes-Opportunities-for-use-of-Creating-Futures-tools.pdf>

Figure 8 below shows a conceptual model of policy development that places stakeholder participation in the centre of the PDP lifecycle.

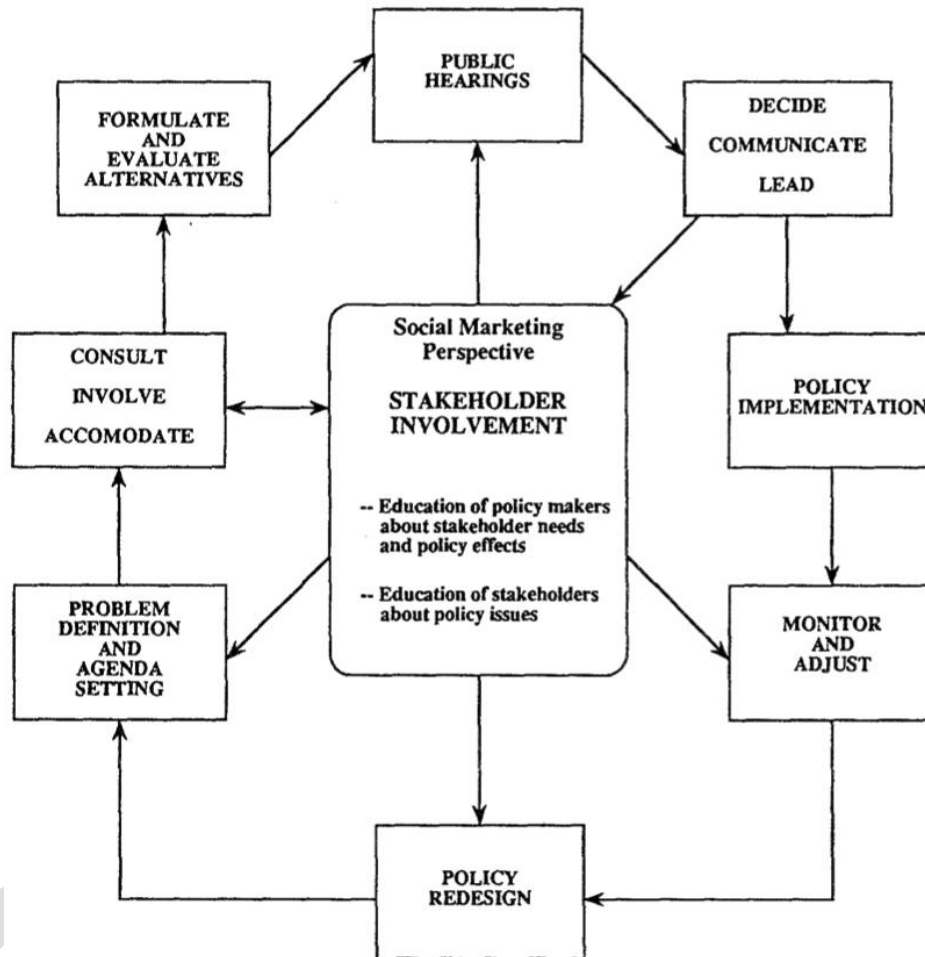


Figure 8: A stakeholder based policy process³⁵

While the text in the boxes around the edge are a little confusing, the placement of stakeholders in the centre of the model helps to both reinforce the importance of stakeholder participation to those managing the PDP as well as tell potential participants in the process that their input is central to the process.

³⁵ p. 39, J A Altman, 1994, "Toward a stakeholder-based policy process: An application of the social marketing perspective to environmental policy development", *Policy Sciences*, 27: 37-51.

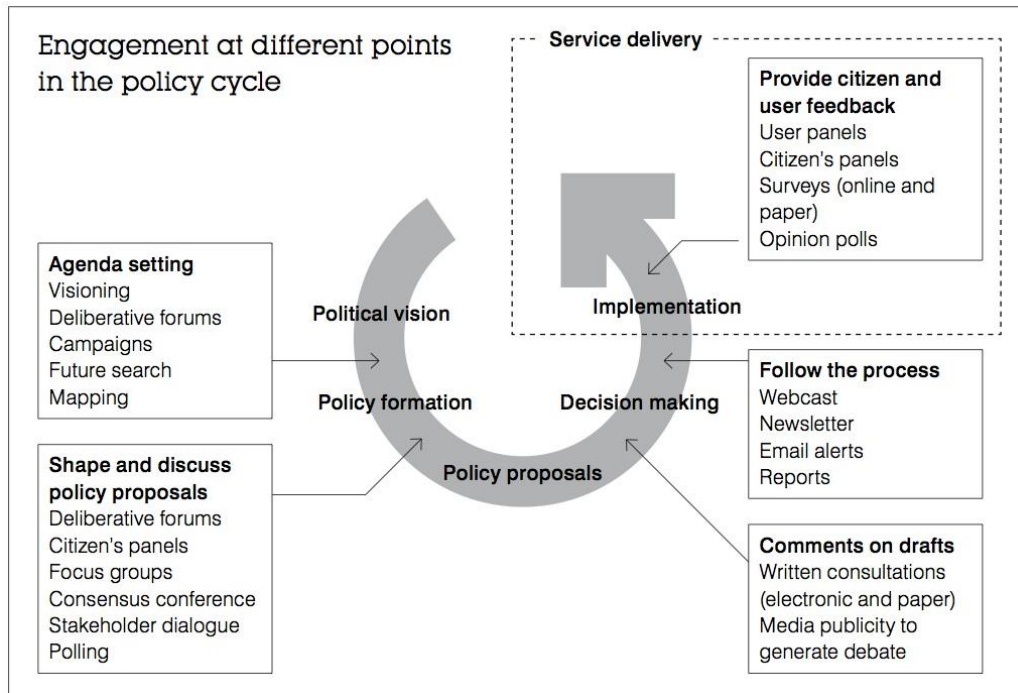


Figure 9: A UK government perspective on the policy cycle³⁶

Note that Figure 9, above, includes engagement methods that would fit closer to the “minimum participation” end of the spectrum illustrated in Figure 7, the Shand-Arnberg Participation Continuum. What is interesting about this particular model, however is the way it highlights documentation/information—“Follow the process”—as a way to engage stakeholders.

³⁶ p. 4, D Warburton, n.d., *Making a Difference: A guide to evaluating public participation in central government*, <http://www.involve.org.uk/wp-content/uploads/2011/03/Making-a-Difference-.pdf>

4.6. The ICANN PDP process compared to other relevant multi-stakeholder processes

Compared with other public policy processes, ICANN’s PDP is remarkably open and transparent. Any person can participate, without paying a joining fee. Considerable resources are devoted to enabling remote participation whether through teleconferences, virtual meeting rooms, audio and video web casting, transcriptions of all meetings.

	ICANN	RIR	OECD	ITU	Red Cross /Red Crescent
<i>Participation</i>					
Participation open to all (without membership fee)	✓			✗	
Participation open to all countries or territories	✓		✗		
Participation open to any level of expertise (formally or informally)	✗	✗			
Participation for remote participants	✓				
<i>Policy Development Process</i>					
Issues can be suggested by anyone	✓				
Working groups – open membership	✓				
Consultation documents published	✓				
Public comment	✓				
Public comments published	✓				
Public meetings transcribed	✓				
All decision-making interactions recorded, transcribed	✓				

Two sections of the document, not obviously necessary to those responsible for drafting the ATRT2 draft material, will not appear in this document but will appear in the final version of the report. This is one of those two sections.

5. Recent (five-year) Qualitative Analysis of GNSO PDPs

5.1. Source Material

The PDPs are well-documented. We focused on relatively recent PDPs where the process used was similar and the opportunities for participation could be compared across different PDPs. The PDPs we did quantitative analysis on nine PDPs, namely:

1. Fast Flux
2. Inter-Registrar Transfer – Part A
3. Post Expiration Domain Name Recovery
4. Inter-Registrar Transfer – Part B
5. Locking of a Domain Name Subject to UDRP Proceedings
6. Inter-Registrar Transfer – Part C
7. 'Thick' Whois
8. Protection of IGO and INGO Identifiers in All gTLDs
9. Inter-Registrar Transfer – Part D

Older PDPs were considered, but the history of the PDP and its mechanisms is such that it is difficult to compare older processes with more recent PDPs. Besides, the documentation of the PDPs have evolved over the years, with more recent ones having much more thorough and accessible documentation. All the PDPs considered in this study have portal web sites where mailing lists, attendance lists, wikis, comment archives and analysis, descriptive and explanatory information are provided. Table 1 provides some basic metadata about where much of the source material for the quantitative analysis was found.

PDP	ICANN Website	PDP Initiation Date
IGO-NGO	http://gnso.icann.org/en/group-activities/active/igo-ingo	2012-10-17
Thick WHOIS	http://gnso.icann.org/en/group-activities/active/thick-whois	2012-03-14
IRTP Part D	http://gnso.icann.org/en/group-activities/active/irtp-d	2012-01-17
UDRP Lock	http://gnso.icann.org/en/group-activities/active/locking-domain-name	2011-12-15
IRTP Part C	http://gnso.icann.org/en/group-activities/active/irtp-c	2011-09-22
IRTP Part B	http://gnso.icann.org/en/group-activities/active/irtp-b	2009-06-24
PEDNR	http://gnso.icann.org/en/group-activities/inactive/2013/pednr	2009-05-07
IRTP- Part A	http://gnso.icann.org/en/group-activities/inactive/2009/irtp-a	2008-06-25
Fast Flux	https://community.icann.org/display/gnsfastfluxpdp/Fast+Flux+PDP+Working+Group	2008-05-08

Table 1: Basic data about sources of material for quantitative analysis of the PDPs

Some of the PDPs that we examined are not yet complete. Information about the status of each PDP at the time of the research for the report is as shown in Table 2.

PDP	PDP Initiation Date	Completed?	Implemented?	Initial Report Date	ICANN Board Resolution Date	Total length of PDP
Fast Flux	2008-05-08	YES		2009-01-26	N/A	546
IRTP-Part A	2008-06-25	YES		2009-01-08	N/A	343
PEDNR	2009-05-07	YES	YES	2010-05-31	2011-10-28	1745
IRTP Part B	2009-06-24	YES	YES	2010-05-29	2011-08-25	1142
UDRP Lock	2011-12-15	NO	NO	2013-03-15	N/A	
IRTP Part C	2011-09-22	YES	NO	2012-06-01	2012-12-20	547
Thick WHOIS	2012-03-14	NO	NO	N/A	N/A	
IGO-NGO	2012-10-17	NO	NO	2012-06-14	N/A	
IRTP Part D	2012-01-17	NO	NO	N/A	N/A	

Table 2: Status of various PDPs at the time of the research for this report

Information about individuals was gathered from public web sites including the ICANN wiki, participant Statements of Interests, material submitted to ICANN from those individuals, and a variety of other public sources around the Internet. Material prepared and submitted by individuals was considered to have primacy over source material discovered about individuals from secondary sources.

5.2. Issue Scoping

The gNSO is encouraged to consider scheduling workshops on substantive issues prior to the initiation of a PDP. A majority (70 percent) of survey respondents agreed that PDPs are more effective when workshops are organized on substantive issues before the initiation of a PDP. However, 50 percent of survey respondents do not think that the current practice whereby the request for an issues report prior to the initiation of a PDP only requires the name of the requestor and the definition of the issue is a positive step in making PDPs more effective. In contrast, 30 percent of respondents said they think such a requirement is helps make PDPs more effective.

5.3. Working Groups

Working Groups are a major driver for PDPs, and their effectiveness is key to the success of PDPs. For this reason, the manner in which working groups are formed, and their make-up are key issues in the evaluation of PDPs. The study found that an large majority (65 percent) of survey respondents agreed with the statement that the formation and make up of WGs is done fairly and transparently. This certainly will help increase the credibility of WGs, their work, and findings.

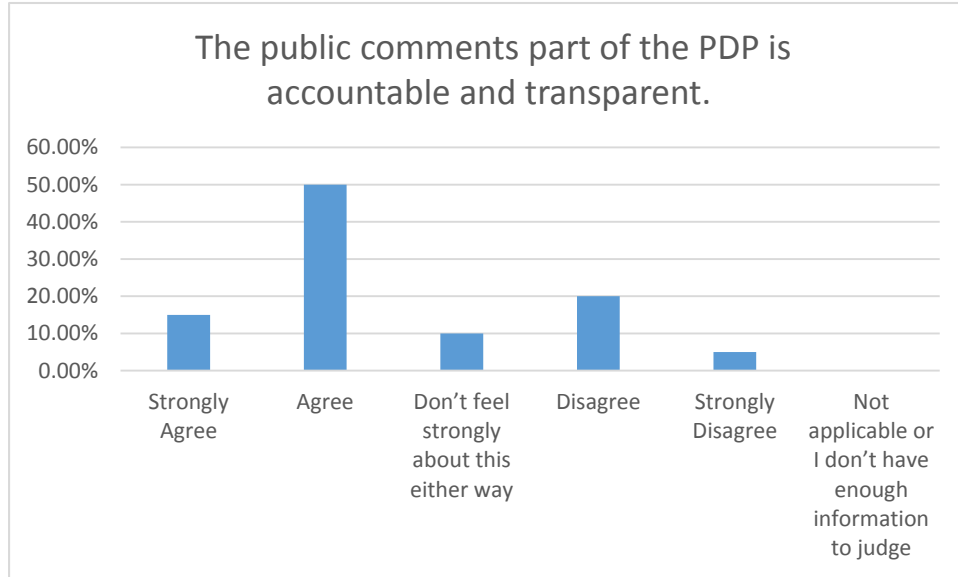


Figure 10: Accountability and Transparency

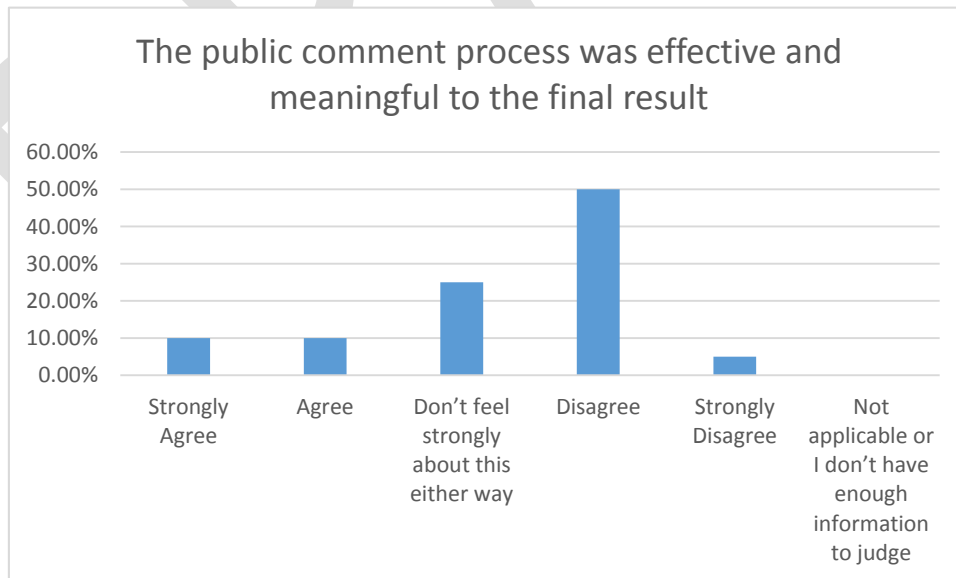


Figure 11: Public Comment Process Effectiveness

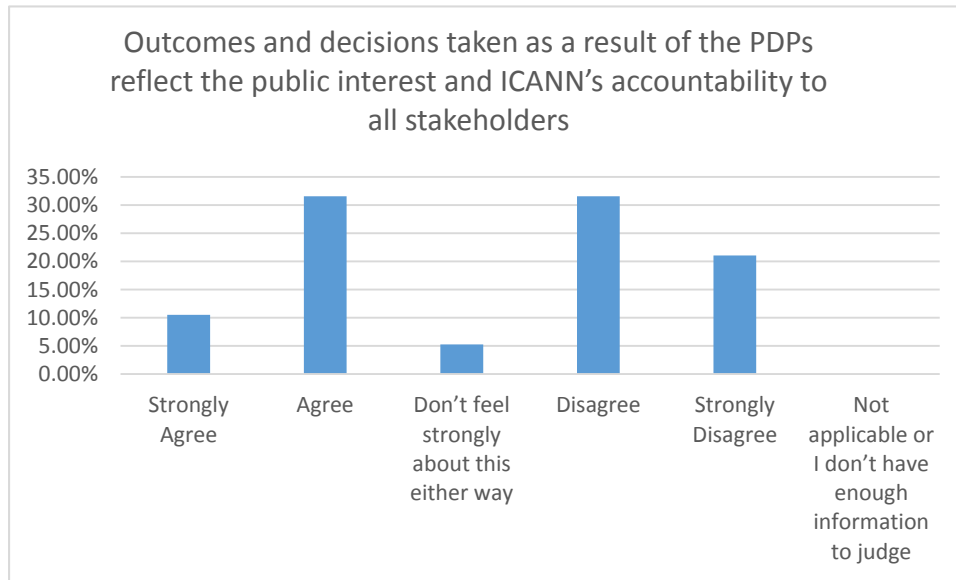


Figure 12: Decisions and Accountability

5.4 Participation

5.4.1 Who Participates in the Working Groups?

Individuals participate in working groups. Sometimes the individuals are representatives of larger communities of people with similar interests; often constituencies or stakeholder groups, and sometimes organizations outside of ICANN with an interest in the policy issue being considered in the PDP. Whatever the motivation or nature of WG participants, they have to be informed of PDPs, and their phases, and opportunities to participate if they are to become involved. The survey found that ICANN meetings, and mailing lists were the most popular sources of information about PDPs (Figure 13), with 90 percent, and 80 percent, respectively, of respondents saying they were their sources of information about PDPs. In contrast, other ICANN Web sites (e.g. the GNSO, and other SO/ACs Web sites) and external Web sites were the least popular sources of information about PDPs.

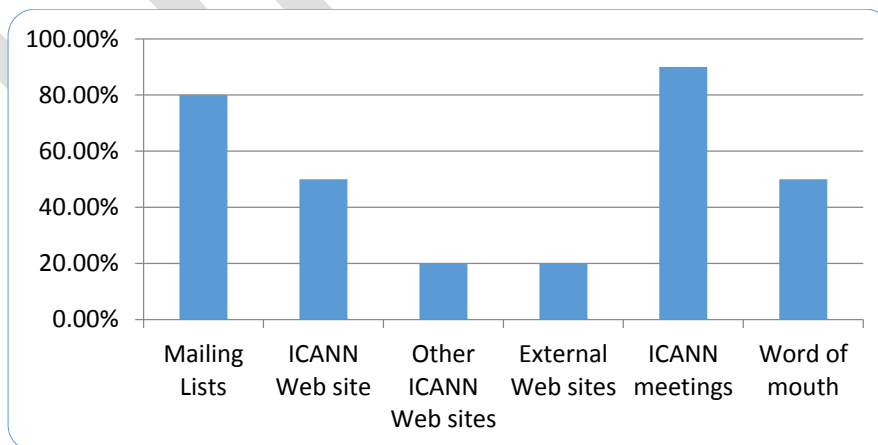


Figure 13: Sources of information about PDPs

Looking at the variety of public policy issues under consideration it would be natural to expect that there are widely varying patterns of participation. However, some interesting patterns suggest that significant issues can be raised about the current PDP. Just looking at the size of the membership of the working groups shows the variety at work (membership in a working group consists of being acknowledged in the final report AND participation in at least one working group call or have one entry in the mail archive).

The PDPs in this graphic are listed in rough chronological order of their work. The trendline would seem to indicate that the number of participants in working groups was growing slightly over time. However, this conclusion is skewed by the recent IGO-NGO working group. By far the largest working group ever assembled under this version of the PDP, the IGO-NGO working group is quantitatively different than any working group before or the one after it. In fact, if the IGO-NGO working group is removed from the trend analysis, the trend in working group size goes down slightly.

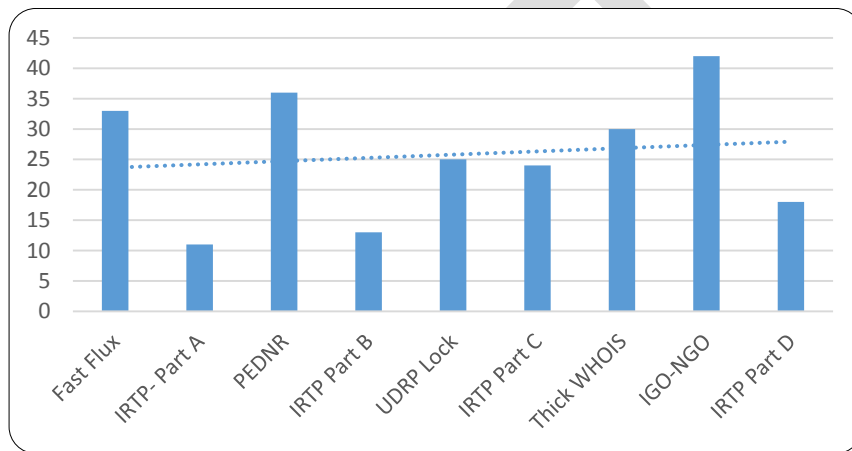


Figure 14: Working Group size by issue

When the working groups are examined for gender balance, two issues stand out immediately: first, participation in working groups is dominated by men; and second, participation by women is on the rise (Figure 15). The most recent working groups have a roughly 75/25% division of participation by men and women. However, in the last two years the number of women participating in working groups is growing and would still be seen to be growing even without the slightly exceptional case of the IGO-NGO working group.

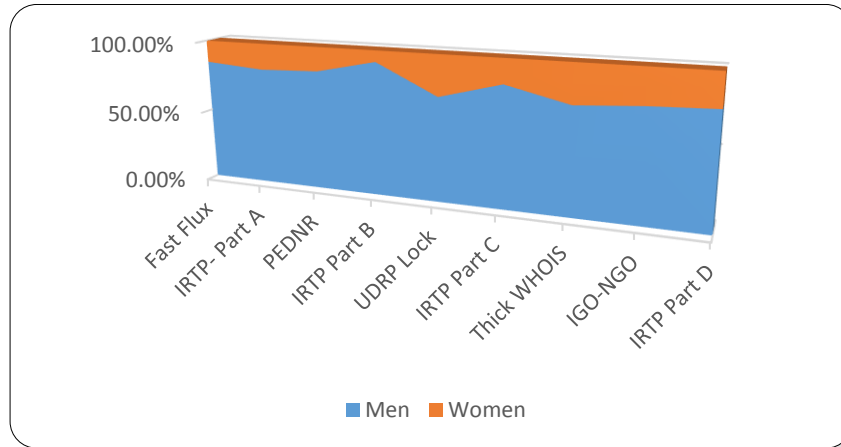


Figure 15: Working Group participation by gender

A quick analysis of recent PDPs shows that the dominant participation model is one where an interested individual becomes a member of a working group and then never repeats the activity. We have evidence that some of this is based on people not wanting to participate in overlapping working groups, but the data is clear that the talent pool is reduced because individuals tend, in dramatic numbers, not to participate in their second working group. As shown in Figure 16, 100 WG participants belonged to only 1 WG, while less than 20 belonged to 2 WGs. Even fewer numbers of people belonged to 3 or more WGs.

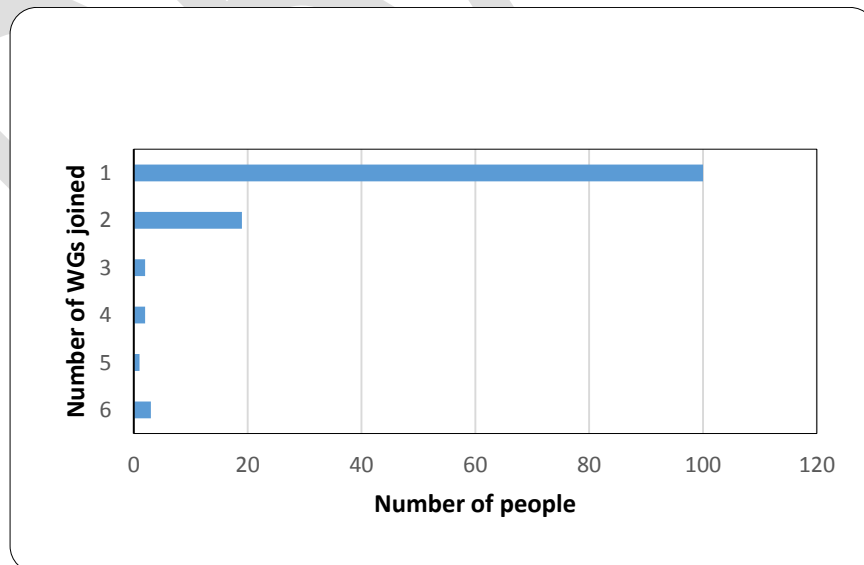


Figure 16: Number of WGs joined by WG participants

The survey found that a majority (40 percent) of respondents said that the main reason they did not participate in WGs is that they are too busy. Another reason for lack of participation in WGs is that the PDP is not relevant to the respondent. In this regard, 20 percent of survey respondents said they did not participate in PDP WGs because the issues covered were not relevant to them. It is also worth noting that some respondents said that the reason they did not participate in WGs was that they did not know enough about the issue, while others said they did not participate because someone they work with participated on their behalf. In all likelihood, the participation of people in WGs can be increased by educating and informing them about the issues before the PDP starts.

Although some people never participate in WGs, the survey found that a significant majority (60 percent) of respondents said they closely monitored the work of WGs without being formal members of these groups. Thus, 60 percent of respondents said they closely monitored WGs they were not members of, compared to 30 percent who said they did not monitor them. The reasons why people monitor WGs instead of directly participating in them include time constraints, and lack of expertise. Furthermore, survey respondents said that they monitored the WGs in various ways, including reading transcripts of WG meetings, remote participation in WG meetings, commenting on draft reports, reading and commenting on documents published by WGs, and talking to friends and colleagues about the WGs.

5.4.2. Where are the Working Group Participants From?

ICANN is a global organization and it is important that it be able to draw from technical and policy experts from around the world. However, the makeup of working groups, the foundation of the work in a PDP, are heavily skewed to two of ICANN’s geographic regions (Figure 17).

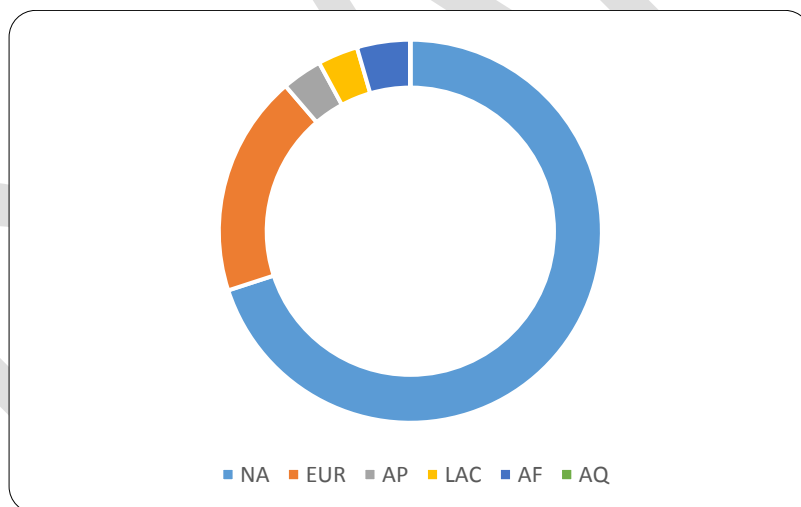


Figure 17: Working Group participation by region

First, we looked all nine of the PDPs and examined the whereabouts of the working group participants based on their own answers to questions in the ICANN Statement of Interest. North America accounts for 70.0% of participation in working groups. Europe provides 18.7% of working group members in recent PDPs and Africa, Asia/Australia/Pacific and Latin America/Caribbean together account for 13.3% of working group members. That three of ICANN’s regions have such low participation in working groups is a potential problem for global legitimacy.

Naturally, one could look to see if the situation has started to become better in time (asking the question, “This is not good, but is the situation improving?”). The raw data appears to be promising, however a closer examination shows that beside a real need for overall improvement in working group participation, the recent improvements might be the result of specific effects of certain topics in the PDPs (Figure 18).

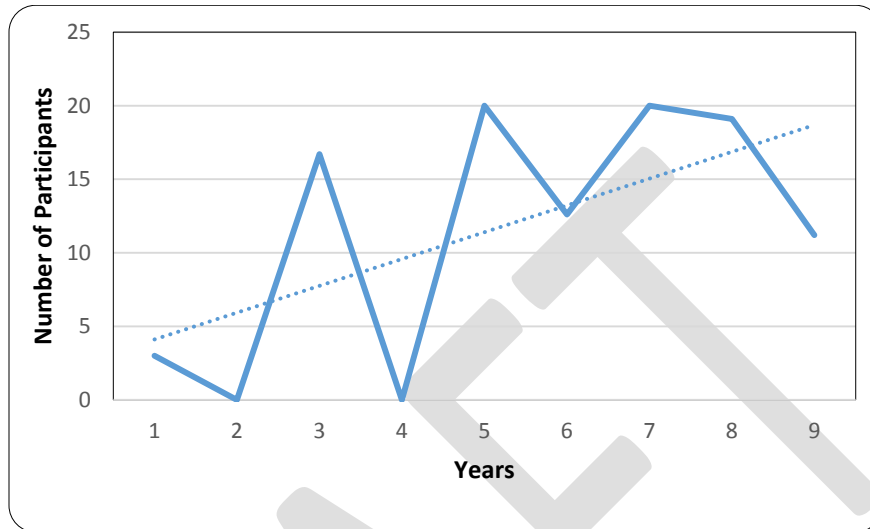


Figure 18: AP/AF/LAC participation in WGs over time (%)

However, IGO-NGO and Thick-WHOIS saw an unusual number of additional participants in the working groups. In Thick-WHOIS, the additional participants were active and attended many teleconferences. This development was not so much the case in IGO-NGO. So, while the signs are positive that things may be getting better for global working group participation, the small number of new participants in two WGs has potentially painted a more optimistic picture than what the future may actually hold. In any case, the participation in the Africa, Asia/Australia/Pacific and Latin America/Caribbean regions is a potential problem for global legitimacy. As we will soon see, this is not just a problem isolated to the working groups.

5.4.3 Demographics of Working Group Comment and Participation

Of course, direct participation in a working group is not the only means of participation. The PDP provides for extensive opportunities for comment by people outside the working groups. Initial and interim work products can be commented on by people or organizations outside the working group itself.

The comment process itself would seem to be a natural and easy way to seek input on the ongoing work of a working group. What could be easier than exposing the current work of a working group and asking anyone interested to comment. As we will see elsewhere, the comment process is essential to the legitimacy of the PDP and one of the most challenging to get right.

However, because the archives of comments on staff and working group products are open and available to all, we first examined the “who” of working group comments. We decided to take two comment periods that have been available throughout almost the entire recent history of PDPs: public comments on the issue report and public comments on the working group initial reports.

The public comment period is just that: public. Anyone and any organization can comment on a work product from the PDP. Indeed, survey results show that the Public Comment Period is a popular window for people to

participate in the PDPs, 80% of respondents saying they have contributed comments on draft reports and other documents. Furthermore, many respondents said they have commented on more than one PDP, as individuals or on behalf of organizations or a constituency.

When we took a look at “who” comments on PDP products we notice an important trend: five years ago it was very common to have individuals comment on PDP products; but today that is rare. Instead, groups and organizations dominate the public comment activity in the PDP. Groups such as constituencies, stakeholder groups and some advisory committees provide regular and extensive commentary on the products of a PDP. In addition, affected stakeholder groups and businesses are much more likely to comment than they were five years ago.

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Starting with the staff generated issue report, let’s examine “who” is commenting. Removing the PDPs where the issue report was with a different PDP or one was not provided, we see the following trend in recent years (Figure 19).

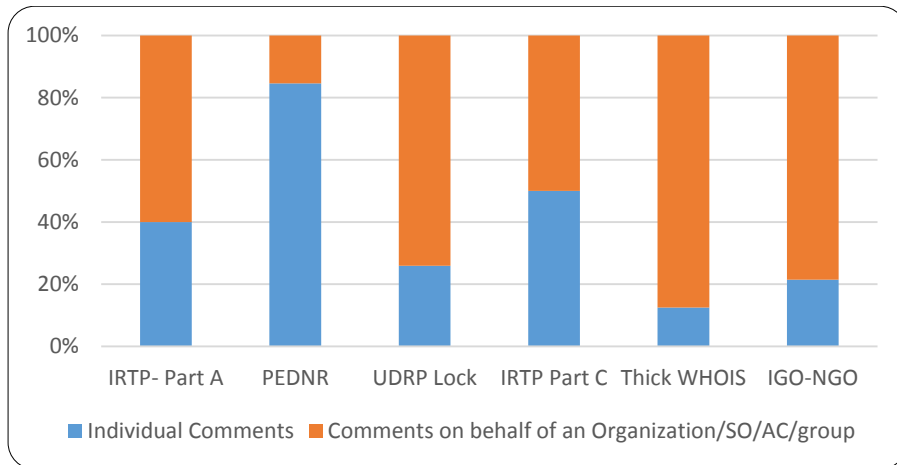


Figure 19: Comments on Issue Reports

The number of individuals making comments on issue reports is dropping significantly, while the number of constituencies, stakeholder groups, advisory committees and outside groups of interested stakeholder groups is growing quickly (Figure 20).

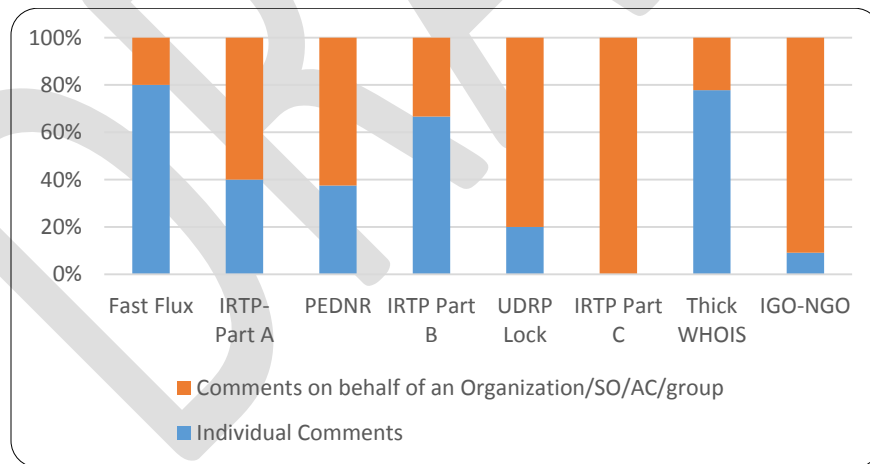


Figure 20: Comments on Initial Report from WG

Is that just the result of a small dataset and a few participants? It turns out that precisely the same trend is taking place in comments on working group initial reports.

A deeper analysis shows that this is a trend affecting all public comment processes in the PDP. This may be because constituencies and stakeholder groups are better organized to consider work products of the PDP and are

better able to react to those work products in a group setting. There is also clear evidence that, for those constituencies and stakeholder groups with direct interest in GNSO issues, the number of organizational units within the GNSO commenting on items in the PDP is also growing.

A less welcome finding is that, with the notable exception of the ALAC, there is almost no participation by Advisory Councils or other Supporting Organizations in the comment processes of the PDP.

We noted earlier that there are also trends, some of which are unwelcome, in the global participation of working groups. We note that those trends are acutally amplified when you look at the comments processes in the PDP.

If we start with the comments on the issue report, we can analyse where the comments are coming from geographically. Once again, when a comment came from someone, or an organization, who self-identified their location, we used their self-identification as a primary source. We used other tools to attempt to discover the regional location of commenters. In the event that we were eventually unable to discover their regional location, we did not count their comment in our analysis of regional statistics.

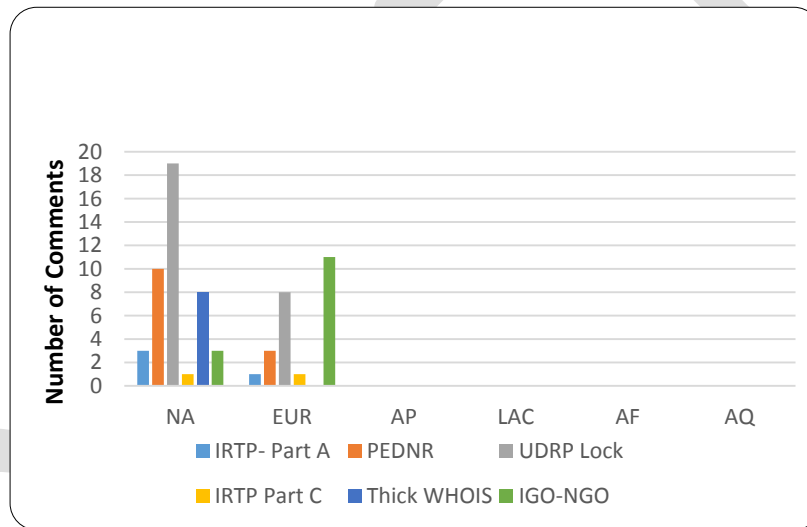


Figure 21: Regional distribution of PDP Issue Report comments

Public comments from the Africa, Asia/Australia/Pacific and Latin America/Caribbean regions do not appear as individual comments (Figure 22). For instance, stakeholder groups in those regions, such as trade associations, industry or advocacy groups, or regional interest groups, do not band together to make comments on Issue Reports. If people or organizations do show an interest in those regions, they do so through contributions to group comments submitted by other constituencies, stakeholder groups or external organizations (especially, for instance, the ALAC).

It might be possible that this was a feature of the issue report alone. However an analysis of the public comments on the working group’s initial report shows the same trend.

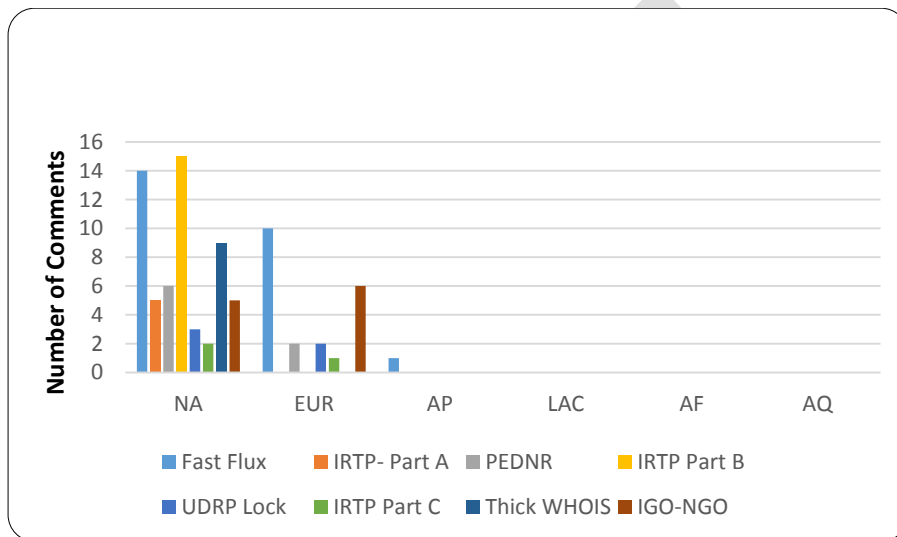


Figure 22: Regional Distribution of comments on Initial WG Report

5.5 PDP Timelines

5.5.1 Status

A common anecdotal complaint about PDP process is that “it takes too long.” From a merely quantitative view of the recent PDPs it is very difficult to determine what the “right time” would be for any issue where a PDP is initiated, successfully concludes, achieves Board approval and then is implemented. But we can examine the recent PDPs to see if they help us understand anything about the perception that the PDPs simply take too long to complete.

One metric that is interesting to observe is the amount of elapsed time between the approval of a working group charter and the delivery of the Initial Report of the working group. For this, we examined the formal meeting minutes of the GNSO Council and the public record available for each of the PDPs.

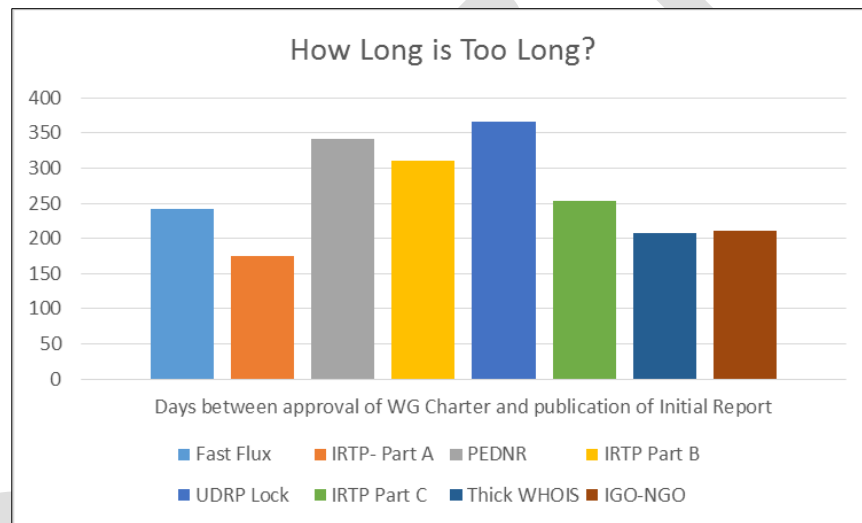


Figure 23: Length of PDP timelines

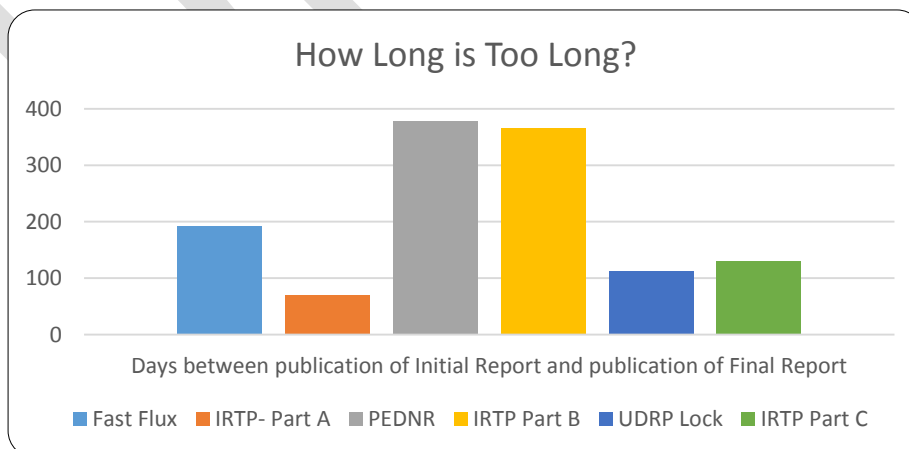


Figure 24: Number of days between publication of Initial and Final Reports

Another major contributor to the length of time it takes to complete a PDP is the time that elapses between the publication of the Initial Report and the publication of a Final Report (Figure 24). We can combine these to get a feel for the level of commitment – both in time, focus and energy – that it takes to contribute extensively to the activities of a PDP working group.

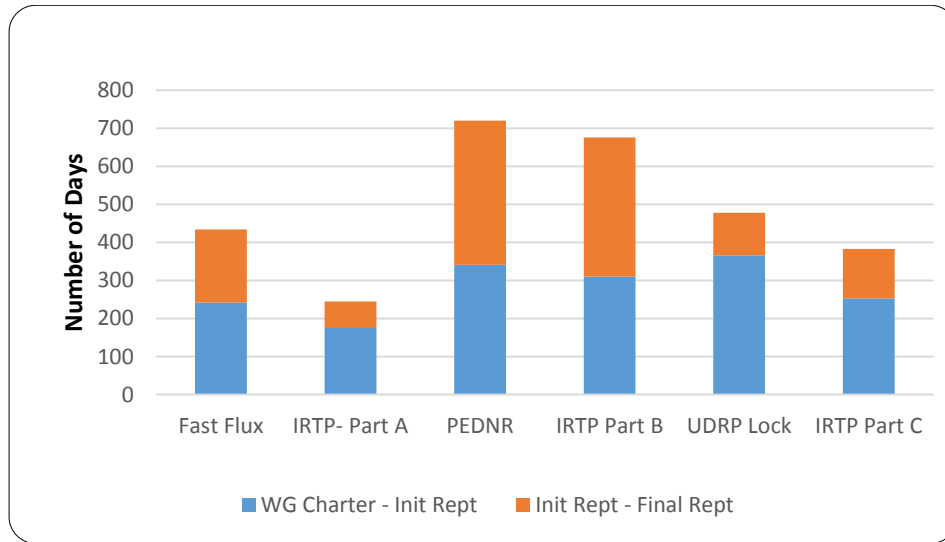


Figure 25: Number of days between WG Charter and Initial, and between Initial and Final Reports

In PEDNR, the elapsed time between the working group charter and the publication of the working group final report was 720 days (ten days short of two years).

Survey results also show that WG participants are not satisfied with the timelines of the PDPs. Specifically, 50% of respondents said they disagreed with the statement that the overall timescales for the PDP are sufficient and flexible enough to ensure effective public policy outcomes, compared to 30% who agreed with the statement.

5.5.2 PDP Timelines Challenges

The PDPs face important challenges in terms of the timelines, as indicated by survey respondents. Among the challenges identified are the need to balance thoroughness and speed, as well as ensuring the policies produced have buy-in from various stakeholders. Thus, it was suggested that the PDPs should focus on breadth of engagement, even if this might reduce the rate at which PDPs are completed. Given the low level of participation of regions other than Europe and North America in the PDPs, it is important that the engagement be broadened if the policies produced have the buy-in to ensure their effective implementation.

Survey respondents also suggested that the implications of policy recommendations should be thoroughly analyzed, and that significant policy issues should be deliberated on over a number of years. This is especially, it was suggested, given that many PDPs never meet a 12 month deadline for their completion. For this reason, it was suggested that policy development should be in phases, and last at least 15 to 18 months.

Another important challenge in the PDPs are workshops. Survey respondents said that although the workshops are useful, there are problems, especially the demands they impose on volunteer communities. In addition, there often are delays between the PDPs and their implementation. For example, the PEDNR PDP ended 2 years ago, but its implementation only started last August.

Other important challenges are the public comment process, and the way the public comments are summarized. Survey respondents mentioned that the public comment process leaves a lot to be desired. For example, while a 21 day comment period might be sufficient for individuals, it is not for organizations. Survey respondents also said that summaries of comments are sometimes “misleading, or omit some inputs altogether.” It was pointed out that this creates the impression that ICANN does not want to receive the comments.

The survey respondents suggested various ways and means to overcome the challenges posed by the PDP timelines. First, fact-based white papers should be prepared to educate stakeholders and those engaged in the PDPs. In addition, reasonable and flexible time frames should be set. This is especially important given the multi-stakeholder model ICANN is based on.

Another suggestion for reducing the time required to complete the PDPs is that ICANN should fund face-to-face meetings to facilitate the work of WGs. Other ways ICANN can help expedite PDPs include providing researchers, and staff as a secretariat. It was pointed out, however, that this might be present its own set of challenges.

5.6 Other statistical data related to PDPs

Survey respondents use various mechanisms to participate in WGs and associated PDPs. Among these are teleconferences (TC), mailing lists (ML), face-to-face (F2F) meetings, and remote participation (RP). Survey results show that teleconferences were reported to be the most useful means of participating in PDPs, with 87.5% of respondents saying they found them useful (Figure 26).

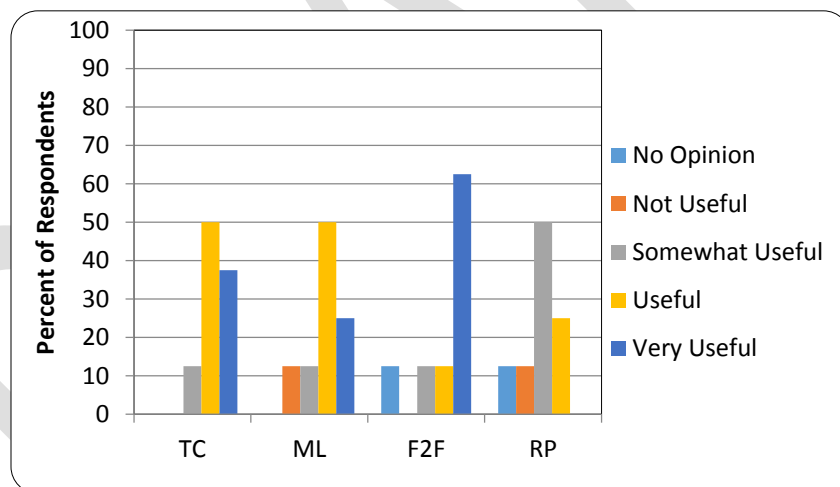


Figure 26: Use of various mechanisms to participate in PDP WGs

Mailing lists and face-to-face meetings were the next most popular means to participate in PDP working groups each with 75% of respondents saying that they used them to participate in PDPs. Remote participation is by far the least popular, with only 25 of respondents saying they used them to participate in PDPs.

6. The Current State of the GNSO PDP

6.1 Strengths

6.1.1 Transparency

The GNSO PDP achieves world class standards of transparency. Much of this is due to the provision of structured tools and processes by ICANN, for example audio and video webcasting, transcripts, published email lists, all public comments published, virtual meeting rooms for remote working and in which silent observers are welcome. The full archive is published, even for PDPs that finished many years ago. In this way, an important historical record is being nurtured and maintained. Our research was able to benefit from the availability of a rich variety of primary source materials across different media, this made our analysis – and that of future researchers – possible.

There is an inevitable conflict between transparency through publication of exhaustive records, and clarity. It is certainly difficult to track down some materials, or to understand quite what is happening (for example, the conflicts between the different versions of the PDP are discussed at section 3). However, in our opinion, and that of interviewees, the transparency of the PDP process (up to the point where implementation begins – see below), the provision of resources by ICANN, all came through very strongly. For example, interviewees who choose to monitor rather than participate directly in certain working groups cited a wide variety of tools (including transcripts, webcasts, email archives, public comments) that they use to keep up to date with developments.

6.1.2 Flexibility

The varying length of time taken to complete the PDPs in this study are testament to the flexibility of the PDP. Feedback from working group chairs, and others who have participated in the PDP indicates that proper consideration of the issues is a hallmark of a bottom-up policy process, and that a process taking a long time is not a sign of failure. Interviewees were all asked their opinions on the statement “The overall timescales for the PDP are sufficient and flexible enough to ensure effective public policy outcomes” While 24% disagreed, there was a general acceptance that flexibility is necessary in a rigorous policy development process.

6.1.3 Policy staff support

Interviewees went out of their way to say how impressed they were with the quality of ICANN’s policy staff.

The only consistent area for improvement cited was in the summarising of public comments. Many interviewees noted that there had been steady improvement in recent years, but also cited individual examples where they felt that comments had not been fairly summarized, or had been omitted, and some speculated that such actions had been taken because the ICANN organization wanted a particular outcome. This highlights how easily trust can be lost, and how long the memory remains vivid about things which may be no more than clerical errors or omissions, but which are of great importance to participants.

6.2 Weaknesses

6.2.1 The Role of the GAC

The GAC represents an important set of stakeholders in any policy development process related to domain names. However, for reasons documented later in the report, the GAC rarely participates in any PDP. It should be noted that there are other Advisory Committees (eg ALAC) that routinely participate in GNSO. The GAC has a history of successful collaboration in other areas of ICANN, for instance ccNSO working groups and participation in AoC reviews, and therefore there is good practice to build upon.

The consequence of the GAC not participating in GNSO PDPs is that lengthy processes may be completed, negotiations and agreements reached and only after this process is largely completed are concerns raised by the

GAC. Our research also shows that while there are several windows of opportunity for GAC to provide advice during PDPs, those opportunities are not taken. This needs to be addressed. Our work has found that there appears to be no structural barriers which prevent the GAC's participation in the PDP (for instance, we believe that no changes to the Bylaws are required). Instead, a more well-defined and structured relationship between the working groups and the GAC would help the GAC identify which issues are meaningful to governments and help the working groups identify topics where they must give early notification to the GAC. Interaction between the GAC and the working groups and the GAC must move from "opportunities" to being a structured part of the process.

6.2.2 Global stakeholder participation

There is clear and unimpeachable statistical evidence that three of ICANN's regions simply play no meaningful part in the PDP. If global legitimacy is a core value of the policy that comes out of the PDPs, the GNSO risks that legitimacy by not making significant effort to assertively be more inclusive of viewpoints from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.

Beside the quantitative data, there is additional qualitative evidence that the PDP as a model for building consensus policy does not match the cultural or participation models of other regions. There is some statistical support for the view that language is a genuine barrier to participation in PDPs. For example, 97% of comments submitted in any PDP public comment period are in English – and none of these comments are ever translated for consumption by non-English speakers. One interviewee pointed out that it was impossible to gain widespread input from their region, as the documents were not available in their language.

Those questioned spoke perfect English (even if it was not their mother tongue) and participate actively in the process. Further research is required into understanding the reasons why stakeholders from outside of North America and Europe do not participate.

Resolving this issue is not simply a matter of outreach, although several interviewees mentioned that it would be helpful if the outreach efforts tied more closely into recruitment for working groups or made use of community leaders in the regions. Beside matters of operational practice, (time difference, resource availability, support for diverse languages, etc.) the collaboration and discourse model built into the current PDP has a distinctly Western approach and fails to take into account other cultural approaches to developing and building consensus policies. ICANN needs to reform its outreach activities to nurture and support working group participants from Africa, Asia/Pacific and the Latin American/Caribbean/South American regions.

In addition, there needs to be a reconsideration of the underlying collaboration and discourse model and potential adjustments made to support participants who are not used to working collaboratively using that model. Failure to recruit, involve and support those participants potentially risks the global legitimacy of the policies built using the PDP

6.2.3 Demands on regular participants

Our research shows that fully engaged participation in PDPs makes an extraordinary set of demands on participants (individuals, organisations, businesses and governments). So much so that the participation pattern in the last five years show a "one and done" attitude by the vast majority of people who participate in working groups. This trend has resulted in a small number of participants, who have economic and other support for their ongoing engagement in working groups, to dominate attendance records. This has a set of clear implications for policy development, not least of which is that there is a very small pool of potential participants who can lead, moderate, and bring to completion the difficult work of guiding participants and policy through the PDP. Having such a small pool poses both accountability, credibility, and resource risks for the policy development process. In

response, the current PDP needs to be examined to find ways to break up the enormous commitment into component parts. It may be possible to further modularize the PDP and make it possible for participation in ways other than full participation in a working group. Even the comment process is seen as a difficulty: our survey research found that a large majority of stakeholders who had connections to businesses, constituencies or stakeholder groups reported that it was very difficult to craft, discuss, get agreement and approval for submission of comments in the time frames provided by the PDP. If stakeholders feel that they cannot commit to the demands of full working group participation and also have difficulty responding to comment periods, then they are effectively alienated from the policy development process itself. ICANN needs to examine the potential for alternative participation models in the PDP.

6.2.4 The PDP, staff and the Board

In isolation, the PDP is a multi-stakeholder, consensus-driven, public policy development process. However, the PDP in the GNSO does not work in isolation from other parts of ICANN. Our surveys show that many people are concerned about the interactions between the work products of the PDP and other parts of the organization. Specifically, there have been a significant number of responses that expose concern about policy built through long collaboration and negotiation, being changed or challenged by other parts of ICANN “after-the-fact.” In particular, concern was raised that the Board could – and has – changed proposed policy, or accepted alternative implementation of policy; thus, overruling the work of the PDP. Others pointed to those, who did not get the results they wished out of the long work of the PDP, moving the GAC, GNSO Council, or ICANN Board to lobby for changes in substance or implementation after the PDP was completed. Outside of the essential fairness issues that are evident in these concerns, there are more important transparency issues at stake. A change made by the Board to a consensus-driven policy created by committed, often volunteer, participants in bottom-up stakeholder engagement process is always open to questions about why and how those changes were made. This has become such a prevalent concern that, in one very recent working group, participants challenged others in the working group on the issue of whether they were truly committed to the process – or, if they simply intended to wait the process out and then “lobby” for the results they wanted in other parts of the organization. Some of our survey respondents indicated that cynicism about other participant’s commitment to the PDP was a barrier to their own participation. While, in our opinion, this is not a structural problem, there needs to be process and procedure applied to ensure that other parts of the organization do not inadvertently subvert the accountability and transparency of the PDP.

6.3 GAC/PDP Interaction – A Potential for Change? Or, Is Change Needed?

6.3.1 Governments and ICANN

The GAC has been part of ICANN’s system since the beginning. The first GAC communique, dated 2 March 1999 notes the attendance of 23 of its 25 member governments, multilateral governmental organisations and treaty organisations. The GAC committed itself to “implement efficient procedures in support of ICANN...by providing thorough and timely advice and analysis on relevant matters of concern to governments”³⁷. GAC membership and

³⁷ GAC 1 Meeting, Singapore, 2 March 1999, 28(6): 758-786.
https://gacweb.icann.org/download/attachments/27131924/GAC_01_Singapore_Communique.pdf?version=1&modificationDate=1312231461000&api=v2

participation in meetings has steadily grown, to 44 members attending in 2004³⁸, 58 members in 2009³⁹, 61 members and 8 observers attending in 2013⁴⁰. Over time, the GAC meetings have extended into multi-day events, including scheduled interactions with other stakeholder groups. In recent years, the GAC has become more proactive in its policy advice⁴¹, a watershed moment being its intersessional meetings with the ICANN board in 2011 in relation to new gTLDs. What resulted was the incorporation of governmental advice into the gTLD process, both through Early Warnings, GAC advice, and amendments to the application form. The GACTivism continues, with over 30 pieces of GAC advice being produced so far in 2013.

6.3.2 GAC/PDP Interaction and the Bylaws

The ICANN Bylaws are very specific regarding the foundation of the Governmental Advisory Committee in Article XI:

Section 1. GENERAL

The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees: 1. Governmental Advisory Committee. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.

³⁸ GAC 19 Meeting, Rome 29 February – 3 March 2004

https://gacweb.icann.org/download/attachments/27131950/GAC_19_Rome_Communique.pdf?version=1&modificationDate=1312229551000&api=v2

³⁹ GAC36 Meeting Seoul, South Korea, 25-30 October 2009

https://gacweb.icann.org/download/attachments/27131984/GAC_36_Seoul_Communique.pdf?version=1&modificationDate=1312227059000&api=v2

⁴⁰ GAC Communique, Beijing April 2013

https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2

⁴¹ See GAC register of advice

https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2, and note the increase in GAC advice relating to gTLDs from 2010.

- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.*
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.*
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.*
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.*
- g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.*
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.*
- i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.*
- j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*
- k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.*

In regard to the gNSO PDP, we make the following immediate observations:

- The GAC has, via the ICANN Bylaws, a clear mandate to “consider and provide advice” in the development of policy within ICANN (Article XI, Section 2. Paragraph 1).
- The ability for the GAC to provide advice to the board on new or existing policies is explicitly provided in the Bylaws (Article XI, Section 2, Paragraph 1.i.).
- The GAC has the explicit ability to place one non-voting member, if it so chooses, the GNSO Council (Article XI, Section 2, Paragraph 1.g.) as it does with the Council of any of ICANN’s Supporting Organisations.
- The Bylaws make the Board of Directors responsible for notifying the GAC of any public comment periods on policy issues and must do so in a timely manner (Article XI, Section 2, Paragraph 1.h.).

6.3.3 Implications of GAC Advice to the Board on Policy Matters

That governments would want to provide ICANN advice on policy matters where “*they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues*” seems natural enough. The GAC is a natural and needed participant in the whole cloth of policy discussions related to the DNS. They bring expertise and experience that is not available from elsewhere, particularly with regard to identifying and serving the public interest.

The record shows that there have been GAC interventions in policy matters – usually a procedurally messy affair. In our interviews there was a wide-ranging diversity of views on whether those interventions have been helpful, effective or even necessary to the policy process.

But providing this avenue of input provides a structural opportunity for the GAC to be used by other players in the community as an alternative vehicle for policy changes.

Specifically, we have seen clear evidence that, when parties feel that certain policy issues have not been advanced in their favor in traditional PDPs, they attempt to work with the GAC to convince governments to intervene on their behalf on policy issues. This has a double effect.

First, it subverts the PDP. As we have seen, the policy development process is long. If the ICANN community works together, in an agreed process framework, over a long period of time, and comes to consensus via negotiation and compromise, it will naturally aggrieve many if the GAC is then used as a vehicle to change the process. The legitimacy of the PDP is called into question if unhappy parties can simply use other structural opportunities in ICANN to propose, create and revise policy. This also has the effect of potentially limiting interest in participation in working groups.

Second, it makes the working group process more difficult. We have already seen evidence in recent PDPs where working group members call other volunteers into question – doubting that they were sincerely supporting of and would be active and engaged participants in the PDP. With the difficulty in recruiting working group members for the long and intense commitment of a PDP, the injection of suspicion between working group members is not a welcome addition.

6.3.4 Could GAC Interact with the PDP Earlier?

When the GAC provides the Board with advice on GNSO-related policy matters, the timing is important.

If the timing is such that the working group has already drafted its final report, and the public comment process is complete, there is no mechanism in the GNSO Operations Manual for re-opening the activities of the working group. The danger, of which we find clear evidence, is that advice late (or, at the end) of the policy development process then becomes separated from the bottom-up, stakeholder driven model that underpins the GNSO PDP. Instead, potentially improvised processes involving the GNSO, the GAC, The Board, ICANN staff and other interested parties begin to occur.

On one view this is not necessary. Many stakeholders cannot understand why the GAC cannot, or will not, participate earlier in the PDP. After all, there are clear opportunities for this.

Here’s is a chart, contributed by ICANN staff, on some possible points of GAC engagement with the PDP, its drafting and comment process and the underlying working group model:

Phase of the PDP	Opportunity for input	Method for seeking input from GAC
Request for Issue Report	An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.	N/A
Preliminary Issue Report	Public comment period on Preliminary Issue Report to encourage additional data / information as well as views on whether PDP should be initiated	Announcement posted to ICANN & GNSO web-site and public comment forum opened Announcement sent to the GAC Secretariat for distribution
Rejection of PDP requested by Advisory Committee	If GNSO Council rejects initiation of a PDP requested by an AC, then option to meet with AC reps to discuss rationale followed by possible request for reconsideration	N/A
Developing charter for the PDP Working Group	Drafting team to develop charter for PDP WG open to anyone interested	Announcement posted to GNSO web-site Announcement sent to GAC Secretariat for distribution
Working Group	PDP Working Group is open to anyone interested to participate, either as an individual or as a representative of group / organization	Announcement posted to the GNSO web-site and, if timely, included in Monthly Policy Update Announcement sent to the GAC Secretariat for distribution
Working Group	PDP WG is required to reach out at an early stage to obtain input from other SO / AC	PDP WG will send email request for input to SO/AC Chair and secretariat Request will typically include questions / input that input is sought on as well as a deadline for input (noting that additional time may be requested if needed)
Working Group	Initial Report published for public comment	Announcement posted to ICANN & GNSO web-site and public comment forum opened Announcement sent to the GAC Secretariat for distribution
Council Deliberations	Council Recommendations Report to the Board which also includes an overview of consultations undertaken and input received	N/A
Board Vote	Public comment forum prior to Board consideration of recommendations	Announcement posted to ICANN & GNSO web-site and public comment forum opened

Phase of the PDP	Opportunity for input	Method for seeking input from GAC
		Announcement sent to the GAC Secretariat for distribution
Board Vote	Requirement for the ICANN Board to inform the GAC if policy recommendations affect public policy concerns	Board will notify GAC
Implementation	Council has the option to form Implementation Review Team to assist Staff in developing the implementation details (in principle open to all)	Call for volunteers will be circulated to PDP WG
Implementation	Implementation plans may be posted for public comment or additional consultations held depending on nature of policy recommendations	Announcement posted to ICANN & GNSO web-site and public comment forum opened Announcement sent to the GAC Secretariat for distribution

However, the GAC faces a structural and operational set of problems if it were to attempt to engage in the PDP at earlier points in the process. First, the GAC is a separate, logical entity inside of ICANN. As a result, it usually attempts to communicate with other parts of ICANN with a single, unified voice. Having a participant in working groups is cumbersome, because that participant would find it difficult to speak extemporaneously on behalf of the GAC, or even on behalf of their own government. It is also evident that the GAC would find it difficult to identify and nominate a person of the right skills and background for many of the policy discussions that take place in PDPs. Finally, there is the issue of resources: the people who make up the GAC would especially find it difficult to commit the time to a working group.

If not a working group, then what about GAC engagement in public comment periods? In this case, the GAC would find it very difficult, if not impossible, to work within the current timescales for public comment processes. Again, the combination of resource limitations and the ability to coordinate the GAC on short notice for public comment would make it very difficult for the GAC to be able to consult with their internal governments, coordinate and negotiate between governments, and then come to agreement on a mutual position. The timescales in the PDP are simply not set with the operational abilities of the GAC in mind.

6.3.5 Where Next for GAC Engagement in the PDP?

Considering the available engagement opportunities in the PDP, if direct participation in working groups is very unlikely and comment in public comment periods operationally unworkable, then what interaction models remain?

No formal ones are built into the current PDP. However, we have evidence that the GNSO and the GAC are working on informal engagement mechanisms that enhance communications between these critical parts of ICANN.

It's worth recalling that some stakeholder groups now view the GAC as a backstop. As a way to prevent the implementation of flawed policy, the GAC is a very imprecise tool to make specific policy changes. However, several groups have recently used the GAC as an audience for expressing the view that policy developed elsewhere

in the organization, has poor public policy features. In our interviews there were strong feelings that the GAC should not be involved in after-the-fact policy evaluation of work done in PDPs. However there was also a strong feeling that the GAC was a needed protection against the development and implementation of poor policy.

While we believe there are no structural issues in the Bylaws that prevent the GAC from interacting directly with the GNSO through the PDP, perhaps a better way to approach the GAC is through small requests for information and advice rather than full comments on Initial Reports or PDP Drafts.

During our research we concluded that the PDP needs adjustment if there cannot be successful engagement by the GAC until the PDP is completed.

One approach might be to make the mechanics of the PDP input process more flexible so that it was easier for the GAC to respond. Another approach might be to add to the PDP, perhaps at the Initial Report, a task which specifically requires input (or, an admission that they are not going to give input) from the GAC.

DRAFT

7. Does the GNSO PDP Satisfy the Mission of ICANN in Regard to Policy Development?

7.1. The mission of ICANN

The mission of ICANN is stated in Section 1 of Article 1 of the ICANN Bylaws. In particular:

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.

The role of policy development is, therefore, to create policies that enable ICANN to perform the function of global coordination of Internet's systems of unique identifiers, while ensuring the stable and secure operation of the Internet's unique identifier systems.

In the specific context of the GNSO PDP, its role in satisfying ICANN's mission is to ensure ICANN can coordinate the gTLD system, with particular attention paid to the stability and security of the gTLD system. Given the ICANN mission refers to the domain name system in general, it may also be appropriate to assume that gTLD policy development should also consider the wider stability and security of the entire domain name system.

Associated with ICANN's mission are a number of core values specified in Section 2 of Article 1 of the ICANN Bylaws. Of particular interest to this review of the GNSO PDP are the following core values:

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

The GNSO PDP's ability to reflect these core values are discussed below.

Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making

As written in the ICANN Bylaws and the GNSO Operations Manual, the GNSO PDP provides multiple opportunities for affected stakeholders to document their needs and wants, and contribute their perspectives, to active PDPs. Stakeholders can participate as members of the PDP Team or contribute during the Public Comment periods. PDP Teams are also required to seek input from each Stakeholder Group and Constituency and are strongly recommended to solicit input from other SOs and ACs. In addition, although not required by the Bylaws or the Operations Manual, PDP Teams solicit input through other ways, such as online surveys. The variety of

opportunities available to provide input should, in theory, enable instances of the GNSO PDP to amass a broad diversity of materials with which recommendations can be strongly founded.

Given the overwhelming majority of participants in GNSO PDPs are from North America and Europe (see Section 5), it is not completely clear that the GNSO PDP, *as practiced*, is sufficiently able to support diverse levels of geographic and linguistic participation. As stated in Section 5.4, balanced participation in terms of geography, stakeholder interest group and gender is difficult to achieve. The fact that the majority of GNSO Council members come from developed countries means that it can be easy for the Council to overlook imbalances in representation within instantiations of the PDP. Imbalances in participation are also able to affect the decision-making processes of input received by PDP Teams. For example, if only one short not-easy-to-understand public comment in English was received from a Somali (whose first language is not English and who struggled to express her thoughts in English), but 15 long and highly structured public comments were received from native English speakers from the USA, a PDP Team that has a majority composition of US and European members may inadvertently give the Somali's comment less weight than the more detailed comments from the US.

Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

Given the dominance of US and European participants in the GNSO PDPs examined, there is a significant risk that policy development favors the particular environment in which US and European businesses are operating, potentially to the detriment of those operating in less deregulated environments or in developing countries where the markets are not yet able to compete with US and European markets on an equal basis. Given domain name registrations are not bounded by national borders, the demonstrable lack of active participation from regions outside North America and Europe creates the risk that GNSO PDPs may produce recommendations that favor business environments in North America and Europe, instead of encouraging a level playing field for all potential participants in the domain name market.

Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

The stages of the GNSO PDP are publicly available to all and contain multiple mechanisms that enable public input into the process by any person or entity wishing to participate. Publication of all material associated with each instance of the PDP, including PDP Team deliberations—email archives, transcripts of meetings, etc.—add significant transparency to each PDP undertaken.

However, at a more abstract level, the slightly differing grouping of steps in the PDP documented in the ICANN Bylaws and the GNSO Operations Manual (See Section 3.3) does affect the transparency of the process. In fact, it might be more appropriate to describe the policy development mechanisms as “slightly foggy”. The fact that the GNSO Policy Development Process web page⁴² contains nine flowcharts—eight of them form a series of stepped events in the PDP—to illustrate the process suggests that the GNSO Council and ICANN staff are aware of this fogginess. Given the complexity of the PDP, the slightly different grouping of PDP steps in the Bylaws, Operations Manual and flowcharts on the GNSO website, and general time constraints on all ICANN stakeholders, the GNSO PDP, as currently documented, could contribute to the lack of diversity in active participation during PDPs. This is

⁴² <http://gns0.icann.org/en/node/31379/>

because members of the community may not be aware how important particular phases of public input are to the development of recommendations by the PDP Team. Instead, only those with an encyclopedic knowledge of the process fully understand when to devote their time to following or actively contributing to the PDP. Less well-informed stakeholders may feel out of their depth given the overall complexity of the process and, due to existing constraints on their time, choose not to spend the time engaging in PDPs.

The current GNSO PDP as practiced does not require, at either the Issues Report or PDP Team stages, specific identification of entities that may be most affected by the PDP or experts that may assist the PDP. The Issue Report must describe the impact of the issue proposed for a PDP on the requesting party (Board, GNSO Council, or AC) but does not have to identify the impacts of the issue on other parties. Although it is clear that the Issue Report is meant to be limited in scope, clearly identifying affected parties—not just by constituency or AC, but as needed, perhaps on a more fine-grained basis—could help the GNSO Council, and later the PDP Team, identify specific groups to actively encourage to participate in the process.⁴³

While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

We have seen, in Section 6.3, that there is a significant challenge to ICANN in this area. As we have documented, the PDP has many opportunities for participation and government and public authorities' recommendations are welcome at all those opportunities. We have seen, specifically when governments have significant self-interest in the result, public authorities are perfectly willing to contribute extensively in the confines of the PDP. The recent PDP on IGO-NGO is a good example of that process working as it was designed.

Public policy requires specific knowledge and ICANN's best resource for public policy expertise is in the Governmental Advisory Committee. We have seen the challenge of getting GAC advice early into the PDP in previous sections. However, interviews with GAC members showcased the fact that they are very sensitive to the intersection between DNS operational, market and infrastructure policy and public policy. It is at this intersection where the GAC has intervened and the ICANN Board has carefully considered those interventions.

While this framework of GAC intervention does work, not all are happy with the impact it has on the stakeholder driven PDP. The relationship between the timing of governments' and public authorities' recommendations and the ongoing work of policy development in the GNSO is one of the thorniest issues for the future of the PDP.

⁴³ For example, Final Issue Report: Translation and Transliteration of Contact Information, states that the issue “affects a high percentage of generic TLD (gTLD) registrants (individuals and organizations), registrars, and registries”. However, it does not explicitly state that the issue is particularly relevant to stakeholders who use non-ASCII text – stakeholders very much associated with emerging Internet economies and whom, to date, have not been significant contributors to GNSO policy.

Annex 1: Detailed Methodology

A.1 Approach and data sources

The RFP formulated by the ATRT2 sets out the scope of work for this study to achieve a critical analysis of the effectiveness of the GNSO Policy Development Process as an instrument of bottom-up, multistakeholder policy making.

Part of the required analysis of the PDP process is to identify differences between defined process and actual practice, and a range of participation-based metrics. The RFP foresees that part of the research will be focused on the published archive. A quantitative approach is appropriate to provide metrics on actual participation by region, stakeholder group including the GAC, and identify through examination of the evidence the extent to which all stakeholders participate in PDP.

The RFP also requires this study to identify strengths and weaknesses in the process, the extent to which the process incorporates the views advice and needs of all stakeholders, and evaluate the extent to which the PDP produces sound policy in support of the public interest. The ICC Team took the view that participants in the process would be an invaluable source of opinion and insight into the effectiveness of the PDP, as well as potential areas for improvement.

Therefore, our research had both quantitative and qualitative elements.

A.2 Written documentation – a quantitative analysis

The ICC team identified the following data sources:

- Published documents defining the PDP as a process, including the ICANN bylaws, GNSO PDP manual, GNSO PDP tutorial materials and public records of the discussion for potential changes to the PDP
- Published records relating to specific PDPs. Such records include but are not limited to the PDPs portal web sites where mailing lists, attendance lists, wikis, comment archives and analysis, descriptive and explanatory information are provided. The table at section 5 references to where much of the source material for the quantitative analysis was found.
- ICANN staff were made available to the ICC team, in order to provide clarification on publicly available materials and to help identify records of interest to the ICC team
- General GNSO materials including transcripts, MP3 recordings and the records of GNSO Council meetings were also consulted

The available primary sources are extensive and comprehensive. To assist in a critical analysis of the process, the ICC team developed objective and measurable criteria through which to evaluate the effectiveness of the PDP.

The PDP provides two key methods for participation: working groups and public comment. For the PDP to be capable of fulfilling the promise of bottom-up, multistakeholder policy making, and ICANN's public interest goals, the diversity of stakeholders (by type of stakeholder, geographic region) is relevant, as is gender balance, and any changes over time. To be effective in a fast-changing environment, the PDP should balance timeliness with rigorous examination of the issues – what could the data tell us about the length of the process?

The metrics derived from the quantitative analysis include:

1. Working groups:
 - a. Working group size by issue
 - b. Working group participation by gender
 - c. How many working groups do participants join?
 - d. Working group participation by geographic region, and any changes over time
2. Public comments:
 - a. Individual comments versus organisation comments

- i. On issues reports
 - ii. On initial reports
 - b. Regional distribution of comments
 - i. On issues reports
 - ii. On initial reports
- 3. Elapsed time taken for PDPs
 - a. To initial report
 - b. To final report
 - c. Charter to final report

The data was collected through an analysis of mailing lists, the archives of public comments and through an analysis of the data against other sources of information (Statements of Interest, written comments or sources on external websites). Where possible, each public comment and the demographics of the working groups was categorized via information provided (directly or indirectly) by the participants themselves.

A.3 Opinions of participants – a qualitative approach

There were two sources of opinion data. First, through a structured qualitative questionnaire undertaken by the ICC team. The other source was an online email thread created for the ATRT2 project, and participated in by 7 current and former working group chairs.

A.3.1 Qualitative questionnaire

To supplement our understanding, and as anticipated in the RFP, the ICC team undertook a series of interviews with participants in PDPs.

The number of interviews undertaken was [], or []% of the total number of participants in PDPs. This is [is not] a statistically significant sample. This will be filled in for the final report.

A standardised question set

Although it was important to capture individuals' views, it was also necessary to make meaningful comparisons across the data sample. A standardised questionnaire was devised which asked for opinions on a range of issues highlighted in the RFC, aiming to capture views on the effectiveness of the PDP as a bottom-up multistakeholder instrument of policy making.

The ICC team worked together to draft a question set, so that no one view prevailed in drafting the questions.

Rather than Yes/No answers to opinion questions, a respected methodology for qualitative, opinion-based surveys (the Likert Scale) was used. This offers interviewees a range of potential answers from Strongly Agree, Agree, Don't feel strongly either way, Disagree, Strongly Disagree, and Not applicable/I don't have enough information to judge.

To avoid potential bias in the data sample, the ICC team compiled a list of four potential interviewees ensuring geographic and stakeholder diversity, and gender balance.

Challenges and mitigations

There were a number of challenges in this project. First, the ICC team was appointed during the holiday season in the Northern Hemisphere. Many of the potential interviewees were either on holiday or just returned from holiday during that period. It was not until early September that interviews began. Despite several reminders, only [this will be filled in for the final report] interviews took place. The strict deadline for production of the ATRT2 draft final report, and time needed for translation imposed a hard stop-date on data collection and writing up. This effectively reduced the active window to little over 3 weeks.

Given the ATRT2 requirements for an evidence based approach to understanding the PDP's effectiveness in all its phases, necessitated a long questionnaire. While the ICC team worked to reduce the number of questions, the overall length of interviews (depending on length of responses) was between 30 to 100 minutes.

The length of the questionnaire and complexity of the subject matter gave rise to another potential challenge: for non-native English speakers, to conduct such a survey by telephone, without sight of the questions, may present challenges in understanding the questions, and formulating answers. To overcome this, we made the survey available online and invited users to participate via the online form if more convenient for them.

Another potential cause of low uptake may have been “volunteer fatigue” identified in other parts of the ICANN community, in that a relatively small group of individuals is targeted for many interventions, including research interviews.

The questions

Time constraints meant that the question set for the questionnaire needed to be devised quickly, and it was not possible to run extensive tests or consult with the ATRT2 team on the question set. That said, the majority of the questions appeared to work well in practice. A few were identified by participants or the ICC team as potentially ambiguous, asking a single opinion on two or more factors, leading or otherwise problematic. These include questions 3.9, 3.11, and 3.24. To mitigate these issues, the answers to those questions are treated with caution, and not relied on in any of the key findings.

A.3.2 Working group chairs

Review of an email thread involving seven (7) former and current Working Group Chairs. The email thread was initiated by the ATRT2, and is published on the ATRT2 email archive.

The thread was analysed for demographics, and number of responses per participant. Issues highlighted were identified and clustered under broad headings.

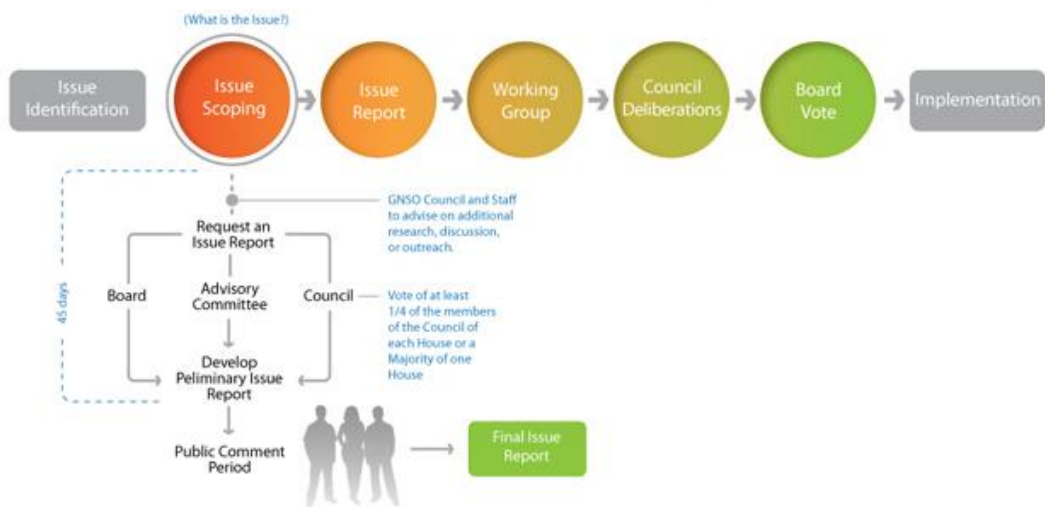
We also used this thread as a means to identify issues of interest to participants who, by their chairing a working group, were especially knowledgeable and interested in the PDP.

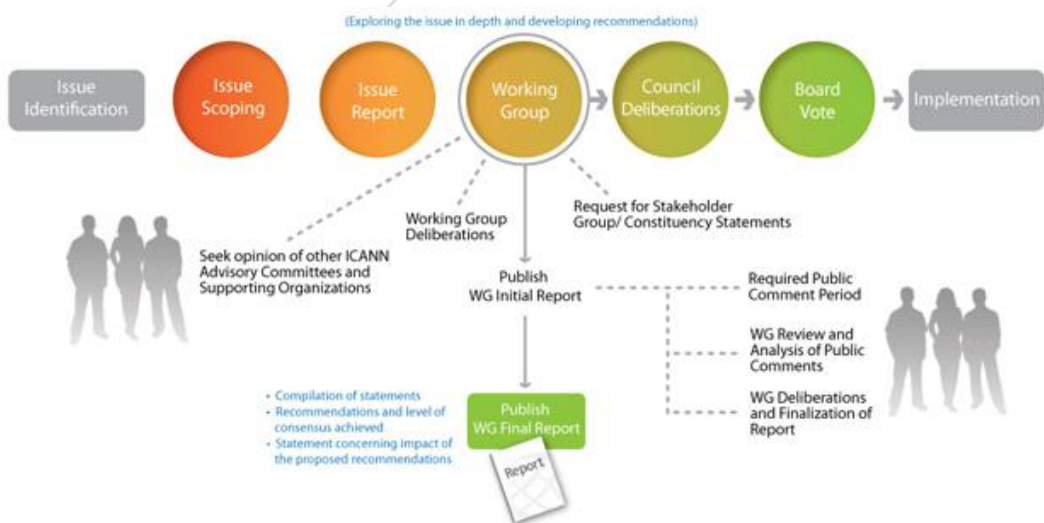
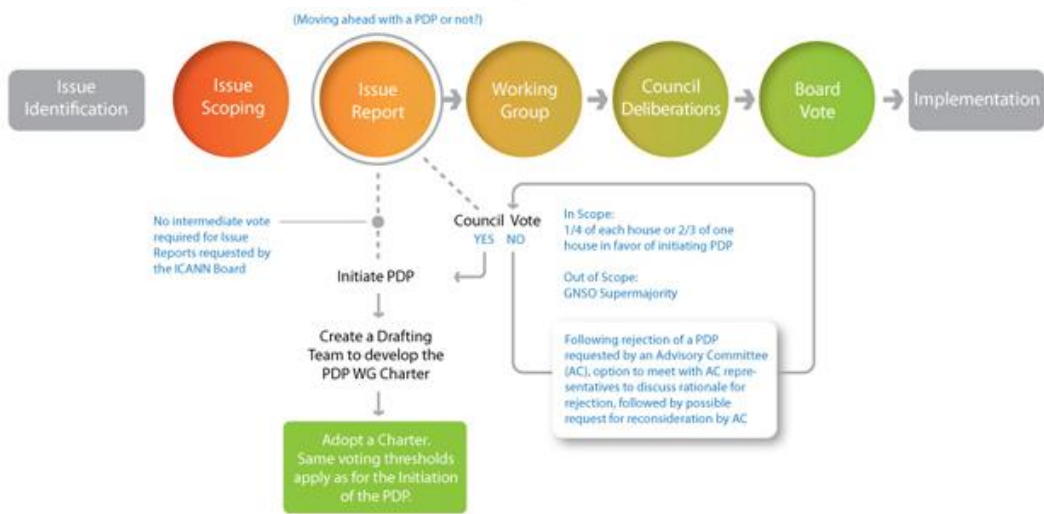
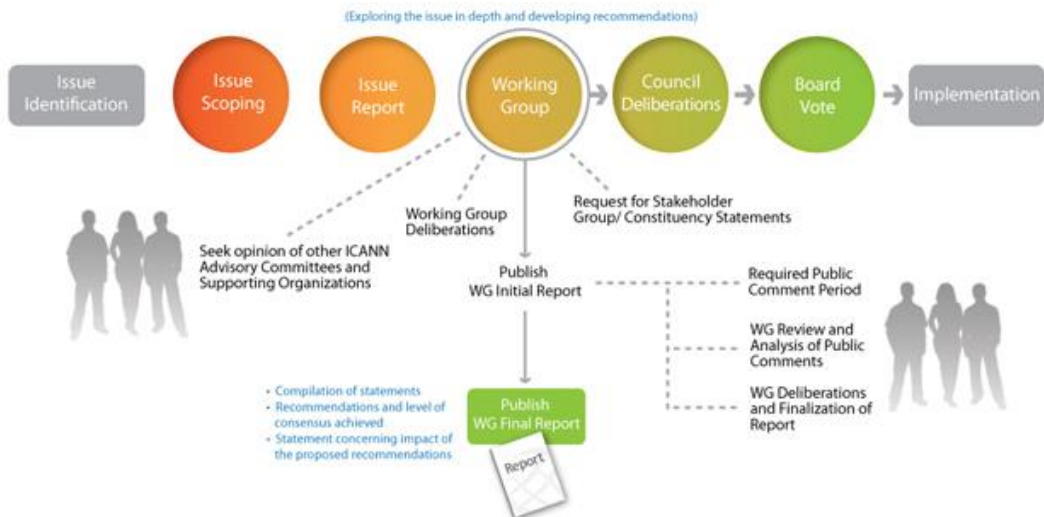
A.4 Managing conflicts of interest

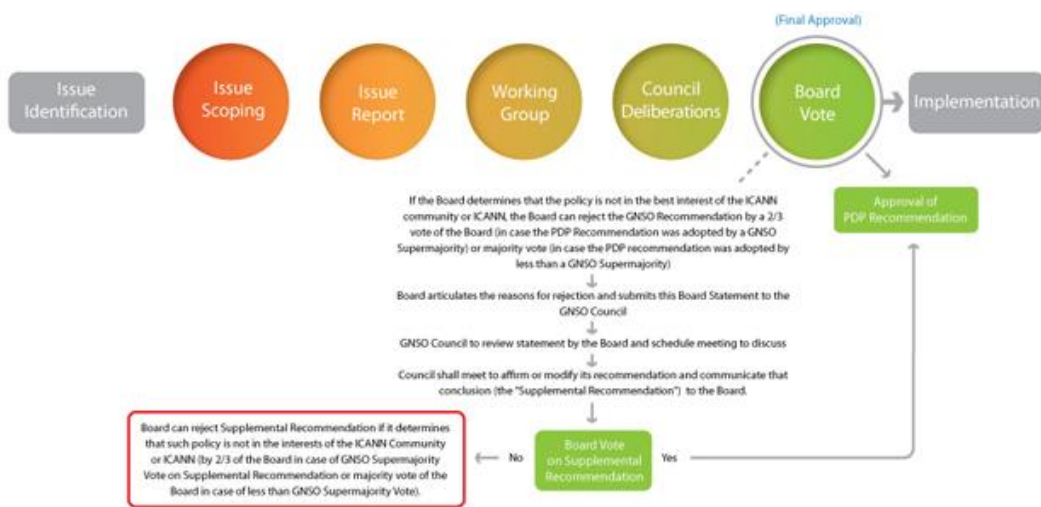
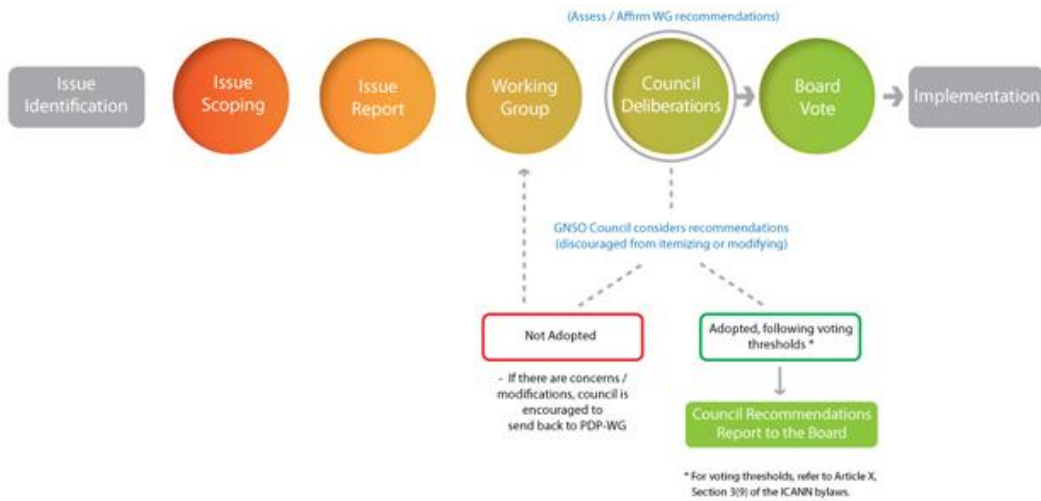
The ICC Team is comprised of “insiders” to the ICANN process. This brings numerous advantages particularly on a project with tight timeframes. The Team put in place a robust system for the management of any conflicts of interest. Conflicts of interest were proactively declared by Team members, and details passed on to the Chair of the ATRT. Where conflicts were identified for a particular individual, that individual stepped out of the relevant work, and passed it on to colleagues.

One of the ICC Team also serves as Chair of a GNSO Constituency. Having declared the interest, that individual took no part in the interview process on the qualitative side of the project.

Annex 2: Series of eight flowcharts illustrating the current GNSO PDP







Annex 3: Detailed description of the Who, What, How and When of GNSO PDP steps

What	Who	How	When	Outcome
1. <i>(If Issue Report request is being considered by GNSO) Hold workshop on issue</i>	GNSO Council	Not specified	Before Issue Report request is submitted	<ul style="list-style-type: none"> • Clearer understanding of the issue • Wider support for requesting Issue Report
2. Request Issue Report	ICANN Board, GNSO Council or AC	Complete request template	As needed	Issue Report request sent to ICANN staff, & if request was issued by Board or an AC, also to GNSO Council
3. Create preliminary Issue Report	ICANN Staff Manager	Write report based on elements a)-f) listed in Section 4 of Bylaws Annex A.	Publish within 45 days of receipt of Issue Report Request (<i>extension may be requested</i>)	Issue Report written
4. Call for public comments on preliminary Issue Report	ICANN Staff Manager	Publish report on ICANN website	Within 45 days of receipt of Issue Report Request (<i>extension may be requested</i>)	Report published. ⁴⁴ Call for public comments announced.
5. Comment on preliminary Issue Report	ICANN community	Post comments on ICANN public comment forum	Open for no less than 30 days after call for comments is posted	All public comments published on ICANN website
6. Summarize & analyze public comments	ICANN Staff manager	Write report. (No officially specified format for report)	Within 30 days of the closing of the public comment forum (<i>extension may be requested</i>)	Report of public comments forwarded to Chair of GNSO Council
7. <i>(If comments received require Issue Report adjustments) Write second, "Final" version of Issue Report</i>	ICANN Staff manager	Write report based on elements a)-f) listed in Section 4 of Bylaws Annex A & feedback received during public comment period	Within 30 days of the closing of the public comment forum (<i>extension may be requested</i>)	Final Issue Report forwarded to Chair of GNSO Council

⁴⁴ ICANN Staff are encouraged to translate Executive Summary of Preliminary Issue Report into all six UN languages, posting translated versions as they become available.

What	Who	How	When	Outcome
8. <i>(If Issue Report was requested by ICANN Board)</i> Decide to initiate a formal PDP	GNSO Council	Note receipt of Final Issue Report and formally initiate PDP	If Final Issue Report was received: <ul style="list-style-type: none"> At least 10 calendar days before upcoming GNSO Council meeting, discuss at that upcoming Council meeting after submission Less than 10 calendar days before upcoming GNSO Council meeting, discuss at Council meeting that follows the upcoming meeting <i>(Discussion may be postponed by no more than one Council meeting)</i> 	PDP is formally initiated
9. <i>(If Issue Report was requested by GNSO Council or AC)</i> Decide to initiate a formal PDP	GNSO Council	A vote of the GNSO Council based on the Council's consideration of the Final Issue Report <ul style="list-style-type: none"> To initiate a PDP within Scope requires an affirmative vote of: <ul style="list-style-type: none"> more than 1/3 of each House, OR more than 2/3 of one House To initiate a PDP Not Within Scope requires an affirmative vote of GNSO Supermajority. That is: <ul style="list-style-type: none"> 2/3 of the Council members of each House, OR 3/4 of one House and a majority of the other House 	If Final Issue Report was received: <ul style="list-style-type: none"> At least 10 calendar days before upcoming GNSO Council meeting, discuss at that upcoming Council meeting after submission Less than 10 calendar days before upcoming GNSO Council meeting, discuss at Council meeting that follows the upcoming meeting <i>(Discussion may be postponed by no more than one Council meeting)</i> 	PDP is formally initiated

What	Who	How	When	Outcome
10. Develop PDP Charter	A group formed at the direction of the GNSO Council	Write Charter based on elements specified in GNSO Working Group Guidelines: <ul style="list-style-type: none"> • Working Group Identification • Mission • Purpose & Deliverables • Formation • Staffing & Organization • Rules of Engagement 	GNSO Council to indicate expected timeframe.	Proposed Charter is presented to Chair of the GNSO Council
11. Approve PDP Charter	GNSO Council	A vote of the GNSO Council based on the Council's consideration of the Final Issue Report <ul style="list-style-type: none"> • To initiate a PDP within Scope requires an affirmative vote of: <ul style="list-style-type: none"> ○ more than 1/3 of each House, OR ○ more than 2/3 of one House • To initiate a PDP Not Within Scope requires an affirmative vote of GNSO Supermajority. That is: <ul style="list-style-type: none"> ○ 2/3 of the Council members of each House, OR ○ 3/4 of one House and a majority of the other House 	If proposed Charter was received: <ul style="list-style-type: none"> • At least 10 calendar days before upcoming GNSO Council meeting, discuss at that upcoming Council meeting after submission • Less than 10 calendar days before upcoming GNSO Council meeting, discuss at Council meeting that follows the upcoming meeting 	PDP Charter is approved

What	Who	How	When	Outcome
12. Form Working Group (<i>preferred</i>) or other designated working method	GNSO Council	<ul style="list-style-type: none"> Form Working Group using designated rules & procedures available in GNSO Operating Rules & Procedures OR Decide on other working method after first identifying specific rules & procedures in ICANN Bylaws or PDP Manual 	Not specified	A “PDP Team”, consisting of either a Working Group or other working method, is created.
13. PDP Team formally solicits statements from each Stakeholder Group and Constituency	PDP Team	No specified method.	The formal solicitation should occur early in the PDP (<i>exact timeframe not specified</i>) ⁴⁵	
14. Stakeholders submit formal statements to PDP Team	Stakeholder Groups and Constituencies	No specified methods	Window for submitting statements is at least 35 days from the moment the PDP Team sends the request	
15. PDP Team solicits input from other SOs & ACs	PDP Team	The PDP Team is to decide how best to contact other SOs and ACs to request their input.	Early in the PDP (<i>exact timeframe not specified</i>)	<p>The method chosen by the PDP Team for soliciting input from other ACs and SOs is included in the Team’s Report.</p> <p>Any input sent by other SOs & ACs in response to this call receive a response from the PDP Team in the form of:</p> <ul style="list-style-type: none"> Direct reference in applicable report OR Embedded reference in other “responsive documentation” Direct response to SO or AC

⁴⁵ The PDP Team can formally solicit statements from Stakeholder Groups and Constituencies more than once during the PDP.

What	Who	How	When	Outcome
16. SOs & ACs submit input to PDP Team	SOs & ACs	Depends on PDP Team's decision in previous step.	Not specified	PDP Team receives input from SOs & ACs, which is to be treated with same due diligence as other input & comment processes
17. PDP Team establishes contact with ICANN departments outside the policy department	PDP Team	Optional, but encouraged step. PDP Team contacts ICANN departments that may have an interest, expertise, or information regarding the implementability of the PDP issue.	Early in the PDP (<i>exact timeframe not specified</i>)	PDP Team establishes communication channels with ICANN departments

What	Who	How	When	Outcome
18. PDP Team develops recommendations on the issue that is the subject the PDP	PDP Team	<ul style="list-style-type: none"> • Dependent on PDP Charter and working method chosen for PDP Team (Working Group or other method). • ICANN Staff Manager to coordinate with Chair(s) of PDP Team to enable the Team to carry out its work. 	Not specified	<p>The PDP Team can either:</p> <ul style="list-style-type: none"> • Reach the conclusion that no recommendation is necessary, OR • Make recommendations on one or more of the following: <ul style="list-style-type: none"> 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

What	Who	How	When	Outcome
19. Create Initial Report	PDP Team & ICANN Staff	Write Initial Report that includes the following elements: <ul style="list-style-type: none"> • Compilation of Stakeholder Group & Constituency Statements • Compilation of statements received from SOs & ACs • Recommendations on the issue that is the subject of the PDP • Statement of level of consensus regarding the recommendations • Information regarding the members of the PDP Team (attendance records, Statements of Interest, etc.) • Statement on the PDP Team’s discussion on impact of the proposed recommendations (such as economic, competition, operations, privacy & other rights, scalability & feasibility) 	Not specified	Initial Report written
20. Call for public comments on Initial Report	ICANN Staff Manager	Publish report on ICANN website	Not specified	Report published. ⁴⁶ Call for public comments announced.

⁴⁶ ICANN Staff are encouraged to translate Executive Summary of Initial Report into all six UN languages, posting translated versions as they become available.

What	Who	How	When	Outcome
21. Comment on Initial Report	ICANN community	Post comments on ICANN public comment forum	<ul style="list-style-type: none"> Open for no less than 30 days after call for comments is posted. If the public comment period coincides with an ICANN Public meeting, extend the period by 7 days to be a minimum of 37 days. 	All public comments published on ICANN website
22. Summarize & analyze public comments	ICANN Staff manager	Write report (No officially specified format for report)	Within 30 days of the closing of the public comment forum (<i>extension may be requested</i>)	Report of public comments forwarded to PDP Team
23. Prepare Final Report	PDP Team & ICANN Staff Manager	<ul style="list-style-type: none"> Identify & add comments from the public comment period that are appropriate for inclusion in the updated Report. Document how the PDP Team has evaluated & addressed the issues raised during public comment period. If appropriate, update recommendations from Initial Report to respond to feedback received during public comment period. 	Not specified	Final Report written
24. (<i>Optional but recommended</i>) Publish Draft version of Final Report for public comment	ICANN Staff Manager	Following PDP Team's deliberation on whether publishing a draft Final Report can help maximize transparency & accountability, publish report on ICANN website	Not specified	Report published. ⁴⁷ Call for public comments announced.

⁴⁷ ICANN Staff are encouraged to translate Executive Summary of Draft Final Report into all six UN languages, posting translated versions as they become available.

What	Who	How	When	Outcome
25. <i>(If Draft Final Report published for public comment)</i> Comment on Draft Final Report	ICANN community	Post comments on ICANN public comment forum	Not specified	All public comments published on ICANN website
26. <i>(If Draft Final Report published for public comment)</i> Summarize & analyze public comments	ICANN Staff manager	Write report <i>(No officially specified format for report)</i>	Not specified	Report of public comments forwarded to PDP Team
27. Forward Final Report to GNSO Council	Not specified	If a Draft Final Report has been published for public comment, ensure issues raised in comments that comment period are addressed in the Final Report.	Not specified	Final Issue Report forwarded to Chair of GNSO Council
28. <i>(Optional but strongly recommended)</i> Review Final Report	Stakeholder Groups, Constituencies & GNSO Councillors	Not specified	Allow “sufficient time” to review between publication of Final Report & GNSO Council meeting that will formally make a motion to adopt the Final Report	Transparency & accountability goals enhanced

What	Who	How	When	Outcome
29. Deliberate & vote on Final Report recommendations	GNSO Council	<ul style="list-style-type: none"> • Vote on recommendations in the Final Report • Decide if recommendations that did not achieve consensus should be adopted or remanded for further analysis & work • GNSO Council strongly recommended to consider interdependent recommendations as a block • If GNSO Council considers making changes to Report recommendations, it may be more appropriate to return these issues to the PDP Team for further input & follow-up 	No later than the second GNSO Council meeting after the Final Report has been presented to the GNSO Council. <i>(Deliberation may be postponed for no more than 1 GNSO Council meeting)</i>	Final Report recommendations voted on
30. <i>(If recommendations in Final Report have been approved by GNSO Council)</i> Prepare Recommendations Report for the ICANN Board	An individual or group designated by GNSO Council	ICANN Staff to advise report writers of the format requested by the Board	If feasible, Recommendations Report to submitted to the Board before the GNSO Council meeting that follows the Council's adoption of the Final Report	Recommendations Report written
31. <i>(Optional?)</i> Write Staff Report	ICANN Staff	Write report on legal, implementability, financial or other operational concerns related to the PDP recommendations in the Final Report	Not specified	Staff Report written
32. Forward Board Report to the ICANN Board	ICANN Staff manager	The Board Report consists of the Recommendations Report and the Staff Report	Not specified	Board Report forwarded to ICANN Board

What	Who	How	When	Outcome
33. Approve PDP recommendations	ICANN Board	<ul style="list-style-type: none"> Board to adopt PDP recommendations approved by a GNSO Council supermajority, unless a 2/3 vote of Board determines that such policy is not in best interests of ICANN community or ICANN A majority vote of the Board is used to adopt PDP recommendations approved by less than GNSO Council supermajority 	Preferably not later than the second Board meeting after the Board receives the Board Report	PDP recommendations adopted
34. <i>(If some recommendations not adopted)</i> Explain non-adopted recommendations to GNSO Council	ICANN Board	If Board determines recommendation(s) are not in best interest of ICANN community or ICANN, Board must explain its reasons in report submitted to GNSO Council	Not specified	Board Statement forwarded to GNSO Council
35. <i>(If some recommendations not adopted)</i> Discuss Board Statement	ICANN Board & GNSO Council	<ul style="list-style-type: none"> Board to determine how the discussion will take place Council to review Board Statement as soon as feasible after its receipt 	Not specified	ICANN Board & GNSO Council meet to discuss reasons for non-adopted PDP recommendations
36. <i>(If some recommendations not adopted)</i> Forward Supplemental Recommendation to ICANN Board	GNSO Council	Supplemental Recommendation will report whether Council discussion on Board Statement has resulted in Council affirming or modifying its recommendation to the Board	Not specified	Supplemental Recommendations forwarded to ICANN Board (by ICANN Staff manager, presumably)

What	Who	How	When	Outcome
37. <i>(If some recommendations not adopted)</i> Approve PDP Supplemental Recommendation	ICANN Board	<ul style="list-style-type: none"> Board to adopt Supplemental Recommendation approved by a GNSO Council supermajority, unless a 2/3 vote of Board determines that such policy is not in best interests of ICANN community or ICANN A majority vote of the Board is used to adopt Supplemental Recommendation approved by less than GNSO Council supermajority 	Not specified	Supplemental Recommendations adopted
38. <i>(Optional)</i> Establish Implementation Review Team	GNSO Council	Implementation Review Team to be established according to recommendations included in Final Report	Not specified	GNSO Implementation Review Team established to assist with implementation
39. Implement PDP recommendations	ICANN Staff	ICANN Board to authorize ICANN Staff to work with GNSO Council to create an implementation plan	Not specified	PDP recommendations implemented
Other:				
<i>Call for public comments on other PDP related documents such as surveys (not Issue Report or Initial Report)</i>		<ul style="list-style-type: none"> <i>PDP Team to decide on items as they feel it necessary.</i> <i>No approval from the GNSO Council is needed to initiate such additional calls for public comment.</i> 	<i>Open for no less than 21 days after call for comments is posted.</i>	

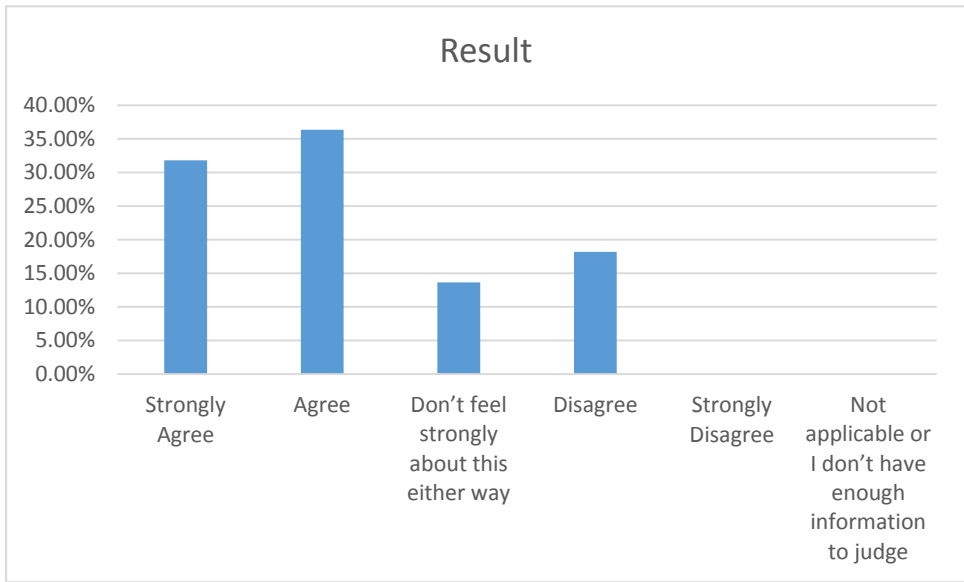
Annex 4: Survey Results by Question

What follows is a complete presentation of the standardized data collected during the survey conducted for the ATRT GNSO PDP research. The methodology for the survey is presented in Annex 4: Detailed Methodology. No correlations appear here, instead these are the raw tabulations for each of the standardized questions.

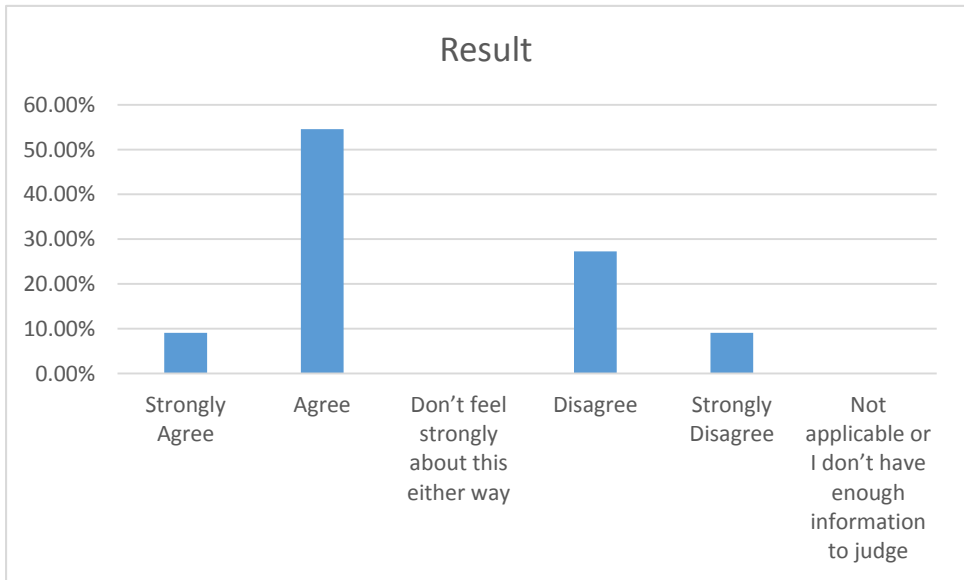
The presentation of this data is in a preliminary form. Further data is being collect after this draft is produced. As a result, this data should be seen as indicative and a work in progress; intended to assist the immediate needs of those responsible for drafting, considering and finalizing the ATRT2 draft section on the GNSO PDP. The statistics provided will almost certainly be updated in the final version. , will not appear in this document but will appear in the final version of the report.

The survey results begin on the following page.

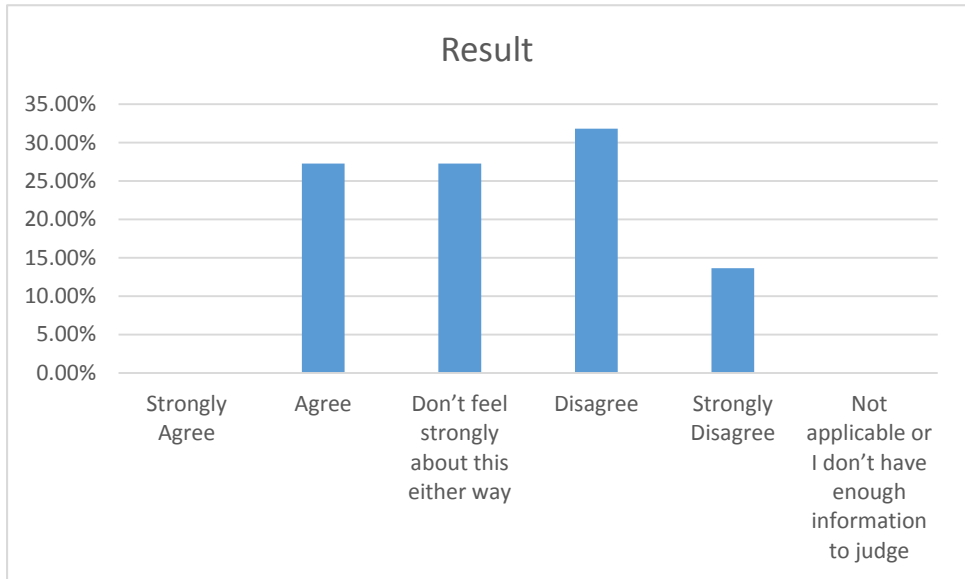
Question 1: The PDP, as currently defined, meets the transparency goals and requirements of ICANN processes.



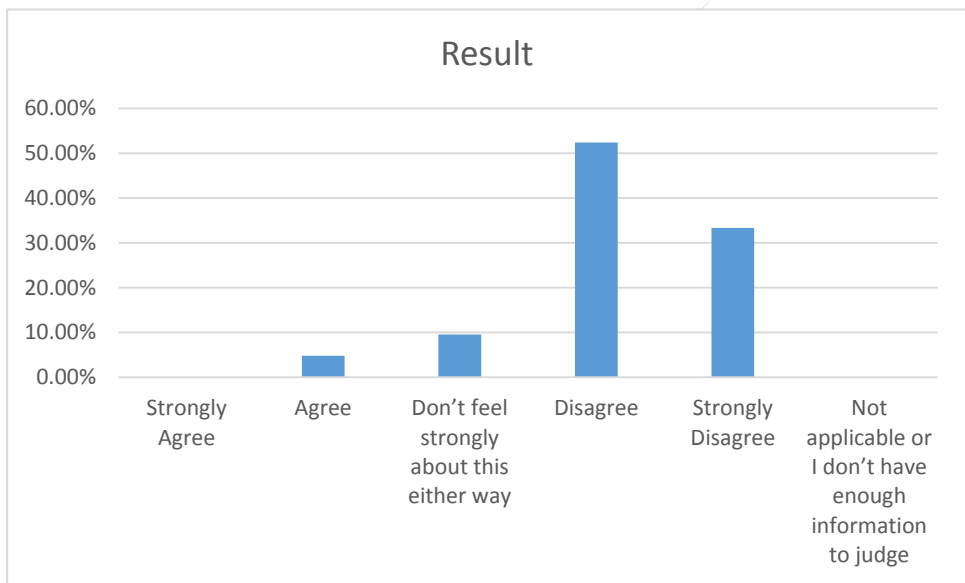
Question 2: The PDP, as currently defined, develops public policy that has legitimacy in the eyes of all stakeholders for that policy



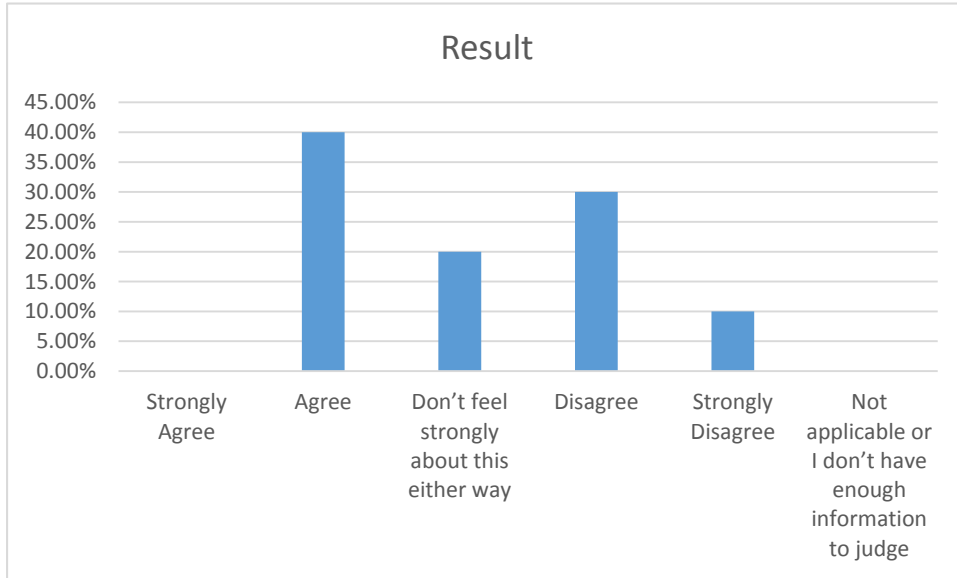
Question 3: In general, the current process ensures a balanced outcome that will take account of the interests and views of all applicable stakeholders including end users.



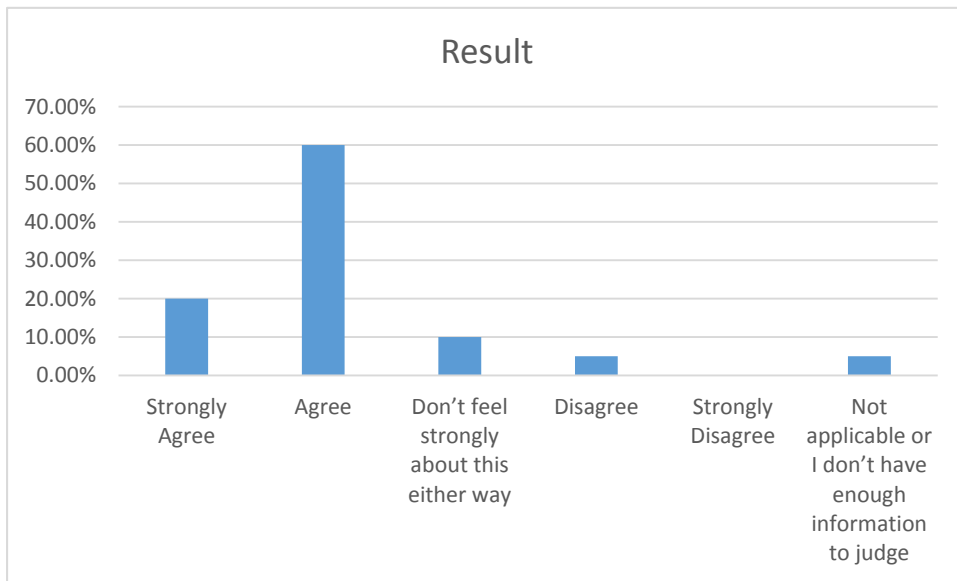
Question 4: The role and timing of GAC engagement in the PDP is adequate and effective.



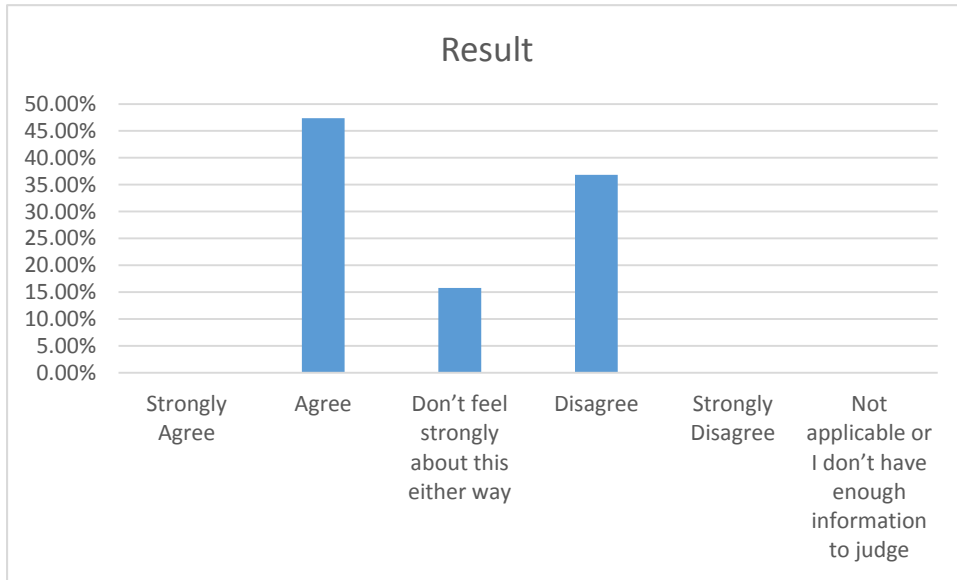
Question 5: The overall timescales for the PDP are sufficient and flexible enough to ensure effective public policy outcomes.



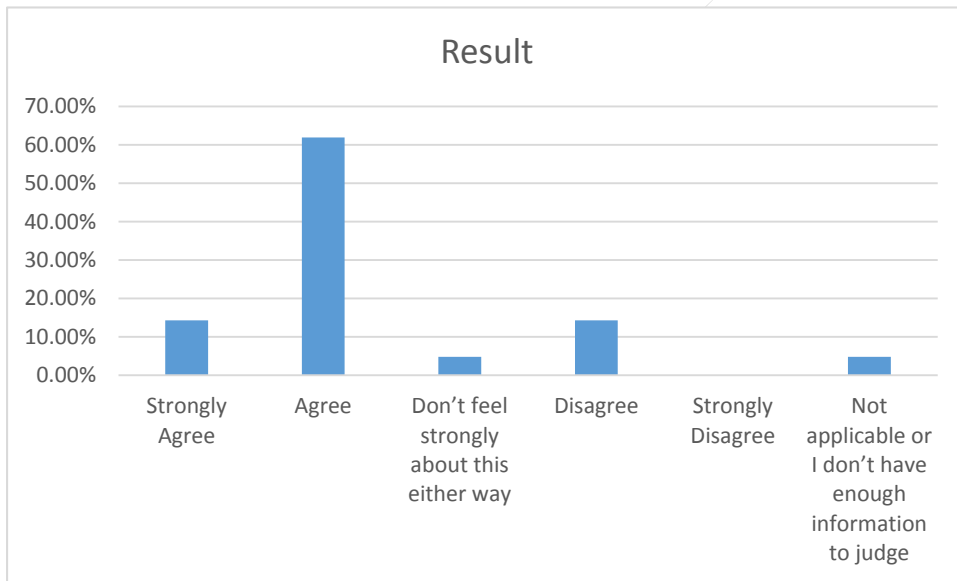
Question 6: The gNSO is encouraged to consider scheduling workshops on substantive issues prior to the initiation of a PDP. I believe this is a positive step in making PDPs more effective.



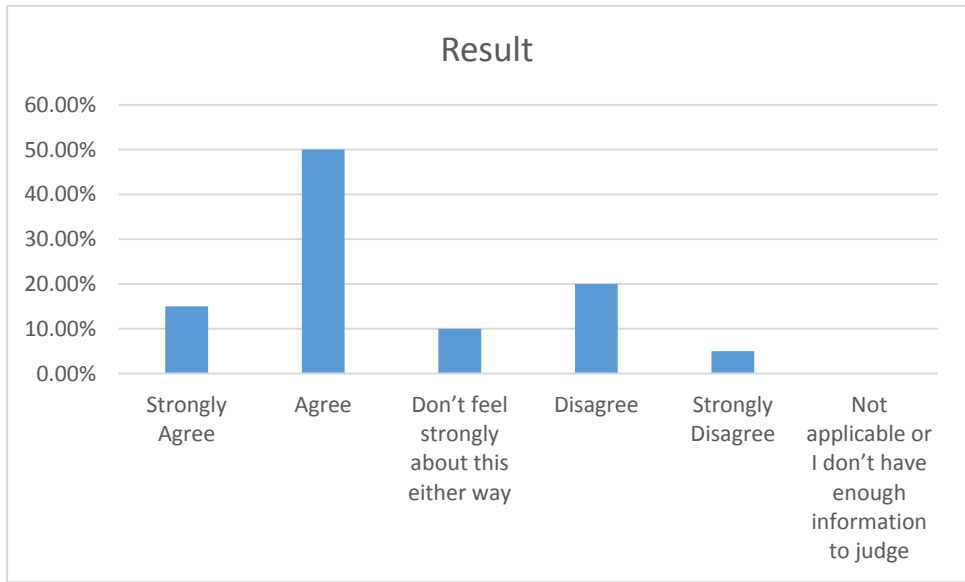
Question 7: Currently the request for an issues report prior to the initiation of a PDP only requires the name of the requestor and the definition of the issue. I believe this is enough for the initiation of an issues report.



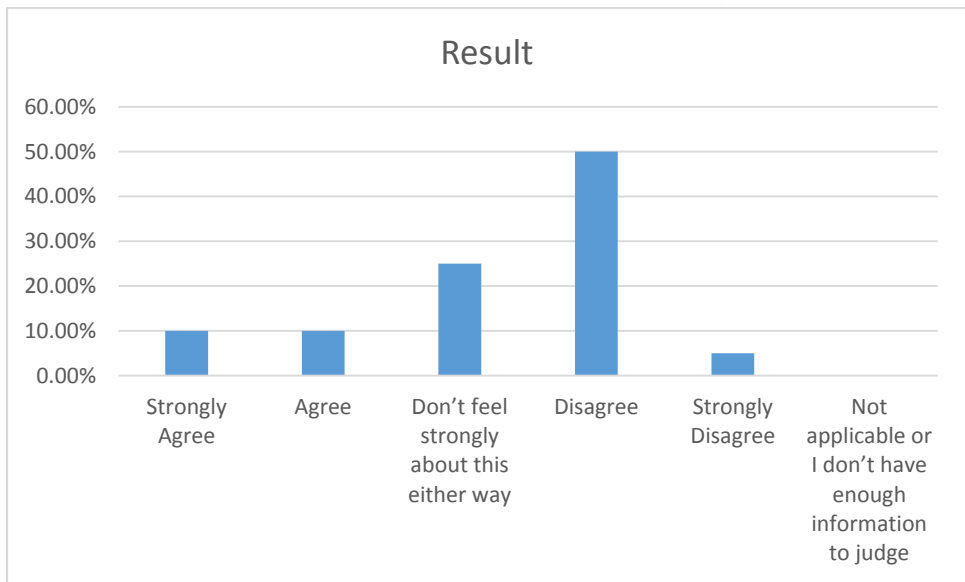
Question 8: The formation and make-up of Working Groups is done fairly and transparently.



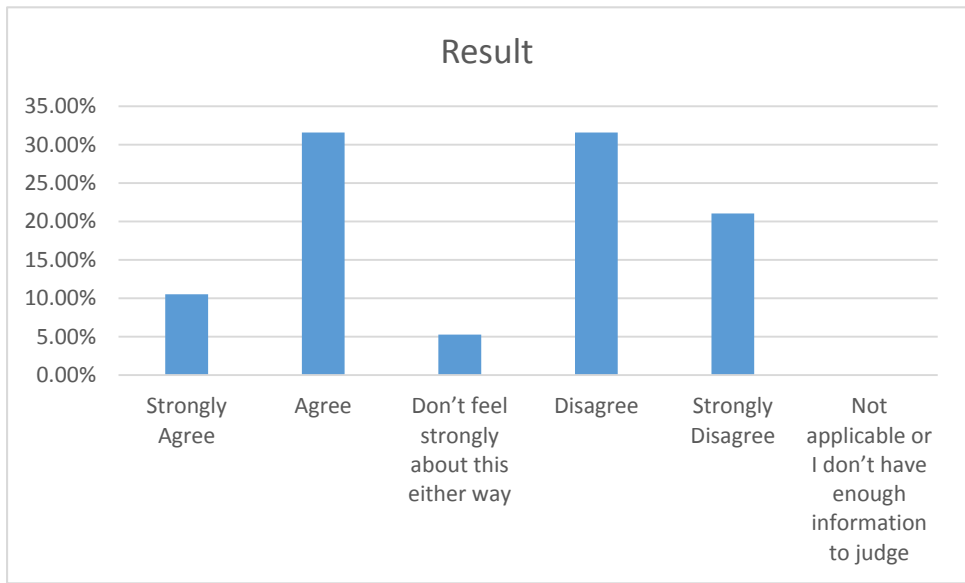
Question 9: The public comments part of the PDP is accountable and transparent.



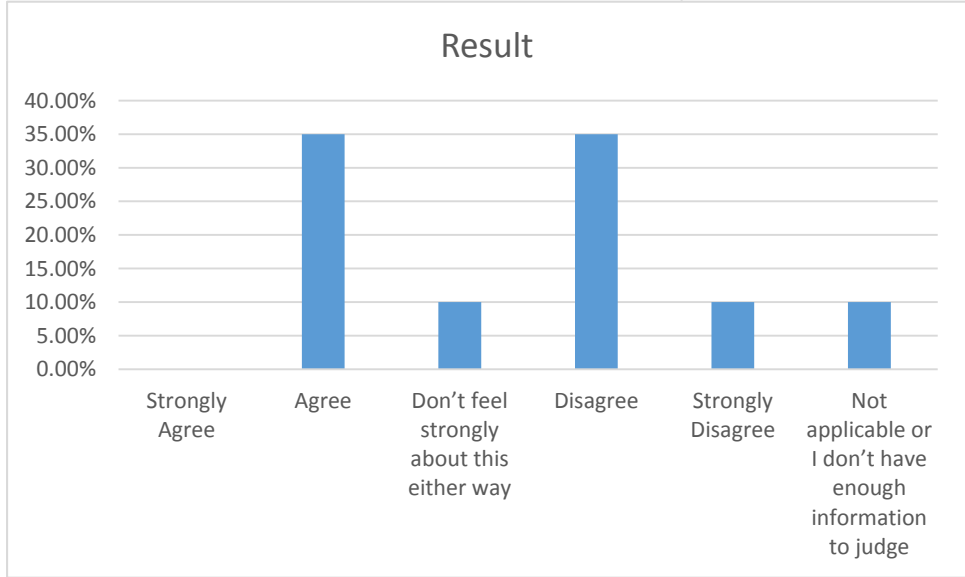
Question 10: In the PDPs I participated in, the public comment process was effective and meaningful to the final result.



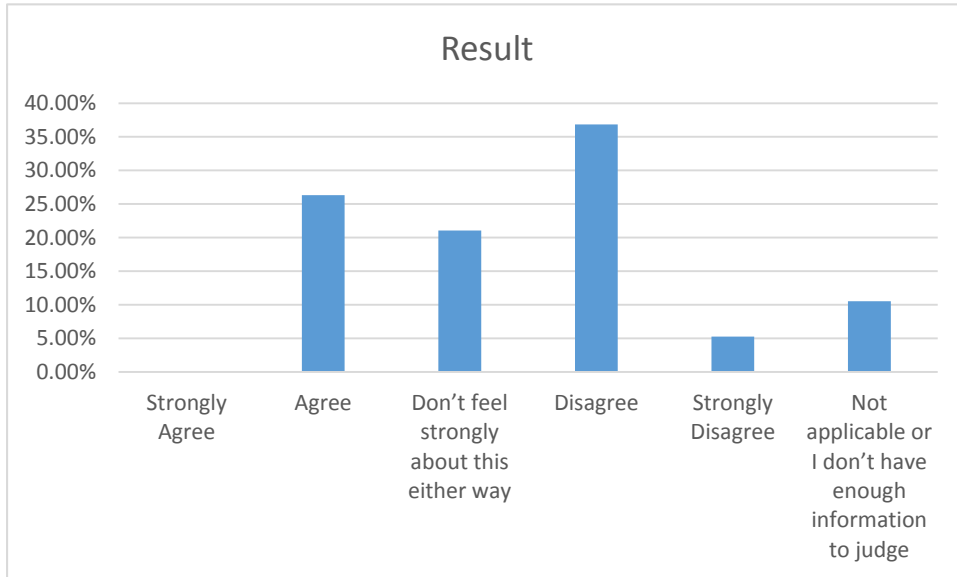
Question 11: In general, the outcomes and decisions taken as a result of the PDPs reflect the public interest and ICANN's accountability to all stakeholders.



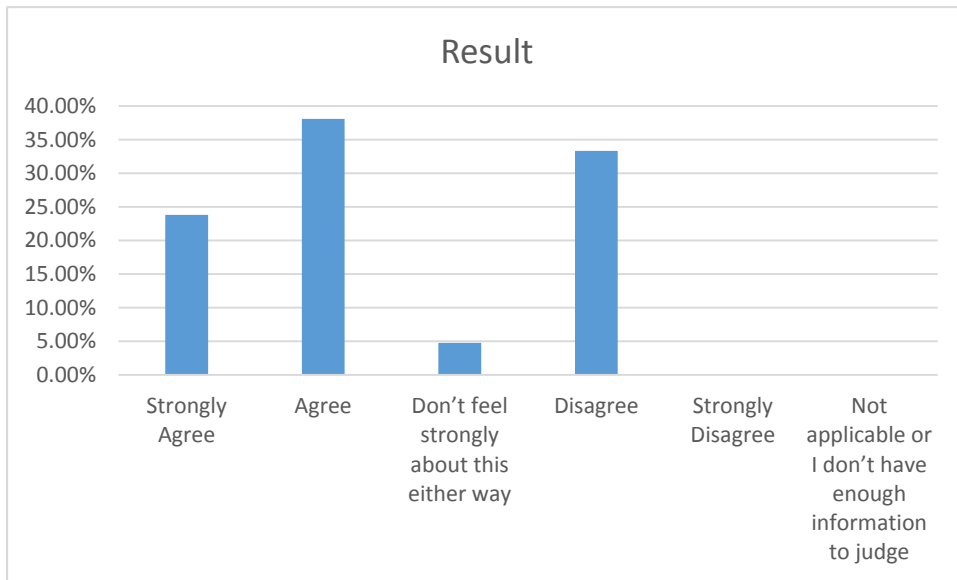
Question 12: The implementation phase of the PDP provides appropriate and effective opportunities for stakeholder comment and consultation.



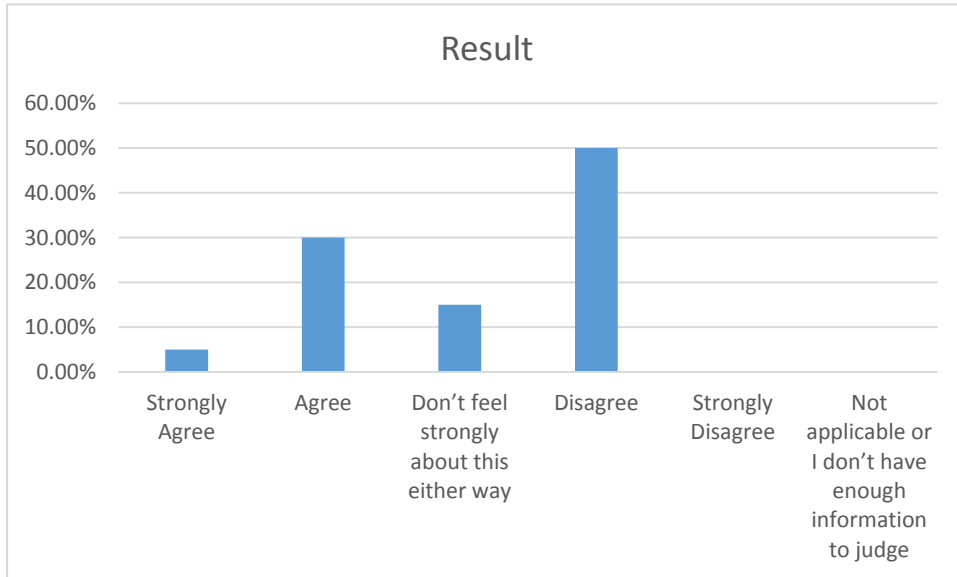
Question 13: Any differences between the PDP as it is defined and the PDP as executed in actual practice are necessary to ensure the public interest.



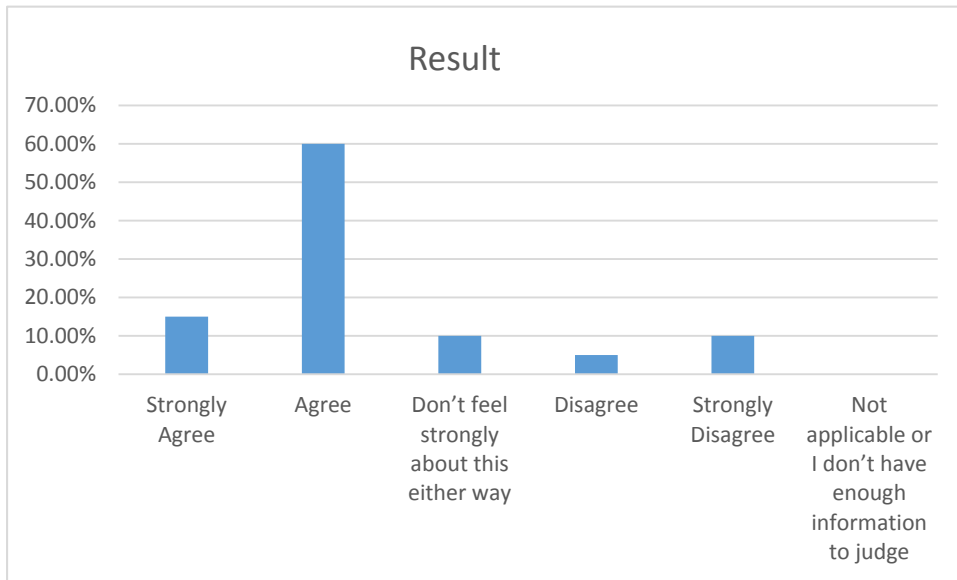
Question 14: The PDPs have been accessible to every stakeholder who wanted to participate.



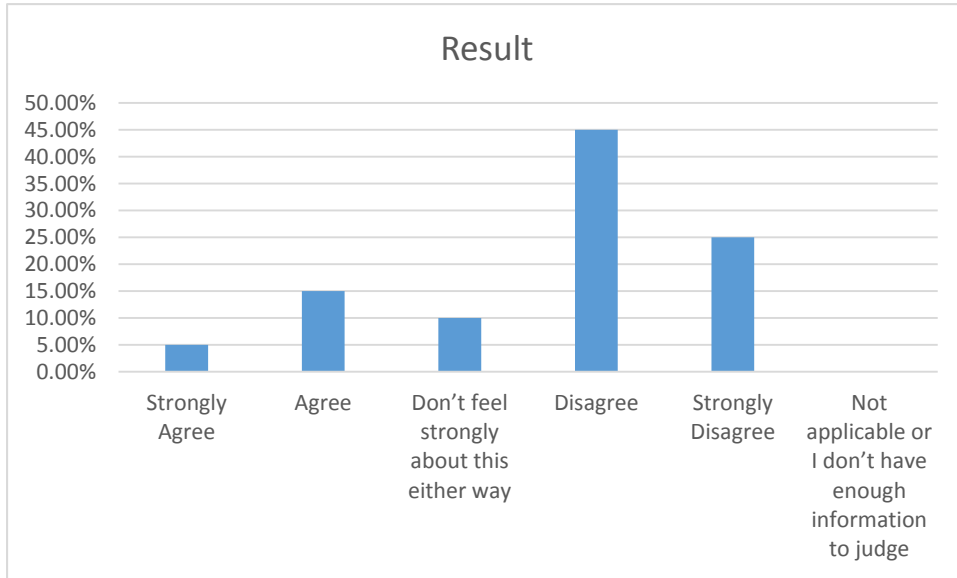
Question 15: The legitimate needs and interests of a diverse set of stakeholders have been reflected in the policy outcomes of the PDPs.



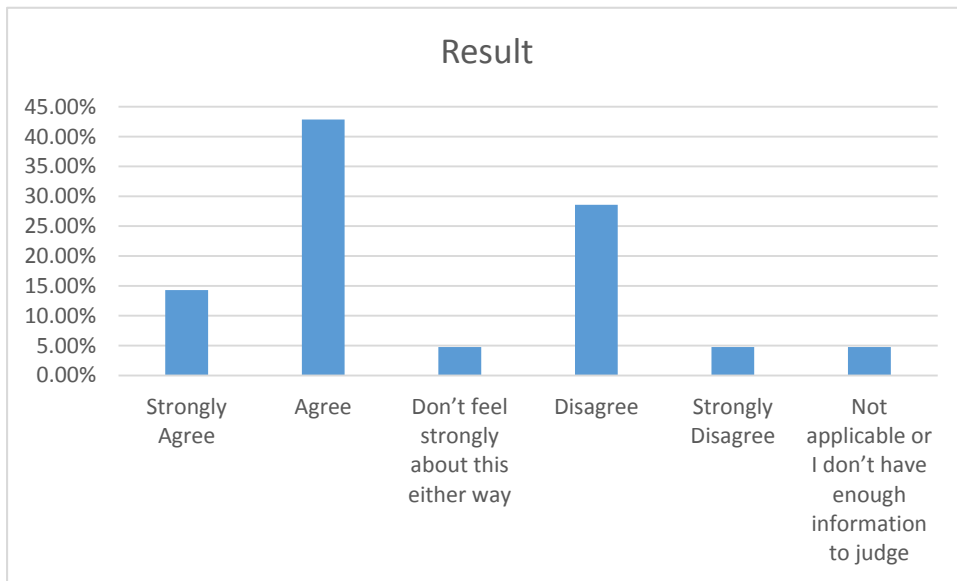
Question 16: I feel my input can influence the final outcome of the PDP.



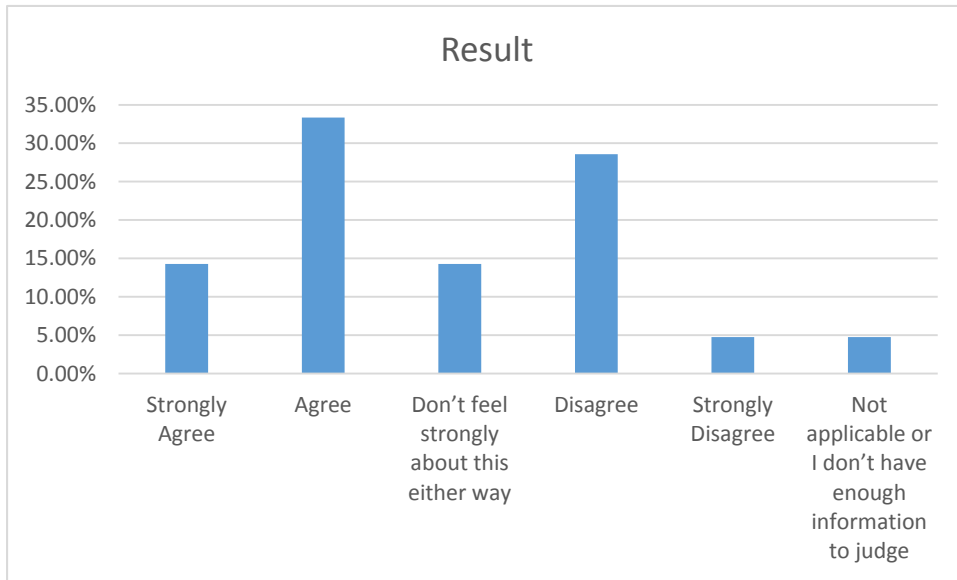
Question 17: There is effective interaction with other SO and ACs to ensure that effective policy outcomes from the PDP process.



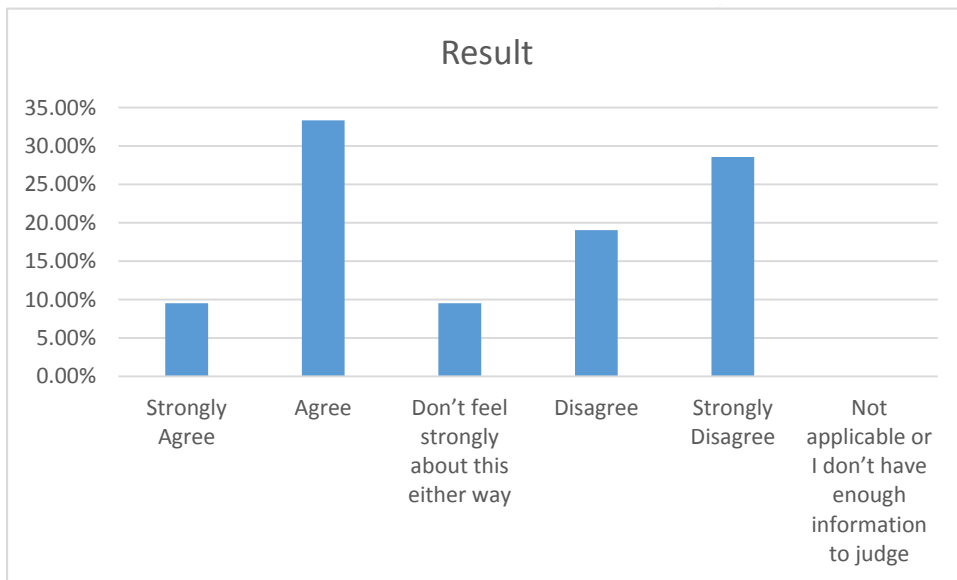
Question 18: The role of staff in the PDP was clear and transparent.



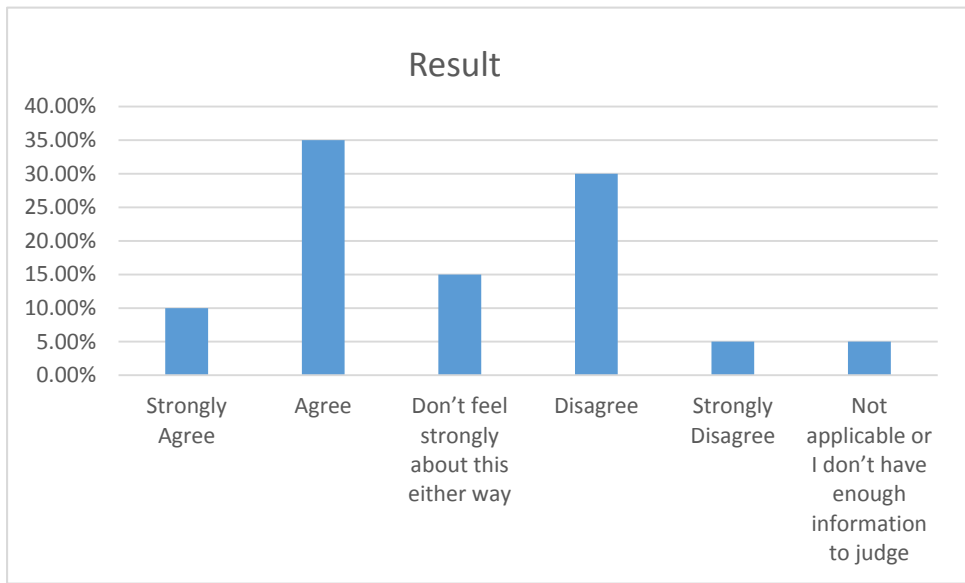
Question 19: The resources provided by ICANN to support the PDP were sufficient and timely.



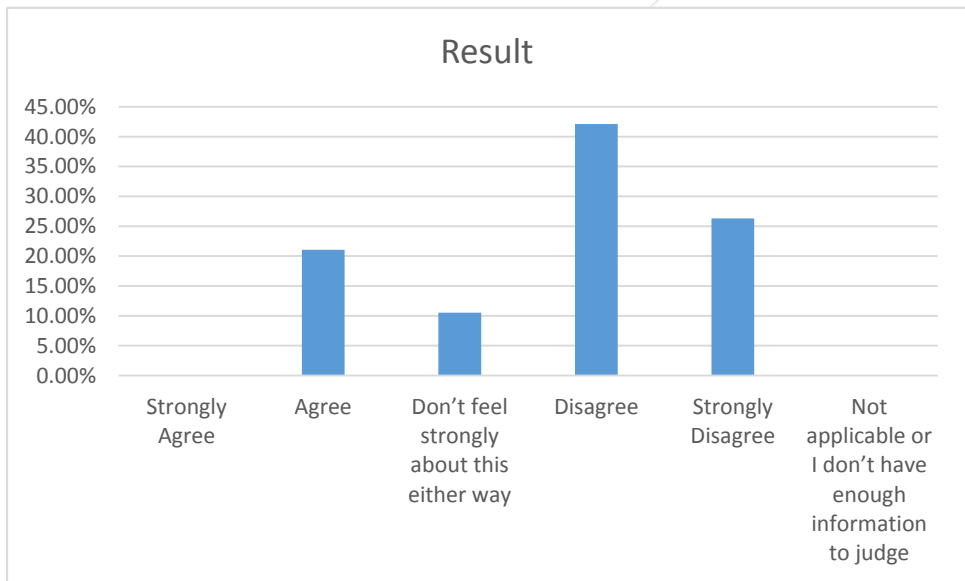
Question 20: Language barriers were not a problem in getting work done or in conducting the discussions.



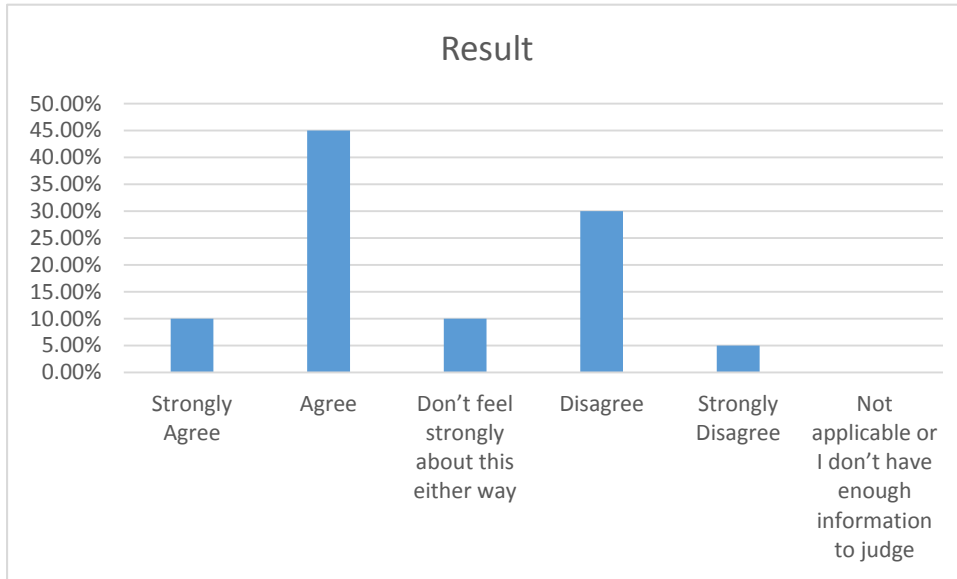
Question 21: The PDP Team is encouraged to establish communications, in the very early stages of a PDP, with people that may have an interest, expertise or helpful information. This worked effectively in the PDPs I participated in.



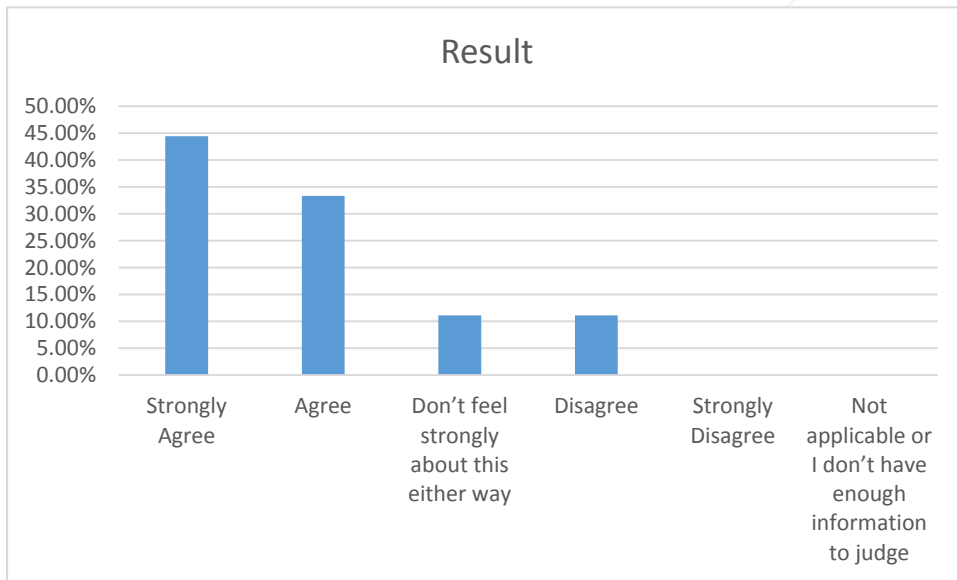
Question 22: There was effective participation from other Supporting Organizations or Advisory Councils.



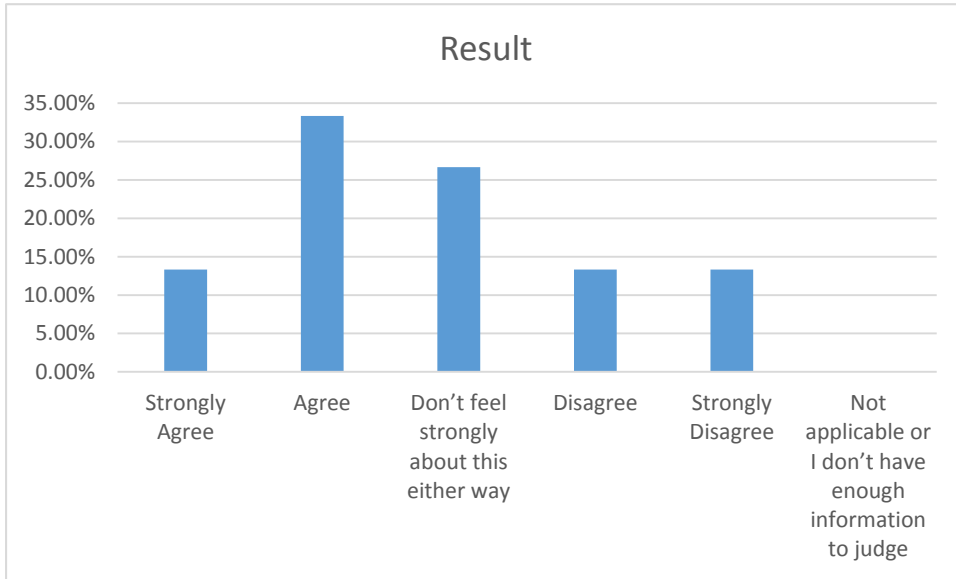
Question 23: Participation from all parties was valued and encouraged.



Question 24: "Insiders" have a particular advantage in the PDP.



Question 25: Working group dynamics helped us get good results in the PDP I participated in.



Question 26: We managed to build consensus even with diverse points of views and stakeholder needs in the PDPs I participated.

