



**Comment on Policy &
Implementation Working
Group Initial
Recommendations**

Status: FINAL

Version: 2

16-Mar-2015

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment

The BC supports the initial report of the Initial Recommendations Report of the GNSO Policy & Implementation Working Group.

The BC has been consistent in the past with its support for proving clear, certain, predictable principles in order to distinguish policy development from policy implementation whilst ensuring appropriate community participation and oversight.

In the BC's earlier comment on Policy vs. Implementation (Version 4, 5-Mar-2013), the BC stated its positions.¹ Following are observations based upon the BC's earlier comment on this issue in light of the WG's Initial Recommendations Report:

BC comment: Policy vs. Implementation (Version 4, 5-Mar-2013)	Initial Recommendations of the GNSO Policy & Implementation Working Group
"the framework should also provide predictability to all parties: that is, parties should know <i>ex-ante</i> with some amount of certainty whether a particular type of change will be subject to a PDP or some other process, and how they can participate in that process and how a decision will eventually be made"	Addressed by: <ul style="list-style-type: none">• Definitions (Part 3)• Policy & Implementation Principles (Part 4)<ol style="list-style-type: none">A. Overarching PrincipleB. Principles that apply to Policy & ImplementationC. Principles that apply primarily to PolicyD. Principles that apply primarily to implementation

¹ See BC comment on Policy vs Implementation, 5-March-2013, at <http://www.bizconst.org/wp-content/uploads/2014/06/BC-Comment-on-Policy-vs-Implementation-FINAL.pdf> and in the public comment list at <http://forum.icann.org/lists/comments-policy-implementation-31jan13/msg00008.html>

BC comment: Policy vs. Implementation (Version 4, 5-Mar-2013)	Initial Recommendations of the GNSO Policy & Implementation Working Group
a formal approach for rendering “policy advice” by the GNSO	Addressed by Proposed Additional New GNSO Processes (Part 5), Paragraph 2. “GNSO Guidance Process (GGP)” which is ““Binding guidance” means advice that has a binding force on the ICANN Board to consider the guidance and it can only be rejected by a vote of more than two-thirds (2/3) of the Board, if the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.”
changes related to administrative updates, errors, corrections and clarification of prior obligations should be considered implementation	<p>Addressed by paragraph D, sub-paragraph 1 (c):</p> <p>“ Principles that apply primarily to implementation: Implementation Standards:”</p> <p>“ICANN staff tasked by the Board with the implementation of the approved GNSO Policy recommendations should be able to make transparent changes to the proposed implementation of the policy recommendations into an implementation plan as long as these do not affect the intent of the policy recommendations. Examples of such changes include administrative updates, error corrections and process details.”</p> <p>The BC notes that this section is still under review by the WG and looks forward to an opportunity through possibly an interim report or other mechanism to be able to comment on this section when the WG has made further progress on this item.</p>
rules that impose material new obligations should be considered Policy	<p>This has been address only in part and may require further clarification and clear mention in the work and report of the WG.</p> <p>Under Annex C – Proposed GNSO Input Process, at paragraph 1 GNSO Input Process (GIP) Manual – Introduction, the report touches upon this issue through an indirect exclusionary mention when definition GIP “when a request for GNSO input is received from the ICANN Board or other entity</p>

BC comment: Policy vs. Implementation (Version 4, 5-Mar-2013)	Initial Recommendations of the GNSO Policy & Implementation Working Group
	<p>that does not involve the creation of new obligations for ICANN contracted parties and does not relate to a topic otherwise suitable for a GNSO Policy Development Process or GNSO Guidance Process, for example providing GNSO Input to a public comment forum”.</p> <p>Then again when dealing with “Principles that apply primarily to implementation: Implementation Standards: Limitation of Implementation:” paragraph D, sub-paragraph 2 (a):</p> <p>“There should be a mechanism to flag and address unanticipated outcomes of implementation decisions that may significantly impact the community.” and further in a foot note related to this item (footnote 14): stating: “Some possible examples include but are not limited to: if new obligations are imposed on parties; substantive changes to burdens such as related privacy, accessibility, rights protections, costs, risks, etc. 18 Identified via a process that is expected to be defined by the PI WG.”</p> <p>This however, could be added to or mentioned in “Principles that apply primarily to Policy” and/or “Principles that apply to Policy & Implementation”</p> <p>The BC thus, believes that greater clarity and mention of this element in the principles laid out in the report would be beneficial both in terms of substance any by way of clarity.</p>
<p>“PDP-lite process for policy or implementation” – “more lightweight process that moves more quickly than the PDP process but nevertheless provides predictability, transparency, and accountability in decision-making”</p>	<p>Addressed by both the suggested creation in the report of:</p> <ul style="list-style-type: none"> • GNSO Input Process (GIP) and • GNSO Expedited Policy Development Process <p>And their respective Annexes C & E respectively</p>

The BC is supportive of this initial report, though it notes that the report still appears to raise several questions regarding important issues for the WG to answer. It may be premature at this stage to comment on these questions. The BC looks forward to an interim report where the WG has had the opportunity to make progress in addressing some of these important questions.

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These comments were drafted by Zahid Jamil.

It was approved in accordance with the BC charter.