To the Chairs of the GNSO Policy & Implementation Working Group : Chuck Gomes, J. Scott Evans, Olivier Kouami

Dear Chuck, J. Scott and Olivier,

on behalf of the ISPCP Constituency I'd like to provide you with the following comment to your input request from Dec. 2013. We know that the WG together with several Sub-WGs has already made significant progress in structuring and detailing the complex issue. However, we hope our comments could be of value for the ongoing work.

There may be further comments requested in future depending on the WG status. The ISPCP constituency would be happy to contribute.

1. What guidance do the ICANN core values (Bylaws Article 1, Sec. 2) directly provide with regard to policy development work and policy implementation efforts? (e.g., multi-stakeholder participation).

To our understanding, this article i.a. makes reference on how policy development work (4., 7., 11.) should be worked on. There's 1 hint (8.) on implementation: « …applying documented policies neutrally and objectively, with integrity and fairness."

The WG should discuss whether this covers the requirements satisfactorily.

2. What guidance do other ICANN core values provide that relate indirectly to policy development and policy implementation? (e.g., effective and timely process).

As outlined under the article the core values are expressed in very general terms. As usual in these cases there is room to understand indirect guidance to policy development and policy implementation being associated with some of the terms used – depending on where the reader is coming from.

E.g. core value 9. Elaborates on « acting » which includes « policy making and implementation ».

3. "Questions for Discussion" contained in the Policy versus Implementation Draft Framework prepared by ICANN staff. (See, http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm).

In general agree to the existing separation of policy development (GNSO) and implementation (staff) but see potential for improvements regarding the communication during the implementation phase. Whether a mandatory community implementation review team would be the best solution depends on the various PDP subjects and the parties concerned. Potential benefits of such a model should be investigated by the WG.

4. What lessons can be learned from past experience?

a. What are the consequences of action being considered "policy" vs. "implementation"?

Consequences could be found in the responsibilities allocated (see under 3.).

b. Does it matter if something is "policy" or "implementation"? If so, why?

Maybe regarding resposibilities and legal consequences.

c. Under what circumstances, if any, should the GNSO Council make recommendations or state positions to the Board on matters of policy and implementation as a representative of the GNSO as a whole?

Only in case the GNSO community and their respective Stakeholder Groups and Constituencies have agreed to. Details to be discussed.

d. How do we avoid the current morass of outcome-derived labeling (i.e., I will call this "policy" because I want certain consequences or "handling instructions" to be attached to it?)

Clear definitions are necessary.

e. Can we answer these questions so the definitions of "policy" and "implementation" matter less, if at all?

5. What options are available for policy ("Consensus Policy" or other) and implementation efforts and what are the criteria for determining which should be used?

   a. Are "policy" and "implementation" on a spectrum rather than binary?
   b. What are the "flavors" of policy and what consequences should attach to each "flavor?
   c. What happens if you change those consequences?

6. Who determines the choice of whether something is "policy" or "implementation"?

   a. How is policy set/recommended/adopted and do different paths lead to different "flavors"?
   b. How is the "policy" versus "implementation" issue reviewed and approved?
   c. What happens if reviewing bodies come to a deadlock?

7. What is the process by which this identification, analysis, review and approval work is done?

   a. How are "policy and implementation" issues first identified (before, during and after implementation)?

Before and during

   b. What is the role of the GNSO in implementation?

- Readjustments of policies which appear hardly to implement
- Check against the policies intended to implement

c. In order to maintain the multi-stakeholder process, once policy moves to implementation, how should the community be involved in a way that is meaningful and effective?

e.g. public comment periods after certain milestones t.b.d.

d. Should policy staff be involved through the implementation process to facilitate continuity of the multi-stakeholder process that already occurred?

As long as the expert knowledge related to the policies already worked out is needed policy staff should definitely included.