Staff Paper on the Development of a Framework of

Operating Principles for

Cross Community Working Groups

STATUS OF THIS DOCUMENT

This Staff Paper on the development of a framework of operating principles for cross community working groups is issued by ICANN Staff to the GNSO Council per its request of 10 October 2013 (see resolution 20131010-1). This paper provides a summary of the GNSO work done to date on this project and incorporates feedback received from the ccNSO in order to provide a baseline document for the new Drafting Team that the GNSO Council intends to form, co-chaired with the ccNSO and involving participants from all other interested SOs and ACs.

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I.   Executive Summary

On 10 October 2013 the Council of ICANN's Generic Names Supporting Organization ("GNSO Council") passed a Resolution requesting that ICANN Staff consolidate the set of initial draft principles for cross community working groups originally developed by a GNSO Drafting Team and approved by the GNSO Council in March 2012 with recent feedback received from the ccNSO on the draft principles.

The objective of this Staff Paper is to:

(i)   Provide a brief summary to the GNSO Council on the development of the set of initial draft principles ("Draft Principles");

(ii)   Present a consolidated report of the Draft Principles and the feedback received from the Country Code Names Supporting Organization (ccNSO) in June 2013 ("ccNSO Feedback"); and

(iii)   Identify relevant issues and topics that the new cross community Drafting Team (to be formed after the ICANN meeting in Buenos Aires) may decide to address in its work.

In preparing this Paper, Staff reviewed the work of the original GNSO Drafting Team that created the Draft Principles according to its Charter, the ccNSO Feedback and relevant GNSO Council Resolutions relating to this project. Based on this review, Staff recommends that the new cross community Drafting Team which the GNSO Council intends to form in collaboration with the ccNSO Council and other interested ICANN Supporting Organizations and Advisory Committees ("SO/ACs") be requested to develop proposals and recommendations relating to the Issues & Questions raised by the ccNSO and described in Section III of this Paper. Staff further recommends that the new Drafting Team also consider, in light of its proposals and recommendations, whether or not the original Draft Principles need to be further updated and/or how they may be integrated with the new proposals and recommendations. Staff also recommends that the new Drafting Team be requested to provide periodic updates of its work, at a minimum prior, at or following each ICANN meeting, to all of the SO/ACs participating in the new Drafting Team, and that the relevant SO/ACs consider formally reviewing the progress and work of the Drafting Team twelve months after its formation.

II.   Background

On 6 October 2011 the GNSO Council passed a Resolution approving the formation of a Drafting Team ("DT") that would be responsible for "developing a proposed framework under which working groups jointly chartered by other SO/ACs along with the GNSO can effectively function and produce meaningful and timely reports and recommendations on topics that are of interest of such SO/ACs". The GNSO Council also recognized that the DT had been meeting informally prior to the Council's Resolution, and approved a Charter for the DT that would guide its continuing work. The GNSO Council further requested that the DT provide a status report at the ICANN Dakar meeting in October 2012, and a Final Report by the end of that calendar year.

Although the DT was created by the GNSO Council, two members of the At Large Advisory Committee ("ALAC") also participated in the work. The DT completed its work in December 2011 and submitted its Initial Report to the GNSO Council in January 2012. The Report contained a number of draft principles relating to the scope and working processes for cross-community Working Groups ("CWGs"). The GNSO Council approved the proposals made by the DT, and directed that ICANN Staff circulate the Draft Principles to the Chairs of all other SO/ACs for their feedback both on the Draft Principles as well as on "the route forward for community-wide adoption or development of a related set of principles for the operation of Cross-Community Working Groups".

In June 2013, the ccNSO provided the ccNSO Feedback to the GNSO Council. In the ccNSO Feedback, the ccNSO pointed out that some aspects relating to the creation, operation, and decision-making processes for CWGs either required further clarification or the development of additional principles. The ccNSO also noted the existence of past and current CWGs[1], and stated that the need for CWGs will increase given the increasing complexity and scope of issues facing ICANN's SO/ACs. It emphasized that a common framework for CWGs will be effective only if it takes into account divergences in expectations and perceptions among WGs from different SO/ACs as well as the differences in internal practices for WGs in the SO/ACs.

Following receipt of the ccNSO Feedback, the original GNSO DT held a meeting to discuss a possible recommendation to the GNSO Council regarding the most appropriate way forward. The DT's recommendation was for a new cross community drafting team to be formed, consisting of representatives from all interested SO/ACs and co-chaired by the GNSO and the ccNSO. The new drafting team would work on developing an updated set of principles for CWGs taking into account the Draft Principles and ccNSO Feedback. The DT's recommendation was adopted by the GNSO Council in October 2013. In the same motion, the GNSO Council also agreed to appoint GNSO Councilor John

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[1] Current CWGs listed were the Joint DNS Security and Stability Advisory ("DSSA") WG, the Framework of Interpretation ("FoI") WG, and the Joint ccNSO-GNSO IDN WG ("JIG"). Past examples of successful CWGs listed were the IDNC WG (which proposed the ccNSO Fast Track IDN process) and the Joint GAC-ccNSO IDN WG. The ccNSO also noted several examples of WGs or study groups in which it is working with participants from other groups, e.g. the Study Group on the Use of Country Names as TLDs, and the IDN ccPDP WG.

Berard, the current GNSO Council liaison to the ccNSO Council, as the GNSO co-chair for the new Drafting Team.

In early November 2013, the GNSO Council Chair wrote to the Chairs of the other SO/ACs informing them of the GNSO Council's wish to collaborate with them and their communities in developing the updated set of principles and inviting them to participate on the new Drafting Team. The GNSO Council Chair also invited the Chair of the ccNSO to appoint a co-chair for the new Drafting Team. It is currently anticipated that the new Drafting Team will be formed in the immediate weeks following the ICANN meeting in Buenos Aires in November 2013.

III.   The Draft Principles[2] and the ccNSO Feedback[3]

A.   The GNSO Draft Principles

The Draft Principles developed by the GNSO's original DT and approved by the GNSO Council were the following, encompassing the scope and operations of CWGs, with the latter further grouped into formation, execution and outcomes:

(I) Scope of CWGs

(a) Possible Purposes:

(i) To provide information and recommendations to the chartering organizations (and perhaps ultimately the broader ICANN community) in accordance with the charter or directions from the chartering organizations;

(ii) To provide a discussion forum to achieve greater community understanding;

(iii) In any event, consensus policy development must occur using current SO/AC rules.

(b) Relationship to Policy Development Processes (PDPs):

The formation of a CWG may occur either prior to, following, or independent of a PDP to help define issues and concerns, or to provide implementation recommendations or related guidance.

(2) Operation of CWGs:

(a) Formation:

(i) Apply appropriate SO/AC Working Group Guidelines to all CWGs whenever possible;

(ii) All participating SO/ACs should approve a single, joint Charter that defines the rules and procedures for the CWG;

(iii) CWG Charters should include outcomes expected of the CWG and steps to be followed to review outcomes by the chartering organizations.

(b) Execution of CWGs:

(i) CWGs should follow the approved charter and bring concerns back to all chartering organizations for resolution according to their respective processes;

(ii) SOs/ACs should solicit and consider the views of other SOs/ACs;

(iii) CWGs should seek to accommodate diverging views where possible before finalizing positions.

(c) Outcomes of CWGs:

(i) CWGs do not develop policy. CWG recommendations should be considered for possible approval through the appropriate PDP;

(ii) CWGs must communicate final reports and outcomes to chartering organizations for review and action;

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[2] See Annex A.
[3] See Annex B.

(iii) CWGs' output must not be taken as an expression of community consensus, except as it may be endorsed as such by its chartering organizations;

(iv) SOs/ACs should commit to timely review and finalizing of actions to avoid delays.

B.   The ccNSO Feedback

The ccNSO Feedback[4] was divided into several parts. First, it highlighted several considerations that the ccNSO believed required either further clarification or work. These included the following, which are further elaborated on below:

- Clarifying the definition of the scope of the Working Group ("WG") in relation to the remit of participating SO/ACs;

- What should, and, more importantly what should not be included in a WG charter;

- Dealing with decision making by the participating SO/AC's, in particular in the case of a disagreement across participating SO/ACs and/or between the WG and one or more of the participating SO/ACs;

- Closure of the WG; and

- A regular review of the CWG principles.

Secondly, the ccNSO offered the following as reasons for divergent expectations and perceptions when CWG participants are drawn from different SO/ACs:

- They may have different views as to the purposes, scope and expected outcomes of WGs: for example, ccNSO WGs are the general mechanism to organize its activities and they are used for a variety of purposes, ranging from administrative matters to policy related work.

- There is a different activity focus and function for SO/ACs in the general ICANN framework: for example, ccNSO policy development in the strict sense is very limited.

- There may be different intended audiences for each SO/AC WG's output.

- There are differences in the role and function of the ccNSO Council and the GNSO Council vis-à-vis their members and stakeholders or constituents (respectively) as well as for the members and leadership of the other SO/ACs.

- There may be different anticipations as regards the role of support staff.

- There exist different SO/AC internal organizational rules and procedures for charter adoption, WG participation, and voting thresholds: for example, the ccNSO Council appoints its WG members.

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[4] While all the ccNSO feedback was summarized for this Paper, the reader is encouraged to review the original document for the full set of comments: see Annex B.

Thirdly, the ccNSO noted that it runs various different types of WGs, ranging from those it creates itself and to which it appoints liaisons and observers or invites participation from other SO/ACs, to those which it establishes jointly with other SO/ACs, and those that are initiated by the Board (and which can also be joint WGs.) It also outlined the typical life cycle of a ccNSO WG, as follows:

- The definition of the purpose and scope of a WG is first done by the Council or Advisory Committee and is reflected in the WG charter; this includes the definition of the deliverables and a tentative timeline and schedule.

- This is followed by the formation of the WG, resulting in the adoption of the charter, appointment of chairs, members and other participants.

- The internal working practices or operation of a ccNSO WG cover the following areas:

    - ✓ Rules and procedures for the WG

    - ✓ Decision making in the WG by the membership

    - ✓ Defining the role of the WG chair

    - ✓ Rules and procedures for amending the charter

    - ✓ Public consultations

- When it comes to decision-making, the WG reports to the constituting body, which will take a decision/action based on the output of the WG.

- Closure of WG is the next step in the life cycle of the WG.

- Follow-up action and next steps include sharing information, informing the ICANN Board or possibly the formation of a new WG. This is out of scope of the WG itself, but its output could for instance lead to the creation of a follow-up WG.

Finally, combining its observations on the differences, types and life cycles, the ccNSO provided specific comments and suggestions on the following issues that it believed the Draft Principles do not currently address:

I.   *What is a CWG? What is/are the determining factor(s)?*

On this question, the ccNSO's experience to date with several successful cross community working groups (e.g. IDNC WG, FoI WG, DSSA WG and JIG WG) has shown that it is critical that:

- The charter is adopted/supported by the participating SO/ACs, and

- More importantly, the output of the WG has to be adopted/supported by the participating SO/ACs in accordance with their own rules and procedures.

- The topic also needs to have clear cross-community aspects. This implies that a CWG reports to all participating SO/ACs as well as the need for a reconciliation mechanism if not all participating

SO/ACs adopt/endorse/support the output of the WG.

II.   What should be the purpose and scope of CWGs?

Each of the ICANN SOs and ACs has its own remit, not just in terms of whether it can develop policies and the scope of these policies but also for other activities. The Draft Principles address only part of this issue (where they state that the output of a CWG should not supersede the output of policies, nor should a CWG replace a PDP); as such it should therefore be made explicit that the purpose and scope of a CWG should be within the remit of each of the participating SO/ACs.

III.   What should be covered in the charter?

This discussion should take into account that, as the ccNSO's experience with CWGs has shown, rules and procedures for WGs and hence expectations how WG activities are organized differ from one SO/AC to the next, and do not cover the same aspects (such as internal decision making, reporting or the appointment of WG members).

IV.   What should govern decision making by the relevant Councils and Advisory Committees?

Where the Draft Principles seem to assume that all Councils and Advisory Committees will automatically approve/support the output of CWGs, the ccNSO's experience has been that this is not the case; as such supplementary rules to deal with this situation should be included. These rules should include the recognition that a participating SO/AC will not change the output from a WG unilaterally, and provide for a reconciliation mechanism.

V.   What principles will govern the closure of a CWG?

For example, what if a participating SO/AC decides to end its participation in the CWG?

VI.   Under what circumstances and when should a review of the principles be done?

This is an administrative step that may still be necessary on a regular basis in order to maintain the relevance and acceptability of the CWG principles and their associated processes.

The ccNSO concluded its comments by noting that several of the Draft Principles already cover rules and procedures followed by ccNSO WGs, for example, by stating that: (i) the purpose and scope of a CWG may not supersede policy development processes as defined in the ICANN Bylaws; (ii) cross community output must not be taken as an expression of consensus of the participating SO/ACs; and (iii) SO/ACs should commit to timely review and finalizing of actions to avoid delays.

IV.   Conclusions and Next Steps

As the Draft Principles were initially developed within the GNSO, the ccNSO Feedback highlights a number of places that, as work continues, would benefit from input from other SO/ACs who may have different working processes and experiences than the GNSO. The ccNSO Feedback also raises a number of questions that should reasonably be considered by the new DT. Some of these issues are not currently covered by the Draft Principles while others would require further discussion, analysis and recommendations. Staff therefore recommends that:

1. Participation by representatives of other SO/ACs other than the GNSO should be emphasized in the formation of the new DT.

2. The new DT should provide all other SOs/ACs with a summary of the ccNSO Feedback, and request suggestions as to further questions to be considered by the DT.

3. The DT should review all responses received, the Draft Principles and the ccNSO Feedback to determine which are the issues that are new (i.e. not covered by the Draft Principles) and which are either partly covered or not fully addressed, including the specific questions raised by the ccNSO, summarized as Questions I-VI in Section III above and listed under "Aspects for Clarification or Additional Principles" in the ccNSO Feedback (see Annex 2).

4. Following this exercise, the DT may wish to form sub-teams to work on one or more of the issues in each category.

5. The DT should review the specific suggestions made by the ccNSO in developing either updated or new principles for CWGs.

6. The DT should collect, compare and review the similarities and differences among the SO/ACs in terms of their respective remits and guidelines applicable to WGs and other community-based groups (such as study groups).

7. The DT should also review previous CWGs, and consider reasons for their success or lack of it.

8. In view of the lapse of time between the GNSO's initiation of the first Drafting Team and now, it may be useful to require periodic reporting (perhaps at least once at or immediately after a regular ICANN meeting) and a status update from the new DT to all participating SO/ACs.

9. Given the increasing likelihood that new and more complex issues will affect and interest more than a single SO/AC, it would be in the community's interest to have a final set of CWG principles approved and adopted sooner rather than later. Therefore, Staff recommends that a deadline for delivery of a draft report preceding a final report be considered, possibly twelve months after the establishment of the new DT.

10. As the development of CWG principles is a topic that affects multiple constituents and communities within ICANN, Staff further recommends that the DT's draft report be published for public comment prior to its finalization and sent to the respective SO/AC leadership.

ANNEX 1 – THE 2012 GNSO DRAFT PRINCIPLES

Draft Principles for Cross-Community Working Groups (CWGs)

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1) **Scope of CWGs**

   a) *Possible Purposes:*

      i)   To provide information and recommendations to the chartering organizations (and perhaps ultimately the broader ICANN community) in accordance with the charter or directions from the chartering organizations.

      ii) To provide a discussion forum to achieve greater community understanding.

      iii) In any event, consensus policy development must occur using current Supporting Organization (SO) and Advisory Committee (AC) rules.

   b) *Relationship to Policy Development Processes (PDPs):*

      The formation of a CWG may occur either prior to, following, or independent of a PDP to help define issues and concerns, or to provide implementation recommendations or related guidance.

2) **Operations of CWGs**

   a) *Formation of CWGs:*

      i)   Apply appropriate SO/AC WG Guidelines to all CWGs whenever possible.

      ii) All participating SOs/ACs should approve a single, joint Charter that defines the rules and procedures for the CWG.

      iii) CWG Charters should include outcomes expected of the CWG and steps to be followed to review outcomes by chartering SOs and ACs.

   b) *Execution of CWGs*

      i)   CWGs should follow the approved charter and bring concerns back to all chartering organizations for resolution according to their respective processes.

      ii) SOs/ACs should solicit and consider the views of other SOs/ACs.

      iii) CWGs should seek to accommodate diverging views where possible before finalizing positions.

   c) *Outcomes of CWGs:*

      i)   CWGs do not develop policy. CWG recommendations should be considered for possible approval through the appropriate PDP.

      ii) CWGs must communicate final reports and outcomes to chartering organizations for review and action

      iii) CWGs' output must not be taken as an expression of community consensus, except as it may be endorsed as such by its chartering organizations.

      iv) SOs/ACs should commit to timely review and finalizing of actions to avoid delays.

ANNEX 2 – THE ccNSO FEEDBACK

ccNSO Comments and Suggestions on GNSO Draft Principles on Cross Community WG's

Introduction and Summary

The GNSO has tentatively adopted cross community WG principles at its meeting in Costa Rica. It is now seeking input and feedback from the ccNSO. The ccNSO Council acknowledges the usefulness of principles or guidelines. The Council also acknowledge that these principles or guidelines should be at a high-level. However, based on the ccNSO experiences and practices with regard to cross-community working groups to date, some aspects relating to the creation, operation and decision-making of cross-community working groups need further clarification or need to captured in additional principles, in particular:

- The definition of the scope of the working group in relation to the remit of participating SO's and AC's should be clarified.

- What should, and, more importantly what should not be included in a charter

- Decision making by the participating SO's and AC's, in particular in case of disagreement across participating SO's and AC's and/or between WG and (one of the) participating SO's or AC's.

- Closure of the WG

- Regular review of the principles

Framework for Analysis.

As a result of the increased complexity and cross community nature of the issues facing the SO's and AC's, it can be expected that the need for cross-community working groups will increase. General agreed upon principles will facilitate the creation and functioning of these working groups. However, taking into account the divergences in expectations and perceptions of working groups and the different internal practices relating to working groups, a common framework for cross community working groups will only add value if it takes these experiences and differences into account.

(A) ccNSO cross community working groups

The ccNSO has initiated and participated in several cross community working groups. Some of these working groups have been more successful then others. Currently the ccNSO and ccTLD community are engaged in following cross community WG:

- Framework of Interpretation WG
- DSSA WG
- Joint ccNSO-GNSO IDN WG (JIG WG)

Former, successful cross-community working groups include:

- IDNC WG (responsible for proposing the IDN ccTLD Fast Track methodology) and
- Joint GAC-ccNSO IDN WG.

The ccNSO has also initiated some working or study groups with participants from other SO's and AC's, which are still active:

- Study Group on Use of country names as TLD's,
- IDN ccPDP Working group (1).

(B) Different expectations and perceptions

Experience has shown that the success of cross community working group is determined by matching differences in expectations and perceptions across the participating SO's and AC's regarding purpose, function and working methods of cross-community working groups. Major driving factors for these differences are:

- Purpose, scope and expected outcome: For the ccNSO working groups are the general mechanism to organize its activities and they are used for a variety of purposes, ranging from administrative matters to policy related work.
- Main focus of activities and function of SO or AC in the general ICANN framework: For the ccNSO policy development in the strict sense is very limited.
- Related to the previous point is who is the intended audience of the output. The output of ccNSO WG is aimed at different audiences, ranging from the ccNSO meetings attendants to the ICANN Board of Directors
- Role and function of the ccNSO Council vis-à-vis membership of the ccNSO and that of the GNSO Council and constituencies in the GNSO, and member and leadership of the other SO's and AC's.
- The anticipated role of support staff.
- SO and AC internal organizational rules and procedures: Each of the SO and AC have their own rules and procedures to adopt charters, appoint members to working groups and voting. The ccNSO council appoints members to WG.

(C) Typology of Working groups

From a ccNSO perspective Woking Groups in which non-ccTLD managers are participating can be categorised as:

1. ccNSO established working group, with invited observers or liaisons. Example: Delegation and Re-delegation Working Group, IDN ccPDP WG 1.

2. ccNSO created Working Group with participation of other SO and/or AC's on an invitation basis. Example: Framework of Interpretation Working Group,

3. Joint Working Groups: ccNSO and one or more SO's or AC's participate in the creation of the Working Group. Examples: DSSA WG, JIG WG.

4. Board appointed, joint WG: Examples: IDNC WG, Joint Board Geographic Regions WG (not included in comparison).

(D) Life cycle of working groups

Each WG will follow the following typical life cycle:

*   Definition of purpose and scope of Working Group by the Council or Advisory Committee (reflected in charter), in accordance with its own rules and procedures. The definition of purpose and scope includes the definition of the deliverables and a tentative timeline and schedule.

*   Formation of the WG, resulting in adoption of charter, appointment of chairs, members and other participants.

*   Internal Working Practices or operation of the WG
    o   Rules and procedures of SO or AC for WG
    o   Decision making in WG by WG membership
    o   Definition of role of chair
    o   Rules and procedures for adjustment of charter
    o   Public consultations

*   Decision making processes by the participating SO's and AC's. WG report to the constituting body, which will take a decision/action based on the output of the WG.

*   Closure of WG

*   Follow-up action (Share information, Inform Board, new WG etc.), next steps. This is out of scope of the WG itself, but could for instance lead to creation of a follow-up WG (examples: DRDWG -> FoIWG, ccNSO Geographic Regions WG -> Geographic Regions WG constituted by the Board)

Aspects for Clarification or Additional Principles

Combining the life-cycle model, typology and differences in expectations and perceptions, the draft principles for Cross Community Working Groups's (cWG's) can be reviewed on the basis of the experiences of ccNSO with former and existing joint WG's.

From a ccNSO perspective, the guiding principles for cross community working groups do not cover all aspects. In particular the following main aspects are not included i.e. should be made more explicit:

- What is considered to be a cross community WG? What is/are the determining factor(s)? The draft principles do not address, what is considered to be a cross-community working group. Experience to date has with successful cross community working groups (IDNC WG, FoI WG, DSSA and JIG) shown that it is critical that 1. the charter is adopted/supported by the participating SO's and/or AC's. and more importantly, 2. the output of the WG has to be adopted/supported by the participating SO's and AC's in accordance with their own rules and procedures. Further the topic needs to have clear cross-community aspects. This implies that a cross community WG reports only to all participating SO's and AC's. It also implies the need for a reconciliation mechanism if not all participating SO's and AC's adopt/endorse/support the output of the WG. This should be reflected in the principles.

- Purpose and scope of cross-community WG: Each of the ICANN SO's and AC's has its own remit, not just in terms of whether it can develop policies and scope of these policies but also for other activities. The draft principles for CWG's address only part of this issue (the output of a ccWG should not supersede the output of policies, nor should a CWG replace a PDP). It should therefore be made explicit that the purpose and scope of a ccWG should be within the remit of the ccNSO (and of other other SO's and AC's for that matter).

- What should be covered in the charter? Experience has shown that rules and procedures for working groups and hence the expectations how the activities are organized differ per SO and AC, and do not cover the same aspects (internal decision making, reporting, appointment of membership).

- Decision making by Councils and Advisory Committees. The proposed principles seem to assume that all Councils and Advisory Committees will automatically approve/support the output of ccWG's. Experience has shown this is not the case (see for example the proposed letter from the JIG to the ICANN Board of Directors)   The Principle that supplementary rules to deal with this situation should be included. It should also be included that a participating SO or AC will not change the output from a working group unilaterally, and further a reconciliation mechanism.

- Closure of WG. This is not addressed in the principles. What will happen if one of the participating SO's or AC's ends its participation?

- Review of the principles. Although administrative by nature, review of the principles on a regular basis should therefore be included as a guiding principle in order to maintain the relevancy and acceptability of the Principles and the associated processes.

At the same time it should be noted that some of the proposed principles do cover aspects that are covered in charters of ccWG in which the ccNSO is participating:

- The purpose and scope of a cross community may not be used to supersede policy development processes as defined per ICANN Bylaws.

- Cross community output must not be taken as an expression of consensus of the participating SO's or AC's.

- SOs/ACs should commit to timely review and finalizing of actions to avoid delays.