

Comments on the Westlake Report  
Stephanie Perrin, NCUC/NCSG

Thank you for the opportunity to comment on the draft Westlake report. There is much good work in here, but I believe a lot of work remains to be done prior to releasing a draft report for comments. I would respectfully submit that the GNSO Review working party needs to see the next iteration of this report prior to its release for public comment, because there are a number of issues that need to be rectified. The following brief comments are based on the draft report dated February 9.

P. 10. Second survey on PDPs was not advertised as well as it might have been....not a good sample size. I would have filled it out, did not know.

P. 11. I am admittedly more accustomed to independent review performed by governments, where review is done by officers of Parliament and is quite independent, usually monitored by internal auditors to ensure appropriate distance. However, I must point out that if Westlake was talking to staff and receiving guidance from them on a daily basis, with weekly calls, this is hardly an independent review. I would also note that I recognize 7 of the interviewees as staff (and I may be missing some as I don't recognize all the names, and some more could be in the anonymous interviewees) but even at 7 that is 18% of a very small sample. Staff are terrific resources, but I think this survey should not rely so heavily on staff observations and interventions. Perhaps they could be analysed separately?

p.40-41. The concept of a trained, independent facilitator to lead working groups is an interesting one. However, my experience with the EWG in 2012-13 did not lead me to think that this route is necessarily going to be more fruitful than training the community in leading process, and in respecting diversity and difference of opinion. It is my observation, after two years participating at ICANN, that it would be very appropriate for ICANN to take a serious look at the human resources issues underlying the operation of a successful multi-stakeholder community. The vantage points, economic conditions, and motivations of the stakeholders, and therefore the actual workers on PDPs, are so vastly different that it is a tribute to leadership and to the staff that anything actually gets done at all. However, if ICANN is serious about addressing diversity, language, and gender issues...it needs to look at HR practices (and I mean the behavior, ethics, and deportment of volunteers). They are the ones allegedly doing the work...without minimizing the massive contribution of staff, they must remain the ones doing the work, or this will not be a multi-stakeholder model.

I do not agree with the recommendation on Page 42, to use a paid facilitator when there are conflicting views. The EWG was tasked to solve a very difficult issue, and while I liked the facilitator very much, I think he exemplified how very difficult it is to bring external individuals in to chair such arcane discussions....in fact, he did not chair the meetings, nor did he understand the final report or the dissent. If you wish

to try it, do a pilot, and a very thorough evaluation. The contractor should report to the PDP, not to staff. Start with something that is not too complex.

P.46. Again, my experience comes from government, in a regulatory environment, or with international standards bodies. The threshold that I had to meet with my team, in assessing and taking into account or dispensing with comments appears to be higher than the one at ICANN. Nobody should go to the work of creating thoughtful comments if they are not going to be taken into account in a serious manner. I think a lot more work needs to be done in this area.

p. 50. I appreciated the quote cited about the fact that very little impact assessment on end users is done. I have recommended repeatedly that ICANN needs to do the equivalent of a regulatory impact assessment or RIA on end users and stakeholders who are not necessarily represented in the ICANN community, or who are represented in a global sense by civil society (NCSG and ALAC). This would require independent assessment, which I don't believe has been done.

P. 52. Re the lack of a strategic plan....yes, I find it a bit odd too, but it speaks to the somewhat ad hoc manner in which ICANN has developed.

P.60. In the matter of whether the Board or the Council should veto the work of the PDPs....this needs more work. It is quite possible that the representation on a PDP might be skewed, and not represent the interests of all stakeholders, particularly end users. In this case it might be appropriate for either party to raise fresh issues. Obviously, it would be hoped that these would be raised in the comments phase but sometimes it appears this does not happen. In my view, the comments process is not working as well as it should for a quasi-regulatory process, so until it does, the possibility of sending something back for further review, further comments or study should be on the table.

P.63. It is a fact that there is volunteer burnout. It is a fact that the same people volunteer over and over again for the WGs/PDPs. In my opinion, one of the drivers (and I am serving on four of these at the moment, as well as working on constituency matters and the GNSO) is that it is quite hard to predict which ones will have legs, and hard to stop something once it gets up a head of steam. The workload is crushing, particularly for volunteers whose income sources have nothing whatsoever to do with ICANN or its policy and implementation agenda. This should be a major focus of this review, and I would like to see some recommendations about how this workload could be distributed differently. I have no ideas myself, it seems to me that breaking pdps into clumps usually means the same volunteers (at least in civil society) will be covering all the clumps, possibly in a thinner manner. Similarly, I don't think issues can be parked for years. I will be interested in what you come up with.

P.66. There are definitely gaps in the skill sets of participants at ICANN. Coming from a government/policy/regulatory background, I notice gaps in knowledge of project management, accountability and governance mechanisms, policy development and assessment processes, impact assessment, and certain critical areas of law (eg. Privacy law, human rights). I took the leadership training course, and found it useful, but it was focused on people skills, which In general I applaud,

and perceive as a necessary training area for ICANN stakeholders. However, I also need help with my gaps and lack of technical background. Personally, I would like to take a deep dive course on how the DNS actually works (rather than tire out patient registrars and registry operators who explain things to me.). I took the Meissen school course at my own expense, and found it very useful....but it was a fast look at so many aspects of this complex field of endeavor that I think I would need that course to be three weeks long to answer all my questions. I should note that I have worked in information policy in the Canadian government since 1981, and I am also a doctoral candidate at the University of Toronto Faculty of Information studying ICANN (year 5) so frankly if I don't understand many aspects of these matters, I would venture to suggest that I am not alone. The current discussions on the IANA transition are certainly confirming my belief that many folks have gaps, not just us newcomers. It is a good thing to profess ignorance, in my view, and the prevailing discourse needs to change so that newcomers will not feel irrelevant (or worse, stupid) when they admit that they do not know everything. This is a long-term project in my view, and support should be given to the ICANN academy to develop deeper courses on a variety of material. In the meantime, a gap analysis would be useful.

P.73. I don't think it is helpful to describe the cases described in testimony/allegations as "venal". The fact is, at least among civil society participants, that they are pitted against one another for funding in every field of activity, across the spectrum of development, human rights, free speech and political freedom, women's education...you name it. This has been well documented in my own field (privacy) by Colin Bennett, in his 2009 book *The Privacy Advocates*. If ICANN is truly to become a leader in Internet governance through the multi-stakeholder model, it should recognize this fact, and take steps to remedy the situation through more funding, fair funding models, etc. It is not helpful to pit one group against the other, and when this appears to be happening, significant, transparent efforts should be made to remedy the disagreements, including the scrupulous avoidance of manipulation (or the appearance of manipulation) by other stakeholders who could benefit from discord among the opposition ranks. So far, I don't think the approach that Westlake has taken to obtaining interviews (appears to be the squeaky wheel methodology) or citing allegations in this draft are helpful in this regard.

It would do much to establish trust if the SOI requirements were beefed up. Who pays for volunteers to participate at ICANN? I certainly would have no objection to greater transparency about funding issues regarding participation at ICANN, and I think it will be necessary if there is to be broader outreach to new countries and new groups. I note that some speakers at the ICANN public forum are scrupulous about stating when they are representing the views of a client or stakeholder group, or views they are representing as advice to a client. I regard this as a best practice, but it does not appear to be universal.

With respect to creating new groups and constituencies....it seems more sensible to get the existing groups working together better than to go out looking for more at this time. Returning to funding for civil society....we do have a fair and transparent

system for the limited funds available at the moment, so I am mystified as to where these comments are coming from.

P.88-90. As stated above, I think the SOIs are inadequate. Many stakeholders at ICANN have significant financial interests in outcomes, which are known to and understood by insiders (who may be past or present business associates or competitors) but which are not going to be understood by newcomers, particularly those coming from foreign countries or different backgrounds. In the interests of transparency and ethics, a more comprehensive approach to disclosure is warranted. This would apply to the non-commercial realm as well, and may help guard against the inclusion of civil society actors who are in fact working for government or business. This is not to suggest that governments and business do not work for the benefit of end-users, including for consumer protection, but the transparency of the economic situation of volunteers is important, and individuals who are on salary in a business or government institution are in a different category as volunteers.

P.92. I agree that incumbency is a problem, but the idea of cutting off the “lifers” strikes me as shooting ourselves in the foot. Furthermore, some of the folks who have been around for a long time are the best chairs. As examples, I might select Chuck Gomes, Don Blumenthal and Steve Metalitz, who chair/co-chair PDPs I am on, and who in my view do an absolutely first-rate job of chairing. Lets not move to get rid of veterans until we can be sure that we have well-trained, knowledgeable folks coming up in the ranks. I would note in that context that Graeme Bunton, who co-chairs the PPSAI with Steve Metalitz, is a relative newcomer and is also doing a great job, doubtless assisted by working side by side with his colleagues. This kind of mentoring is essential in my view. The democratic process of selecting chairs appears to be working....and if it is not, lets have a look at improving it and providing for mentoring and “apprenticeship” rather than imposing arbitrary limits. I for one would not be able to manage as many PDPs as a volunteer if the difficult task of chairing were not well managed.

In the recommendation that says constituency travel should be decided by ICANN, to whom individuals would have to prove their contributions would be valuable....how on earth would that be decided? Constituencies should manage their own representation. Don't get ICANN staff involved in this.

P. 99. Over my 30 years in the Canadian government I was involved at the working level (Senior analyst/manager/ director) in many international organizations, either directly or as part of a team where other members represented us more actively. This would include the ITU, COE, GATT, trade negotiations such as FTA and NAFTA, G8 and G20 meetings, and notably in my case the OECD and the International Conference of Data Commissioners. In this context, I find the GAC to be one of the more peculiar committees that I have seen. I am curious as to why ICANN responds the way it has done over the past years, and interested in the GNSO efforts to further systematize the way GAC “advice” is analyzed and acted upon. I would suggest that

it requires further study. I would be grateful if this committee could point me to further reading on the GAC, its evolution and representation, and the background to the strategic approach which the Board has taken in heeding GAC advice.

P. 103. The following quote from the text regarding the recent NCSG elections is, in my view inflammatory. I regard it as inaccurate, and I would request that Westlake Associates change it prior to releasing the draft for comments:

It was widely commented by survey respondents and interviewees that the NCSG has issues that inhibit its effectiveness. Essentially the NCUC, dominated by small or single person groups, is always likely to have the numbers to out-vote NPOC, which represents often larger but fewer NPOs. All four NCSG members recently elected to the GNSO Council have come from the NCUC because it has a far greater number of members than the NPOC, and voting is 'first past the post', rather than a form of proportional representation.

Since I am one of the four elected new NCSG members, I may be taking this paragraph rather personally, but I think Westlake should refer readers to the rules on voting procedure rather than citing a comment as gospel. The tacit assumption appears to be that each constituency only votes for its own members, which I know is not the case. Anyone can examine the voting numbers and see this. NPOC only ran one candidate in this election. Given the geographical distribution of seats (no more than two seats from each region, to the extent possible, and one North American seat is occupied for another year) and the fact that the only NPOC candidate was from North America, as I am, it meant that I was competing with their only candidate. Since all other candidates were assured of a seat because no one ran against them, it might have been prudent for NPOC to have encouraged their folks from other regions to run as well. In any case, I think it is inappropriate to state as fact either that NCUC can always outvote NPOC, or that the weighted voting does not actually work in favour of NPOC (see below). The bottom line remains, members have to volunteer to run, and members have to remember to vote. Hopefully, they will vote for the person they feel will represent them best and work hard for the issues they care about, not just by constituency block. I believe the NCSG voting system does a pretty good job of promoting that outcome at the moment, and would be interested to see facts about how some other system could produce a better outcome.

I would close by saying that I would be delighted to be interviewed, if Westlake wished to enlarge its sample size a bit. I am a relatively new participant at ICANN (two years, 8 meetings) and a new member on council. I don't believe newcomers are well represented in the current sample, which is a pity, because we are less likely to have history which might colour our observations, and we are supposed to be a target group for recruiting and preventing burnout.

Thanks for reading these comments.

Stephanie Perrin

<https://community.icann.org/display/gnsononcomstake/Charter#Charter-4.0VotingProcedures>

## 4.0 Voting Procedures

All NCSG votes will use the weighted voting standards defined in this section, where a Large Organization Member has a vote equivalent to twice the vote of a Small Organization Member and a Small Organization Member has a vote equivalent to twice the vote of an Individual Member.

### 4.1 Nomination Process

The NCSG-EC is responsible for publishing online any open NCSG position and for publishing a description of the position, requirements for the position, and an election schedule for the position.

Any member of the NCSG may nominate any NCSG active member either for the position of an NCSG GNSO Council Representative or for NCSG Chair.

Once nominated, the nominee is responsible for public acceptance of the nomination and for making a public statement that includes:

- Name, declared region of residence, gender and employment;
- Any conflicts of interest;
- Reasons for willingness to take on the tasks of the particular position;
- Qualifications for the position; and
- Statement of availability for the time the position requires.

The nominee's statement may also include any other information that the candidate believes is relevant. The NCSG-EC and NCSG-PC may also require answers to specific questions relating to policy issues.

### 4.2 Voting mechanism

All NCSG votes will be held using an online voting system to be determined, approved and supervised by the NCSG-EC. Membership classification for voting will be based on the official membership list, which must include the category of membership and must be verified before any vote.

### 4.3 Election for NCSG GNSO Council Representatives (size, number, and distribution of votes):

In the discussion below, N refers to the number of seats that need to be elected. Optimally N will equal 3 seats in years with normal rotation. Any number of reasons can cause this number to vary.

- NCSG members classified as "individuals" will be given N votes and must assign 1 vote to each of N candidates.
- NCSG members classified as "small organizations" will be given 2N votes and must assign exactly 2 votes to each of N candidates.
- NCSG members classified as "large organizations" will be given 4N votes and must assign exactly 4 votes to each of N candidates.

### 4.4 Election of NCSG Chair (size and number of votes):

- NCSG members classified as “individuals” will be given 1 vote.
- NCSG members classified as “small organizations” will be given 2 votes.
- NCSG members classified as “large organizations” will be given 4 votes.
- Members must cast all their votes for a single candidate.

#### **4.5 Member Voting Eligibility:**

Any NCSG active Member who has been an active member for at least thirty (30) days before the date of the election is eligible to nominate candidates, vote in NCSG elections, and propose amendments to the NCSG Charter.

## **5.0 Amendments to the NCSG Charter.**

Proposals to amend this charter may be submitted by five (5) percent of the then-current members eligible to vote, based on the weighted voting as defined in section 4.0. Proposals may also be put forward by the NCSG-EC or the ICANN Board of Directors or one of the Board's committees.

Amendments proposed by the NCSG members or the NCSG-EC will only take effect after there has been a membership review, approval by 60% vote of NCSG members using the weighted voting defined in section 4.0 and final review/approval by the ICANN Board of Directors.

Amendments proposed and approved by the ICANN Board of Directors or one of its Committees will only take effect after membership review and approval by 60% vote of the NCSG members using the weighted voting defined in section 4.0. The ICANN Board may require proposed amendments to be posted for public comment prior to taking its decision on the proposal.

## **6.0 Charter Amendments.**

Version	Date	Name	Description
1.0	22 June 2009	Structural Improvements Committee	Version approved and published for community input
2.0	30 July 2009	Structural Improvements Committee	Additional revisions submitted to Board for approval
2.1	19 March 2010	NCSG EC	Inclusion of changes agreed upon by NCSG community
2.2	11 April 2010	NCSG EC	Completion of draft - including resolution of IC/C issue proposal and financial governance issues
2.3	7 May 2010	NCSG Chair	Update near the end of the membership review period prior to ballot based on membership comments
2.4	10 May 2010	NCSG Chair	Update at the end of the membership review period prior to ballot based on membership comments
2.5	14 June 2010	NCSG Chair	Add information on the NCSG approval of the Charter by 70% and fixed one typo a voter pointed out; s/consensue/consensus/
2.6	28 July 2010	NCSG chair	Changes made to satisfy issues brought by ICANN Board Structural Improvements Committee
2.7	1 September 2010	NCSG Chair	Changes made to respond to review by George Sadowsky of the ICANN Board Structural Improvements Committee
2.8	27 October	NCSG Chair	Changes made in response to Staff questions to SIC

		2010	
2.9	03 February 2011	NCSG chair	concerning constituency formation and subsequent NCSG discussions.
2.10	03 February 2011	ICANN Staff	Created word copy for processing by ICANN legal staff to accommodate necessary change to correspond to Board constituency process.
2.11	05 May 2011	NCSG Chair	Provided edits for internal consistency, clarity, and consistency with Proposed Constituency Process

Final Review before posting for comment

## 7.0 APPENDIX: Transition to NCSG Charter

7.1 The charter will take effect once it is approved by the NCSG members and the ICANN Board of Directors. Until such time, the NCSG will run according to the currently approved interim charter, all pertinent ICANN Board decisions and the transition agreement put in place by the NCSG at the Seoul ICANN meeting.

7.2 Until such time as the charter is approved by the ICANN Board, any and all members of Constituencies within the NCSG as well as any 2009 Board appointed GNSO Council members who are not currently members of the NCUC and who meet the noncommercial criteria of the NCSG are deemed to be NCSG members.

7.3 Once in effect all existing Interest Groups will be considered for Candidate Constituency Status, subject to the Board's defined Process for Constituency Recognition.

7.4 GNSO Council Seat Elections. The NCSG has been assigned six (6) GNSO Council seats and, according to the provisions in Section 3.2, GNSO Council Representatives' terms are to be staggered.

7.4.1. In 2009, one GNSO Council Representative was elected by the NCUC to a 2-year term scheduled to end in 2011. This term will continue as planned.

7.4.2. In 2009, three GNSO Council Representatives were appointed by the ICANN Board. Their terms are scheduled to end in 2011.

7.4.3. In 2010, two Council Representatives were elected by the NCUC. Although section 8.2.1 of the NCSG Transitional Charter initially provided that those terms would "expire at the end of the transition period," those terms will now continue until 2012.

7.4.4 In order to enable staggered terms, the following GNSO Council election procedure will be followed:

Year	Number to elect Term	
2010	2	2 year
2011	1	1 year
2011	3	2 year
2012	3	2 year
Yearly thereafter	3	2 year

The NCSG Executive Committee will ensure, to the maximum extent possible, that, in the selection of GNSO Councilors, no more than two shall come from the same geographic region as defined in the ICANN Bylaws.

7.4.5 Consistent with Article X, Section 3 of the Bylaws and the GOP, all serving elected and Board-appointed NCSG Council Representatives will be entitled to run for another term if they so choose. In the event that a Board-appointed Council Representative is elected to another term, this will count as their second consecutive term for calculating term limits.