

INTRODUCTION

Following the discussion at the GNSO Council meeting on 12 May on the draft revised ICANN Bylaws and the IANA Transition, staff conducted a detailed review and analysis of the final revised ICANN Bylaws with respect to GNSO obligations. This analysis in the table below could provide guidance on the obligations as they relate to the new community, and particular GNSO, powers as provided for in the revised Bylaws. Please note, however, that the table is subject to further updates pending final checks against the Bylaws.

As noted in the analysis below the revised ICANN Bylaws contain a number of new provisions that may require the GNSO Council and community to develop additional mechanisms to address certain new obligations and allow for the GNSO's effective participation in the Empowered Community that is to be created as a result of the IANA stewardship transition, as well as to ensure continuity of GNSO processes in other matters. In the table the staff analysis grouped the obligations as follows:

1. Obligations of the GNSO as a Decisional Participant of the Empowered Community;
2. Engagement in the new Customer Standing Committee; and
3. Processes relating to voting thresholds.

The details concerning how the Empowered Community exercises its powers in all the areas where these powers apply are contained in Annex D Empowered Community Mechanisms of the revised Bylaws. This Annex provides step-by-step descriptions of these mechanisms. Because of the complexity of Annex D, staff is conducting a separate analysis of the Annex in order to determine whether possible new GNSO procedures may apply and whether they can be grouped according to type of obligation or procedure.

The following is a brief description of the types of obligations and actions in the three areas. Staff also has prepared a table with analysis detailing the respective sections in the revised new ICANN Bylaws where these changes are located, identifying possible new or existing procedures that can apply, and noting comments for the Council's consideration.

1. Obligations of the GNSO as a Decisional Participant of the Empowered Community

As stated in Section 1.1(a) of Article 6 Empowered Community, concerning the composition and organization of the Empowered Community (EC), "The Empowered Community ("EC") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO, the GNSO, the ALAC and the GAC (each a "Decisional Participant" or "associate," and collectively, the "Decisional Participants")." As a Decisional Participant, the GNSO has obligations that are set forth in the Draft New ICANN Bylaws, both in Article 6 and elsewhere. Examples include:

- 1) Actions relating to the Post-Transition IANA Entity (PTI);
- 2) Engaging in consultations;
- 3) Providing comments in public forums;
- 4) Requesting mediation processes;
- 5) Deciding how to address a petition from an individual to a Decisional Participant (in this case the GNSO);
- 6) Engaging in processes for removing Directors and recall of the ICANN Board;
- 7) Engaging in Independent Review Processes (IRP);
- 8) Initiating reconsideration requests; and
- 9) Voting (see below).

As noted above, the details concerning how the Empowered Community exercises its powers in all the areas where these powers apply are contained in Annex D Empowered Community Mechanisms of the revised Bylaws. This Annex provides step-by-step descriptions of these mechanisms in the following articles and sections:

Article 1 Procedure for Exercise of EC’S Rights to Approve Approval Actions

Section 1.2 Approval Process

Section 1.3 Approval Action Community Forum

Section 1.4 Decision Whether to Approve an Approval Action

Article 2 Procedure for Exercise of EC’s Rights to Reject Specified Actions

Section 2.2 Petition Process for Specified Actions

Section 2.3 Rejection Action Community Forum

Section 2.4 Decision Whether to Reject a Rejection Action

Article 3 Procedure for Exercise of EC’s Rights to Remove Directors and Recall the Board

Section 3.1 Nominating Committee Director Removal Process

Section 3.2 SO/AC Director Removal Process

Section 3.3 Board Recall Process

Article 4 Procedure for Exercise of EC’s Rights to Initiate Mediation, a Community IRP or Reconsideration Request

Section 4.1 Mediation Initiation

Section 4.2 Community IRP

Section 4.3 Community Reconsideration Request

2. Engagement in the new Customer Standing Committee

The GNSO will have certain obligations stemming from its engagement in the post-transition Customer Standing Committee (CSC). Section 17.1 of the ICANN Bylaws (on Customer Standing Committee) states,

“ICANN shall establish a Customer Standing Committee (“**CSC**”) to monitor PTI’s performance under the IANA Naming Function Contract and IANA Naming Function SOW. The mission of the CSC is to ensure continued satisfactory performance of the IANA naming function for the direct

customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.”

They further state, “The ccNSO and GNSO may address matters escalated by the CSC, pursuant to their operating rules and procedures.” The GNSO’s obligations relating to the CSC include:

- 1) Appointment of an individual representing top-level domain registry operators (a position separate from appointments to be made by ccTLD registry operators and the gTLD Registries Stakeholder Group);
- 2) Appointment of a liaison to the CSC;
- 3) Approval of initial proposed members and liaisons of the CSC and the annual slate of members and liaisons;
- 4) Periodic review of the CSC charter; and
- 5) Approval of amendments to the CSC charter.

3. New procedures or existing procedures concerning voting thresholds

The Draft New ICANN Bylaws also contain provisions that may entail possible new GNSO Operating Procedures, or changes to existing procedures, involving voting by the GNSO Council. Examples include new Supermajority votes, which should be added to and referenced in the GNSO Operating Procedures in the voting thresholds table. Examples of new GNSO obligations involving voting include:

- **Section 17.3:** Amendments to CSC Charter – ratified by a vote of the simple majority of the GNSO Council;
- **Section 18.3:** Frequency of Periodic IFRS: Approval of a delay by Supermajority;
- **Section 18.6:** IFR Recommendations approved by Supermajority;
- **Section 18.12:** Special IFR approved by supermajority and Special IFR Recommendations approved by Supermajority; and
- **Section 19.1:** Establish SCWG – SCWG creation recommendation approved by supermajority and SCWG recommendation approved by Supermajority.

A NOTE ON ASSUMPTIONS AND THE SCOPE OF THIS DOCUMENT

- 1) The table lists only new or additional rights and obligations for the GNSO Council and community effected as a result of the latest revisions to the ICANN Bylaws. It does not address existing rights and obligations, even where language or other changes may have been made as part of the current revision process (e.g. any entity materially affected by an action of the ICANN Board and staff could – and still can – file a Reconsideration Request, so language changes to that part of the Bylaws are not included in the table).
- 2) The revised Bylaws include references to voting. The current GNSO structure, as described in the ICANN Bylaws, foresees that any voting is conducted via the GNSO Council (outside the specific remits of a GNSO Stakeholder Group and Constituency). As

such, the table was developed based on the assumption that, in the absence of a new mechanism, it is the GNSO Council who will be voting on behalf of the GNSO with respect to those new or additional rights and obligations noted under the revised Bylaws.

- 3) The table lists only new, modified or additional procedures that may be needed solely to enable the GNSO to fulfil its new obligations, including as a Decisional Participant in the Empowered Community. It does not go further to address any procedures that may need to be developed for the Empowered Community as a whole to exercise its rights, powers, responsibilities and obligations as it is the assumption that these will need to be developed through cross-community collaboration.
- 4) In the absence of new procedures or agreement on which procedures to be used, the default threshold to pass a GNSO default threshold to pass an action will apply (a simple majority vote of each House) to any decisions that are not defined otherwise.

ORGANIZATION OF THIS DOCUMENT

This document is organized into the following sections:

- 1) Obligations of the GNSO as a Decisional Participant of the Empowered Community;
- 2) Engagement in the new Customer Standing Committee; and
- 3) Processes relating to voting thresholds.

In addition, the following color coding is applied to show where likely action is needed or not:

Green: Administrative changes likely;

Yellow: Action may be necessary, but requires discussion; and

Orange: Action likely.