

Instances of the Use of “Council” or “GNSO Council” In Place of “GNSO”

CCWG Supplemental Final Proposal on Work Stream 1 Recommendations:

<https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>.

Bylaws to add an IANA Function Review and Special IANA Function Review:

IANA FUNCTION REVIEW AND SPECIAL IANA FUNCTION REVIEW

Line 146

While the IFR will normally be scheduled based on a regular cycle of no more than five years in line with other ICANN reviews, a Special IANA Function Review (Special IFR) may also be initiated when CSC Remedial Action Procedures (as described in the CWG-Stewardship Proposal) are followed and fail to correct the identified deficiency and the IANA Problem Resolution Process (as described in the CWG-Stewardship Proposal) is followed and fails to correct the identified deficiency. Following the exhaustion of these escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process, and the IANA Problem Resolution Process and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SOs and ACs, the Special IFR could be triggered. In order to trigger a Special IFR, it would require a vote of both of the **ccNSO and GNSO Councils** (each by a supermajority vote according to their normal procedures for determining supermajority).

Following the discussion during the Bylaws Drafting Team meeting on 31 August, staff extracted the following instances of the use of “Council” or “GNSO Council” in place of “GNSO” and tried to compare, when possible, to language provided in the CWG and CCWG reports.

Analysis of Bylaws and Comparison to Final Transition Proposal

ARTICLE 16 POST TRANSITION IANA ENTITY

SECTION 16.3 IANA NAMING FUNCTIONS CONTRACT

On or prior to 1 October 2016, ICANN shall enter into a contract with PTI for the performance of the IANA naming function (as it may be amended or modified, the “**IANA Naming Function Contract**”) and a related statement of work (the “**IANA Naming Function SOW**”). Except as to implement any modification, waiver or amendment to the IANA Naming Function Contract or IANA Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to Section 18.6 or an SCWG Recommendation approved pursuant to Section 19.4 (which, for the avoidance of doubt, shall not be subject to this Section 16.3(a)), ICANN shall not agree to modify, amend or waive any Material Terms (as defined below) of the IANA Naming Function Contract or the IANA Naming Function SOW if a majority of each of the **ccNSO and GNSO Councils** reject the proposed modification, amendment or waiver.

CCWG and CWG Final Transition Proposal: No parallel reference

ARTICLE 17 CUSTOMER STANDING COMMITTEE

SECTION 17.3 CSC CHARTER; PERIODIC REVIEW

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the **ccNSO and GNSO Councils** pursuant to each such organizations’ procedures. Prior to any action by the ccNSO and GNSO, any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN. Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Final Transition Proposal:

Customer Standing Committee (CSC) - Overseeing performance of IANA Functions as they relate to naming services

Line 1131

*The CSC is not mandated to initiate a change in the IANA Functions Operator via a Special IANA Function Review, but could escalate to the **ccNSO and GNSO Councils** or either body in the specific case where the issue in question applies only to ccTLDs or gTLDs respectively, which might then decide to take further action using agreed consultation and escalation processes (see Annex J).*

Line 1142

*The CSC is not mandated to initiate a change in the IANA Functions Operator via a Special IANA Function Review, but could escalate to the **ccNSO and GNSO Councils** or either body in the specific case where the issue in question applies only to ccTLDs or gTLDs respectively, which might then decide to take further action using agreed consultation and escalation processes (see Annex J). Any new IFO (or other separation process) will be subject to the approval of the ICANN Board, and a community mechanism derived from the CCWG-Accountability process.*

ARTICLE 18 IANA NAMING FUNCTION REVIEWS

SECTION 18.2 FREQUENCY OF PERIODIC IFRS

(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a **GNSO Supermajority**. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

SECTION 18.12 SPECIAL IFRS

(a) (i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and
(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a **GNSO Supermajority**.

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW [under] the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract ... shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract ... shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and
(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a **GNSO Supermajority**.

(d) If the Board rejects a Special IFR Recommendation that was approved by the **ccNSO Council and GNSO Council** [o] does not resolve to either accept or reject a Special IFR Recommendation within [the requisite time period], the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants ... ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum ... to discuss the Board Notice; [and] the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant.

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

SECTION 19.1 ESTABLISHING AN SCWG

(b) The Board shall establish an SCWG if each of the following occurs:

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a **GNSO Supermajority**;

SECTION 19.4 SCWG RECOMMENDATIONS

(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

(i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a **GNSO Supermajority**.

References in ICG Transition Proposal 10 March 2016:

<https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf>

Special IANA Function Review

Line 1125

Following the exhaustion of the above escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process (as defined in Annex G), and the IANA Problem Resolution Process (as defined in Annex J) and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SO/ACs, the Special IFR could be triggered. In order to trigger a Special IFR, it would require a vote of both of the **ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority)**. The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IANA Function Review. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of

the IANA Functions operation, including the CSC, but should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs.

Line 1127

As described in Annex L, an IFR may determine that a separation process is necessary. In making this determination, the IFR is not responsible for recommending a type of separation. If the IFR determines that a separation process is necessary, it will recommend the creation of the Separation Cross-Community Working Group (SCWG). This recommendation will need to be approved by both of the **ccNSO and GNSO Councils** (each by a supermajority vote, according to their normal procedures for determining supermajority), and will need to be approved by the ICANN Board after a public comment period, as well as a community mechanism derived from the CCWG-Accountability process.¹¹ A determination by the ICANN Board to not approve an SCWG that had been supported by a supermajority of the **ccNSO and GNSO Councils** will need to follow the same supermajority thresholds and consultation procedures as ICANN Board rejection (by a supermajority vote) of a PDP recommendation that is supported by a **GNSO supermajority**.

Customer Standing Committee (CSC) - Overseeing performance of IANA Functions as they relate to naming services

Line 1131

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Line 1142

The CSC is not mandated to initiate a change in the IANA Functions Operator via a Special IANA Function Review, but could escalate to the **ccNSO and GNSO Councils** or either body in the specific case where the issue in question applies only to ccTLDs or gTLDs respectively, which might then decide to take further action using agreed consultation and escalation processes (see Annex J). Any new IFO (or other separation process) will be subject to the approval of the ICANN Board, and a community mechanism derived from the CCWG-Accountability process.