

Draft Recommendation 23



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That the GNSO Council and SGs and Cs adhere to the published process for applications for new constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed due process. Subject to the application meeting the conditions, the default outcome should be that a new Constituency is admitted.

Working Party (initial assessment of feasibility and usefulness):	CG - Accept as is.
Staff (initial assessment of feasibility and usefulness):	<input type="checkbox"/> Accept As-Is <input type="checkbox"/> Accept With modification <input type="checkbox"/> Reject Rationale: MK: accept as-is.
Basis for Assessment:	
Work in Progress:	(Is this recommendation suggesting that the process is currently not followed?)
Expected Completion Date for Work in Progress:	
Milestones:	
Responsibility:	

Public Comments Received

Comment #	Submitted By	Affiliation	Comment
Recommendation 23 (Participation and Representation): That the GNSO Council and SGs and Cs adhere to the published process for applications for new constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed due process. Subject to the application meeting the conditions, the default outcome should be that a new Constituency is admitted.			
27	Paul Diaz	gTLD Registrars Stakeholder Group	(Support) The recommendation should include an explicit call on the Board to respect all due process and not impose its views on internal stakeholder group or constituency business.

64	Osvaldo Noivo	ISPCP	(It Depends) The ISPCP fully supports the need to grow Constituencies in order to ensure the PDP is fully inclusive of all impacted parties. The successful integration of new Constituencies is totally dependent upon the structure they join. The statement within the report that the GNSO's structure is designed to be adaptable and 'future-proofed' by allowing for the creation of new constituencies as needs arise, within the four stakeholder groups' is totally refuted. The existing bi-cameral structure is a barrier to equal participation by all parties. Weighted voting has long been a contentious issue and cannot be resolved within the current structure. In fact it has become even more complicated and is almost unintelligible by those outside of the GNSO. In the current arrangement far too much emphasis is on voting rather than a desire to achieve consensus. In a situation where weighted voting clearly favours one side, there will never be a willingness to change that by all parties. Representation on the GNSO Council, where voting occurs, is also problematical if new Constituencies are allowed to join the GNSO without prior consideration of the need to provide a flexible GNSO Council that facilitates growth, fairness, and equal representation. That situation has been apparent since the acceptance of the NPOC as a new Constituency within the NCPH. If ICANN is to maintain organizational integrity it is of prime importance that the structural issues are addressed and new Constituencies are not simply levered in to the existing dysfunctional structure. Only then can the questions raised by this recommendation be addressed. The ISPCP also oppose the overriding acknowledgement that once an application meets the conditions set, the default is always that a new Constituency is admitted. Such an assumption may easily result in a conveyor belt of similar, unmanageably large constituencies that would undermine the constituency system. It is essential that broader consideration of the impact each new Constituency has on the existing balance is also a requisite that has to be met.
175	Laura Coivins, J. Scott Evans, Marie Patullo	BUSINESS COUNCIL	The BC fully supports that the GNSO Council and SGs and Cs adhere to the published process for applications for new constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed due process. Subject to the application meeting the conditions, the default outcome should be that a new Constituency is admitted.
216	Stephanie Perrin	NCSG	This seems to imply that this has not taken place. IS there an example of this?
260	Greg Shatan	ISPCP	(Support) The fact that only one new constituency, the NPOC, has been approved suggests that the procedures are not currently working. The promotion of new constituencies was a fundamental recommendation of the last GNSO review, as a result of which a new process for constituency applications was developed and approved. Whilst the Draft Report does not disagree with the decision overall to reject the first application under this new procedure, it concludes that one of the grounds for recommending refusal was not a valid objection and should not have been upheld. The Draft Report also highlights substantial feedback that the procedure is not consistently applied and that there is a perception of direct lobbying from current incumbents against new applicants. This cannot be allowed to continue. For the multistakeholder model to be effective it must be open to all potential stakeholders. If a group of potential stakeholders have reasonable grounds to consider that their needs are not fully met by the existing SGs and Cs then they must be afforded every encouragement and support to address this. In the same vein, some review mechanism should be established to ensure that new constituencies, once recognized, are afforded full opportunities for participation and a sufficient role in decision-making within the stakeholder group to which they are assigned.
285	Amr Elsadra		I could not agree less with this recommendation. The Report associates an increase in constituencies within the GNSO with increased representation and participation. The report goes further to admonish the NCSG and the ICANN board for rejecting the application of the Public Internet Access /Cybercafe Ecosystem Constituency (PIA/CC), and not supporting the Consumer Constituency. In contrast to Westlake's assumptions, it is evident following the creation of the NPOC that the growth in NCSG participation is still largely due to an increase in the number of members of the NCUC, which has attracted a larger number of new members than NPOC has since NPOC's creation. The report should evaluate how the creation of the only new constituency has contributed constructively to representation and participation in the GNSO. Several other concerns with the constituency model, as experience within the NCSG suggests, including an increase in unnecessary executive overhead, encouragement of competitive behavior within the stakeholder group, and the development of policy in fragmented silos rather than a collaborative manner were not included the final Westlake report or recommendations.
334	Olivier Crepeblond	ALAC	(It Depends) Whilst the ALAC fully supports that the GNSO Council and SGs and Cs adhere to the published process for applications for new constituencies, the ALAC has concerns about the potential for competing Constituencies to be created, further dividing the non-Contracted Parties house. The ALAC therefore recommends caution regarding a default outcome that a new Constituency is admitted if its application satisfies itself, as conditions for entry might evolve as circumstances and ICANN evolve. When providing the reason for more constituencies, the Report cites the ICANN core value, which includes the broad participation in policy making. The formation of more constituencies is not the only way to expand participation, and it ignores the existence and role of the ALAC. The ALAC, with its representatives from five regions, a wide range of language groups and myriad Internet user groups is far better placed to provide that broad participation. A better and more achievable way to achieve the broad participation is to support and encourage ALAC members to engage in policy processes.

3 56	Unknown, https://businessjournal.org/trancript-21-jun15-en	GNSO Working Session Who proposed that the GNSO is a strategic manager rather than a policy body? Actually the board governance committee as one of its early recommendations as well, the same words. That's where the words came from. Out of the previous review.
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3 64	A mr El sa dr (vi a ch at) , http://www.icsinc.org/sc/education-organisations-working-trancript-gnsoreview-w-21-jun-15-en	G N S O W or ki n g S e s si on The language in the report on the process approved by the BGC on creating new GNSO constituencies describes the process as ineffective. How has the Westlake team reached this conclusion? Has an analysis of the applications to create new constituencies been evaluated to determine whether they fulfill all the requirements they're supposed to?
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<p>3 74</p> <p>Mil to n M ue lle r, ht ps // bu en os air es 53 a ica nn a or g /e /sc he du le /tu e- nc uc /tr an sc rip t- nc uc -2 3j un 15 : en</p>	<p>N C UC</p>	<p>Yes, I felt like I was going back in time to 2009 when I read this report in terms of its approach to the problem of constituencies. It seems like you never really questioned or provided any real analysis of the assumption that more constituencies means better representation and more representation. We've given a lot of thought to that in the first restructuring because we had to deal with the question of what was the role of constituencies. And we came out with the idea that we really don't need constituencies that broad stakeholder groups that are balanced is a much better structure. We had a big discussion of that with the Board. And the Board agreed at the time to detach Council seats from constituency structures because of these problems. And I see absolutely no evidence that that whole discussion has been understood, and instead I see a reassertion of the constituency model. The first problem with constituencies is that they fragment the discussion. You've got different people in different rooms talking about different policy. And this happens when let's suppose you're (Aaron) there who's from India, and he's interested in Human Rights, he's interested in development, he's interested in privacy, he's interested in freedom of expression. Suppose there's a separate constituency for all of those interests; there's a development constituency, there's a freedom of expression constituency. Where does he go to discuss this? Does he join four or five different mailing lists? Does he join four different membership structures? What exactly is he supposed to do? The second thing is the confusing competition for new members. So a member comes in, either they are just recruited by the general ICANN process which is mostly what happens, and they are confronted with four or five different groups saying, "Oh join us." And they're like, "Okay, I thought I did join. I just joined the Non-Commercial Stakeholder Group. Now I'm being assaulted by five different groups that want me to join them." Then you have the inefficient duplication of administrative and bureaucratic overhead and each of these constituencies has to have officers, they have to have votes, they have to have mailing lists. But here's the most fundamental thing. I don't think there's any evidence that you actually increase participation with new constituencies. Almost every new constituency proposal that we have seen is people who are already here, already involved, trying to create a new structure that will give them resources. Maybe it's a legitimate request for resources; maybe it's just a request for resources. But the point is the idea that you get new people or more people involved by creating a constituency is just a false assumption. Constituency or any kind of structure is a lot of work, and the idea that people who are coming into ICANN are just dying to take on all kind of administrative work and run a constituency is really not a valid thing. And then the final problem I would mention is the rigidity of the constituency structure. You're creating basically a semi-permanent structure that goes into the bylaws of ICANN based on what? An application by a group of people that may not be around in five years, that may be very strong for two or three years and then pitter out and dissolve. How do you get rid of constituencies when they're no longer needed or they're no longer functioning? So that's in a nutshell the critique of the constituency model, and it's unclear to me why this is being revived when, you know, we've been doing - we've been growing, we've been getting new members, we've been getting more diversity. We don't need constituencies. Why do you want us to have them?</p>
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376	<p>Robin Gross, https://business.icaann.org/en/2015-03-15</p>	<p>NCUC I'd like to know about your view on the application of the Cyber Café Constituency. And you talked about that in the report as a problem; you called it ineffective process because the Cyber Café Constituency didn't get in. and I'd like to hear a little bit more about that. Back to the Cyber Café Constituency, this was a constituency of commercial actors or I should say a group of commercial actors who wanted to participate in the non-commercial stakeholder group. Why should we allow that? It seems to me that the process worked that they weren't allowed in. we're not supposed to let commercial actors into the noncommercial stakeholder group. And the Board agreed with us. This was not just an NCSG decision that we can't let commercial actors into the non-commercial stakeholder group. It was a Board decision. The Board said we got it right. And so for you to use this as an example of how we're exclusive and try to keep people out is just unfair. I mean because they were left out because they're commercial actors. So it seems to me that the process actually worked. So I'm having a really hard time understanding why you want to use this as an example. Then why is it pointed out as being problematic? That's not true. There was only one. You might want to go back and check your facts. I would be happy to discuss it with you further because I managed that process with that Cyber Café Constituency and I would be more than happy to walk you through the process. If you would like to actually speak to somebody who participated in that process, I'm available. There's only been one application ever made and that one was rejected. There is no other one.</p>
399	<p>Ronda Anuff https://business.icaann.org/en/2015-03-15</p>	<p>BCUC You talked about as much as we could add new constituencies we could dissolve old constituencies. It struck me from the point of view that the only new constituency that's evolved in my time since I joined ICANN about 15 or 16 years ago is the NPOC. And they are slowly, slowly getting their seats in the various places. One place they don't have is, for example is the committee that Stéphane chairs and I'm the chair elect, that's the Nominating Committee. There's no seat for them at this point and that needs to be changed. And we're trying to find a way to make sure that that does. But when you talk about dissolution of a constituency I'm kind of wondering how that would work. I mean, even if I think about -- if I use the BC as an example, we are big business, large business and small business. So one might say as we advance the small business issues aren't being dealt with as much as the large business issues so maybe you might have a split there. So I could sort of see that kind of a scenario, you know, that's a very hypothetical one. But I don't understand the dissolution of a constituency because that would certainly push us into a reform. But how do you see a dissolution of a constituency?</p>