

GNSO PDP3.0 Small Team - ICANN66

ICANN66 – GNSO PDP3.- Small Team Meeting

DATE: Monday, 04 November 2019 / **TIME:** 13:30-15:00

Room: 513D

ICANN66 Schedule link: <https://66.schedule.icann.org/meetings/1116967>

AGENDA:

1. Welcome and roll call
2. Package 4 Improvements: **Finalize the draft proposals** (~Flip, Ariel & Julie)
 - a. #9 Provide further guidance for section 3.6 and clarification of section 3.7: https://docs.google.com/document/d/1pIHfupCdXoH3BSgRfu6KbzUm2jt1AQ-_MEk0JeMGU-l/edit?usp=sharing (new content on pages 23-28)
 - b. #15 Independent Conflict Resolution: <https://docs.google.com/document/d/1dZxdlhXaGqp2zsSkSqjcfJtDaUv3VlaNzgZ629zPVY/edit?usp=sharing> [docs.google.com]
3. Package 3 Improvement:
 - a. #17 Resource reporting for PDP working groups: **Initial discussion** (~Berry & Rafik)
4. Post ICANN66 work planning
5. AOB

In addition, please find the slide deck prepared for PDP 3.0 presentations at ICANN66, including:

- GNSO Council Working Session (Sunday, 3 November at 13:20 - 14:00 local time); and/or
- GNSO Council Public Session (Wednesday, 6 November at 13:00-15:00 local time)

Documents:

[PDP 3.0 Slides-Council 3 November.pptx](#)

Actions & Notes:

Actions:

Improvement #9: Revise and send to the Small Team for a final call along with improvement #15.

Throughout the document:

ACTION: Staff will make the universal change from “dispute” to “disagreement”.

3.7 Complaint Process

ACTION:

Replace: “Working group members shall treat the complaint process under Section 3.7 as a last resort in resolving a disagreement, as the proceeding will likely require substantial amount of time and effort from all parties involved. Members and leaders of GNSO working groups and the GNSO Council should all do their part to prevent the escalation of a disagreement.”

By the following text: The 3.7 proceeding will likely require substantial amount of time and effort from all parties involved. Therefore, members and leaders of GNSO working groups and the GNSO Council should all do their part to prevent the escalation of a disagreement by using their reasonable [best] efforts to try to resolve the disagreement prior concertation and negotiation with a view to coming to a resolution.

3.7.1 Complaint Submission Criteria

ACTION: Change to "A complaint already filed by the same complainant..." and "the complaint is still pending" (rather than calendar year or 1 year).

3.7.2 Role of GNSO Council, ICANN Org, and Ombudsman

ACTION: Maybe include an umbrella paragraph that if any of the positions listed below are included in the complaint describe that the Ad-Hoc Complaint Committee or Council Leadership could step in. Or say, "except in the case of conflict of interest" ahead of the entire section.

3.7.3 External Legal Counsel

ACTION: Suggest changing to "The GNSO strongly encourages parties in a Section 3.7 complaint to personally present their position and arguments. Any correspondence or communication during the proceeding will go to the parties directly involved in the complaint process."

3.7.5 Abuse of the Complaint Process

ACTION: Revise the language to "up to 5 years".

Improvement #15 Independent Conflict Resolution: Incorporate the changes from Pam and send to the Small Team for a final call along with improvement #9.

Post ICANN66 work planning:

Revised PDP Working Group Charter Template:

ACTION: Staff to do a first staff to see what part of the Working Group charter needs to be revised and bring it back to the Small Team to review

AOB:

Timing of calls:

- Move to bi-weekly calls.
- Skip a call next week.

Notes:

1. Package 4 Improvements: **Finalize the draft proposals**(--Flip, Ariel & Julie)
2. **#9 Provide further guidance for section 3.6 and clarification of section 3.7:** https://docs.google.com/document/d/1p1HFupCdXoH3BSgRfu6KbzUm2jt1AQ-_MEk0JeMGU-l/edit?usp=sharing(new content on pages 23-28)
3. Proposed **New Text for Section 3.7 in GNSO Working Group Guidelines**
 - List of the suggested changes to 3.7.
 - The proposed new text for Section 3.7 of the GNSO Working Group Guidelines.

3.7 Complaint Process

-- Summary: First paragraph notes that Section 3.7 should not be a litigation type process. Second paragraph notes that this doesn't relate to consensus determinations by leadership. Third paragraph is noting that this process is a last resort. Fourth paragraph has the link to related guidance (improvement #9).

Discussion:

-- Delete the term "dispute" throughout. Use "disagreement" instead. Want to not make things bigger than they are or not give them more attention than they deserve. That should drive the terminology.

-- Question: Term "disagreement" – does that cover whether someone is not doing their job? Answer: Best to use the same language to keep the text as clear as possible.

-- Question: When we refer to last resort, are we expecting them to have gone to the Ombudsman? Answer: No. But maybe we need some clarification. We cannot stop someone from going to the Ombudsman. Suggest deleting: "Working group members shall treat the complaint process under Section 3.7 as a last resort in resolving a disagreement, as the proceeding will likely require substantial amount of time and effort from all parties involved."

ACTION: Staff will make the universal change from "dispute" to "disagreement".

ACTION: Flip and Pam will suggest revised wording.

3.7.1 Complaint Submission Criteria

- When the complaint process can be invoked.
- Initiated in 2 months of becoming public knowledge.
- Complaints must specify the grounds.
- Word limit.
- No new complaint under the same circumstances.
- Council Leadership makes the assessment on the criteria.

Discussion:

ACTION: Change to "A complaint already filed by the same complainant..." and "the complaint is still pending" (rather than calendar year or 1 year).

3.7.2 Role of GNSO Council, ICANN Org, and Ombudsman

- Spells out who will be involved in the process and their roles.
- Emphasizes the Council Liaison's crucial role.
- Describes the Ad-Hoc Complaint Committee.
- Describes the ICANN Org resources' advisory roles. Resources to help the Council resolve the issue.
- Consider when to use the ICANN Org resources.
- Notes that Ombudsman process should be separate from the 3.7 process, but flexibility to bring in the Ombudsman if Council leadership decides.

Discussion:

-- Question: When we talk about the roles, what if the complaint is about the Liaison?

ACTION: Maybe include an umbrella paragraph that if any of the positions listed below are included in the complaint describe that the Ad-Hoc Complaint Committee or Council Leadership could step in. Or say, "except in the case of conflict of interest" ahead of the entire section.

3.7.3 External Legal Counsel

- Strongly discouraged.
- Parties represent themselves.

Discussion:

-- Remove "strongly"?

-- Consider whether to remove the paragraph.

-- Keep the first sentence: "The GNSO strongly discourages the representation of any party in a Section 3.7 complaint process by external legal counsel."

-- Or say "strongly encourage parties to personally present their arguments."

3.7.4 Complaint Proceeding Procedure

- Members involved in the complaint will always discuss with the leadership.
- Leadership consults with Council leadership and liaison, Complaint Committee, and consider involving other resources.
- Further description of each step follows in detail.

3.7.5 Abuse of the Complaint Process

- Saying that if there is abuse then the person is subject to a 5-year bar from using the 3.7 process.
- Examples of abuse.
- Determination is made by the Complaint Committee.

Discussion:

- Question: Is a 5-year ban too long? Answer: We've had some people who have been removed from policy development permanently. Doesn't bar them from raising any complaint in the ICANN environment. How to bar them from bringing frivolous complaints?
- Think about revising the language to "up to 5 years".

3.7.6 Termination of the Complaint Process

- Not mutually exclusive and does not impact other complaint resolution mechanisms.

3.4 External Legal Counsel

"If one party insists on legal representation, the GNSO Council, in consultation with the ICANN Org and Ombudsman, should consider whether there are ways, if any, to provide assistance to the other parties involved in the proceeding to ensure a level playing field."

Discussion:

- Put it in more positive language?
- Say that doing so will terminate the 3.7 proceeding?
- Make people sign a statement saying that they won't bring in external legal counsel.
- Don't think we can bar someone from seeking legal representation.
- We don't have any way to prevent that from happening.
- Remove the paragraph.

4. #15 Independent Conflict Resolution: <https://docs.google.com/document/d/1dZxdlhXaGqp2zsSkSqcjFJtDaUv3VlaNzgZ629zPVY/edit?usp=sharing> [docs.google.com]

ACTION: Incorporate the changes from Pam and send to the Small Team for a final call along with improvement #9.

5. Package 3 Improvement:

6. #17 Resource reporting for PDP working groups: **Initial discussion**(~Berry & Rafik)

7. Post ICANN66 work planning:

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