

**LSE Public Policy Group and Enterprise LSE**

**A Review of the Generic Names  
Supporting Organization (GNSO)**

**Volume 1**

**Part of the Internet Corporation for Assigned Names  
and Numbers ([www.icann.org](http://www.icann.org))**

**June 2006**

**Strictly confidential**

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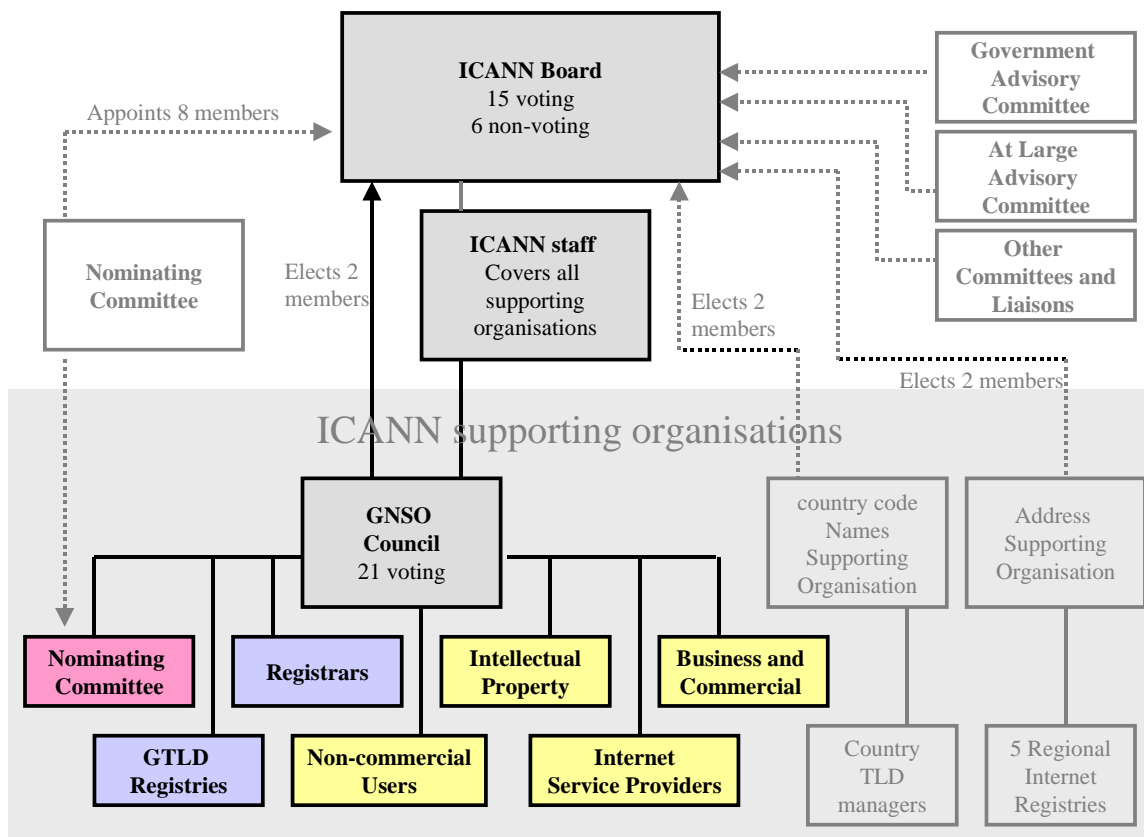
## **Part 1:**

# **Introduction - the Generic Names Supporting Organization (GNSO) is one of the key consultative and policy development bodies within ICANN**

- 1.1 The Internet Corporation for Assigned Names and Numbers (ICANN) was established in September 1998 as the body setting global policy for the assignment of numbers and domain names (URLs) by a Memorandum of Understanding signed with the US Department of Commerce. Since December 2002, ICANN's Bylaws have stated that periodic reviews should take place of its supporting organizations to examine how its procedures were working. In February 2006, following competitive tenders, the ICANN Board commissioned the LSE Public Policy Group to conduct an independent review of one of ICANN's most important constituent bodies, the Generic Names Supporting Organization (or GNSO).
- 1.2 In ICANN terminology a Supporting Organization (SO) is a consultative and policy-development body, whose function is to allow multiple stakeholders in the global Internet community to contribute to policy-making on matters that fall within ICANN's remit. The views of Supporting Organizations go to the ICANN Board and where the SO can achieve a consensus their view has special force in guiding and shaping Board policy. It has been an important part of ICANN's distinctive character as the body guiding Internet development in respect of domain names and numbers that supporting organizations allow for bottom-up involvement by diverse stakeholders. Supporting organizations also play a key role in fostering the development of consensus policies, those enjoying a broad and substantial level of agreement amongst different interests and communities involved in the Internet (even if not always universal agreement). Figure 1 shows that there are a number of supporting organizations feeding inputs to the ICANN Board, and others not reviewed here cover country code domains and the allocation and management of Internet Protocol (IP) addressing. There are also a number of other important bodies feeding input to the ICANN Board, including the Government Advisory Committee and the At Large Advisory Committee. **[See Section 1 of Volume 2 for more details]**

1.3 The supporting organization with which we are concerned here was set up in December 2002 and is that for ‘generic names’ – that is, globally relevant domain names which do not have one particular country code (like .uk or .de) at the end. These are all ‘top level domains’, often abbreviated within ICANN to TLDs, which means that their addresses are directly entered in the Internet’s root server, its central addressing system.

**Figure 1: The position of the Generic Names Supporting Organization within the overall structure of ICANN, mid 2006**



(All other Web addresses are reached from one of the top-level domains). Generic domain names (gTLDs) were historically the first type of domain name to develop and today the most prominent by far is still the original .com. Other widely used generic domain names are .org, .info, .net, .biz and .TV. Generic names can be held by users or companies in any country, and their use is now dispersed across many

nations, but for historic reasons the heaviest concentration of generic names is still in the United States.

1.4 The supporting organization for generic names, GNSO, consists of two tiers of bodies. The first tier are the six Constituencies, designed to represent the interests of different kinds of stakeholders in generic names. Each constituency recruits members and arranges to consult them, usually establishing a chair and executive structures to help process GNSO business and to collate the views of constituency members. The constituencies are:

| <i>Constituency name</i>                    | <i>Who the constituency mainly represents</i>   |
|---|---|
| gTLD Registries                             | Registries are firms who operate top level domains and provide connections to the Internet's root servers   |
| Registrars                                  | Registrars are firms marketing the registration of domain names to final customers, businesses and other users  |
| Business and Commercial Users               | Corporations and industries which are users of Internet domains   |
| Intellectual Property                       | Trade associations in the US, Europe and internationally who monitor intellectual property (IP) rights issues and infringements, and lawyers in the IP area |
| Internet Service and Connectivity Providers | Firms marketing Internet connectivity, email services and often Web site domains to final customers   |
| Non-commercial Users                        | Owners of domain names outside the business sector, such as the universities, charities and NGOs, and (to some degree) individual Internet users            |

1.5 Each constituency also elects three members to the second part of GNSO, the GNSO Council. In addition there are three other members of GNSO Council, appointed by another part of the ICANN organization called the Nominating Committee (whose role is to bring into ICANN talented people with a disinterested stance). The GNSO Council thus has 21 members and it is the core of the supporting organization. The Council meets three times a year, face to face, at the ICANN Conference, which migrates around the main regions of the world. Additionally the Council conducts business in conference calls and in occasional face-to-face sessions, called to help it discuss and progress important matters. Council members serve for two-year terms and in some constituencies they can be re-elected without term limits, while in others they are limited to two consecutive slots, each of two years. Most constituencies have provision for their representatives on GNSO Council to come from different regions of the world, with usually one

from the US or North America, one from Europe and one from the rest of the world. The six Constituencies show wide variation in their internal structures and processes. **[For more on the Constituencies, see Section 5 of Volume 2.]**

- 1.6 The GNSO Council discusses issues associated with generic domain names that are relatively complex and often quite technical. The development of policy positions and expression of opinions is painstaking work. The Council Chair plays a key role in structuring discussion, and trying to get its members to frame their views carefully, to adapt and react to the views of other members and to reach agreed conclusions from their deliberations. To help conduct work on particular issues the Council often creates Task Forces. They can bring into discussions and deliberations people from outside the Council itself. However, the tendency has increasingly been for recent Task Forces to be mainly composed of sub-sets of GNSO Council members or people active on one of the GNSO constituencies. **[For more on the GNSO Council, see Section 8 of Volume 2.]**
- 1.7 When the GNSO in its current form was established as a separate body for generic names in 2002, the current system of six constituencies was put in place and some key innovations were made. In particular, the registries and registrars are the only stakeholders who are contractually tied to ICANN. Because they were seen as vulnerable to having their business models changed as a result of GNSO deliberations and new policy decisions, and because they actually provide in terms of fees some 90 per cent of ICANN's corporate revenues, they were accorded extra protection in the GNSO set-up. Therefore votes of the registry and registrar constituency representatives count as double-weighted in formal votes. Thus although GNSO's normal operations are conducted by counting voices amongst the 21 members, on formal votes there are in fact 27 votes cast (with double-weights for the three registry and three registrar members). However, when GNSO was established steps were also taken to define the level of support needed for GNSO to make 'consensus' policy, which was set as policy commanding the support of two thirds or more of the Council. Thus the registry and registrar votes combined add up to less than half of all weighted votes and they are well short of being able to define 'consensus' policies in the GNSO Council. The significance of this is that consensus policies developed by GNSO go to the ICANN Board and have special weight: the ICANN Board must show strong reasons why it does not adopt GNSO consensus policies. **[For more on voting and policy consensus, see Section 10 of Volume 2.]**



## **The terms of reference for this report cover GNSO's representativeness, transparency, effectiveness and regularity**

1.8 The ICANN Board asked the LSE Public Policy Group to investigate the following four issues:

- A. the quality and extent of the representation of stakeholders in the Internet community achieved by the GNSO and its six constituencies;
- B. the transparency and openness of the GNSO process;
- C. how effective the GNSO has been in undertaking its work and developing policy positions; and
- D. the regularity of GNSO operations in compliance with ICANN's Bylaws (effectively its internal constitution) and implementation of GNSO policy positions.

1.9 The operations of GNSO are of central importance for those of ICANN as a whole, but it is important to note that the scope of our enquiry was limited to GNSO alone. However, some of our findings and recommendations below have a certain degree of broader relevance and raise issues with implications for the other parts of ICANN with whom GNSO links and interacts. **[For more on the Terms of Reference for the Review, see Section 2 of Volume 2.]**

## **We used a strong set of methods to carry out this study**

1.10 To conduct this enquiry we used a range of different methods, designed to generate a wealth of objective evidence, and to yield different kinds of data that 'triangulate' with each other – so that the inevitable limitations of any one method can be countered by the strengths of other methods deployed. Our approach is set out in detail in **Annex 1 of Volume 2 of this report**, but briefly our main methods were:

- From the extensive document archives on the ICANN website, and with the generous assistance of ICANN staff, we assembled a thorough documentation of GNSO's activity since its formation in 2002;

- We collated data on the conduct of GNSO's policy development process, looked at the issues and debates covered and examined the viewpoints expressed in GNSO Council by constituency representatives. We also collated data on GNSO Council votes.
- We examined all the documentation available on GNSO constituencies, looking at membership details, participation in policy consultation, and the involvement of personnel.
- We established a website for the GNSO Review and wrote to all constituency members that we could identify asking them to give us their views in response to an online survey posted there, and to send us views by email or contact us to give their views in person. Some 107 people filled in the survey and a number of people contacted us additionally.
- We conducted lengthy and detailed face-to-face or phone interviews with over 100 people who were experienced and knowledgeable about GNSO's role in ICANN, including all but one current GNSO Council members and relevant members of the ICANN Board. A full listing of all those we talked to is given in **Annex 1 of Volume 2**.
- We visited the ICANN meeting in Wellington and observed a range of different meetings of constituencies, meetings of GNSO Council and public presentations by GNSO Council and the ICANN Board. We also observed a phone conference of GNSO Council.
- We systematically scanned the Web for comments or discussions on the work of GNSO and ICANN.

## Part 2:

# GNSO's current operations present a somewhat mixed picture and respondents to this enquiry varied sharply in their views of the current process

- 2.1 The current system of GNSO's operations is not very old, stemming from a decision made in 2002 to separate out the supporting organizations for generic names (gTLDs) and for country code names (ccTLDs). Prior to this decision there was a single Domain Name Supporting Organization (DNSO), where policy for both kinds of domain names was developed, an approach that created tensions from country code organizations. When the GNSO was established as a separate body the current system of six constituencies was put in place and some key innovations were made, including the introduction of weighted voting for registries and registrars. Yet even in the course of a few years, there have been major changes in how the GNSO operates and in how far it involves stakeholders from the wider Internet community, with a generally declining level of participation apparent. **[For more on the setting up of GNSO and the DNSO, see Section 3 in Volume 2.]**
- 2.2 In seeking views about GNSO's operations we encountered a wide range of different positions. Some Council members argued that the Council is concerned with regulating the behaviour of suppliers (namely registries and registrars) and so these interests should not be represented at all on the Council. Other members and respondents argued that one or more of the constituencies was more or less defunct, and that their representatives on the Council were not effectively representing any one's interests but their own: often they called for mergers of constituencies. Some senior ICANN people argued that GNSO was a very important part of its processes and was basically operating effectively, and others that it was in need of radical structural changes. We set out next our main views of GNSO's performance against the four key criteria for our review.

**In terms of representation, there is considerable evidence that some parts of the current system of constituencies are not working particularly well**

- 2.3** The origins of the current Constituency system are found in the organised interests that played key roles in establishing ICANN in the late 1990s – especially major American computer and telecommunications corporations (such as AT&T, MCI, IBM and Telstra) who were involved in the process, along with major content provider corporations (such as Disney and Time Warner), intellectual property representative associations, and early vestiges of the registration industry (basically Network Solutions). Internet service providers were also represented as they were playing a major role in helping consumers to gain access to domains and URLs. Constituencies at this time were ‘self-organizing’ (as stated in the GNSO Bylaws) and the ‘loudest voices prevailed’. Senior ICANN staff invited the 50 or so individuals present at the Singapore meeting to ‘go into a room and get organized’. There are aspects of the current GNSO constituency system that seem to reflect a snapshot of the interest groupings most active on generic names issues in the late 1990s. **[See paragraphs 3.9 to 3.13 of Volume 2.]**
- 2.4** In the formative stages of ICANN, intellectual property issues were also more controversial than they are now. The formation of the Uniform Domain Name Resolution Process (UDRP) was an important precursor to ICANN. It was developed by the World Intellectual Property Organization (WIPO) prior to the establishment of ICANN, and almost immediately after the formation of ICANN it was adopted as policy wholesale by the Board. At this time voices in the Non-commercial Users’ Constituency were critical of this decision, suggesting that the UDRP should first be subject to ICANN and DNSO scrutiny. Subsequently the UDRP has come to be widely regarded as a successful initiative: its arbitration procedures have greatly reduced previous concerns over cyber-squatting and the perceived threats to intellectual property arising over domain name issues. **[See paragraphs 3.4 and 3.5 in Volume 2.]**
- 2.5** Looking first at the two constituencies for supply-side firms with registration interests, they are very active, and have a relatively high coverage of their total population included in their membership. The Registry Constituency is inevitably dominated by the presence of Verisign, and the Registrar Constituency tends to be

led by the largest Registrars in the generic TLD market. The registration market has grown rapidly over recent years. Registry and Registrar Constituencies are responsible for providing around 90 per cent of ICANN revenue. Their high participation in the GNSO process reflects their financial involvement in paying fees and also the centrality of ICANN regulations for how they operate their businesses, their exposure to costs and their opportunity to make returns and profits.

2.6 Registries and Registrars generally favour a narrow interpretation of the scope for ICANN and GNSO to undertake new policy development. This stance partly reflects a feeling that a narrow scope generally helps exclude from consideration issues that might impose business costs on the registration industry. Perceptions of appropriate scope tend to get wider when business interests dictate. For example, in light of the recent settlement with Verisign, the Registrar Constituency has been a driving force behind new GNSO work (called a policy development process or PDP) on the contractual conditions of existing contracts with Registries. **[For more on the Registrars and Registries Constituency, see Sections 5a and 5b of Volume 2.]**

2.7 Turning next to the separate constituencies representing Business, Intellectual Property and Internet Service Providers (ISPs) some interviewees have put to us that the reasons for there to be three distinct constituencies are not now apparent. In recent GNSO Council processes representatives from these three constituencies have tended to adopt closely aligned positions, and the three also hold an influential ‘cross-constituency’ joint meeting at ICANN conferences. A relatively small group of individuals are highly active participants in the GNSO process in each of these three constituencies. Participation in the GNSO policy development work is a ‘third level priority’, even for most Business Constituency members. Major corporations are not now much involved in its deliberations. The IP Constituency retains links to the major representative associations that were involved in drafting the UDRP (such as INTA and AIPPI). Some of the IP Constituency member organizations have been represented in the Business Constituency (e.g. Walt Disney, Time Warner, and TAGI). Most active participation comes from a core of individuals representing international IP associations. Ensuring defensive mechanisms for IP rights built into GNSO policy is the core priority of the IP Constituency. We found the ISP Constituency very

hard to pin down. We have very little evidence of participation beyond that of the three current Councillors and a small group of Constituency officials. **[For more on the BC, IP and ISP Constituencies, see Sections 5c, 5d and 5f of Volume 2.]**

- 2.8 Finally, the Non-commercial Users' Constituency (NCUC) now consists of around 30 member organizations, showing diverse functional and geographical spread. Some previously active types of non-business participants, such as American and overseas universities, are not now very involved in the constituency. There are one or two dominant personalities leading discussions, and a core of around 10 participants account for around two thirds of all mailing list postings. The constituency has limited funds and has suffered a bit from a high turnover of representatives. NCUC's interests often overlap with those of small and medium sized businesses, which do not find that they have large intellectual property issues at stake in domain name issues. **[For more on the NCUC, see Section 5e of Volume 2.]**

**In terms of transparency, GNSO has been an almost invisible part of the ICANN process. More could be done to enhance its visibility and the ability of stakeholders in the Internet community to access and influence its decisions**

- 2.9 If a decision-making process is to be transparent, it must first of all be easily visible and accessible. Potentially interested stakeholders must be able to find out what is going on, what timetables and policy processes are in operation, what kinds of consideration are being looked at and how they themselves can best follow and influence discussions. We are clear that GNSO's current operations create insufficient visibility to allow this essential foundation stone of transparency to be seen as in place.
- 2.10 ICANN as a whole has a very significant Web presence and its operations have been well described in a number of recent accounts by academics or impartial observers. However, the Generic Names Supporting Organization has very low visibility compared to that of ICANN as a whole. For instance, in a 414 page report on ICANN written by the National Academy of Sciences in the US there is a detailed contents page running to 7 pages, which does not include any mention of the GNSO. Similarly in systematic searches of the Web we have found only a very

tiny proportion of references to ICANN which make any reference at all to GNSO or its Council.

- 2.11 Yet many insiders have argued to us that ‘GNSO is ICANN’, in two important senses. First, looking at revenue data and other outputs, GNSO issues and stakeholders are at the heart of the ICANN process. Second, GNSO is in many ways the key and certainly the most distinctive piece of machinery supporting ICANN’s claim to facilitate ‘bottom-up, stakeholder participation’ in an open and transparent way in the governance of the Internet. The GNSO is therefore a strange combination of being a critical and integral part of ICANN, but one that is almost invisible to people who are not already deep ICANN insiders
- 2.12 A main reason why GNSO’s visibility on the Internet is currently very low is that there are serious deficiencies in the current design of ICANN’s overall website, deficiencies which have long been known to the Board and the ICANN Chief Executive, arising from previous restrictions on resources and personnel issues. However, website problems in the modern age cannot be treated as peripheral or involving only a dispensable or luxury good. Especially for a body such as ICANN and its main components such as GNSO, a properly working and designed website is an integral element of being an effective organization at all, and its role in respect of facilitating transparency is of critical importance.
- 2.13 The parts of ICANN’s website concerned with GNSO are currently set up and used as a working tool for Councillors. In many ways they provide a very comprehensive information resource, that is potentially of considerable value and where openness is pursued to a high degree. For instance, Council phone conferences are recorded as MP3 files and deposited on the Website, so that an interested observer could potentially replay the whole event, should they wish to do so. However, currently accessing and understanding this data is only feasible for people with pretty high levels of skills and who already know what they are doing and what they are looking for. In terms of building the wider profile of GNSO as part of the ICANN organization, the current Web provision is weak. It is very difficult to get a clear sense of what the GNSO does, who the GNSO is, and policy issues that are current. It would be an exceptionally daunting task for outsiders to seek to understand how GNSO works, and the website is also virtually useless in terms of attracting new members to get involved in generic names issues. Document formatting and labelling is weak. Many policy papers are

labelled in confusing or arcane ways, and the labels are nowhere explained. Some policies seem to get lost. For example, a final GNSO report or the report of a Task Force will be published on the website. But subsequently there will be very little information about how the findings or recommendations in this report have been progressed or of what has happened as a consequence.

- 2.14 There is currently very little in the way of branded GNSO (or ICANN) policy statements or research publications. Given the thousands of hours of time voluntarily committed by GNSO councillors and constituency to policy development, we find it strange that there is currently no policy publication series or any sign of ICANN branded output that is linked to GNSO or represents its activities to any wider public.
- 2.15 Beyond being visible, a transparent organization is one where the reasons for people saying what they do are fully understandable to observers. Of particular importance here in contexts like GNSO, where decisions can often impact on the economic life chances and financial situations of participants in decision-making, is that people acting in representative roles should meticulously document and declare any relevant interests that they may have. Some interviewees complained strongly to us that disclosure of interests of GNSO Councillors was not always upheld. It was often impossible to tell which organizations individuals were representing.
- 2.16 Transparency in the relationship between the ICANN Board and the GNSO was also an important concern. Decision-making processes were often seen as rather opaque, and channels of communication between the Board and the GNSO were seen as lacking or dependent on personal links. **[For more on this, see Section 7 of Volume 2.]**
- 2.17 We noted above that for some GNSO constituencies there has been a considerable decline in participation levels below that anticipated at the time the current GNSO structure was set up. Where participation levels become low or very low, there is a risk that those who sustain constituencies will be perceived externally (rightly or wrongly) as running a clique-dominated process, one perhaps unreceptive to the involvement of new actors or players. Two areas give cause for particular concern here:
- First, there is wide variation across constituencies in the turnover of GNSO councillors. Some constituencies have developed term limits for how long



their councillors can serve, but others apparently do not. In the case of the Business and ISP constituencies there has been very low turnover of personnel as their representative on the Council. It is also true, however, that some constituencies, such as the Non-Commercial Users have had difficulty in retaining councillors long enough for them to become experienced in how GNSO operates. It will also be important to have sufficient people involved in how constituencies are run to prevent their officers being the same people for long periods of time.

Second, some potential participants complained to us of the high barriers to participating in GNSO affairs represented by the requirement to first be admitted to a constituency. For instance, a stakeholder wishing to establish a new type of generic domain name has a very high interest in GNSO policy on this issue, but until they actually get permission to set up such a registry it is not clear how they can appropriately gain full access. Similarly, some potential members of the Business Constituency complained to us that it charges a relatively high annual fee (between Euro 1,500 and 1,000 per year), which is likely to exclude any smaller business, especially from outside advanced industrial countries.

So long as such decisions potentially affecting the existence of cliques and the ability to easily join constituencies remain at the discretion of constituencies themselves, and are not effectively over-viewed by ICANN, then transparency will be inherently limited.

**GNSO's policy work is time-consuming, intensive, and unquestionably requires dedication from councillors. But its effectiveness in terms of achieving policy outputs is questioned by many interviewees**

2.18 The GNSO Council has a set of formal procedures for looking at new issues, seeking views from the constituencies and other stakeholders in the Internet community who want to comment, debating the views expressed in the Council, seeking common ground and trying to reach a consensus view of the issue. These procedures are called a Policy Development Process (or PDP) and the ICANN Bylaws lay down demanding deadlines for how long a PDP process can last, designed to help ICANN respond at 'Internet speed' to problems or issues and to

avoid the long timelines characteristic of governmentally-run international forums and bodies. Most current Council members view the PDP process as generally effective. Three major weaknesses were raised by insiders. It is often difficult to keep to the time schedules outlined in the ICANN Bylaws. There are differing views of how best to draw on and incorporate external expertise in the Council's policy development work (see below). And difficulties have been encountered under current arrangements in ensuring that constituencies provide adequate documentation on the number of members who have participated in defining a position adopted by a constituency.

2.19 However, many other interviewees were critical or even scathing of how PDPs operate, with some describing it as 'Byzantine', or 'archaic', or even 'baroque'. For outsiders, it is a deeply complicated process to understand, punctured by strict time deadlines for particular stages, regular voting, and somewhat phoney public comments periods.

2.20 There is a confusing juncture in the PDP where the decision is taken to either launch a Task Force or continue with ICANN staff managers coordinating policy development. The distinction between these two routes is far from clear. Some people have suggested that the Task Force route is more suited to narrower and more focused study. However, the most recent Task Force launched by the GNSO Council is a wide-ranging review of the purpose of the WHOIS database and privacy issues relating to data stored on it. (The WHOIS database ensures that registrars provide information about who owns and operates particular websites. WHOIS is seen as a critical resource by business and IP interests in attempts to control intellectual property rights issues or combat cyber-squatting and alleged abuses of domain names. Other interests close to the Non-commercial Users Constituency believe that enlarging disclosure obligations in WHOIS beyond a minimum infringes citizen privacy rights). **[For more on the PDP, see Section 9 of Volume 2.]**

2.21 Currently GNSO Task Forces consist of members of the GNSO Council and key representatives from constituencies. There is no representation from policy or technical experts and there has been very limited representation from the private sector or governments. Task Forces have commonly demonstrated the same intractable policy divides that have been visible in the Council. Because many of the people on Task Forces are GNSO Councillors, they generally develop the

policies themselves, and then have to vote for the policies they have created. **[For more on Task Forces, see paragraphs 9.3 and 9.4 of Volume 2.]**

- 2.22 By comparison with other global and international bodies, the PDP process with Council-dominated task forces seems to be a somewhat inward-looking approach to developing policies. This is particularly the case because much of this policy work is inevitably linked to national and regional policies that are already in place in different countries and zones across the world (like the EU bloc). Partly because of a tendency for American and Anglo-Saxon participants to be the most influential members, GNSO output can therefore sometimes seem disconnected from the wider world and debates going on in more mainstream international channels. For example, the final WHOIS Task Force report on resolving conflicts for registries and registrars between compliance with national privacy laws and ICANN contractual obligations stipulates that national competition authorities will have 45 days to provide their ruling. More than one of our interviewees suggested that it was somewhat optimistic to expect any competition authority to provide a ruling (as opposed to guidance), and even more optimistic to stipulate that this be produced within 45 days. The general opinion from other interviewees is that if push came to shove, ICANN would have to respect the laws of the country.
- 2.23 An important aspect of the policy development process is when GNSO requests constituencies to seek public comments on options and proposals. Public comments vary considerably in their numbers and volume. Early public comments periods on the UDRP (mentioned above in paragraph 2.4) proved comparatively active, with intellectual property interests debating with privacy and civil liberty advocates. Much of this debate has continued through the public comments on the recent WHOIS work. By contrast, policy development work on registry services has attracted very little public interest. The topic of bringing in new generic top-level domains has shown a slight increase in public interest.
- 2.24 The available documentation shows that GNSO's public comment periods have frequently involved individual members of constituencies resubmitting their views under the guise of 'public' stakeholders. Analysis of comments shows clearly that a high proportion of 'public' contributors are constituency members and even councillors. There may be understandable reasons for these patterns, but it does tend to give the public comment period a somewhat phoney identity if little widening out of debate occurs during them.

- 2.25 Looking at other aspects of the Council's work, it is apparent that it is painstaking and requires a lot of commitment from councillors. Teleconference calls take place every month or so, at times that are necessarily inconvenient for some members scattered across the globe's time zones. There are occasional opportunities for members of one constituency to meet with other constituencies. There is a Council mailing list for Council members and other key policy staff to discuss issues. Participants have suggested that tele-conferencing does not often produce much constructive discussion. Apart from the face-to-face meetings of GNSO Council at ICANN conferences and occasionally elsewhere, the Council's mechanisms do not really allow for softer discussion and consensus building across constituency around common objectives. As a result constituencies tend to develop a position on a PDP process relatively early on, and then stick to it thereafter.
- 2.26 As its revenues have grown in recent years ICANN has considerably increased the numbers of its policy support staff and the last year has provided much more staff support to the GNSO Council, supplementing the secretarial, recording and agenda support that has existed for a longer period. ICANN policy staff now play an enhanced role in informing and assisting the work of the Council. At the same time some of our interviewees identified or exhibited some unusual tensions in the relationship between staff and the Council. There has been a strong feeling in the Council that the staff have allegiance to ICANN management, who appoints them, rather than to the Council. Some Council members advocate a do-it-yourself approach that resists staffwork and distrusts expertise as inimical to bottom-up stakeholder involvement. Equally, other interviewees suggested to us that Council members often take staff for granted and unnecessarily limit their role in informing discussion. In a related area, it is remarkable that despite the highly technical character of GNSO's processes the Council relies almost exclusively on internal sources of expertise, with very little use having been made of external consultants or other external sources of expertise.
- 2.27 Turning to the way in which the GNSO Council operates, a number of interviewees suggested that there is too much of a 'legislative' approach rather than a deliberative approach, despite the best efforts of the Chair to try to move members towards 'consensus policies', which are formally defined as those requiring 67 per cent support in a Council vote. Critics argue that there are too many votes in the Council. Our analysis shows that there is a lot of voting on

procedural matters. For example, between January 2003 and October 2004, 63 votes were held in 27 teleconference meetings, an average of more than two per conversation. Consensus may seem to be either trivial or impossible with the current voting system. Many procedural votes are non-controversial and therefore generate high levels of consensus amongst members. However large substantive policy votes often generate intractable blocs of interests. The current voting rules (combined with the three linked constituencies for business interests and weighted voting for registries and registrars) provides no incentive for opposing blocs to want to find common ground for consensus or to give way on concessions. The super-majority vote of 67 per cent can often seem to the major blocs (of registries/registrars on the one hand and the cross-constituency grouping on the other) to be attainable by attracting relatively few ‘swing’ voters from the Non-commercial Users Constituency or the Nomination Committee members. So the currently rather low ‘consensus’ threshold seems to perpetuates major blocs, and may actually provide positive incentives for intransigence and the use of delaying tactics. **[For more details on voting and policy consensus, see Section 10 of Volume 2.]**

2.28 Consensus is often artificial or meaningless in cases where opposing blocs cannot agree on an acceptable compromise. The recent example of the vote on the purpose of WHOIS shows how a super-majority can take place, giving the impression of consensus. However, as many people have suggested, the vote generated what is effectively an unsustainable policy position, in that national governments and law enforcement agencies will continue to insist on access to WHOIS database information, as will IP interests investigating potential abusive behaviour relating to registered trademark domain names. The output is a peculiar manifestation of the Constituency system, the voting system, and formulaic and inflexible mechanisms for developing globally relevant policy. In our discussions with officials from other global policy development bodies we found that voting was actually extremely rare and consensus was generally the product of discursive and iterative work around pre-prepared policy drafts. One interviewee said that ‘we almost never take a vote...we have processes in place for a vote to be taken...but in my five years of experience and the 20 or 30 policy papers produced, we have hardly ever voted.’

## **GNSO's operations comply with ICANN Bylaws and its operations are regularly conducted**

- 2.29 The fourth criteria for our Review asked whether GNSO operates in a regular way within the ICANN Bylaws and with follow-through for its decisions, to which the general answer is clearly positive. GNSO Council members and staff involved are clearly concerned to operate within the Bylaws and to follow the organization's rulebook. There are two areas where those who talked to us mentioned problems.
- 2.30 The first relates to the interpretation of how a 'consensus policy' passed by GNSO Council should be treated by the ICANN Board. Some people on the Council took the view that such a decision should be binding on the Board and cannot be ignored or overturned. Others argued that the Board must not lightly reject a policy developed by GNSO and meeting the two thirds of weighted votes criterion, but must explain and offer reasons. But equally they argued that the Board has to take account of the views of all the Supporting Organizations plus other bodies (such as the Government Advisory Committee). Policies adopted by GNSO have implications that overlap other areas and spread more widely, for instance on issues like WHOIS or internationalised domain names, the Board must make a comprehensive decision on behalf of ICANN as a whole.
- 2.31 The second area of controversy concerns the scope of GNSO's policy work. Some people have suggested that scope issues are used instrumentally to deflect and delay issues. Registries and registrars generally support much narrower interpretations of GNSO scope. This translates into similar views about the scope of ICANN's activities as a whole. Some people argued to us that GNSO has taken on too wide a concept of its responsibilities, seeking to pronounce on issues that affect the whole of ICANN and without co-ordinating its work sufficiently with other supporting organizations or parts of ICANN. They also feel that GNSO has declared too many PDPs at once, without achieving resolution on ongoing issues. Most interviewees do not see scope as too much of a problem, and believe that the scope of ICANN and the GNSO responsibilities are essentially compatible.
- 2.32 Very little work has been done by ICANN or the GNSO to follow up on the effectiveness of consensus policies that are implemented. Very few of the early consensus policies on procedures covering transfer of domain names from one registrar to another, or procedures for deleting domain names from registry files,

have ever been measured for impact or compliance. A question that follows from this is to what extent is GNSO policy specific and mainstream enough for any follow-up or measurement work to be done. Policy on the transfers and deletions of domain names might well provide opportunities for implementation studies, however much of the WHOIS work is very generalized and peripheral for serious impact study work. For example, the policy covering conflicts between national laws and ICANN contractual obligations relates to decisions, which, in the words of one senior ICANN official, ‘may never in actuality have to be taken’.

**2.33** In one particular area, the implementation of an earlier GNSO Council Review carried out less formally by a consultant in 2003, although the report was endorsed by Council many applied recommendations made at that time have not been implemented – for instance, the need to improve the GNSO website. **[For more on the earlier GNSO Council Review, see paragraphs 8.1 to 8.4 in Volume 2.]**

2.34 We have not looked here at issues concerning the compliance of registrars and registries with ICANN operating contracts, which is outside our scope.

## Part 3:

### **We recommend that the ICANN Board adopt four principles for improving GNSO's performance, each leading to a number of specific suggested changes**

3.1 Any changes made to GNSO's operations need to follow through on four key principles:

- GNSO's operations need to become more visible and transparent to a wider range of stakeholders than at present.
- Changes need to enhance the representativeness of the GNSO Council and its constituencies.
- GNSO's structures need to be more flexible and adaptable, able to respond more effectively to the needs of new and old stakeholders in a rapidly changing Internet environment.
- Changes in GNSO Council's operations are needed to enhance its ability to reach genuinely consensus positions, enjoying wide support in the Internet community.

We review each principle in turn and show how it implies a number of specific changes in the way that GNSO currently operates.

### **GNSO's operations need to become much more visible and transparent to a wider range of Internet stakeholders**

3.2 *GNSO needs a web strategy* and an effective Web presence. There can be no transparency without visibility, and for a body whose central task is Internet governance that means critically immediate visibility on the web. The current GNSO website is used primarily as a working site for Council members and a repository for all policy-related documentation that is produced. There is an extensive mailing list that impressively has averaged between 1 and 2 postings per day since mid June 2003. All minutes of meetings are freely available. But many interviewees were particularly frank with us about the lack of the design and poor organisation of the website. A previous GNSO Council Review in 2004 recommended that the GNSO website be overhauled – yet subsequently no progress has been made. Organizations with imperfect websites often react to



these deficiencies being pointed out by implying that such problems are inconsequential or can be easily corrected by a simple application of finances and effort. We do not share this confidence. In our experience website problems invariably reflect deep political problems inside organizations, and can only be successfully addressed when such problems are resolved. We recommend that the GNSO (and necessarily the wider ICANN) website is redesigned, maintaining the wealth of information currently available at lower tiers of pages, but also incorporating a properly designed top three or four levels, for which named ICANN staff members have responsibility for maintaining in a ‘fit for purpose’ state. The website should be designed to systematically present GNSO’s (and necessarily ICANN’s) activities to a global public in an accessible fashion, but also in some useful detail. The GNSO homepage and top four tiers of pages should give a high-level overview of GNSO’s organisation and current policy work, one allowing a lay person to gain a reasonable and up-to-date understanding of GNSO’s current issues, workload and modes of operating. A specific plan and funding for website improvements need to be incorporated into ICANN’s operational plan as a high priority. The GNSO Council needs to review web statistics at least annually and should aim to grow traffic to the site in line with the overall expansion of Internet traffic.

- 3.3 *Document management within GNSO needs to be improved* and the presentation of policy development work made much more accessible. Many of our interviewees, particularly relatively new participants in the GNSO process, have suggested that document management practices on the GNSO website currently make it extremely difficult to get an overview of policy issues over recent years. Documents are often labelled with obscure headings, an extreme example ‘pdpfinalrevNov04’, and it is often hard to tell from the headings and introductory text whether documents are preliminary reports, final reports, revised final reports and so on. Having spent three months crawling over the ICANN and GNSO websites for relevant background documentation, it is still not clear to our highly experienced research team whether we have read all relevant iterations of key documents. It is also often the case that policy narratives are ‘left hanging’, in the sense that document trails just stop with no apparent explanation of whether a policy report ever become policy or such like. We therefore recommend that any redesign of the website include a forensic trawl through the existing

documentation, removal of extraneous documentation from the main pages (and creation of archives if necessary), and introduction of crystal clear labelling practices. For example, for each policy development process (PDP) that has been carried out in recent years, there should be a page with an up-to-date document narrative available, documents clearly labelled, and some basic summary information about the Task Force membership (where relevant) and the final outcomes that resulted.

- 3.4 *GNSO needs to be more pro-active in recruiting constituency members*, who may then in turn eventually become councillors. There is compelling evidence from many voluntary organizations in many different countries that people get involved primarily because others whom they know personally ask them to do so. GNSO needs to consider how they can make public forums of different kinds (Council sessions and constituency meetings) more interesting and accessible. The more people who attend ICANN conferences the larger are the potential audiences for GNSO Council public sessions. There would seem to be great potential for ICANN conferences to attract greater attendance by building up additional secondary functions, such as trade fair functions, professional sessions and skills updating, market reviews, rather than the current rather ascetic emphasis upon policy functions alone.
- 3.5 *The position of the GNSO Council Chair needs to become much more visible within ICANN and to carry more institutional weight*. Organizations are generally made more visible and salient when they have a clear personal embodiment, and someone who clearly represents them in other important forums. At present the Chair of GNSO Council is a very important and internally influential figure, whose agenda management plays a key role in progressing GNSO's work and facilitating constructive debate. Yet the GNSO Council Chair does not then have a formal role in other ICANN settings. For example, he or she does not attend Board meetings, where the Council is in fact only 'represented' in a very limited way by two former members originally elected to the Board by a GNSO Council vote. (ICANN Board members anyway have a duty to act in the best interests of the organization as a whole and its mission, rather than to represent particular interests). As a result, communications and understanding between the Council and the Board have at times been strained. Recent controversy over the way in which the Verisign settlement was handled raises serious questions about the quality of

communication between the ICANN Board and the GNSO. Many views expressed by Council members during our interviews and indeed much of the written documentation on the decision reflect a need for more formalized and transparent channels of communication on how GNSO views are taken into account and how decisions at Board level are made. Some people have suggested to us that the Chair could act as a non-voting liaison to the Board. Others have suggested that the GNSO Chair could automatically take a seat on the Board after their Council term had ended. And although the current Council Chair has ready access to the ICANN Chief Executive this arrangement is rather informal and might not continue with other personnel in these posts. This is a difficult area for us to frame a specific recommendation because ICANN's central organization was not within our scope. And the role of Council Chair is already onerous enough, so that adding any new duties or roles would require a slimming down of other activities (see below). But what is not sensible is to continue with the GNSO Council operating as a large body with only a diffuse identity and an apparently 'submerged' or under-visible leadership. Amongst other useful ideas put to us (in addition to those above) was the idea that an overall ICANN central executive committee should be established, perhaps including the Chair of the Board, President and Chief Executive, the GNSO Chair and chairs of other Supporting Organizations, and the chair of the Government Advisory Committee. This central executive committee would be a regularized and minuted discussion of work going on across ICANN and GNSO and other represented bodies, and give a chance to maintain open channels of communication on the many cross-cutting issues now in discussion.

## **The GNSO Council and constituencies should be made more representative**

- 3.6 *The basis for participation in GNSO activities needs to be revised*, from a constituency-based membership to one deriving from a direct ICANN membership. Currently the main interface with the GNSO is solely through becoming a member of a relevant constituency. But many interviewees pointed out to us that joining existing constituencies that (rightly or wrongly) appear to be subject to control by relatively small groups of interests is often very off-putting to prospective members – who if they react adversely may then steer clear of any

involvement with GNSO and ICANN as a whole. There are also dissatisfactions about the variation in practices across constituencies and the apparently restrictive and now dated missions of current constituencies. Resources at the constituency level are often limited and lack standardization – a consequence of the bottom-up stakeholder philosophy, but also a factor that greatly increases the perceived complexity and impenetrability of GNSO’s operations. The activities of constituency executives and their levels of outreach activity and membership support have been variable and are hard to predict. Finally having to take out membership only via an amateur-run constituency gives the impression to potential members of being far removed from the heart of ICANN and from influence on its policy processes. Consequently the marginal benefits of being a stakeholder in the ICANN process may seem diffuse. We recommend therefore that organizations and individuals should become stakeholders in ICANN through a centralised membership process. The primary membership interface would be with ICANN rather than with GNSO Constituencies. Depending on their interests and legal status, new members would be channelled towards the relevant stakeholder constituencies (which will need to be simplified, see below). Membership fees could be tiered to individuals and to the size and type of organizations or firms (as is currently the case with some constituencies), but a single scale would prevail. Revenues from fees would be centrally collected by ICANN staff. Expenditure on constituency professional and outreach development would come from a remitted major element of ICANN membership fees and attracting members should also attract a commensurate contribution from the central ICANN budget, so as to give (reformed) constituencies incentives to be proactive in attracting members and contributors.

- 3.7 *There needs to be great ICANN support for and overview of constituency activities*, and greater communication amongst them. There are currently cross-constituency groups and meetings, but these generally involve clusters of specific constituencies rather than regularized and inclusive interaction across all constituency executives. Existing variations in the constitutional and operational arrangements across constituencies raise the transaction costs of participation for organizations and individuals who might usefully play a part in more than one constituency (for example, small business associations). Establishing a Liaison Committee of either the Chair or the Secretary of each Constituency together with

key ICANN policy and operational staff would help to grow understanding and good professional practice and to share experiences and encourage understanding of other constituencies. ICANN also needs to designate or appoint a member of staff to act as GNSO Constituency Officer, with a key role of supporting the work of the Liaison Committee, helping all the constituencies to be as effective as possible, and helping to strengthen and develop the new membership arrangements (above).

- 3.8 *GNSO constituencies should be required to show how many members have participated* in developing the policy positions they adopt. Currently only a small minority of policy statements developed by Constituencies have any kind of data indicating the level of participation or support for a particular Constituency position. One or two recent statements from the Registry Constituency have contained data on the number of members participating in the process. We have heard a range of arguments for and against the introduction of some basic underlying data of this kind. Senior personnel, including Board members, have suggested that more in-depth information on levels of participation and agreement from the constituency members would facilitate weighing up and interpreting any final policy recommendations from the GNSO Council. Other interviewees argue that constituencies are often not required to achieve consensus across their members (and at times cannot). Some have said that members cannot be forced to participate, and so silence from member organizations on a particular can legitimately be taken as agreement on a consultation document. There have been attempts in recent PDPs to collect underlying data from constituencies. We recommend that some basic requirements are agreed and established. The Liaison Committee could be a forum for agreeing and managing such requirements.
- 3.9 *Fixed term limits should be introduced for GNSO councillors* either of two two year terms (as applied in some constituencies already) or perhaps of a single three-year term. Our data on incumbency since 2001 shows a wide variation in the degree of turnover of councillors, with some constituencies showing turnover above average, and some showing turnover chronically below. The current bylaws stipulate two year terms for each Councillor, with staggered changeover of 2 Councillors in one year and then one in the next, and so on. Some Constituencies, such as the Registrars, stipulate term limits for Council representatives. Although term lengths are specified at GNSO Council level, councillors in other

constituencies may continue to serve more than two years (indeed indefinitely) if re-elected by a majority of their constituency members. A term limit of three or four years, after which councillors must step down from membership for at least a term, but could of course be active in a GNSO constituency, would safeguard the need to marshal and conserve expertise while avoiding any creation of cliques.

3.10 *The policies on GNSO councillors declaring interests must be strengthened* and a vote of ‘no confidence’ leading to resignation should be introduced for non-compliance. Many of our interviewees expressed concern about the disclosure of interests of participants involved in the GNSO process. There is much evidence to suggest that self-regulation on issues of disclosure works relatively well, particularly given the close knit community of ICANN, the few degrees of separation between most principal actors, and the intensity of discussion between them. The general view amongst councillors themselves is that any compromising relationships and interests will be uncovered one way or another. Yet however useful these self-correcting tendencies may be, suspicions of conflicts of interest are currently widely held elsewhere in the ICANN community. And (especially in tandem with perceive cliqueness) they are highly corrosive of the legitimacy of GNSO’s deliberations. We recommend that the GNSO establishes and enforces stronger and more detailed disclosure policies for all Council representatives. A vote of no confidence might be introduced with a qualified majority (15 or more members) to encourage members to comply.

3.11 *GNSO Councillors should be paid reasonable travel and accommodation expenses to attend thrice-yearly Council meetings and essential other meetings* instead of having to meet such costs from their own resources as at present. (The only current exceptions are the councillors selected by the Nominating Committee, who are reimbursed) It is an essential principle of representation that representatives should be chosen not just from those who can afford onerous costs. The current set of arrangements also causes conflicts of interest problems, since councillors must search for the wherewithal to fulfil their duties. ICANN’s budget has increased and it should be feasible to meet reasonable (that is, non-luxury) costs for travel and hotel accommodation only. Council members who are anyway funded should be allowed to donate their expenses allowance to their constituency’s funds or other ICANN pro bono activities.

## **The institutional set up and working arrangements of GNSO and its constituencies need to be reorganized so as to become more flexible and capable of adapting to rapid changes in the Internet**

3.12 *GNSO's constituencies need to be radically simplified* so as to be more capable of responding to rapid changes in the Internet. Although the current six constituencies were created around 7 years ago, they are already an offputting 'legacy' structure whose rationale is no longer clear. The current structure has been made inappropriate by a range of subsequent changes, such as the resolution of the most pressing intellectual property issues via UDRP, the blurring together of registries and registrars and the changing character of registration businesses, developments in the secondary market for domain names, the rapid growth of web hosting companies, etc. The logic behind creating the current six constituencies has thus proved highly time-specific, and the constituency structure enjoys little overall support beyond that of current insiders. In tandem with the suggestion above that the primary membership should be of ICANN as a whole, we suggest creating a simpler constituency structure with only three main divisions

- *Registration*, including the current registries and registrars constituencies;
- *Business Users*, including the current Business, Intellectual Property and ISP constituencies; and
- *Other Users*, including the current Non-Commercial Users constituency, but also ordinary domain holders, and possibly individuals currently represented via the At Large Advisory Committee of ICANN.

Once organizations and individuals have joined ICANN they would choose to join one of the three generic domain names constituencies above that most related to their interests. The definition of the constituencies would ensure that there are no gaps where organizations and individuals cannot find an appropriate constituency. In addition, the existing three Nomination Committee places on GNSO Council would be retained.

3.13 *A reorganization of GNSO Council would also allow it to be made somewhat smaller* and hence easier to manage. Clearly the Council must represent diverse points of view, but a body of 21 people is a hard one to convene in one place and to

get agreement from. With a simplified constituency structure as above, the number of representatives per constituency could be arranged in wide range of permutations. However, as an indicative guide we would suggest that allocating 5 seats to Registration, 5 to Business Users and 3 to Other Users, along with 3 Nominating Committee seats would reduce the overall membership to 16 but yet preserve the current balance of interests on GNSO Council. (It would be possible to allocate more seats to Other Users, but there are already indications that perhaps it would not be easy to fill them). For ordinary votes, not using weighted voting, the Chair would gain a casting vote in the event of a tie, reflecting the recommendation above to increase his/her role.

3.14 *GNSO Council should make more use of Task Forces and Task Force participants should be more diverse and represent a wider range of people in the Internet community.* Task Forces provide a structured way of prising open policy issues and developing informed and focused material for review by the Council. They also provide a useful opportunity to integrate new faces and sources of expertise into the policy making process. However, our analysis of Task Force membership (and indeed steering groups overseeing Task Force work) shows that the current mix of participation is limited to overly limited to Council members and representatives from constituency organizations. The make-up of Task Forces also normally reflects the balance of constituent interests in the Council. This means that Task Force debates and outputs can often encounter and reproduce the same problems of intractable interests that are seen at Council level. We therefore recommend that Task Forces should include a broader range of participants from outside the GNSO Constituency structure. If six constituencies are retained as now, we do not believe that it is necessary for Task Forces to include two representatives from each constituency: a Task Force of 12 members could include one member representing the interests of each constituency, representatives from ICANN Advisory Committees such as ALAC and the GAC. Depending on the nature of the issue under consideration, the remaining 4 members could be chosen from other organizations from the private and intergovernmental sector. With the smaller membership Council recommended above then it might be useful to have two members on task forces from each of the Registration and Business Users constituencies. But Council members and constituency representatives should make up no more than half of task forces. An ICANN consultant or associate membership



category could be established with a view to encouraging ongoing participation in the ICANN process by very busy people with appropriate technical or policy expertise. These members of task forces might be suggested by ICANN policy staff and agreed by the Council. Other international and global bodies working in similar areas to GNSO make extensive use of expert-dominated task forces and find that this approach allows for much more expeditious and constructive working on detailed policy development. Finally, many interviewees stressed to us that it is important to recognize that task forces can be organized in many different work patterns, as opposed to the long-drawn out and multi-stage process emphasized in GNSO Council at present. For instance, a pattern of paying expenses to predominantly expert and committed people to come and conduct business intensively face to face and to produce a comprehensive draft policy for GNSO Council to consider, might allow GNSO to become more expeditious and consensual at the same time.

3.15 *GNSO Council should rely more on face-to-face meetings supplemented by online collaborative methods of working. It should reduce the use of intensive teleconferencing.* Since January 2002 there have been around 70 GNSO Council calls averaging just less than two hours each. A high proportion of current and former Council members suggested to us that it is not necessary to convene Council calls so frequently and that much of the work and discussion that takes place on these calls is largely procedural and could satisfactorily be carried out using widely available online software tools. ICANN staff and the GNSO have recently introduced new communication management tools, and are currently piloting them. We recommend that these software tools are developed more intensively across the GNSO. Online voting software might be used for straightforward procedural votes. There are also more sophisticated collaborative project packages on the market (not least a form of ‘wiki’), ideally suited to the GNSO style of policy development. But the most important change needed, which would be achievable by making more use of predominantly expert task forces as above, is for GNSO’s work to focus more on face-to-face meetings, at the regular ICANN conferences and perhaps exceptionally at one or two other occasions when workload demands it. Some people suggested to us that more regular meetings could be held in global hub location, e.g. European cities. Such meetings are much more productive of useful deliberative debate and the constructive development of positions and interchange of views than can be achieved via teleconferencing.

*3.16 GNSO should develop and public a Two Year Development Plan* to dovetail with ICANN's budget and Strategy documents. We have received many different views on the scope of the GNSO policy development work and the way in which new policy development work is initiated. Some people have suggested that the GNSO has not made sufficient progress with some important future policy challenges, particularly IDNs. There is also a recurrent view that the GNSO has invested much of time and resources to major issues such as those relating to the WHOIS database, but have struggled to generate specific and useful outputs from this work. Some people have also suggested that policy development work often tends to emerge in rather ad hoc and reactive ways, such as the latest PDP on amendments to existing contractual conditions with gTLD Registries. We would therefore recommend that the Council publish a Development Plan for its policy work covering the next two or three years. This should be based on consultation across Constituencies, but also other ICANN supporting organizations, and external expertise. It should be presented as a formal document breaking down policy development work into some key areas, and setting out some broad timeframes for completion. It should be based on notional calculations of average cost per PDP, and available time and resources given the existing GNSO arrangements. The first year of the Plan would need to be regarded as firmly committed but the second year could be more indicative so as to retain flexibility to respond agilely. It is important to give stakeholders a clearer picture not just of what GNSO is doing at present but of what topics it will cover in the near future.

*3.17 GNSO Council needs better, more consistent and more GNSO-dedicated staff support, but Council members also need to use staff more constructively.* In some of our interviews with councillors and others we were struck by an unusual level of distrust of the ICANN staff supporting GNSO, partly fuelled by a conviction that bottom-up stakeholder involvement required a 'do it yourself' approach to many issues that can only be effectively handled at this level by expert and committed staff. Some of those involved in GNSO see ICANN staff as appointed and by and working to the agenda of the Chief Executive and have also tried to restrict their role in supporting Council because of this suspicion. In extensive interviews with staff we found instead a strong dedication to helping GNSO work in a neutral and disinterested way to operate effectively and expertly. We believe that achieving more uniformly harmonious relations and a clearer view of staff roles in facilitating

Council discussions, preparing papers, seeking experts for task forces and helping the Council to commission consultants and research where needed could all be helpful for the future. Taken in tandem with the changes suggested above, it could be important to provide additional assurance to GNSO stakeholders that staff working to support the Council and its new proposed constituencies have strong loyalties to these tasks and have appropriate professional autonomy in those roles, while also being accountable in a matrix fashion to ICANN central management.

### **GNSO's rules need a number of alterations to foster more consensus working and better deliberation**

3.18 *The definition of achieving a consensus should be raised above its current level and weighted voting abolished* so as to create more incentives for different constituencies to engage constructively with each other, rather than simply reiterating a 'bloc' position in hopes of picking up enough uncommitted votes so as to win. The current two thirds level for achieving consensus policies is relatively low. Currently for non-controversial issues we find a very high level of consensus across the Constituencies in voting behaviour. However for any major issues such as recent votes on WHOIS or the introduction of new generic top-level domains, there are often intractable blocs of opposing preferences. The weighted double vote privilege for the gTLD Registries and Registrars, and the current super-majority requirement for 67 per cent majority, combine to create practically no incentive for opposing parties to find meaningful positions of compromise and consensus. Admittedly, some issues such as the most recent policy development work on contractual conditions for gTLD Registries may inevitably split the Registries and Registrars. In our view, the effectiveness of the voting system to create pragmatic incentive for consensus should not be dependent on the dynamics of the issue at stake. It should be set up in such a way that broad consensus is in the interests of all stakeholders from the start of policy development regardless of the issue. With a Council of 16 members and without any weighted voting for the Registration constituency we suggest that the consensus level be set at 12 votes (75 per cent). Note that weighted voting would not be needed here to protect the undoubtedly salient interests of registries and registrars, because the Registration constituency would already have a blocking vote of 5 (44 per cent). Accordingly, any new

consensus policy would require the assent of at least one Registration constituency representative to be approved. Currently weighted voting create some avoidable complications in GNSO Council – for instance, a lot of business is done by ‘collecting voices’, but a majority assembled in this way can then be easily overturned by a weighted vote. The result is a lot of unnecessary manoeuvring, plus resentment among people not enjoying weighted votes and seeing previous deliberations apparently unravelled. Note that with a Council of 16 and 5 Business User votes this constituency too could also block.

3.19 In addition, *if weighted voting is still retained, the consensus level should also allow a block by Business Users*. With a GNSO Council of 16 and a Registration constituency of 5, retaining weighted voting would give a total of 21 votes. In this case, we recommend that the level of support needed for consensus policy should be raised to 17 votes (82 per cent), giving Business Users with 5 votes a capability to block.

3.20 *The way in which GNSO Council votes to elect two Directors to the ICANN Board should be changed to use the Supplement Vote system*. The GNSO Council elects two Directors (Seats 13 and 14) to the ICANN Board at least every three years. In all cases each member of the GNSO Council casts one vote for a preferred candidate, and the winner is decided by simple majority. It may be the case therefore that the successful candidate does not have an overall majority of Council votes, but simply a plurality, the largest number of votes but short of majority support. A plurality rule system does not create strong incentives for candidates to ‘reach out’ to people from other constituencies. We therefore recommend introduction of a simple multi-preference system called the Supplementary Vote used to elect the London Mayor (also called ‘instant run-off’ in the US). Here each councillors can express two preferences, one for their first preference candidate and a second one for a second preference candidate. First preference votes are counted and any candidate with majority support is elected and their votes are removed from the election. If only one candidate has majority support, then the top two remaining candidates (let’s call them A and B) stay in the race but all others are eliminated. We look at the second preferences of voters for the eliminated candidates, to see if any are for A or B, and if so are added to that candidate’s pile. The winner of the second Board seat is then whichever of A and B now has most first and second preference votes. In the event that the first round of votes gave no candidate an outright majority, then in the Supplementary Vote system the top

three candidates (A, B and C) stay in the race and all others are eliminated. We then look at the second preferences of voters for eliminated candidates, adding any for candidates still in the race to their respective piles. The winners are now the two most popular of A, B and C on the basis of their combined first and second round votes.