GNSO gTLD Registries Stakeholder Group Statement

Issue: Policy Development Process Work Team Initial Report

Date: 18 August 2010

Issue Document URL: http://www.icann.org/en/public-comment/#pdp-initial-report

Regarding the issue noted above, the following comments represent the views of the ICANN GNSO gTLD Registries Stakeholder Group (RySG) as indicated in the RySG Support Summary provided at the end. Unless stated otherwise, the RySG positions were arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

The RySG compliments the Policy Development Process (PDP) Work Team (PDP WT) for its long and hard work on this very important process and provides below questions and comments regarding the draft recommendations.

Comments & Questions regarding Draft Recommendations

Recommendations 3 & 5 (pp.5-6)

Recommendation 3 says: "The DP-WT recommends the development of a Policy Development Process manual or guidebook, which will constitute an integral part of the GNSO Rules of Procedure, intended to provide guidance and suggestions to the GNSO and ICANN communities on the overall PDP process, including those steps that could assist the community, working group members, and Councilors in gathering evidence and providing sufficient information to facilitate the overall policy development process."
- How are the contents of the PDP Manual/Guidebook going to be developed?
- Note also that Recommendation 5 appears to duplicate Recommendation 3.

Recommendation 6 (p.6)

Recommendation 6 concludes with ". . . guidance could be provided in the Policy Development Process Manual or Guidebook that the Council and/or Staff could provide advice ahead of a vote on the request for an issues report whether they feel additional research, discussion, or outreach should be conducted as part of the development of the issues report, in order to ensure a balanced and informed Issues Report."
- In some cases it might be useful to do additional research, hold discussions or conduct outreach before an Issues report is requested, so it might be useful to include this possibility in the manual/guidebook.

Recommendation 10 (p.7)

Two options are under consideration regarding the timeframe for creating an issues report:
1. "Setting a maximum timeframe (e.g. 30-45 days) in the By-Laws which can be modified . . ."

2. "Request that ICANN staff provides the GNSO Council with an estimate of time it would take for the ICANN Staff to complete an issues report taking into account the complexity of the issue and the ICANN staff workload."

Maximum time frames in the current PDP in the Bylaws have for the most part have had to be ignored because they were unrealistic for many issues. Timeframes are better put into the manual/guidebook instead of any the Bylaws. The practice of asking Staff to provide estimates of time needed has worked fairly well in GNSO history and better accommodates the variability of issue complexity.

Recommendation 12 (p.8)

This recommendation starts off with "The PDP-WT recognizes the value of workshops on substantive issues prior to the initiation of a PDP."
- What is meant by a "workshop"? Workshops traditionally have been held at ICANN international meetings but those are only held three times a year.
- Note that drafting teams have been used successfully in the GNSO in recent years for several purposes including drafting charters, developing recommendations for consideration before initiating a PDP, etc. Does the WT see a place for DTs in the PDP process and, if so, what would that be?

Recommendation 13 (p.8)

This recommendation says: "The PDP-WT recommends that the Policy Development Process Manual or Guidebook describe the option for the GNSO Council to require that an impact analysis be conducted if appropriate or necessary prior to the vote for the initiation of a PDP. Such an impact analysis could include the assessment of the economic impact, the impact on competition, the impact on consumer choice and/or protection, etc."
- The RySG believes this is a very constructive recommendation.

Recommendation 15 (p.9)

This recommendation says: "The PDP-WT is considering the notion of having a fast-track procedure that would allow for a more timely PDP in cases where such urgent action is deemed to be necessary while at the same time ensuring broad participation and avoiding gaming. The PDP-WT hopes to receive further input from the community on which elements such a procedure should contain and how it would work in practice, during the public comment period."
- Recent experiences in the GNSO have demonstrated the need for such a procedure so the RySG supports this recommendation.
- But it should be recognized that some issues will be too complex to adequately cover in a fast-track process so it would be helpful if there were some guidelines that could be used to decide when to consider a fast track procedure.

Recommendation 25 (p.12)

This recommendation says: "The PDP-WT recommends that each PDP WG will be strongly encouraged to review the GNSO Working Group Guidelines that include further information and guidance on the functioning of GNSO Working Groups."

- Development of a "cheat sheet" for WGs could facilitate implementation of this recommendation.

Recommendation 28 (p.12)

Recommendation 28 says: "The PDP-WT recommends modifying clause 9 of Annex A of the ICANN by-laws to change the duration of the public comment period on the Initial Report from twenty to a minimum of thirty calendar days (see section 3 for proposed new language)."
- Timeframes are better placed in the manual/guidebook than in the Bylaws because the former are much easier to change as needed.
- GNSO experience to date has shown that flexibility is often needed; in that regard, it might be better to suggest comments periods of 20 to 30 days, the latter being preferred if possible.

Recommendation 31 (p.13)

Three options are under consideration here:
1. "Require the inclusion of implementation guidelines as part of the Final Report"
2. "Consultation with the WG / Council on the draft implementation plan"
3. "The creation of an implementation team that consists of representatives of the WG, amongst others, which would be tasked to review / provide input during the implementation phase "

The first option seems like it could have value but it is not clear that it would be practical in some PDPs. It may depend on what is meant by implementation guidelines, so that may need some clarification. For example, the New gTLD PDP contained implementation guidelines but they were at a fairly high level; if the final report had to contain more detail, the PDP would have taken considerably longer than the 1.5 years it lasted. And we have seen that the implementation process has taken even longer than the PDP took.

To the extent possible, it would be helpful to consult with WGs during the implementation process, but for PDPs that last a long time, WG membership tends to change a lot so that reality needs to be considered. Also, it is important to do that in a way that does not too easily provide an avenue for redoing recommendations in cases where some parties may not have been totally satisfied with the results unless there is strong justification for doing so.

Consultation with the GNSO should definitely happen during the implementation plan development. The GNSO Council should mainly be a channel through which that happens.

In cases where an implementation team is formed, it would be useful to include members of the WG as possible.

Recommendation 32 (p.13)

The RySG strongly supports this recommendation: "The PDP-WT recommends that staff resources needed or expected in order to implement the policy recommendations should be evaluated as part of the WG recommendations, and as part of the Council's review of those recommendations, as part of the feasibility analysis and/or impact statement (see recommendation 31)."

Recommendation 33 (pp.13-14)

This recommendation says: "The PDP-WT recommends amending clause 7 of Annex A of the ICANN by-laws to reflect the practice that Stakeholder Group / Constituency statements are requested by the Working Group and the timeline for submission should start from that point instead of the initiation of the PDP (see section 3 for proposed new language)."

- The RySG thinks this is a good change.
- It might also be a good idea to note that in some cases constituency statements may be requested more than once.

Recommendation 38 (p.15)

This recommendation says: "The PDP-WT recommends to provide additional guidance to GNSO Council in the Policy Development Process Manual or Guidebook on how to treat Working Group recommendations, especially those that have not received full consensus and the expected / desired approach to adoption of some, but not all, or rejection of recommendations. There is discussion within the PDP-WT whether the GNSO Council should have the flexibility to 'pick and choose' recommendations. There is no agreement yet on what guidance, if any, should be given on recommendations that have not received full consensus. The PDP-WT hopes to receive further input on this issue during the public comment period."

- It is important to note that WGs do not necessarily have balanced representation.
- In contrast, the Council structure is designed to facilitate balanced representation of the stakeholder groups.
- Assuming that Councilors are consulting with their SGs and constituencies, Council decisions should reflect the consensus or lack thereof of the broader GNSO community and hopefully the broader ICANN community as applicable.

Recommendation 39 (pp.15-16)

The third sentence of this recommendation says, "Reports on PDPs should be delivered from the GNSO Council directly to the Board and if any summaries are needed, that should be the responsibility of the Council with the help of the Working Group (if necessary)."

- The RySG suggests rewording this sentence along the lines of the following: "Reports on PDPs should be delivered from the GNSO Council to the Board and any summaries needed should be approved by the Council after consultation with the Working Group (if necessary)." This would more clearly allow the Council to enlist GNSO policy staff support in preparing and delivering summaries and reports while still leaving approval of such to the Council in its representative capacity of GNSO community members.

The last sentence says, "The PDP-WT has discussed ways in which to make the report more focused and easier to digest, but has not agreed on a possible recommendation in relation to this issue yet and hopes to receive further input on this issue during the public comment period."

- As this initial report illustrates, reports need to be much more concise. Detailed background and supporting information can be referenced as appendices or attachments.

Recommendation 42 (p.16)

The first sentence of this recommendation says, "The PDP-WT recommends creating a WG Implementation Review Team, which would be responsible in dealing with implementation issues."

- The RySG supports this idea and suggests that the recommended composition of such a review team be made in the WG final report.
- The review team then could serve as an ongoing resource for the GNSO Council and ICANN implementation staff.

PDP Flowchart (p.19)

The RySG notes that the PDP Flowchart shows the 'Initiation of a PDP' prior to the 'Creation if a Drafting Team to develop the WG Charter'.

- In recent GNSO PDPs, it has appeared to be helpful to have a draft charter prepared before initiating the PDP; that then makes it easier to decide whether a PDP should be initiated because the desired objectives and deliverables are defined.

For 'Adoption of the Charter', the "Same voting thresholds apply as for the Initiation of the PDP".

- The voting thresholds for initiating a PDP are as follows:
  - To initiate a PDP within scope requires an affirmative vote of more than 33% of each House or more than 66% of one House.
  - To initiate a PDP not within scope requires an affirmative vote of more than 75% of one House and a majority of the other House ("GNSO Supermajority").
- It might be simpler to apply the default threshold, a simple majority of each house.

RySG Level of Support

1. **Level of Support of Active Members**: Unanimous

    1.1. # of Members in Favor: 13

    1.2. # of Members Opposed: 0

    1.3. # of Members that Abstained: 0

    1.4. # of Members that did not vote: 0

2. **Minority Position**(s): N/A

General RySG Information

- Total # of eligible RySG Members[1]: 14

- Total # of RySG Members: 13

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[1] All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the "effective date" set forth in the operator's or sponsor's agreement (RySG Articles of Operation, Article III, Membership, ¶ 1). The RySG Articles of Operation can be found at <http://gnso.icann.org/files/gnso/en/improvements/registries-sg-proposed-charter-30jul09-en.pdf>. The Universal Postal Union recently concluded the .POST agreement with ICANN, but as of this writing the UPU has not applied for RySG membership.

- Total # of Active RySG Members[2]: 13

- Minimum requirement for supermajority of Active Members: 9

- Minimum requirement for majority of Active Members: 7

- # of Members that participated in this process: 13

Names of Members that participated in this process: 13

1. Afilias (.info & .mobi)
2. DotAsia Organisation (.asia)
3. DotCooperation (.coop)
4. Employ Media (.jobs)
5. Fundació puntCAT (.cat)
6. Museum Domain Management Association – MuseDoma (.museum)
7. NeuStar (.biz)
8. Public Interest Registry - PIR (.org)
9. RegistryPro (.pro)
10. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
11. Telnic (.tel)
12. Tralliance Registry Management Company (TRMC) (.travel)
13. VeriSign (.com, .name, & .net)

- Names & email addresses for points of contact
  - Chair: David Maher, dmaher@pir.org
  - Vice Chair: Jeff Neuman, Jeff.Neuman@Neustar.us
  - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
  - RySG representative for this statement: Chuck Gomes, cgomes@VERISIGN.COM

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[2] Per the RySG Articles of Operation, Article III, Membership, ¶ 6: Members shall be classified as "Active" or "Inactive". A member shall be classified as "Active" unless it is classified as "Inactive" pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a RySG meeting or voting process for a total of three consecutive meetings or voting processes or both. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a RySG meeting or by voting.