

# GNSO gTLD Registries Stakeholder Group Comments

Issue: **Policy Development Process Work Team Final Report & Recommendations**

Date: 9 July 2011

Request for public comments URL: <http://www.icann.org/en/public-comment/pdp-final-report-09jun11-en.htm>

The RySG sincerely thanks the members of the Policy Development Process Work Team for all of its hard work over a very long period of time. We believe that the recommendations in the Final Report are close to completion, but we have a few suggestions for additional improvements.

## General Comments

1. Except in cases where an action is explicitly required by the GNSO Council (e.g., a vote), we suggest that the term 'GNSO' be used instead of 'Council' or "GNSO Council" so as to better reflect the fact that it is the GNSO community as a whole that develops policy.
2. With regard to voting thresholds, we note that there are times when '33%' or '66%' is used and other times when '1/3' or '2/3' is used. We think it would be helpful to use one approach or the other consistently in the Bylaws (including the PDP in Annex A) and in the PDP Manual.
3. We strongly believe that required time periods should be sufficiently long enough to adequately allow time for bottom-up vetting of issues with SGs, constituencies, Advisory Committees and other Supporting Organizations as applicable. In several cases, a deadline of eight days before a Council Meeting is stated; in most cases, this would not be sufficient for Council members themselves to review and develop thorough feedback let alone allow them vet the issue with their group members. The RySG recommends the following guidelines for timelines:
  - In cases where a new motion may be made regarding a just released report, and such report has material changes from a previously released report, a minimum of 30 calendar days should be allowed.
  - In all cases, time requirements should provide for exceptions to provide flexibility for special circumstances.
4. We compliment the WG for developing a draft PDP manual and believe this will facilitate implementing the recommendation in that regard.

## Comments regarding Recommendations

### Recommendation 23, Mode of Operation for a PDP (M)

The two examples given for other working methods are 'task forces' and 'committee of the whole'. We suggest that these examples not be given and that other examples be given such as 'drafting teams' and 'review teams'. We think that neither 'task forces' or 'committee of the whole' is consistent with the working group model as defined in the GNSO Improvement Recommendations. Both are defined in the current PDP with very specific requirements that are different than what is being implemented for

working groups. And establishing a ‘committee of the whole’ would put the Council in a policy development role rather than a policy process management role.

#### Recommendation 29, Guidance on Public Comment Periods (M)

The general intent of this recommendation seems good, i.e., that a WG consider and respond to public comments, but the way it is worded seems to require that the WG respond to every public comment submitted. In cases where few comments are received, it may be realistic for the WG to do that, but when there are large numbers of comments, that would be extremely time consuming and likely unrealistic for the WG. We recommend a change along these lines to the latter part of the second sentence: “. . . encouraging WGs to explain their rationale for agreeing or disagreeing with ~~different comments~~ **the main themes of comments** received and, if appropriate. . .”

#### Recommendation 37, Timing of Consideration of Final Report (M)

Allowing as late as eight days before a Council Meeting for considering a Final Report is totally unworkable in a bottom-up process. (See General Comment 3 above.)

#### Recommendation 38, Consideration of Working Group Recommendations (M)

In light of the experiences in Singapore relating to the Council not readily accepting WG recommendations and, more importantly, out of respect for the bottom-up process, we suggest the following two changes to this recommendation:

- i. Add a sentence like the following before the last sentence: “The Council, in its policy process management role, should cautiously handle any reconsideration of WG recommendations to ensure that the WG does not get the impression that their work was in vain. If the Council thinks that a particular recommendation does not have support from any particular group, it should determine whether that group’s input was reflected in the final recommendation.”
- ii. In the last sentence, change the word ‘encourage’ to ‘require’ so that it says “The PDP WT would like to ~~encourage~~ **require the following: where** the GNSO Council **has** concerns or would propose changes, it passes these concerns and/or recommendations for changes back to the respective PDP WG for their input.”

#### **Comments on Section 3, Overarching Issues**

Are all of the overarching issues included in the draft PDP Manual? If so, it might be a good idea to state that near the beginning of this section of the report. If not, it would be helpful to identify which ones are not with the supporting rationale.

#### Consideration of Final Issue Report by the GNSO (p.28)

Allowing as late as eight days before a Council Meeting for considering a Final Issue Report is totally unworkable in a bottom-up process. (See General Comment 3 above.)

#### Approval of WG Charter (p.29)

Allowing as late as eight days before a Council Meeting for considering a WG Charter is too short in a bottom-up process. (See General Comment 3 above.)

### Consideration of Final Report by GNSO Council (p.30)

Allowing as late as eight days before a Council Meeting for considering a WG Charter is too short in a bottom-up process. (See General Comment 3 above.)

### Consideration by the Board (p.31)

This item says “Where feasible, the Board shall consider the Recommendations Report at the Board’s next meeting after receipt . . .” ‘Where feasible’ provides some flexibility and that is good but the basic recommendation does not take into consideration Board requirements and needs. Just like the GNSO, Board members need some lead time to sufficiently review documents. Moreover, they have a requirement whereby issues must be provided to them a minimum number of days in advance of their meetings. We recommend that this item be reworded to say something like this: “The Board shall consider the Recommendations Report as soon as possible according to its requirements but not later than the second meeting ~~at the Board’s next meeting~~ after receipt . . .”

### PDP Document Translation

Item 2 says “Public comments should be received in other languages and where feasible, these comments should also be translated back into English.” We recommend this be changed as follows: “Public comments should be received in other languages ~~and~~ where feasible, **and when that occurs** these comments should also be translated back into English.” Because English is the official language for ICANN activities, it is critical that all non-English comments be translated into English; otherwise WGs and the GNSO as a whole will not be able to adequately consider the comments.

### Voting Thresholds (pp. 34-36)

The organization of this section is a little confusing. Item 5 is titled ‘Vote of Council’ but items 2, 3 & 4 are also Council votes. It would be clearer to put all four items under a heading of ‘Council Votes’ (i.e., a new item 2).

The last sentence of 5.c on page 35 says: “. . . the GNSO Supermajority vote threshold will have to be met or exceeded with respect to any contracting party affected by such contract provision.” What does this mean? Wouldn’t it be sufficient to say this: “. . . the GNSO Supermajority vote threshold will have to be met or exceeded.” The clause “with respect to any contracting party affected by such contract provision” seems to be irrelevant. We suggest that you clarify this in the report.

Regarding Item 6, Board Vote:

- We note that the current ICANN Bylaws use a voting threshold of 66%, which is what is used in 6.b and 6.e of this section of the report. Clearly, it is essential that the GNSO recommended Board voting thresholds are consistent with those in the Bylaws. This is important to keep in mind with regard to General Comment 2 at the beginning of this document.
- Item 6.b says “The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement . . .” Twenty days will likely be too short a turn-around for the Council in most cases. Assuming that the review would require at least one Council meeting and enough lead time for SGs and constituencies to review the statement before that meeting, twenty days could expire before a Council meeting is held. As suggested in General Comment # 3 at the beginning of this document, we recommend this be changed to at least thirty (30) days.

## PDP-WT Conclusion

There are so many bullet points in this section that we think it would be preferable to number them for easier reference.

Regarding the second full bullet on page 38, the last sentence says: “The WT discussed whether a timeframe should be included as to when the board is required to submit its statement to the GNSO Council and it was suggested that a certain timeframe should be included (e.g. Board shall within x days submit the board statement to the GNSO Council with guidance on how to cure the identified deficiencies).” To ensure flexibility to deal with various circumstances that may occur, we suggest that this be change to something like this: “. . . a certain timeframe should be included (e.g., the Board shall within x days submit the board statement to the GNSO Council with guidance on how to cure the identified deficiencies, **with an option to extend if necessary**).”

Regarding the third full bullet on page 38, allowing as late as eight days before a Council Meeting for considering a Board statement is too short in a bottom-up process. (See General Comment 3 above.)

The fourth full bullet on page 38 says: “The WT also discussed whether the board should be able to pick and choose recommendations or whether they should be adopted or rejected ‘en block’ as has been current practice. Most agreed that the board should only be able to adopt or reject the GNSO Council recommendations as a whole as policy development is supposed to be done at the SO level, not by the board.” We suggest adding a sentence like this: “If the Board is considering separating recommendations, it should discuss this with the GNSO Council beforehand.”

The first full bullet on page 39 says: “The WT discussed 6g and the meaning of ‘timely’. Some suggested this could mean time sensitive, critical or urgent. The question was raised who makes the assessment on whether something is timely? Most agreed that it would be the role of the ICANN Board to make this assessment, although the GNSO Council could make a recommendation to this end. ICANN staff has been requested to ask for clarification from Legal on this provision.” If clarification was received from Legal, this paragraph should be updated to reflect that. If not, we suggest that clarification be obtained and this point updated before finalizing the report.

## Annex A, Section 1 Required Elements of a PDP

Element g on page 41 says “PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]”. Because of the importance of the recommendations, it might be useful to require that the recommendations be provided as a separate document from the full report or that they be concisely provided as a distinct section of the report after the Executive Summary.

## Section 3, Creation of an Issue Report, p. 42

With regard to elements that should be considered in the Issue Report, item e says: “The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN’s mission, policy process and more specifically the role of the GNSO as set forth in the PDP Manual.” Should this end with “as set forth in the Bylaws” instead of “the PDP Manual”? The Bylaws are authoritative; the Manual is not.

## Section 4, Initiation of the PDP, p. 43

This section starts off by indicating that “The Council may initiate the PDP as follows: *Board Request*: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.” What if resources are too limited to perform a PDP? It seems like it would be a good idea to change this to something like the following: *Board Request*: Except in cases where the Board believes that a PDP is urgently needed, before requesting a PDP, the Board should request the GNSO to provide information regarding the availability of community and staff resources as well as what GNSO activities may have to be delayed to add a new PDP. If the Board requested an Issue Report for what they consider an urgent need, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP unless resources are not available. No vote is required for such action. If the Board requested a PDP for a matter that is not considered urgent, they should provide guidance regarding what other GNSO activities should be delayed if necessary and make suggestions with regard to how additional resources may be found.”

### **Summary of RySG Member Support**

The above comments represent the views of the RySG as indicated below. The RySG comments were arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

1. Level of Support of Active Members: Supermajority
  - 1.1. # of Members in Favor: 12
  - 1.2. # of Members Opposed: 0
  - 1.3. # of Members that Abstained: 0
  - 1.4. # of Members that did not vote: 2
2. Minority Position(s): N/A

### General RySG Information

- Total # of eligible RySG Members<sup>1</sup>: 15
- Total # of RySG Members: 14
- Total # of Active RySG Members<sup>2</sup>: 14
- Minimum requirement for supermajority of Active Members: 10

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<sup>1</sup> 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 (Article III, Organization and Membership, ¶ 1). The RySG Articles of Operations can be found at [http://www.gtldregistries.org/system/files/registries-sg-proposed-charter-30jul09-en\\_0.pdf](http://www.gtldregistries.org/system/files/registries-sg-proposed-charter-30jul09-en_0.pdf).

<sup>2</sup> 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.

- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 13
- Names of Members that participated in this process:
  - Afiliias (.info & .mobi)
  - DotAsia Organisation (.asia)
  - DotCooperation (.coop)
  - Employ Media (.jobs)
  - Fundació puntCAT (.cat)
  - Museum Domain Management Association – MuseDoma (.museum)
  - NeuStar (.biz)
  - Public Interest Registry - PIR (.org)
  - RegistryPro (.pro)
  - Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
  - Telnic (.tel)
  - Tralliance Registry Management Company (TRMC) (.travel)
  - VeriSign (.com, .name, & .net)
- Names & email addresses for points of contact
  - Chair: David Maher, [dmaher@pir.org](mailto:dmaher@pir.org)
  - Alternate Chair: Keith Drazek, [kdrazek@verisign.com](mailto:kdrazek@verisign.com)
  - Secretariat: Cherie Stubbs, [Cherstubbs@aol.com](mailto:Cherstubbs@aol.com)
  - RySG representative for this statement: Chuck Gomes, [cgomes@verisign.com](mailto:cgomes@verisign.com)