

RyC GNSO Restructuring Input – 18 September 2008

The gTLD Registry Constituency (RyC) appreciates the opportunity to provide input for ICANN Staff in preparing an analysis and recommendation for each of the remaining decision points of Board members in their deliberations regarding GNSO Council restructuring. The comments that follow represent a consensus position of the RyC as further detailed at the end of the document.

Issue 1 – Role of the Third NCA

The RyC supports the recommendation of the GNSO Working Group on GNSO Council Restructuring (WG) that a third Nominating Committee Appointee (NCA) serve at the Council level in a non-voting capacity. We believe that the WG reached consensus on that recommendation in a reasonable manner that accommodated the varying concerns of different GNSO stakeholder groups, so to change that now would compromise the accommodations made. We think it is helpful to recognize that having a non-voting NCA serve on the Council is essentially no different than having non-voting liaisons on the Council today, or for that matter the Board, except for the fact that that the NCA would not specifically represent a particular advisory group as the current liaisons do; he/she would hopefully simply provide an independent voice in Council deliberations. But, if the Board decides to make the third NCA a voting seat, then we believe the topic of voting thresholds included in Issue 4 below would need to be revisited because the thresholds were developed with the understanding that the third NCA would be non-voting.

Issue 2 – Council Leadership; Election of GNSO Council Chair

The RyC supports the recommendation of the WG that the GNSO Council Chair be elected by a 60% vote of BOTH voting houses. We strongly believe that to function effectively the Council Chair needs to be experienced and knowledgeable about the GNSO and the GNSO Council and we also believe that Council members are well qualified to evaluate such qualifications. It has been asked what would happen if a 60% vote of both houses could not be achieved: 1) our first response is that in the history of the DNSO and GNSO, chairs have always been elected with support that is higher than the proposed 60% threshold of both houses, so history may tell us that this may not be very likely; 2) even if it is unlikely, that possibility should still be anticipated so procedures should be developed in that regard, and we are confident that the GNSO could develop such procedures for Board approval as part of the implementation process. The RyC also supports the recommendation of the WG that each house elect a Council Vice Chair to support and backup the Chair. While we believe that the Chair should have primary leadership responsibility of the Council, we also believe that the collaborative approach currently used with the Chair, the Vice Chair and ICANN Policy Staff has been very constructive and should be continued with the added advantage of expanding the leadership team so that both houses are represented.

Issue 3 - Election of Board Seats

It is not clear to the RyC what the concerns are with regard to the WG proposal for election of Board seats #13 and #14. It should be noted that the WG recommendation does not say that a director must be associated with the house that elected him/her but only that the applicable house would hold the election. It is understood that directors have a fiduciary responsibility to the corporation and not to the body that elected them; this is true whether a director is elected by the Council as a whole or by one house of the Council. If it is inappropriate for one house to elect one of the seats because that house is only a subset of the full Council, then couldn't it also be argued that it is inappropriate for the GNSO to elect directors because it is only a subset of the ICANN community? The issue of filling Board seats is one that was extremely important on the WG and one for which considerable compromise was made; to change that would have a ripple effect on other compromises made, so we think the Board should be very cautious in that regard. At the same time, if the Board does determine that the proposed approach is not acceptable, we think that it may be helpful to consider other alternatives that the WG discussed such as having a different house nominate candidates for the two seats with confirmation required by the full Council (e.g., 60% of both houses). Once the exact concerns of the Board are communicated, an approach that might be feasible is to ask the WG to develop an alternative proposal that addresses those concerns; because neither seat #13 nor seat #14 will need to be filled until well beyond the end of 2008, such an approach should not cause any undesirable delays.

Issue 4 – Voting Thresholds

The RyC supports the recommendations of the WG for voting thresholds. A great deal of work went into these recommendations and the threshold decisions made were interdependent with other elements of the restructure recommendations, so any changes made to these, with the possible exception of threshold recommendation 6, could be problematic. As pointed out in our comments for Issue 1 above, if the Board decides to make the third NCA a voting seat, then we believe the entire topic of voting thresholds would need to be revisited because the thresholds were developed with the understanding that the third NCA would be non-voting.

Issue 5 – Implementation

The RyC believes that it is both realistic and important to require complete transition of the GNSO Council to the bicameral voting structure by the end of 2008. But this means that implementation work must begin as soon as possible and therefore Board action on the critical elements of the five issues in this document must happen not later than the next ICANN Board meeting. This would also allow for in-person work on bicameral voting structure implementation in the Cairo meetings, something we believe would facilitate the task. In our comments above we noted a couple actions that could be assigned to the GNSO for further work and subsequent Board approval but we do not think that such an approach would delay overall implementation of the new voting structure. In addition to Issues 1, 2 and 4 above, we believe that two very significant implementation issues are: 1) how to quickly involve not-yet-existing interest groups in

the process of implementing the bicameral structure before year-end; 2) how to design a long-term process that ensures that new interest groups can be readily and fairly incorporated into stakeholder groups. In regard to both of these issues, we believe that each stakeholder group should have the primary responsibility of developing a proposal for seating Council representatives under the bicameral model and obtaining Board approval of that proposal. In all GNSO activities, the possibility of capture of a constituency or stakeholder group by an unrepresentative group of individuals should be minimized; this is true in the implementation activities of the next few months as well as in the long-term future of the GNSO. We call attention to WG recommendation 6, Representation, that says: a) All four stakeholder groups must strive to fulfill pre-established objective criteria regarding broadening outreach and deepening participation from a diverse range of participants; b) All stakeholder groups must have rules and processes in place that make it possible for any and all people and organizations eligible for the stakeholder group to join, participate and be heard regardless of their policy viewpoints. Finally, because of the tight time constraints to implement an implementation plan, we want to suggest that it might be necessary to implement an interim plan for 1 January 2009 with the requirement to finalize a long-term plan within 3 to 6 months thereafter.

General Comments

In reviewing the 28 August Board Meeting Preliminary Report, we note that the concept of weighted voting was mentioned several times by the Board. It is our understanding that, under the proposed bicameral voting approach, the concept of weighted voting should not be needed because the bicameral approach combined with the recommended voting thresholds balance the votes between the two houses. We think that recommendations for weighted voting are not only unnecessary but may create confusion and alarm in the community, especially by those who had concerns about weighted voting.

We also note what appears to be a perception that the two GNSO houses would have separate meetings and hold separate votes. This could indeed happen and would not be precluded under the bicameral structure, but it would not be required. The bicameral voting structure could be implemented at the Council level even if the separate houses never held joint stakeholder group sessions or held separate house votes prior to Council meetings.

In reading the Preliminary Board Meeting Report, it is not clear that all directors read the report from the WG and may have relied mostly on staff recommendations. If that is correct, we strongly urge all directors to do so before they make decisions on the remaining GNSO Restructure issues. We have no problem with staff making recommendations to the Board but we also think that reading the WG report directly is essential to understand the full scope of the WG recommendations.

Finally, we fully support the BGC WG recommendation that the GNSO in its policy development process should move away from an emphasis on voting to a rough consensus approach and we believe that goal is achievable. In that regard, we think it is

critical to keep in mind that the bicameral voting structure applies to the GNSO Council in its role of managing the policy development process, not to working groups where policy development work will actually happen.

RyC Information with regard to These Comments

A supermajority of 11 RyC members supported this statement:

- Total # of eligible RyC Members¹: 15
- Total # of RyC Members: 15
- Total # of Active RyC Members²: 14
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 11
- Names of Members that participated in this process:
 1. Afiliás (.info)
 2. Employ Media (.jobs)
 3. Fundació puntCAT (.cat)
 4. Global Name Registry - GNR (.name)
 5. mTLD Top Level Domain (.mobi)
 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. VeriSign (.com & .net)

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 (Article III, Membership, ¶ 1). The RyC Articles of Operations can be found at http://www.gtldregistries.org/about_us/articles .

² Per the RyC Articles of Operations, Article III, Membership, ¶ 4: 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 Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. 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 Constituency meeting or by voting.