

Registries Constituency Comments regarding the LSE GNSO Review

The ICANN GNSO gTLD Registries Constituency (RyC) would like to thank the London School of Economics (LSE) for the extensive effort put into its GNSO Review Report. We recognize that the task was extremely challenging and yet believe that they did a commendable job in identifying critical areas for improvement for the GNSO.

Introduction

The LSE's assessment that the following areas are in need of improvement in the GNSO are remarkably consistent with the observations our members made and positions our constituency took on the same subject:

- Representativeness of constituencies
- Dominance by a small core of people
- Difficulty for newcomers to penetrate constituencies
- Arduous process of reaching consensus with an over reliance on voting and a legislative approach
- Unrealistic time constraints in the policy development process
- Limited visibility and transparency to a wide range of stakeholders
- Limited flexibility and adaptability to respond to a rapidly changing environment
- Inconsistency of public information, procedures and resources across different constituencies
- Little incentive for constituencies to trust the behavior of opposing constituencies
- Insufficient in-depth information on levels of participation and agreement from constituency members with regard to constituency positions
- Lack of standardization of staff support across constituencies
- Deficiencies in the design of ICANN's website and even more importantly the GNSO website
- Very poor document management processes
- Lack of a communications strategy
- Lack of use of project management methodologies in policy development work
- Limited use of collaborative work tools
- Over-reliance on GNSO Councilors in policy development
- Limited delegation of detailed policy development work
- Dominance of public comments by constituency members and their allies
- Lack of incentives for Constituencies to reach agreement
- Lack of follow-up on consensus policies that have been implemented.

We also believe that the LSE made some thoughtful recommendations that could result in improvements to many of the above listed areas. At the same time there are some places where we believe the recommendations may miss the mark and in turn make some alternative proposals for consideration. All of our comments, questions and recommendations are provided with the sincere intent to be constructive in the community-wide discussion of the report and in the improvement efforts that hopefully will follow.

Our comments are presented as follows: we first provide an executive summary that lists what we believe are the most critical areas for GNSO improvement; next we provide some general comments that cannot easily be associated with specific LSE recommendations; then we provide detailed comments in response to each of the 24 LSE recommendations; and finally we provide information regarding how the RyC developed the comments in this document.

To provide the proper context and to minimize the need for readers to refer to the report text directly, our comments are generally accompanied by quotes of relevant excerpts of the report in *italic font* along with page numbers and paragraphs in parentheses.

Several of the comments included in this document are related to suggestions for GNSO improvement that were sent to the GNSO Council by the RyC on 21 December 2005 and can be found at <http://www.gtldregistries.org/news/2005/2005-12-21> . Such comments are marked with an asterisk (*).

Executive Summary

The RyC performed a comprehensive review and analysis of the LSE GNSO Review Report. In that process, we discussed the full report and developed comments, questions and suggestions that we hope will be helpful as the community works together to improve the GNSO. We believe that it is important to evaluate and discuss all of the 24 LSE recommendations, but we strongly believe that the following actions are particularly critical for GNSO improvement and want to call special attention to them upfront.

1. Emphasis on collaboration and group consensus including elimination of voting in policy development
2. Documented PDP verification to include:
 - a. Constituency/stakeholder representativeness
 - b. Level of constituency/stakeholder consensus
 - c. Constituency/stakeholder impact
 - d. Communication of minority opinions
3. Codification of the allowable scope of GNSO policy development efforts in the ICANN Bylaws
4. Spreading the policy development workload over a much broader base of participants
5. Clarifying the Council role as one of PDP management, coordination and oversight in contrast to being the policy making body itself
6. Careful evaluation of the constituency model - It could be that formal constituencies are not even needed; instead self-formed stakeholder groups could be organized for the purpose of contributing to a particular policy development effort of specific interest to those groups. Some such groups might serve a role in multiple PDPs while others may only function for one PDP.
7. Initiating improvement efforts in the following areas while the process of developing final improvement recommendations is ongoing:
 - a. Developing procedures and templates to standardize and simplify PDP processes, inputs and outputs
 - b. GNSO website improvement

- c. Document management
- d. GNSO Councilor term limits
- e. Identifying and evaluating project management methodologies and tools

Each of these areas is discussed in more detail below along with input for all of the 24 LSE recommendations

An overview of the process used by the RyC in developing our comments including data regarding RyC member participation is provided at the end of this document.

General Comments

In the Executive Summary of the report the LSE stated, “*Changes in the GNSO Council’s operations are needed to enhance its ability to reach genuinely consensus positions, enjoying wide support in the Internet community.*” (P.10, ¶ 8, last bullet)

- The RyC believes that there will be policy development efforts where consensus positions cannot be reached.
 - Moreover, we don’t believe that that is a bad thing but rather a signal to let market forces work as freely as possible.
 - Any improvements made to the GNSO policy development process should allow for this occurrence.

In performing its analysis for the report, the LSE included some case studies for what they referred to as comparator organizations (Annex C). The policy work of most if not all of the organizations used as benchmarks in the LSE report has a very different character compared to that of ICANN’s GNSO. The policies developed for other organizations are either non-binding voluntary standards or positions developed by interest groups (i.e., IT suppliers) designed to influence governments or applicable decision makers rather than creating binding rules. The current ICANN model however, assumes that consensus policies once adopted by the Board are binding on certain ICANN participants, namely the gTLD registries and registrars.

- This difference in the nature of comparative organizations and ICANN must be taken into consideration in the process of deciding what recommendations should be implemented.
- One specific consideration that could be explored further is this: changing the binding nature of ICANN policies to a non binding voluntary consensus. This would result in the creation of best practices rather than contractual limitations. This may in some instances be a more appropriate means to develop and apply consensus policy.

While there is in theory no restriction to what parties such policies should apply, the contractual structure makes particular ICANN participants the “natural” targets while leaving others relatively immune to any policy that may be developed. In some comparative organizations (e.g., ITU) the policy development would be undertaken typically only by the entities to whom the policy will eventually (and voluntarily) apply. Even the membership in other ICANN Supporting Organizations such as the ccNSO or

the ASO is organized in a manner closer to that of the LSE-used comparative organizations than the GNSO itself.

To better manage expectations in GNSO policy development efforts, the RyC believes that the function and scope of policy-making authority of the GNSO should be clearly communicated. One point that we think is particularly important in this regard is this: In relation to the ICANN Board, the GNSO should serve a consultative/advisory role in contrast to a directive or legislative role. The ICANN Bylaws clearly give ICANN Board Directors the responsibility for approving policy but, over the years, it appears that some in the GNSO community have come to assume that the ICANN Board is remiss if it doesn't follow GNSO recommendations. The ICANN Board Directors have a fiduciary duty to represent the ICANN Corporation and must take into consideration appropriate legal and other factors when deciding whether policies recommended by the supporting organizations should be implemented. Along this same line, it might be worth considering a change in the ICANN Bylaws to require a supermajority of Board Directors to approve a binding consensus policy and only require a simple majority of Directors to disapprove a GNSO recommended consensus policy. We do not believe that supporting organizations or advisory groups should be able to hold the Board hostage.

Comments Regarding LSE Recommendations

Recommendation 1

“A centralized register of all GNSO stakeholders should be established, which is up-to-date and publicly accessible. It should include members of Constituencies and others involved in the GNSO task forces.” (P.22, ¶ 2.5)

- If this recommendation is pursued further, here are some questions that should be answered:
 - Would someone have to be in the register to be able to participate in policy development efforts?
 - How would the register be updated?
 - What kind of information would be required to register?
 - Would there need to be authentication of stakeholder members?
 - What methods of outreach could be used to expand the register?
 - Who would maintain the register?
 - Would such information be public?
- Even if the centralized register improves stakeholder participation, it seems likely that significant numbers of stakeholders may still be absent from GNSO policy development efforts. Therefore, it would seem useful to explore the idea of obtaining input from non-stakeholders (non-members) in the policy development process via mechanisms such as random surveys of stakeholder groups or the community at large.
 - Information obtained could be used to complement the work done in the formal GNSO policy development process and thereby provide a broader picture than could be obtained by just members of the register.
 - To do this properly would require specialized expertise and additional funding to ensure objectivity and reliability of the questions asked and the

results received, but it could result in additional data that could strengthen or bring into doubt conclusions reached in the formal policy development efforts.

Recommendation 2

“GNSO Constituencies should be required to show how many members have participated in the policy positions they adopt.” (P.28, ¶ 2.14)

The RyC suggests that this recommendation does not go far enough. For all policy recommendations to the ICANN Board, specific, objective measurements should always be provided without limitation to the following:*

- A quantifiable measurement of the level of consensus achieved in the GNSO – This should certainly include the level of consensus on the Council (e.g., 100%, 80%, 60%), but it should go further and include level of consensus achieved in each of the constituencies represented on the Council. [Note that this would not necessarily require voting; in a rough-consensus policy development approach, participating stakeholder groups could be identified along with their level of representativeness and a statement of their support; similarly, participating stakeholder groups who opposed the recommendation could be identified along with their level of representativeness.]
- Listing of impacted parties including their perceived level of impact (e.g., high, medium, low)
- Data regarding the types and quantity of outreach efforts to GNSO constituents and the community at-large including the success and/or failure of those efforts. (e.g., website request for comments received 11 relevant responses over a 21-day period; GNSO constituency request for comments resulted in statements from 5 of the 6 constituencies; etc.)
- The level of representativeness of participants in the consensus development process including:
 - The level of representativeness of each constituency and/or stakeholder group supporting or opposing a recommendation (e.g., 11 gTLD registries including all of the active registries participated in the process out of a total of 12 gTLD Registry Constituency members and out of a total of 14 eligible members.) Data about constituency representativeness (and/or membership) should be generally available, say on the GNSO web site, rather than re-inserted each time constituency comments on a policy. That would provide a readily available means of validating representativeness claims at any given point in time.
 - The level of representativeness of stakeholder groups from whom input was requested.

A standardized input template should be used to ensure completeness and consistency of data reported to the Board. The RyC would be happy to provide a possible example of such a template.

Recommendation 3

“There needs to be greater coherence and standardization across constituency operations. For this to work effectively, more ICANN staff support would be needed for constituencies.” (P.32, ¶ 2.22)

“(G)reater coherence and standardization across constituency operations” could be an excellent improvement for the GNSO especially with regard to policy development efforts. But it is important to realize that simply adding more ICANN staff support for constituencies will do little if there are not significant improvements in process, procedures, communication, representativeness, outreach ,etc. The success of this recommendation is very much dependent on implementation of changes in other areas identified by the LSE as needing improvement.

Recommendation 4

“A GNSO Constituency support officer should be appointed to help Constituencies develop their operations, websites and outreach activity.” (P.33, ¶ 2.23)

The intent of this recommendation appears to have value but it needs to be defined further. For example,

- Could one support officer serve all constituencies?
- Would it be possible for one person to have the necessary expertise in all three areas (operations, websites and outreach) or would that person simply be a coordinator of other resources that could be called upon to serve constituency needs?
- However this recommendation might be fulfilled, do the costs justify the value add?

This recommendation has the potential of facilitating the implementation of recommendation 3.

Recommendation 5

“Constituencies should focus on growing balanced representation and active participation broadly proportional to wider global distributions for relevant indicators.” (P.43, ¶ 2.39)

This recommendation sounds noble but needs some clarification:

- What does balanced representation mean?
- Does balanced representation mean the same thing for all constituencies or stakeholder groups?
- What relevant indicators could be used to measure proportionality of wider global distributions and would these apply in the same way to all constituencies or stakeholder groups?
- What happens if representation and active participation goals are not met?
- What happens if certain segments of the relevant community for a given constituency or stakeholder group cannot be motivated to participate?

Answers to these questions are essential if we want to be able to measure whether or not each constituency or stakeholder group achieves the desired level of representation and active participation.

Recommendation 6

“The basis for participation in GNSO activities needs to be revised, from Constituency based membership to one deriving from direct ICANN stakeholder participation.” (P.46, ¶ 2.44)

In the Executive Summary of the report, the LSE made reference to *“creating a direct (primary) membership in ICANN . . .”* (p. 11, ¶ 9, 2nd bullet). ICANN in its formation consciously avoided becoming a membership organization under California law. Unless ICANN as a corporation makes foundational changes in its legal structure, it seems critical that this recommendation be worded and implemented in a manner that does not become confused with ICANN Corporation membership.

In a follow-up consultation with the RyC, in response to a question about ICANN membership, the LSE stated *“, it is important to note that this doesn’t mean that ICANN should become a membership controlled organization.”*

Recommendation 7

“The GNSO should improve the design and organization of the current website, develop a website strategy for continual improvement and growth over the next three years, and review usage statistics on a regular basis to check that traffic to the website is growing over time and understand more fully what external audiences are interested in.” (Pp.52-53, ¶ 3.10)

The RyC strongly supports this recommendation. While significant improvements have been made to the ICANN corporate website, little has been done to improve the GNSO site and it is extremely hard to use even for active ICANN participants, let alone for those new to ICANN and the GNSO.

It is not clear though that growth in usage statistics is necessarily a meaningful measurement. A well-designed site could actually result in less hits because people would have less need to return frequently. At the same time, the concept of recording and analyzing site traffic is a sound one and one that should be further defined.

The RyC believes that it is not necessary to wait until a total GNSO improvement plan is finished before starting work on implementing this recommendation.

Recommendation 8

“Document management within the GNSO needs to be improved and the presentation of policy development work made much more accessible.” (Pp.54, ¶ 3.14)

This recommendation goes hand in hand with recommendation 14 (to grow the use of project-management methodologies in policy development work). The two

recommendations have the potential of significantly improving the efficiency of policy development efforts.

A tremendous amount of duplication of effort occurs in the GNSO because of poor document management procedures.

The RyC believes that it is not necessary to wait until a total GNSO improvement plan is finished before starting work on implementing this recommendation.

Recommendation 9

“The GNSO should develop and publish annually a Policy Development Plan for the next two years, to act both as a strategy document for current and upcoming policy work, and as a communications and marketing tool for general consumption outside of the ICANN community. It should dovetail with ICANN’s budget and strategy documents.” (Pp.55, ¶ 3.16)

A plan is a great idea but its value will be highly dependent on whether other seriously needed changes are made in the GNSO functionality.

Recommendation 10

“The GNSO and ICANN should work proactively to provide information-based incentives for stakeholder organizations to monitor and participate in GNSO issues.” (Pp.57, ¶ 3.19)

The concept of providing “incentives for stakeholder organizations to monitor and participate in GNSO issues” is easily supportable. And it does seem possible that “information-based incentives” could be part of that concept. But it is not clear that that will be enough to significantly improve stakeholder participation. Improving information flow and communication are definitely prerequisites for improved participation but it may be useful to brainstorm additional incentives that go beyond information.

Internet users like most people in today’s world are busy and have to manage their time judiciously. For some, obtaining increased information will work as an incentive for direct involvement in GNSO activities. For others, it may not. But they might be willing to participate indirectly (e.g., random surveys that require minimal time and effort).

Recommendation 11

“The position of the GNSO Council Chair needs to become much more visible within ICANN and to carry more institutional weight.” (P.62, ¶ 3.26)

If the overall functionality of the GNSO is significantly improved, would it still be essential that the position of Council Chair needs “to become much more visible within ICANN and to carry more institutional weight?” If so, why? The answer to the latter question should provide clues regarding how best to fulfill this recommendation. For

example, if the Chair requires more time commitment than is realistic for a volunteer, how could that be achieved?

In addition to the questions in this regard that were raised by the LSE in their report, some questions for further consideration are:

- Should the Council Chair become a compensated position? Part time or full time?
- Should an honorarium be paid to the Chair?
- Should the Chair position be an ICANN staff position filled by the GNSO?
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In a follow-up consultation with the RyC, the RyC said, “*LSE thinks that the Chair doesn’t have a formal role in relation to the Board, and this needs to be considered; however, this particular topic was not within their Terms of Reference to address.*”

In response to the idea of the Chair being someone who is not a representative of any constituency, the LSE said, “. . . *the LSE thinks it is important that the Chair be a member of the Council as opposed to one who is seen as a “different species” from the rest of the Council members. If a different concept is considered, we would probably be moving away from this.*”

Regardless of how the above questions are answered, the RyC believes that the Chair should be as independent as possible, should be an effective facilitator and should have appropriate qualifications for the job. In particular, the RyC suggests that consideration should be given to making the Chair a non-voting member of the GNSO Council and a liaison to the Board. If too much power is vested in the Chair, it may often be a bone of contention for the council. To take this a step further, it may be worth exploring whether the Chair should be an independent appointee that is not a member of any constituency.

Recommendation 12

“The policy on GNSO Councilors declaring interests should be strengthened. Provision for a vote of ‘no confidence’ leading to resignation should be introduced for noncompliance.” (P.63, ¶ 3.28)

The RyC definitely believes that steps should be taken to minimize conflicts of interest within the GNSO but we also recognize that it is near impossible to find participants who are both useful and without conflicts. Declaring interests is a minimum step that should be required of all Councilors. Moreover, if it is discovered that a Counselor has intentionally avoided declaring interests, then there should be steps for removing that person. But such steps should be carefully designed to ensure that they are fair and do not simply result in opportunities for political game playing.

If strong procedures were enforced to ensure representativeness of constituencies that is well documented within policy development processes, then individual Councilors would be less able to exercise individual influence that could inordinately favor their conflicting interests. So it may be more important to focus on steps that would improve representativeness of Councilor positions than to deal with individual Councilor conflicts of interest.

Another action that could be taken in this regard is to require that any votes communicated by Councilors be identified as either personal positions or constituency positions. And votes given as personal positions should be used for information purposes only.

Recommendation 13

“Fixed term limits should be introduced for GNSO Councilors either of two two-year terms (as applied in some Constituencies already) or perhaps of a single three-year term.” (P. 65, ¶ 3.30)

- The RyC supports this recommendation because, as the report states, it would reduce the chances of cliques, and also because it improves diversity and introduces new thinking.
- The RyC believes that this recommendation could be considered independently and in advance of the package of other recommendations thereby allowing benefits to be realized sooner than if it is delayed until the whole package of recommendations is considered. The RyC is in the process of revising its Articles of Operation to include this requirement and has already taken steps to ensure that no RyC Council representatives are re-elected if they have already served two terms.
- One question that should be discussed is: Should there be exceptions for certain situations where there is difficulty meeting special requirements (e.g., geographical diversity) or where it is impossible to find qualified and skilled candidates willing to serve?

In a follow-up consultation with the RyC, the LSE said, *“not having fixed term limits is unusual in organizations, and accompanying dangers of having individuals continue in perpetuity in a role creates an impression from outside of a click-run operation.”*

Recommendation 14

“The GNSO Council and related policy staff should work more closely together to grow the use of project-management methodologies in policy development work, particularly focusing on how targeted issue analysis can drive data collection from stakeholders (rather than vice versa).” (P.74, ¶ 4.14)

- Any actions that can be taken to improve efficiencies in policy development work should be considered. It might be helpful to form a special working group of qualified project managers to explore various project-management methodologies and make some recommendations. This could be done in parallel to other work being done to improve the GNSO and need not be delayed until a total package of improvements is finalized.

Recommendation 15

“The GNSO Council should rely on face-to-face meetings supplemented by online collaborative methods of working. The Chair should seek to reduce the use of whole-Council teleconferencing.” (Pp.76-77, ¶ 4.19)

In the Executive Summary of the report, the LSE suggested *“radically reducing the use of telephone conferencing and shifting to more face to face GNSO Council meetings, for which all participants would receive reasonable travel and accommodation expenses; . . .”* (p.11, ¶ 9, 6th bullet)

- Whereas the rationale behind this recommendation is understandable, this would seem to be quite expensive to implement. The RyC thinks it would be wise to prepare some cost estimates for implementing this recommendation before pursuing it too far.
- The RyC also believes that the GNSO has had some limited success with the use of teleconferences so it does not seem necessary to eliminate them entirely and possibly not even “radically reduce” them. A better approach might be to develop guidelines for when in-person meetings would be more appropriate, when teleconferences should be considered, and how to organize teleconferences to maximize their effectiveness.
- The Dec05 PDP Committee deliberations regarding the introduction of new gTLDs have been a good example of both the value of in-person meetings and the effective use of teleconferences.
- It may be possible that teleconference meetings could be used effectively if they were structured differently, including but not limited to applying project management techniques as suggested in Recommendation 14.

Recommendation 16

“The GNSO Councilors should have access to a fund for reasonable travel and accommodation expenses to attend designated Council meetings, instead of having to meet such costs from their own resources as at present.” (Pp.77-78, ¶ 4.21)

- The RyC suggests that it would be wise to prepare some cost estimates for implementing this recommendation and then doing a cost-benefit analysis before pursuing it too far.
- Should this be restricted to Councilors? What about task force members?
- If this recommendation or some form of it is implemented, procedures should be established to ensure equitable treatment for all Councilors and/or task force members.

Recommendation 17

“The GNSO Council should make more uses of Task Forces. Task Force participants should be more diverse and should be drawn from a wider range of people in the Internet community, and national and international policy-making communities.” (Pp.76-77, ¶ 4.26)

The LSE goes on to say, “A workable rule of thumb should be that Council members and Constituency representatives should make up no more than half of future task forces.” (p.80, ¶ 4.26, 4th sentence)

- The RyC made a similar suggestion in the GNSO improvement recommendations it submitted to the Council in December 2005: “The GNSO Council should take steps to minimize the number of simultaneous projects (task forces) with which any one Counselor is directly involved. Except in very special circumstances, experts who are not Counselors should make up the majority of task forces and working groups established by the Council thereby freeing Counselors to focus most of their attention in managing the consensus policy development process instead of directly developing policy. To facilitate interface with the Council, at least one and possibly two Counselors should be members of each task force and working group. Deciding to not use a task force in a PDP should be considered rarely if ever.” * Using the Council as a whole or some subset of the Council for GNSO work should be limited to administrative matters only.
- To ensure that no task force participants are spread so thin as to be ineffective and to ensure that the Council can focus on overall management of the policy development process rather than acting as the policy making body, it would seem wise to go further than what the LSE recommends and make recommendations along the lines of the following:
 - Task forces should not be made up of more than four (4) Council members.
 - No Council member or Constituency representative should be involved in more than one task force at the same time (or at most two if there is reasonable justification). [This could be taken a step further and say that no one should be involved in more than one task force at the same time (or at most two if there is reasonable justification).]
- Another very critical reason for recommendations like these is to create an environment in which more policy issues could be worked at the same time.
 - At the present, the GNSO is unable to focus on several policy issues because there is not enough bandwidth.
 - This would not be such a big problem if the workload was spread across a larger population of individual participants. The GNSO would presumably then be able to respond in much more timely fashion to multiple policy development needs in parallel rather than in serial mode as is mostly the case now.

Recommendation 18

“An ICANN Associate stakeholder category of participation should be created, so as to create a pool of readily available external expertise, which can be drawn upon to populate Task Forces where relevant.” (P.80, ¶ 4.27)

- Having a pool of available experts in key subject areas related to GNSO policy development efforts seems like a useful idea whether they are stakeholders, associate stakeholders, or neither. For example, as we approach the introduction

of new IDN TLDs, it could be very useful to have a pool of linguists available who represent major scripts.

- Part of the problem may be that we continue to rely too heavily on “constituencies” and force people into categories.

Recommendation 19

“The current GNSO Constituency structure should be radically simplified so as to be more capable of responding to rapid changes in the Internet. The Constituency structure should be clear, comprehensive (covering all potential stakeholders) and flexible, allowing the GNSO to respond easily to rapid changes in the makeup of Internet stakeholders. We suggest a set of three larger Constituencies to represent respectively Registration interests, Business and Civil Society.” (P.86, ¶ 4.35)

- The LSE stated goals behind this recommendation are easy to support: simple, clear, and flexible structure that covers all potential stakeholders and allows timely updates as the environment changes. But we would add a goal: the structure must be functional; in other words, it must work.
- A fundamental question that the LSE apparently didn’t ask is this: is the constituency model the right model? Although the RyC is not suggesting what the answer is, it might be interesting to explore the question further.
 - In a follow-up consultation with the RyC, the LSE communicated the following: *“One or two put the suggestion forward for the abolition of Constituencies altogether; however, LSE considered the potential for Constituencies to be a very positive force and are working well in some areas.”*
 - It could be that formal constituencies are not even needed; instead self-formed stakeholder groups could be organized for the purpose of contributing to a particular policy development effort of specific interest to that group. Some such groups might serve a role in multiple PDPs while others may only function for one PDP.
 - Whether there are formal constituencies or self-formed stakeholder groups, the number may be irrelevant if adequate procedures are in place to facilitate participation in a measurable and effective manner.
- If it is decided to continue some form of constituency model, then it should be designed in a way that has reasonable chances of solving as many of the problems identified in the LSE report as possible such as:
 - Lack of representativeness of constituencies
 - Dominance by a small core of people (capture)
 - Difficulty for newcomers to penetrate constituencies
 - Arduous process of reaching consensus with an over reliance on voting and a legislative approach
 - Limited visibility and transparency to a wide range of stakeholders
 - Limited flexibility and adaptability to respond to a rapidly changing environment
 - Inconsistency of public information, procedures and resources across different constituencies

- Little incentive for constituencies to trust the behavior of opposing constituencies
- Insufficient in-depth information on levels of participation and agreement from constituency members with regard to constituency positions
- Lack of standardization of staff support across constituencies
- Very poor document management processes
- Lack of use of project management methodologies in policy development work
- Limited use of collaborative work tools
- Over-reliance on GNSO Councilors in policy development
- Limited delegation of detailed policy development work
- Dominance of public comments by constituency members and their allies
- Lack of incentives for Constituencies to reach agreement
- Lack of follow-up on consensus policies that have been implemented.
- Would the three constituencies proposed by the LSE work? The RyC has some concerns in this regard:
 - Cutting down the number of constituencies might make sense where interests across constituencies are frequently duplicated as noted in the report (e.g., BC, IPC & ISCPC), but would smaller organizations and individuals in the case of civil society be swallowed up by larger organizations?
 - The idea that registries and registrars have sufficient commonality of interest to form a single constituency is not supported by theory or practice.
 - In any event, a way would have to be found to ensure that the diverse interests in any given group are all given effective voice and there would need to be mechanisms within constituencies for developing consensus positions.
- Specifically with regard to whether a constituency made up of Registration interests is feasible, the RyC did discuss possible ways that such a constituency could work but as reflected above, the majority opinion was that history does not show this to be a workable approach.
- Operational effectiveness of each constituency (whatever the number of constituencies) would be a significant factor affecting the success of the model.
 - If it is decided to continue the constituency model, then it would be essential that guidelines be developed to facilitate operational effectiveness of constituencies.
- In follow-up consultations, the LSE clarified that they recommended that ICANN members should only be allowed to be members of one constituency within the GNSO.
 - Such a requirement would force many organizations to make a choice between different lines of business.
 - The RyC recommends that this issue be discussed further.
 - Another question that this gives rise to is whether or not an ICANN member could be involved in more than one supporting organization.

Recommendation 20

“A reorganization of the GNSO Constituencies would also allow the Council to be made somewhat smaller (we suggest 16 members) and hence easier to manage.” (P.87, ¶ 4.36)

- Is 16 small enough to significantly increase efficiency? The answer to this question would likely depend on what the responsibilities of the Council are. A smaller Council size would seem to be a very reasonable proposition for increasing effectiveness if the following conditions are met:
 - The GNSO Council’s primary responsibility is to manage/coordinate the policy development process (as the ICANN Bylaws state) rather than acting as the policy development organization itself.
 - Procedures are in place to ensure that each constituency is as representative of its community as possible.
 - There is less reliance on voting and more emphasis on collaborative work on developing policies that most stakeholders can support.
 - Reasonable and flexible time constraints are included in the PDP.
 - A much broader spectrum of stakeholders is involved in policy development task forces.
 - The number of policy development task forces in which any given individual participates is kept to a minimum.
 - The scope of policy development topics is clearly defined so that efforts are focused on appropriate matters.
- Any reduction in the number of Counselors or pairing down of the number of constituencies may also require reevaluation of the requirements for geographic representativeness.

Recommendation 21

“The definition of achieving consensus should be raised to 75 per cent. Weighted voting should be abolished. Both measures could be used 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.” (P.88, ¶ 4.38)

In the Executive Summary of the report, the LSE suggests *“abolishing the current weighted voting for registration interests but giving both them and business users (broadly construed) an effective veto over non-consensus changes.”* (p.11, ¶ 9, 4th bullet):

- It is not clear that any thought was given to how constituencies would organize themselves to be able to provide direction to their representatives in cases where voting occurred.
 - This is particularly crucial in the case of a veto.
 - In the 16 vote model proposed by the LSE with a requirement for a 75% majority, a veto would require all five votes of a constituency.
 - What if a constituency had a split opinion on a possible veto? (For some of the recent issues under consideration by the GNSO, the registries and registrars have definitely had clearly opposing positions with little or no room for compromise.)

- Would equal weight be given to every constituency member regardless of whether the member was an individual or organization, a small organization or a large organization, etc.?

The LSE goes on to say, “*Clearly there is a need to provide assurance to registries and registrars that their interests will not be lightly or inadvisably affected by new PDP decisions. But we do not believe that weighted voting is the best way to do this.*” (p.87, ¶ 4.37, p.87, fifth and sixth sentences)

- Contrary to what the LSE concluded, eliminating weighted voted could quite likely mean that there is less incentive for certain constituencies to work towards compromise on certain issues. In the recent case of Whois that is cited in the report, if it were not for weighted voting, it is quite likely that no willingness to work toward compromise would have ever occurred. In other words, eliminating weighted voting could cause the GNSO to regress back to where it was in the days of the DNSO.
 - How can this be avoided?
 - How can registries and registrars be assured “that their interests will not be lightly or inadvisably affected by new PDP decisions”?
- In addition to the veto proposal suggested by the LSE, it seems important to explore other ways to ensure that contracted parties are protected from a situation that existed in the DNSO where contracted parties were always overwhelmed by users.
- In a follow-up consultation with the RyC, the LSE said they “*would like to see a slightly higher level of consensus; would require outreach to gain understanding by others, a process of constructing an agreement that would normally require a process of compromise and constructing an agreement.*”
 - The RyC is supportive of an approach that encourages constructive collaboration and relies much less on voting; in fact, we would go so far as to recommend that voting be eliminated from policy development efforts.
 - If the Council served a coordinating role for the policy development process rather than a direct policy development role, there quite likely would be much less need for voting.
 - The Dec05 PDP (Introduction of New gTLDs) serves as a good example of an inclusive, rough consensus approach emphasizing collaborative work and minimal or no voting..
 - Another idea that we think deserves consideration is a best practices model with binding policy only used as the last resort for issues critical to security and stability of the DNS instead of being the default mode for any and every issue that anyone wants to put on the table.
 - A corollary approach that could be considered is to differentiate between consensus policies that would be binding if approved by the Board and best practices.
 - In the case of best practices, market forces would presumably reward those who follow them over time.
 - Different thresholds could be established for consensus policies and best practices.

Recommendation 22

“The way in which the GNSO Council votes to elect two directors to the ICANN Board should be changed to use the Supplementary Vote system.” (Pp.88-89, ¶ 4.40)

- The RyC is not convinced that this approach to electing directors is the best fit for the GNSO but is open to further examination of the recommendation. We also suggest that other election options be explored to increase the chances of finding an optimum voting process.

Recommendation 23

“The amount of detailed prescriptive provision in the ICANN Bylaws relating to the operations of the GNSO should be reduced. ICANN Bylaws should outline broad principles and objectives for the GNSO but the detailed operational provision (including the section on the PDP) should be transferred to the GNSO Rules of Procedure. This would allow the GNSO to agree amendments and to introduce new innovations in its working methods and timelines in a more realistic and flexible way, while operating within ICANN’s guiding principles.” (P.96, ¶ 5.7)

- The DNSO went several years without ever establishing clear and measurable procedures for policy development. The PDP procedures in the Bylaws represent the first time clear procedures were provided. Considering the history of political game playing in the DNSO and GNSO, it is important not to revert back to where we were prior to ICANN reform.
- Many on the GNSO Council appear to see themselves as the policy making body instead of the policy management body. Removing much of what is included in the GNSO PDP from the ICANN Bylaws could provide an open door for those who want to continue to use the GNSO to serve their special interests. If the LSE’s recommendation in this regard primarily relates to the unrealistic time frames contained in the current PDP, then the RyC agrees that more flexibility is appropriate in that regard.
- Implementing this recommendation requires TRUST that the GNSO is not captured by a small group of activists and history does not support TRUST. Moreover, the data in the report doesn’t seem to support TRUST either. Too much policy development work is done by a very small group of individuals without sufficient evidence of broader representation. There is too much politicking and not enough true collaboration. Until a model is developed that has realistic chances of creating the needed trust, the RyC recommends that the PDP be kept in the ICANN Bylaws with the one possible exception of PDP timelines.
- Notwithstanding the above comments, the RyC believes that a comprehensive review of the GNSO PDP is overdue. In that regard, we would recommend the following improvements:
 - The scope of GNSO policy development responsibilities should be unambiguously defined, not only in registry and registrar agreements, but also in the ICANN Bylaws. It is only fair to those who volunteer countless hours in support of policy development efforts, that they are assured that those efforts will not later be declared out of scope and therefore result in long hours of wasted time.

- Prior to initiating any activity, the GNSO Council should carefully evaluate the proposed activity to ensure that it involves the possible development of a substantive policy relating to generic top-level domains. If it is not a policy issue, it falls outside of the GNSO's mission and should probably be discarded. If it is a policy issue but not substantive in nature, it should only be pursued if adequate resources are available considering other priorities. To accomplish this recommendation, it would be helpful to reach some consensus regarding guidelines that can be used to determine whether or not an issue is a policy issue and also whether it is substantive in nature. *
 - The only way for policy development to work successfully is for ICANN and the GNSO in particular to restrict the focus only on ICANN's narrow mission as defined in its Bylaws and to implement any resulting policies in a fair and balanced manner.
- Whenever GNSO participants are asked to contribute to a policy development effort, every possible means should be made to provide clear instructions with regard to all of the following: the purpose of the activity; relevant background information; the possible results; and desired input. Using a consistent format to provide these instructions would be helpful; a standard template should be used for desired input to ensure completeness and consistency as well as to facilitate use of the information received. A template could also be used for constituency input and for input from key stakeholders not directly represented in the GNSO. *
- Processes should be bottom-up and every effort possible should be made to minimize the possibility of capture by small groups or individuals; it is also important that ICANN not become a conduit for lobby organizations with too much power.
- Coordination of the consensus policy development process including coordination with participants in the process is extremely important. This is even more important when multiple efforts are going on simultaneously. This coordination responsibility seems like a good fit for ICANN policy staff tasked with supporting the GNSO. *
- To make sure that coordination responsibilities for GNSO policy development activities are clearly understood by all GNSO participants and to ensure that tasks happen in a timely manner, responsibilities of ICANN staff tasked to support GNSO policy development efforts should be clearly delineated. This should include but need not be limited to the following: *
 - Identification of backup support in case of personnel unavailability
 - Specific listing of applicable coordination tasks such as: liaising with ICANN staff, GNSO Council chair, task force chair, GNSO Secretariat, etc.; collection of relevant documentation; scheduling meetings; arranging for meeting minutes; progress reporting; consolidation of input; monitoring compliance with PDP requirements; etc.
 - Responsibilities of task force chairs and task force members should be clearly delineated. In both cases, general responsibilities should be the same for all policy development efforts with only minor

- adjustments made to deal with special circumstances; any such adjustments should be identified.
- The GNSO Council should provide very clear, unambiguous instructions for every GNSO task force, working group or committee including: 1) required time frames; 2) required deliverables; 3) instructions regarding what to do in case there is no consensus position achievable; 4) questions that must be answered; etc. *
 - All policy recommendations to the ICANN Board should be presented as concisely as possible. Thorough executive summaries should always be provided. Objective data should be provided in standardized table or chart format. The temptation to provide excessive documentation of GNSO processes and results should be avoided and clear summaries of the policy development efforts should be provided with references to detailed documents for those who would like to see them. *
 - It is essential that the GNSO communicate to the Board the positions of all stakeholder groups regarding specific recommendations as well as how representative those groups are.
 - A standardized outline should be developed and used for all recommendations to the Board. Any such outline should correlate closely with the requirements of the ICANN Bylaws requirements in Article X, Section 6 and Annex A (GNSO PDP) to ensure that all required information is included. *
 - Some additional areas for improvement in the PDP include: *
 - Establishing more realistic timeframes for various steps of the PDP process including possibly having different timeframes for issues of different levels of complexity
 - Breaking broad issues into smaller components that can more reasonably be considered in required PDP time frames
 - Clearly defining measurable data that is required with any GNSO recommendations to the Board
 - Building increased flexibility in the process to accommodate unanticipated complications
 - Developing procedures and/or guidelines to deal with policy development efforts addressing issues for which there appear to be clear regulatory demands but for which consensus cannot be reached within the GNSO
 - Developing procedures and/or guidelines with clear criteria for disbanding task forces in cases where it is clear that consensus cannot be reached. (Note: it appears that the PDP may be based on what we believe is a false assumption, namely, that it is always possible to develop a consensus and therefore the GNSO Council may have expectations that a recommendation must always be made.)

In a follow-up consultation with the RyC, the LSE stated the following:” *The main focus of the report is the timing involved in the PDP process as regards what the ICANN bylaws say will happen and the actual timing involved in the GNSO Council operations on PDP. It is never a good idea to have a gap as to what is formally to happen and what*

does happen; it results in a state of mind where people might think that these rules don't matter, don't apply any more, or aren't workable. What LSE is trying to suggest is a modest and common sense process in deciding what needs to be entrenched in the ICANN Bylaws and what other rules for operating that might be embodied, and somewhat entrenched, in the GNSO rules and procedures. The important thing is to not have a set of rules or principles that are not working and that need to be kept up to date and kept relevant."

Recommendation 24

"Both ICANN and the GNSO Council should periodically (say once every five years) compile or commission a formal quantitative and qualitative assessment of the influence of the GNSO's work on developing policy for generic names. This should include an analysis of how the GNSO's influence with national governments, international bodies and the commercial sector might be extended." (P.100, ¶ 5.12)

- Is five years often enough in this rapidly changing environment?
 - It is impossible to anticipate all future policy issues that will need to be considered by the GNSO because new issues pop up on an ongoing basis.
 - It is impossible to accurately predict the time needed for policy development regarding more complex and divisive issues.
- Therefore, any such Policy Development Plan must have enough flexibility built into it to properly accommodate unanticipated policy issues as well as the need for extended time for more complex issues.

Process Used by the RyC to Develop Comments

The comments in this paper were developed in the following manner:

1. Representatives from individual gTLD registries and sponsors reviewed the LSE GNSO Review and created lists of questions and comments.
2. A consultation was scheduled and held with the LSE for all interested RyC members during which comments and questions were raised and discussed.
3. A committee was formed to develop a draft comments document.
 - a. The committee consisted of representatives from seven different registries/sponsors.
 - b. The committee held weekly teleconference meetings.
4. The draft comments document was distributed to the full constituency for their review and comment.

All 13 members of the RyC and one pending member support the submission of this document to the ICANN public comment forum with the intent to contribute to the community-wide discussion of the report and in the improvement efforts that presumably will follow.