10.2 Summary of Public Comments on the LSE Recommendations

Between 5 December 2006 and 11 January 2007, ICANN received and posted public comments concerning the LSE Review, see http://forum.icann.org/lists/gnso-improvements. Comments were received from four of the GNSO's six constituencies: gTLD Registries (RyC); Commercial and Business Users (BC); Non-Commercial Users (NCUC) and Intellectual Property Interests (IPC).

The gTLD Registries Constituency (RyC) indicated that in many areas the LSE recommendations were consistent with its own observations and that in a few cases LSE did not go far enough. The RyC stated that it found commonality with respect to its concerns in roughly 16 areas, covering representativeness of constituencies; dominance by a small core of people; difficulty for newcomers to penetrate constituencies; an arduous process of reaching consensus with an over reliance on voting and a legislative approach; unrealistic time constraints; 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 to develop trust among opposing constituencies; insufficient in-depth information on levels of participation and agreement with regard to constituency positions; lack of standardization of staff support across constituencies; deficiencies in the design of the ICANN and GNSO websites; poor document management processes; lack of a communications strategy and use of project management methodologies; limited use of collaborative work tools; over-reliance on GNSO Councilors in policy development and limited delegation; dominance of public comments by constituency members and their allies; lack of incentives for constituencies to reach agreement; and lack of follow-up on consensus policies that have been implemented.

The RyC generally disagreed with, or did not fully endorse, 8 recommendations: making the Chair role more visible; more F2F meetings; providing travel funding; forming a single constituency of both registries and registrars; removing weighted voting; changing the way of electing members of the Board; reducing the amount of prescriptive provisions in the Bylaws; and assessing periodically the influence of the GNSO's policy development work (due to a need for flexibility for improvements). In several of these areas, however, the RyC was open to discussion and further analysis.

The RyC acknowledged that many of the recommendations are interrelated, but also indicated that it views several areas as most critical: greater emphasis on collaboration, including eliminating voting in policy development; greater documentation of the PDP, including the levels of representativeness and consensus; spreading the PDP workload over a broader base of participants; utilizing the Council as PDP manager rather than as the policy-making body itself; and re-evaluating the constituency model (which might lead to the conclusion that formal constituency groups are not necessary). The RyC suggested that several recommendations could be implemented now while review of final improvements is ongoing: simplifying the PDP process, improving the GNSO website

and document management; establishing Councilor term limits; and identifying project management methodologies.

The Commercial and Business Users Constituency (BC) indicated support for 10 recommendations: improving the GNSO website and GNSO document management and making policy development work more accessible; making the GNSO Chair role more visible and important ; strengthening GNSO conflict of interest policies; increasing use of project-management methodologies; providing travel funding for Councilors (and, in addition, members of Task Forces); abolishing weighted voting and then considering increasing the threshold for finding consensus to 75%; changing the GNSO's election of two Board members to use a Supplementary Vote system (as long as weighted voting is abolished); reducing the amount of prescriptive provisions in the Bylaws; and assessing periodically the influence of the GNSO's policy development work. The BC also indicated qualified support to establish a centralized register of all GNSO stakeholders; increase staff support to improve coherence and standardization across constituencies; appoint a GNSO Constituency Support Officer; increase balanced representation; publish annually a two-year GNSO Policy Development Plan; rely on more F2F meetings; make greater use of task forces; and create a pool of available external expertise. The BC rejected the other recommendations.

The Non-Commercial Users Constituency (NCUC) found merit in 13 of the recommendations: appointing a GNSO Constituency Support Officer to help constituencies develop their operations, websites and outreach activity; increasing balanced representation; changing GNSO participation from constituency-based to direct stakeholder participation; improving the GNSO website and document management; publishing annually a two-year GNSO Policy Development Plan; making the GNSO Chair role more visible and important; strengthening GNSO conflict of interest policies; establishing term limits on Councilors; providing travel funding for Councilors to attend Council meetings; making greater use of task forces; simplifying the GNSO constituency structure and substituting three larger constituency groups representing Registration interests, Business and Civil Society; and reducing the amount of prescriptive provisions in the Bylaws. The NCUC had concerns or no views on the remaining recommendations.

The Intellectual Property Interests Constituency (IPC) indicated full or qualified support for 15 of the recommendations: growing balanced representation; improving the website and document management; publishing a GNSO Policy Development Plan, providing information-based incentives; reconsidering the role of the GNSO Chair; strengthening GNSO conflict of interest policies; increasing use of project-management methodologies; relying on more F2F meetings; providing travel funding for Councilors; making greater use of task forces; eliminating weighted voting (although its position on the definition of consensus is unclear); changing the GNSO's system of electing Board members; reducing the amount of prescriptive provisions in the Bylaws; and assessing periodically the influence of the GNSO's policy development work. The IPC expressed concerns or questions about the remaining 9 recommendations.

10.6 Summary of Comments Submitted during the Public Comment Period on the BGC WG's Preliminary Report

The role of the "BGC GNSO Review Working Group" ("BGC WG") is to consider the work that has been done by the London School of Economics Public Policy Group and others to determine whether, in general, the GNSO has a continuing purpose in the ICANN structure and, if so, whether any change in structure or operations is desirable to improve its effectiveness. On 19 June 2007, the BGC WG posted a preliminary report presenting its initial thinking on the questions under review, for discussion with the BGC and the Community at the ICANN San Juan Meeting and for public comment via the ICANN website (see http://www.icann.org/announcements/announcement-19jun07.htm).

The Public Comment period began 19 June and ran until 19 July 2007. Comments were filed by Joop Ternstra, Jeff Williams and Liz Williams during this period.

Mr. Ternstra recommended the ICANN Board take the initiative to invite Individual Domain Name Owners to form a recognized GNSO constituency. He suggested that funding for this constituency be provided by the ICANN budget, and that its "internal democracy" be supervised by the ICANN Ombudsman and two members of the ICANN Board. (Mr. Ternstra had submitted a petition to ICANN in 1999 asking that it form an individual domain name owners (IDNO constituency), see http://www.democracy.org.nz/idno/petition.htm.)

Ms. Williams' comment focused on an email from Karl Auerbach to Danny Younger. Mr. Auerbach, a former member of the ICANN Board, expressed concern about creating a "taxonomy of interests and putting people into boxes inside boxes." He suggested that "micro-dissection" could lead to "one constituency for each and every person," in which case "why the constituency mechanism at all?"

Ms. Williams outlined several points the BGC Working Group might wish to consider, based on her experience as Senior Policy Counselor at ICANN. She noted that working groups are "an efficient and effective way of bringing together diverse groups to do detailed policy development work." She echoed those parts of the draft report that suggested ways to maximize effectiveness, including:
- Development of clear working procedures;
- Training for potential chairs and adequate administrative assistance;
- Assistance with increasing the pool of participants who can work on issues; and
- Emphasizing the value of being involved in working groups and having the chance to help develop important policies.

A fourth public comment was filed by the Business Constituency (BC) after the deadline. The BC supported recommendations geared towards evolutionary improvements in the GNSO's process, voting, administration, communication and policy formulation. The BC rejected as "premature" proposals for structural reform of the constituencies, such as creating three or four broad stakeholder groups that would serve as the foundation for

certain GNSO functions. The BC suggested awaiting the outcome of the reviews of other parts of the ICANN structure, including the Board, the Nominating Committee, the Country Code Supporting Organisation and the At-Large Advisory Committee, before considering such steps.

The BC expressed support or qualified support for several ideas, including:
- Agreeing in part with steps to clarify and promote the option to self-form new constituencies, but on the condition that new constituencies "meet a public interest test." The BC notes that it is "unclear which groups are not today included" in the GNSO.
- Emphasizing the GNSO "reaching consensus and compr[om]ising to achieve objectives and closure on issues."
- Rather than having ICANN staff support the constituencies with standardization, outreach and internal work, staff should instead "prepare regular short articles written for non-specialists which explain the issue and the commercial relevance to the ordinary user." The BC also stated that ICANN should "implement the long standing promise to provide travel support to ICANN meetings for all Council members (not only nom com) parallel to the support provided to Board members."
- Instead of ICANN offering each constituency a "toolkit" of in-kind assistance, the BC stated that ICANN should further improve its website to "make it clear to first time visitors what PDP deadlines are, which constituencies and groups are commenting by when, etc." The BC also stated that "ICANN participants and new participants would further benefit from a summary of each meeting generated by the ICANN staff immediately after the meetings with a neutral synthesis of each issue discussed and decided upon, the key points made, the Board decisions, and any timelines/deadlines announced."
- Making constituency and GNSO documents more broadly accessible and informative, revamping public comment processes and translating PDPs, and providing constituency officers and elected representations with basic training.
- Improving document management capacity and the means to solicit meaningful public comments, and increasing the use of project-management methodologies.
- Developing ways to assess and benchmark gTLD policy implementation, as well as to analyze trends and changes in the gTLD arena.
- Encouraging more frequent contacts between the GNSO Chair and the members of the Board elected from the GNSO, as well as among the Chairs of the GNSO, other Supporting Organizations and Advisory Committees.
- Tightening the GNSO's conflict of interest provisions so that they are consistent with those of the Board. The BC suggested that the "question of anti-trust should also be addressed in ICANN policy making."
- Having a working group model become the foundation for consensus policy development work in the GNSO, but noting that the "current Council practise of either task force or working group or committee of the whole of Council is more flexible to the different needs of different policy processes."

- Developing operating principles for working groups to promote the development of sound policies, and posting notices about the creation of working groups in different languages as early as possible.
- Enabling ICANN Staff to be able to recruit and pay outside experts for assistance to working groups on particular areas.
- Having an experienced, neutral Chair of a working group foster consensus, but also making clear that "consensus is NOT unanimity." The BC suggested that "Equal weighting to all voices is not appropriate . . . as there may be one voice representing a global association, one voice representing a multinational company, and one voice representing an individual with no direct commercial stake."
- Enabling the Council to ask each working group to include in its report a self-assessment of lessons learned.
- Aligning the PDP resources better with ICANN's strategic and operational plans, as well as its consensus policy requirements.
- Giving the Council a greater role (than envisioned by the BGC WG) on revising PDP procedures.
- Encouraging a close, supportive relationship between the GNSO and Staff, and among the GNSO and other ICANN structures.

The BC rejected the following ideas:
- Developing participation rules for all constituencies: because "Each constituency has already develop[ed] such rules" and their charters have been "approved already by ICANN's general counsel." Further, the BC believes that "Constituencies are different and participation criteria cannot be uniform" and "reports within the policy development process already provide clear information on participation."
- Indicating when constituencies accept membership applications and make admission decisions: because it is unclear "What problem is this trying to solve?" and in a "bottom-up organisation constituencies should be free to make their own rules."
- Having the Council develop clear operating procedures for each constituency to ensure that it functions in a representative, open, transparent, and democratic manner: because constituencies already "have their own charter approved already by ICANN's general counsel, " with the BC procedures posted on its website.
- Opening up constituency mailing and discussion lists (with posting rights limited to members): because these lists are "most productive when internal."
- Enacting term limits for constituency officers to help attract new members and provide more chances for participation in leadership positions: because it is unclear "What problem is this trying to solve?" and the BC has not had difficulty "in terms of rotation in its leadership."
- Enacting term limits for Councilors to broaden participation: because "It is unclear what problem this recommendation is attempting to resolve."
- Developing a centralized, publicly accessible registry of the participants of all constituencies and those involved in policy development work: because "The BC website provides all this information today," and "It would be more effective to

make it a requirement that all constituencies provide this information on their website . . . ."

- Moving the GNSO away from a model of policy development based on voting and towards a more collaborative, inclusive approach: because it is a "potentially a hazardous road" that "may perversely result in a dilution of the bottom-up model and may result in a greater focus on staff than constituency input." The BC also stated that "while means of improving consensus are to be supported, this recommendation assumes greater resource in the user constituencies than is available." In addition, the BC asked "If Council's role is [to] be a strategic manager of policy how is this different to the staff position of *Vice President Policy Development*?"
- Having the GNSO review a working group's output and prepare an optional statement on it for the Board: because "This is a current staff responsibility." The BC noted further that "If the WG did not perform its duties in an adequate manner Council should charter a new group. The Board should not be burdened by a less than satisfactory report."