Recommended Common Operating Principles and Participation Guidelines for
GNSO Stakeholder Groups and Constituencies
and
Recommendations on a GNSO Database of Community Members
For Operations Steering Committee (OSC) Consideration
27 May 2010

Recommendations on Task 1: Enhance existing constituencies by developing recommendations on constituency participation rules, operating principles, and database of members

1. Executive Summary

After several GNSO reviews, the ICANN Board Governance Committee (BGC) created a working group (WG) to consider the results of the reviews and recommend a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications. The BGC WG produced a comprehensive set of recommendations: "BGC WG Report on GNSO Improvements" that were approved by the full Board.[1] This report has been extensively referred to in preparing this Recommendation Document.

As a follow up to the above referred report, the GNSO Council formed two steering committees. The Operations Steering Committee (OSC) formed three work teams, one of which is the OSC Constituency Operations Team, subsequently called the OSC Constituency and Stakeholder Group Operations Team (OSC CSG Work Team).

The Work Team, with ICANN staff support, created a Work Plan and broke it down into Tasks. Task 1, the subject of these recommendations, was split into the following four subtasks with subtask team leaders, which correspond to the recommendations in the BGC WG Report referenced above. For a list of OSC CSG Work Team members and subtask team leaders see Appendix B.

- Subtask 1: Develop recommendations for a set of participation rules and operating procedures, which all constituencies should abide by;[2]
- Subtask 2: Develop recommendations for clear operating principles for each constituency to ensure that all constituencies function in a representative, open, transparent and democratic manner;[3]

---

[1] See: "BGC WG Report on GNSO Improvements" at <http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>.

[2] Ibid at page 46.

[3] Ibid.

- Subtask 3: Develop recommendations for creating and maintaining a database of all constituency members and others not formally a part of any constituency that is up-to-date and publicly accessible;[4] and
- Subtask 4: Develop a "toolkit" of in-kind staff support and/or services for all constituencies.[5]

The OSC CSG Work Team completed the recommendations for Subtask 4, the toolkit of services, ahead of the other subtasks and submitted these recommendations separately to the OSC for review. The OSC approved the recommendations with modifications and submitted them to the GNSO Council, which voted to accept the recommendations on 17 December 2009 and staff work on implementation is underway.

Background

The BGC WG Report mandated the development of the following: "…clear operating principles for each constituency to ensure that all constituencies function in a representative, open, transparent and democratic manner. Operating procedures adopted by constituencies should reflect common principles and follow these guidelines."[6] In particular, the BGC WG was concerned to reduce entry barriers to active participation in Constituencies.[7] The BGC WG's recommendation was for the development of common operating procedures while recognizing some variation as acceptable.[8] The BGC WG recommendations also noted that ICANN is engaged in initiatives to improve accountability and transparency and noted that the GNSO Council and Constituency

---

[4] Ibid.

[5] Ibid.

[6] The BGC summarized this in the following action item at page 46: "Proposed Action Item: The Board requests: (i) The GNSO constituencies, with assistance from Staff as needed, to develop a set of participation rules and operating procedures, consistent with the principles outlined above, which all constituencies should abide by. The ICANN Board should ask the constituencies to develop and publicize common principles within six months; and to implement operating rules and procedures consistent with those principles at that time." See: <http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>.

[7] See BGC Report page 42: "It is also important that ICANN minimize the barriers to entry to constituencies for those interested in policy issues. These barriers to entry fall into three groups: information, processes and cost. The information barrier is perhaps the most significant….For many who might be interested in ICANN's policy discussions, another barrier is the myriad of different ICANN processes which can be hard to understand and follow. At present, each constituency has a different set of membership and operating processes, and it is difficult for an individual to have a quantifiable impact on the policy process other than through a constituency. These problems are magnified for those who are not comfortable working in English. One solution is for each constituency to have a clearly communicated set of participation rules and operating principles that are based on common principles developed by the GNSO. These rules then should be made available in a variety of languages so they can be understood by ICANN's global audience." See: <http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>.

[8] See BGC Report page 43 "Within certain broad and important guidelines, there can still be room for innovation and differentiation in the detailed procedures developed by each constituency that best meet the needs of that constituency." See: <http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>.

processes should adhere to the highest standards in this regard.[9] In developing its recommendations the Work Team considered also the ICANN Bylaws, which state at Article II, Subsection 1, "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.[10]

In developing their recommendations, the Subtask Work Teams considered diverse practices and procedures currently in use by the constituencies and stakeholder groups. A detailed analysis was compiled.[11] For a list of Subtask Work Team leaders, see Appendix B. In addition, the Subtask 2 Work Team considered approaches to participation and operational rules by other consensus based multi-stakeholder organizations such as those referenced by the BGC Report including the Internet Engineering Task Force (IETF), the World Wide Web Consortium (W3C), the Réseaux IP Européens (RIPE), the Latin American and Caribbean Internet Addresses Registry (LACNIC), the World Internet Technology Services Alliance (WITSA), the International Chamber of Commerce (ICC), and an independent review of Internet governance entities conducted by the Council of Europe.[12]

When the BGC WG made its initial recommendations, the concept of Stakeholder Groups (SGs) as part of the GNSO structure had not yet been implemented. Since then SGs have been implemented within the GNSO structure along with Constituencies. Thus, unless otherwise stated, these recommendations apply to both Constituencies and Stakeholder Groups, referred collectively in the recommendations as "Groups." In addition, the word "should" as used in the following recommendations means: an obligation or duty to take a certain course of action, unless otherwise specified.

2. Recommendations

The following majority recommendations are supported by the following Work Team members: Olga Cavalli, Nominating Committee Appointee; Rafik Dammak, Non-Commercial Users Constituency; Claudio DiGangi, Intellectual Property Interests Constituency; Chuck Gomes, gTLD Registries Stakeholder Group; Tony Harris, Internet Service and Connectivity Providers Constituency; Debra Hughes, Non-Commercial Users Stakeholder Group; Zahid Jamil, Commercial and Business Users Constituency;

---

[9] See BGC Report page 42: "ICANN is currently engaged in a series of initiatives aimed at further improving levels of accountability and transparency throughout the organization. The GNSO Council and the GNSO constituencies, like all of ICANN's structures, need to ensure that all of their processes adhere to the highest standards. The reviews of the GNSO suggest that there is a need for greater transparency within constituencies and greater consistency across constituency structures..."
[10] See http://www.icann.org/en/general/bylaws.htm.

[11] See: "Revised Constituency Analysis" at: <https://st.icann.org/data/workspaces/icann-osc/attachments/constituency_operations_team:20090710070126-0-21325/original/GNSO%20OSC-CSG%20WT%20Task%201%20Constituency%20Analysis%20V4--%20RrC%20edits%20070909.doc>.
[12] See
<http://www.coe.int/t/dgap/democracy/activities/ggis/Public_participation_internet_governance/Internet_Governance_Report_Souter_May09.pdf>.

Krista Papac, Registrar Stakeholder Group; Michael Young - gTLD Registries Constituency. A minority recommendation is included on page 9, which is supported by Victoria McEvedy, Intellectual Property Interests Constituency and S.S. Kshatriya, Individual. The full minority report is included in Appendix A.

The majority recommendations are arranged in the following three sections:

- Section 2.1: Recommendations for a set of participation rules and operating procedures, which all Groups shall abide by;
- Section 2.2: Recommendations for clear operating principles for each Group to ensure that all Groups function in a representative, open, transparent and democratic manner; and
- Section 2.3: Recommendations for creating and maintaining a database of all Group members and others not formally a part of any Group that is up-to-date and publicly accessible.

2.1 Participation Rules and Operating Procedures

The following sections address the BGC WG's recommendation that Groups shall establish and abide by a set of participation rules and operating procedures.

2.1.1 Participation Principles

All Stakeholder Groups/Constituencies (here-in-after called Groups) should adopt the rules below for participation. Such rules and procedures should be part of their Charters.[13]

a. All Groups should adopt these rules for participation to encourage openness, transparency and accountability. These rules and any other rules governing participation should be objective, standardized and clearly stated.[14] For the avoidance of doubt, while commonality is encouraged in the interest of simplification, Groups are not required to have identical rules and variation between Groups is acceptable, as appropriate.

b. Groups should have their participation rules based on common principles developed by the GNSO. These rules then should be made available in English and the five United Nations languages – Chinese, Russian, Arabic, Spanish, and French – so that ICANN's global audience can understand them.[15]

c. All Groups should strive to improve inclusiveness and representativeness. Groups should have either a differential fee structure based on the ability to pay, in order to encourage increased representation from those living in less developed economies, or

---

[13] See Board Governance Committee (BGC) GNSO Review Working Group Report on GNSO Improvements, page 45, last paragraph.
[14] Ibid, page 43, paragraph 1.
[15] Ibid, page 42, paragraph 5.

hardship provisions that entitle any potential member to apply for relief from the normal fee scale.[16]

d. All Groups should strive to remove information barriers and put in place well-structured outreach programs so that many potential stakeholders come to know of their existence and also of the benefits in being part of the ICANN policy process, thereby becoming more aware of the value of joining the GROUP.[17]

2.1.2 Membership[18]

a. All Groups should make and publish rules and procedures for admission requirements of interested parties as Members in clear and simple terms. Such rules and procedures should be part of their Charters.

b. All Groups should abide by rules governing membership, which are based on common principles. All Group members should have rights, duties and responsibilities and in particular, rights to vote as applicable as per Group membership rules.

c. All Groups must offer membership to natural persons or individuals (if applicable) as well as to entities with legal personality such as corporations. However, any person or organization applying for membership should meet the membership criteria laid down by the Group with ICANN's approval.

d. All Groups should stipulate the rights, duties, and responsibilities of its members in clear and simple terms and publish the same.

e. A simple application form should be devised for membership and it should be publicly available on the Group's website.

  1. Admission criteria should be predictable and objective and not arbitrary or discretionary. Where eligibility depends on participation in a certain sector of business, then applicants should be entitled to submit evidence of their participation in that sector.

  2. The general membership should be entitled to object to an application for membership provided that such objection is based on predictable and objective membership criteria. Such an objection should be published to the Group members.

  3. In applying for membership an applicant thereby agrees to abide by the written rules and regulations, including charters and bylaws, of the Group and terms and conditions laid down by it.

f. Status of a new application and admission decision, as far as possible, should be publicly available at the option of the applicant and an applicant should be advised of any objection to the application, be given the opportunity to ask clarifying questions about the objection, and be given the opportunity to reply with clarification or to reply in general.

---

[16] Ibid, page 41, last paragraph.
[17] Ibid, page 42, paragraph 4.
[18] Ibid, page 43, paragraph 2.

g. In case of unfair treatment resulting in the rejection of an application or a dispute, the applicant may lodge a complaint with the ICANN Ombudsman or a mutually agreed upon non-biased neutral third party. The process for lodging a complaint with the Ombudsman is set forth in Article V of the ICANN Bylaws and in the Ombudsman Framework.[19]

h. Every member should remain in good standing until the Group has decided otherwise as per its Charter provisions. The reasons that such status can be imperiled should be certain and predictable and objective and not arbitrary or discretionary. In such an event, the member should be given an opportunity to be heard. Appropriate procedures should be made for such an eventuality. The affected party should have right of appeal to a neutral third party.

i. List of members and their contact details should be publicly available on the Group website. Individual members should have the right to have publication of address and other contact details withheld to protect their privacy. All members, unless otherwise stated should be eligible to participate in the business of the Group and have voting rights as applicable.

j. No legal or natural person should be entitled to join more than one Group as a voting member.

2.1.3 Policy and Consensus

a. All Group members should be eligible to participate in the Policy work of the Group and to join Committees formed to deal with policy issues and other Group issues, including eligibility of membership in the Group's committees.

b. Groups should refer to the GNSO Working Group model and guidelines for the purpose of reaching consensus and to improve accessibility, transparency, and accountability all Groups should establish and publish a consensus-building model or process that is publicly available to their membership and the community. Whatever consensus-building model or process a Group uses, the Group must describe the process and ensure that is publicly available to their membership and the community so it is visible and transparent.

2.2 Operating Principles

The following sections address the BGC WG's recommendations for clear operating principles for each Group to ensure that all Groups function in a representative, open, transparent and democratic manner.

Groups should adhere to the following common operating principles: representativeness, process integrity, flexibility, transparency, participation, openness, and other norms common to the GNSO.

---

[19] See <http://www.icann.org/ombudsman/documents/ombudsman-framework-26mar09-en.pdf>.

2.2.1 Term Limits

a. No person should serve as a Group Officer for more than four consecutive years. A member who has served four consecutive years must remain out of office for one full term prior to serving any subsequent term as a Group Officer. Any exception to this policy would require approval by the Group membership.

b. No person should serve as a Stakeholder Group Executive Committee member for more than four consecutive years. A member who has served four consecutive years must remain out of office for one full term prior to serving any subsequent term as a Stakeholder Group Executive Committee member. Any exception to this policy would require approval by the Group membership.

2.2.2 Executive Committees

a. All Executive Committees must promptly publish action points, decisions, and any resolutions to Group members. It is recommended that prompt publication means within a reasonable period and a guideline is between 72 hours and 1 week of the relevant meeting.

b. All Executive Committees must publish to Group members their rules and procedures, decision making process and criteria.

2.2.3 Committees

a. Groups should adopt a standard set of rules and procedures to govern Group Committee constitution and operations. Whatever model is adopted, it should be published to the entire Group membership and maintained.

b. The formation of all Committees should be made known to the entire Group membership and eligibility to participate should be open to all members.

c. The fact a Committee has been established and its membership should be made available to the entire Group membership and should be published on the Group website.

d. Action points, decisions and any resolutions and final work products should be made available to the entire Group membership within a reasonable period of any given meeting.

e. Going forward, Groups should publish to the Group membership a list of all active and inactive Committees and their final decisions, resolutions and final work products.

2.2.4 Communications

a. Group mailing lists should be open to the entire Group membership and, at the election of the Group in any given case, to the public. The Group may have reserved lists if needed.

b. The outcome of all Group policy decisions should be open and publicly archived with posting rights limited to members at the election of the Group.

c. Group business, work products, finance and accounts, and submissions to Staff and other ICANN entities should be made available to the entire Group membership unless there are valid grounds for restricting distribution.

d. All Groups should have a published Privacy Policy providing for the protection of the private data of members.

2.2.5 Elections

Groups should publish and maintain a list of all Office holders, past and present, to inform Group members and to provide transparency for term limits.

2.2.6 Voting

a. All Group Charters should clearly delineate the voting rights of all of their members.

b. All Groups should permit all voting members in good standing to vote in elections as delineated in their Charters.

c. Members may be entitled to appoint proxies.

d. No legal or natural person should be entitled to join more than one Group as a voting member.

2.2.7 Charter Amendments

The procedure for amending Group Charters should be stipulated therein.

2.2.8 Meetings

a. Groups should adopt simple and accessible basic meeting procedures. Groups also may refer to the GNSO Bylaws, Operating Procedures, and the GNSO Council Working Group Guidelines.

b. Minutes should be taken at meetings of the general Group membership and action points, decisions and any resolutions or minutes be published to the entire Group membership within a reasonable period.

2.2.9 Policy

a. Eligibility to participate on Policy Committees should be open to all members in good standing.

b. Any Member of a Group should be able to propose the Policy Committee consider a Policy issue in accordance with the Group Charter.

c. Policy Committee meetings should be open for attendance by all Group members.

2.2.10 GNSO Working Group (WG)

a. Any individual participant of a Group should be entitled to join any GNSO WG in an individual capacity and Groups should publish and advise all members of the call for WG participants.

b. Groups should adopt and publish to the Group membership their rules and procedures for selecting and appointing Group representatives to GNSO WGs. It is recommended that these appointments be open to the entire membership to increase opportunities for participation.

c. Group Members may participate in an individual or representative capacity, but Group representatives must advise the entire Group membership of the WG activity from time to time.

Minority Recommendation:

The following is a minority recommendation related to Sections 2.1 and 2.2 and supported by Victoria McEvedy, Intellectual Property Interests Constituency and S.S. Kshatriya - Individual:

We recommend the GNSO adopt a simple standard pre-fabricated Constituency structure and procedure(s) based on one member one vote and applicable to all Constituencies--with a menu/pull down list of accepted variations (to be kept to an absolute minimum). We recommend a simple standard meeting and committee procedure applying to all Constituencies. We recommend a standard handbook on Constituency practice and procedure. We recommend that this be translated into the 5 UN languages. We refer to our Minority Report at Appendix A below.

2.3 Group Membership Database

The following sections address the BGC WG's recommendations for creating and maintaining a database of all Group members and others not formally a part of any Group that is up-to-date and publicly accessible.

2.3.1 Database Architecture

a. The system must allow users a reasonable level of privacy they desire and/or that is required by their local governments.

b. The data scheme/relationship should segment database in a hierarchical fashion with segmentation based on various Communities, Stakeholder Groups (SG) and Constituencies. This should also include Working Groups, drafting teams and other groups that may be used in the GNSO policy development process herein after referred to as Groups.

c. Access to the system could be a link that takes the user to a landing page. As users click on the various boxes they will be taken to the associated member list.

d. Each category of Group will be represented by a link on the main portal contact page. When a link is clicked the user will be taken to another landing page where the various options for that Group are represented. Depending on the number of layers associated with a given Group there will be additional landing pages one is directed to, eventually reaching a page containing all member or member delegate participants for that Group.

e. A systems operator (Operator) and maintenance resource, as well as a backup should be provided by ICANN and will be responsible for adding and/or deleting members or member delegates from the various Group member lists. The Operator will be responsible for validating, to the best of his/her ability, the existence of Group members.

f. Individuals and organizations that wish to be a member of a Group can notify the Operator of their member or member delegate status for a given Group. The Operator will then verify the member or member delegate's membership. Once the membership is confirmed, the Operator will send a notification to the member or member delegate providing access to the member database (similar to what we see today on websites such as LinkedIn or Facebook).

g. Once notified by the Operator, member or member delegates can enter their contact details. Contact details will vary based on the type of member (individual or entity), and member type should be one of the details noted in the database. Examples of contact details are: member type (individual or organization), company name, family name, given name, address, telephone, fax, email, etc.

h. To respect member or member delegate's privacy, the system will allow member or member delegates to select what information is visible to the public. There should be a minimum amount of information available such as member or member delegates' names, whether they are a voting member, and how they are affiliated with the respective Community, SG or Constituency, except in those cases where doing so creates a hardship or dangerous circumstances for the member or member delegate (to be determined by the privacy policy).

i. The system should also indicate member or member delegate's status in the Group they are a part of including: whether they hold an Executive, Council, Board, Nominating Committee position and if so what it is; whether they are an active or inactive member or member delegate, a voting member or member delegate, an interested party; and what working groups—if any—they are participating in.

j. The system must also provide features for member or member delegates to self-select communications and alerts they wish to receive and the frequency.

k. The system should be as scalable as possible, so future functionalities can be added. For example: ability to upload a profile picture, chat, etc.

l. The system's architecture/design should tie back to other OSC initiatives related to communications.

2.3.2 Storing and Updating Membership Records

a. Membership systems of Groups must ensure appropriate privacy measures for those individuals and organizations that are member or member delegates.

b. Membership records should be updated by the member or member delegates themselves, and as stated in 2.3.1 above.

c. Membership in a particular Group would be granted by the Operator. The Operator should also have the ability to set a member or member delegate to inactive, as provided for in the Group's Charter.

2.3.3 GNSO Discussion List

a. The system should include a discussion list, however a generic "GNSO-discussion list" is not recommended as it has been tried in the past and was abused to the extent that most members of the ICANN community discontinued their use of it.
b. The discussion list format should be similar to that which is used today, that is, permission for access to the discussion lists should be determined by the Group with rights extended by invitation from the Operator.
c. ICANN should provide the infrastructure and an IT specialist should organize it and provide documented requirements.

Appendix A: Joint Minority Report

S.S. Kshatriya and Victoria McEvedy
14 May 2010

Introduction

We were the Subtask leaders on WG Tasks 1.1 and 1.2 respectively.

This report concerns what this WG, despite its eighteen month duration, did not achieve and why——in the hope these issues might be remedied at some other stage in the process.

The BGC, like the LSE before it, was concerned to reduce entry barriers to active participation in Constituencies—including the "*unacceptably high information costs*" of joining a Constituency,[20] and the difficulty of penetration and '*the lack of basic transparency*' and disclosure of interests. [21] The WG's analysis[22] of the current position reveals just how complex and convoluted these structures have become. Our own experience and the Staff's review[23] confirmed these problems are real. The goal then was improved, simpler and easier to understand Constituencies[24] that reduce process fears[25] and increase transparency of process. The BGC solution was minimums in common participation rules and operating procedures while recognizing some variation as acceptable.[26]

We were not sufficiently familiar with the likely issues in Stakeholder Groups to apply the BGC's recommendations to them. Complexity in ICANN process tends to

---

[20] See LSE Report at p.9.

[21] See LSE Report at p.9.

[22] See the Work Group analysis document at: https://st.icann.org/data/workspaces/icann-osc/attachments/constituency_operations_team:20100511210631-0-4349/original/Revised%20Constituency%20Analysis.pdf.

[23] See the Staff review of each Constituency Charter and Recertification application and Staff comments and suggestions to each Constituency and responses from Constituencies. See ICANN Staff Analysis Constituency Renewal Reports and Charters on the OSC CSG Work Team wiki at: https://st.icann.org/icann-osc/index.cgi?constituency_operations_team (second from top of page). The Staff review was not concerned –as we are—with proposing common participation rules and operating procedures but is still useful. At its 1 October 2008 meeting, the Board directed Staff to develop a formal Petition and Charter template to assist new Constituency applicants in satisfying the formative criteria (consistent with the ICANN Bylaws). The template is at http://gnso.icann.org/en/improvements/newco-process-en.htm#foot3 and http://gnso.icann.org/en/improvements/newco-petition-charter-28nov08-en.doc. See also Staff advice to the proposed new constituencies. See New Constituency Process at: http://gnso.icann.org/en/improvements/newco-process-en.htm.

[24] See LSE Report at p.11.

[25] See LSE Report at p.44 §2.41.

[26] BGC Report p.43 "Within certain broad and important guidelines, there can still be room for innovation and differentiation in the detailed procedures developed by each constituency that best meet the needs of that constituency."

concentrate power where it resides and we note the warning from the BGC as to the impact of Stakeholder Groups, "o*ur goal is definitely not to create a new layer of bureaucracy, as we heard concerns about at the San Juan Meeting*"[27] –this also drove the BGC's recommendations for standardization and simplification <u>*at Constituency level*</u>. The recommendations of this WG contain no recipe for any standardization or simplification and will not produce real change. This was overall a missed opportunity for much needed simplification of Constituencies. One area of improvement will be increased publication of Committee processes but it should be noted that even now, these basic aspects of transparent governance have not been voluntarily implemented by some Constituencies.

We did not scratch the surface of the really difficult issues as to participation; namely one member one vote, weighted voting systems and meaningful allocation of votes between organization members and individual members. Indeed, arguably it will remain optional to grant individual members votes based on the current language.[28] As to operating procedures, the recommendations are largely, with respect, platitudes.[29] In short, the Constituencies will continue as before, with all the variation and complexity that entails[30] plus now the added layer of the Stakeholder Groups. One can only imagine how non-English speakers experience and navigate these processes. Ultimately this reflects on ICANN's legitimacy and its ability to meet its public trust functions and serve the global community.

Our alternative is a standard simple basic Constituency unit, as explained at 1 below with simple standard meeting procedure applying to all Constituencies and a standard handbook on basic Constituency practice and procedure.

An issue which proved highly controversial was a proposal that the Groups agree to abide by a Code of Practice (see Annex below) in their dealings with Staff.[31] This is a basic structural issue which requires attention.

Given this task required drastic reform of current Constituency structures, the composition of the WG and the width and manner of the call for participation, required attention. In the event, only one active member was independent, having no constituency connection, when a balance between independents and affiliates was desirable. As to the

---

[27] p.33 the BGC Report
[28] See 2.1.2.b "*All Group members should have..right to vote <u>as applicable as per Group membership rules</u>*" or c. "*All Groups must offer membership to..individuals <u>(if applicable)</u>*" and i "*All members, <u>unless otherwise stated</u> should be eligible to participate in the business of the Group*") and 2.2.6 "*All Group Charters should clearly delineate the voting rights of all of their members*."
[29] "2.2.3a *Groups should adopt a standard set of rules and procedures to govern Group Committee*[s].." and 2.2.8 Meetings "*Groups should adopt simple and accessible basic meeting procedures..*"
[30] Indeed, a recommendation for a standard basic meeting procedure, see Appendix A below, was rejected.
[31] That this might be necessary became clear from attempts to remove matters from our remit in favour of the Staff—-- who it can only be assumed would manage a negotiation of them. No criticism whatsoever is made of the Staff who are not responsible for this. However, these practices lack transparency and are objectionable. Research revealed ICANN lacks regulations on dealings with Staff and yet, there is an obvious need to protect Staff and their impartiality, particularly given the Contracted Houses might consider they employ Staff.

operation of the WG, the constituencies fielded a team of experienced players who, in familiar allegiances, fought for the narrowest possible adoption of the BGC's recommendations. The WG became polarized[32] and only members within the circle of allegiances or with Council seats could safely continue to participate.[33]

While bottom up consensus is a laudable model, its limitations are thrown into stark relief when vested interests are asked to reform themselves. Real reform will need to be top down.

Our minority recommendations and analysis are below.

1. Primary Recommendation: a standard pre-fabricated Constituency Structure and Procedure

As the Constituencies are the basic unit of participation in the GNSO for non-contracted parties, we recommend the GNSO implement a simple standard pre-fabricated Constituency structure and procedure(s) applicable to all Constituencies -- with an a la carte menu or pull down list of accepted variations.

We see no need for variation in the base unit and note the simplicity that RIPE processes enjoy without this variation—and without endangering the bottom up principle of policy development. The question might be put –does the bottom up method really need to apply to form and procedure ---or could they be standardized so that it could more precisely (and transparently) apply to policy development alone? We would argue that in the current system, the application of the bottom up principle to form and procedure is mis-used in order to defeat the real goal.

This WG had no appetite for any reform not narrowly derived from the BGC's recommendations and so it was not possible to explore this or work on the possible components of a standard structure or procedure.

We question the benefits derived by anyone (other than incumbent interest groups – who will not willing release their grip) from the infinite complexity and variation of the current system and note the enormous advantages that would flow from standardization.

---

[32] Issues that contributed included invitations to late joiners and in one case, their re-opening of issues and refusal to read in; the suppression of an earlier Minority Report (a report made by four members of the WG) dealing with Subtask 1.4, which was omitted from the version submitted to the OSC in favour of a link. We note that we do not agree that the provision of a link rather than the full text of a Minority Report is an acceptable practice.

[33] We note that steering by common membership of the steered and steering groups by individuals also representing and advocating for interested parties is very far from ideal and lacks transparency as well as even the perception of impartiality. We suggest in future a formal written and open channel of communication with the collective steering entity to the collective WG.

We recommend a simple standard meeting and committee procedures applying to all Constituencies and a standard handbook on basic Constituency practice and procedure. We recommend that these be translated into the 5 UN languages. Given the likelihood that this primary recommendation is not accepted and that Constituencies will take the same view going forward, we make the following observations below on the extent of the current problem.

2. Executive Committees

Executive Committees often operate without transparency. There seems to be a blanket failure to publish processes, minutes, resolutions or minutes. This concern was also noted by the LSE. This is not the right balance for ICANN as an international organization with public trust functions and in light of its core values and bylaw requirements. In a corporate context, Executive Committees are utilized where an organization has a large or a geographically diverse Board and so can act with the power of the full Board between Board meetings. Utilizing Executive Committees without any Board at all is the worst possible borrowing from company law[34] in terms of transparency. We note that while the ICANN Board may not publish its discussions –it does publish minutes and resolutions. For the avoidance of doubt, we are not suggesting that Constituencies should have Boards. We merely note that internationally accepted standards of Board governance and best practice should be a touchstone for good practice in Executive Committees in their own procedures. This is even more so given ICANN's public trust function and its accountability to the public at large as well as ICANN's own core values and Bylaws. It has been noted and we recognize that some Constituencies as a matter of practice do take great pains to communicate the work of committed individuals who volunteer time to serve on the Executive Committees. Practices do differ markedly between Constituencies. While it may be appropriate for Executive Committees to hold discussions in committee or under Chatham House Rules, they can have no objection to publishing their decisions and resolutions. We recommend, as a minimum; all Constituencies publish minutes or decisions and resolutions of their Executive Committee meetings within a reasonable period.

3. Committees

We refer to the Staff Template[35] and to the current practices in the Combined Analysis referred to above. We refer to the draft ICANN Working Group Operating Model by the Policy Process Steering Committee,[36] and we also refer to the laudable

---

[34] We note that under English law model articles of association for a private company are contained in the Companies Model Article Regulations 2007. See www.berr.gov.uk/files/file40794.doc. http://www.companieshouse.gov.uk/companiesAct/implementations/TableAPrivate.pdf.

[35] See Staff Template "3.1Purpose and Function at http://gnso.icann.org/en/improvements/newco-process-en.htm#foot3 and http://gnso.icann.org/en/improvements/newco-petition-charter-28nov08-en.doc.

[36] See: https://st.icann.org/data/workspaces/icann-ppsc/attachments/working_group_team:20100520152411-0-27306/original/GNSO%20Working%20Group%20Guidelines%20-%20redline%20-%20updated%2020%20May%202010.doc.

models of Working Groups developed by the IETF, RIPE, W3C and others. We believe that in many cases, the BGC's objectives would be served by having Constituencies agree to adopt the ICANN Working Group Operating Model–as finally recommended by the Policy Process Steering Committee or another standard model to uniformly govern Committee process—including Policy and Advisory Committees. In addition we recommend that the formation of a Committee should be made known to the entire constituency membership.

To clarify, our concern is the practice of invitation only, closed Committees formed by appointment, whose existence and work may be unknown to the general membership. The fact a Committee has been established should be published on the Constituency website, where a list of all active and inactive Committees and their work products and resolutions should be publically available. We also recommend that Committees should be open to all Constituency members.

4. Communications

IETF, RIPE and LACNIC make almost all information publically available, even the work and drafts of small groups of interested parties who wish to influence policy and are attempting to gather momentum. In some GNSO Constituencies we are sorry to say, only an inner circle are privy to meaningful information.[37]

We recommend that situations properly constituting grounds for restricted circulation or publication even within constituencies should be certain and determined in advance by the membership and included in a Disclosure Policy –which can be incorporated by reference in Charters. We note by way of a precedent, ICANN's own Documentary Information Disclosure Policy.[38] We suggest a policy dealing with both documentary and non documentary information. Any grounds for withholding should be precise and based on predictable criteria e.g. legal advice or trade secrets of members. We also recommend an independent avenue of appeal should be provided for those challenging the implementation or application of the Policy in any instance.

5. Elections

We refer to the Staff Template.[39] We refer to our comments below as to voting. As to the Procedures, as described by the Template—we recommend they be standardized and common across Constituencies—there again being no advantage in any variation.

---

[37] We note the Bylaws requirement that ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, Art. III.§1. We note that while the BGC expressly stipulated that *"mailing and discussion lists should be open and publicly archived (with posting rights limited to members)"*.

[38] http://www.icann.org/en/transparency/didp-en.htm

[39] "Staff Template 7.1.Eligibility for Elected Office at: http://gnso.icann.org/en/improvements/newco-process-en.htm#foot3.

6. Voting

This is an area impacting Subtask 1.1 on common participation rules as well as Subtask 1.2 on operating procedures. We note the Staff's comments to the IPC – which has members that cannot vote at all. Denying constituency members any vote offends basic democratic and representative principle and practice.

We recommend the rule of one member one vote. If legal or natural persons wish to appoint a collective, trade association or other organization, national or international, to exercise their vote –they can do so by proxy. This is how company law deals with the issue. Natural and legal persons (corporations and partnerships and other structures) are equal under the law in all common law jurisdictions and neither is preferred.

The preference for the corporate form and treatment of individuals as somehow second class is wrong in principle. Nor is the negative treatment of individuals common to other internet governance organizations and we refer to the independent report commissioned by the Council of Europe above. Further, there are no common law precedents for weighted or ranked voting based on size in corporate or democratic structures. If classes of members and weighted or tiered voting systems are to be permitted, then academic and expert advice needs to be sought as to the same and then any recommendations developed should require the express approval of the Board on recognized principles –to be developed. Displacing the one member one vote principle based on size or revenue would need to be theoretically justified so as not distort democratic or representative principles. We recommend academic work should be commissioned from experts as to appropriate principles and their application. Given the current system is untested and lacks the hundreds of years of use that corporate models enjoy or, equally valid, alternatively proper independent academic back up and testing of the model --it will inevitably lead to exclusion and unfairness and be undemocratic and unrepresentative. While innovative structures are laudable in general –on this sort of crucial element, proper theoretical foundations are required. Organizational theory and governance are now highly developed subjects and so we recommend some resort to the same.

We recommend that no legal (including related parties) or natural person be entitled to vote in more than one Constituency. This is a live issue. In particular, many organizations belong to both the IPC and the BC and are therefore exercising disproportionate influence and distorting the system.

7. Meeting procedure

This refers here to meetings of the constituency general membership. We recommend that as far as possible basic meeting procedure should be simplified. We see no benefit to variations in basic meeting procedure –and an information barrier and extra layer of complexity without real purpose. We recommend that the CSG WT prepare a basic handbook or rule book of recommended meeting procedure –or the adoption

of an existing precedent such as Robert's Rules. Alternatively, meetings could function on the GNSO WG model currently under development –unless consensus cannot be reached –at which point the proceedings could be escalated to a formal basic standard meeting procedure.

8. Policy Development and Records of support for Policy

Where Constituencies have separate Policy Committees –we recommend those Committee's comply with the same minimums as Executive Committees. In some Constituencies it is not even clear how Policy is dealt with, particularly in the IPC, where repeated requests for clarification of the role of the IPCC (the Council) in relation to Policy have gone unanswered.[40]

9. Dealings with Staff: A Code of Practice

A concern was raised as to the Staff's role and function in the GNSO and to whom the Staff answer. Having no independent constitutional role, they must act under the direction of a GNSO entity, have transparent instructions and be accountable to that entity. All most all international organizations have some regulation to protect Staff. Without structural safeguards, transparent mandates and lines of reporting and accountability, Staff may be engaged and informally lobbied by interested parties – circumventing transparency measures. Staff should be protected from such pressures, particularly in relation to Contracted parties who may regard themselves as the employers of the Staff.

It is within our remit to suggest operating procedures that meet best practice going forward and we think it is appropriate to take this opportunity to recommend certain minimums in the way Constituencies deal with Staff.

We recommend CSG WT prepare a Code of Conduct to govern Constituency dealings with Staff including provision for independent ownership of the Code and for independent adjudication of any complaints by Staff of Code violations. A proposed draft is attached at the Annex.

Annex. Code of Practice for Constituencies' Relations with ICANN Staff

1. All Constituencies shall respect the integrity, independence, impartiality and professionalism of Staff and shall refrain from attempts to influence the Staff in the discharge of their duties.

2. All Constituencies and their constituent bodies and members shall respect the impartiality of Staff and conduct themselves accordingly in their dealings with Staff.

---

[40] See requests made on the WG list by an IPC member to Mr. Di Gangi, Vice President of the IPC.

3. All Constituencies and their constituent bodies and members avoid communications or actions which might adversely affect the integrity, independence and impartiality of Staff.

4. No constituent body or member of a Constituency shall make informal unwritten submissions to Staff in order to influence Policy or Procedure or their application.

5. Submissions to Staff by Constituencies and/or and their constituent bodies or members shall be published by Constituencies.

6. No constituent body or member of a Constituency shall make any complaint about Staff without the passing of a resolution to that effect by the Constituency. Any such complaints shall be made through formal and appropriate channels only.

7. No Constituency or any member thereof may promise or offer employment to Staff while in office –expressly or otherwise and for [2] years following the resignation or termination of the Staff member.

8. No Constituency or any member thereof may offer or give honors, remuneration, favors, gifts or benefits to Staff without the written permission of [?].

9. Public disclosure must be made of any prior dealings a member of Staff may had with any member of a Constituency before taking up their office or employment. Information barriers shall be established in order to prevent that member working with the relevant Constituency.

Appendix B: Constituency and Stakeholder Group Operations Work Team Members

Olga Cavalli, Nominating Committee Appointee (work team chair)
Rafik Dammak, Non-Commercial Users Constituency
Claudio DiGangi, Intellectual Property Interests Constituency (subtask 4 team leader)
Chuck Gomes, gTLD Registries Stakeholder Group
Tony Harris, Internet Service and Connectivity Providers Constituency
Debra Hughes, Non-Commercial Users Stakeholder Group
Zahid Jamil, Commercial and Business Users Constituency
S.S. Kshatriya, Individual (India) (subtask 1 team leader)
Victoria McEvedy, Intellectual Property Interests Constituency (subtask 2 team leader)
Hector Ariel Manoff, Intellectual Property Interests Constituency (inactive member)
Krista Papac, gTLD Registrar Stakeholder Group (subtask 3 team leader)
Dr. Shahram Soboutipour, Individual (Iran) (inactive member)
Michael Young, gTLD Registries Stakeholder Group (work team vice chair)