



**Comment on Draft Report:
Review of the GNSO (Generic
Names Supporting
Organization)**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

The response from the Business Constituency is divided into two parts: the decision not to review the structure in the draft Review of Generic Names Supporting Organization (the "Draft Report"); and comments of the specific recommendations.

The BC notes that the purpose of any review must be to assess and, where appropriate, propose improvements to current processes and procedures. We agree that many of the GNSO's procedures are indeed complex and difficult for the outsider to comprehend, so the goal should be to reduce unnecessary complexity and bureaucracy where possible while maintaining both efficiency and effectiveness. The role of the GNSO is to manage the development of policy as appropriate, not to develop work streams for their own sake. However, if the structure in which such procedures are to operate is itself cumbersome, indeed questionable, we fail to see how such efficiency can be reached.

A. Reviewing the structure of GNSO

The BC wishes to express our disappointment with the limited nature of the Draft Report's analysis of the existing GNSO structure, and our serious concerns that the conclusions reached are inconsistent with the research results.

As part of ICANN's ongoing commitment to its evolution and improvement, Article IV, Section 4 of the ICANN Bylaws requires "periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee"

(<https://www.icann.org/resources/pages/governance/bylaws-en>).

The goal of such reviews is "to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) *if so, whether any change in structure or operations is desirable to improve its effectiveness*" [emphasis added].

Moreover, in its [resolution](#) of September 28, 2013 the ICANN Board stated:

The expansion of the TLD space has increased the number and variety of stakeholders participating in GNSO policy making and a review needs to take place on schedule to examine whether the current model meets the needs of a new generation of stakeholders.

GNSO Structure is unlikely to accommodate the anticipated new stream of stakeholders resulting from the expansion of the TLD space. The GNSO Review will be an important vehicle for considering and addressing this issue. The unbalance that is already occurring needs to be addressed by the GNSO Review. [emphasis added].

When in June 2014, the GNSO Working Party asked for further guidance on the scope of this review, the SIC responded that:

The current review will include an assessment of the effectiveness of structural changes that resulted from the last review, as it relates to the organizational effectiveness of the GNSO...

Questions pertaining to the effectiveness of various GNSO structural components are within the scope of the current review. . . Structural changes along with all other improvements resulting from the last review will be assessed as part of the organizational effectiveness scope of the current review. Questions delving into whether the implemented improvements have been effective in achieving the intended goal would be useful in collecting data for the Independent Examiner to consider. Also useful would be to seek reasons why the implemented improvements may not have been as effective as intended.

While the mandate outlined in the Request for Proposal for the current review does NOT include proposing a new structure, analyzing to what extent the recommendations have been addressed and how effective they have been is within the scope of the current review.

(See link to SIC under “Scope of Review” section found at <https://www.icann.org/public-comments/gnso-review-draft-2015-06-01-en>).

Given this background, it is unclear to us why the SIC would, at the outset, exclude “proposing a new structure” from the review, especially if review team research subsequently indicates that the last round of structural changes and “improvements” were neither successful nor effective. In other words, structural changes seem especially logical and appropriate if the GNSO structure is found to be wanting – and that is exactly what the historical record and the Westlake research and Draft Report make clear.

The current GNSO structure was the result of a forced compromise required to conclude the last GNSO review, a compromise many accepted based on the belief that it would be temporary. The BC submitted several comments on the last GNSO review:

Sep-2008: BC position on the reform of the GNSO – outstanding issues¹

Mar-2009: Cross-Constituency Statement to Board on GNSO Reform²

Apr-2009: Cross-Constituency Statement to Board on GNSO Reform³

¹ 2-Sep-2008, at http://www.bizconst.org/wp-content/uploads/2014/06/Position_reform_9-20081.doc ; http://www.bizconst.org/wp-content/uploads/2014/06/Position-09-2008_reform_issues_2.doc

² 7-Mar-2009, at http://www.bizconst.org/wp-content/uploads/2014/06/Statement-03-2009_to_Board_from_CC.doc

³ 9-Apr-2009, at http://www.bizconst.org/wp-content/uploads/2014/06/Statement-04-09_to_Board_GNSO_Reform.doc

Responses to the Westlake 360 survey confirm widespread frustration with the existing GNSO organizational model and major structural problems that hinder the organization's effectiveness. No matter how diverse its individual participants may be (now or in the future), the current GNSO system of contracted vs. non-contracted houses, and the range of different vehicles that exist (or not) in each house and constituency for the expression of experience and interests does not seem to fully, accurately, fairly and consistently represent participant interests.

A truly useful analysis would evaluate the split and voting rules between contracted and non-contracted parties. Such an analysis should reveal specific instances where the present structured voting produced results that were not consistent with simple majority voting. That analysis would assist the BC in evaluating whether the voting rules should be re-examined and potentially adjusted.

1. Stakeholder Groups that allow "constituencies" as a subset for diverse interests have major challenges. It is not clear that the "constituency" subgrouping concept works.

Forcing multiple constituencies to agree to a single position often results in the loss of valuable perspectives that the GNSO, and more importantly, ICANN, should consider in decision-making. The CSG, for example, is often forced by the ICANN Board to nominate a single representative to participate in important initiatives, or a single viewpoint to be shared on critical issues. While there may sometimes be overlap in perspectives, and positions may be shared, by the ISPC, BC and IPC, that is often not the case. The Board's assumption that these group's interests nearly always align both marginalizes and trivializes the nuanced views these groups can contribute for the betterment of the ICANN ecosystem.⁴

2. There is no uniformity of sub-house, sub-stakeholder group structure within the GNSO to assure that the full range of (even existing) participant views is considered.

As mentioned above, the non-contracted parties' stakeholder groups have constituencies, which have substantial challenges.

The contracted parties' house has different sub-groups:

The Registry Stakeholder Group does not have a mechanism for new constituencies, but rather, allows only new "interest groups", which are unable to vote. In the era of new gTLDs, and to the extent ICANN considers additional rounds, some potential Registry SG members may feel somewhat alienated by this structure. For example, the Brand Registry Group (BRG) has, for now, chosen to operate outside the Registry Group. While we cannot speak for the BRG, it seems entirely possible that this choice is driven in part by being unable to participate in a meaningful way (i.e. being unable to vote) as an interest group in the Registry SG, and even if they joined being adversely impacted by the weighted voting provisions (based on # of registrations) in that group which make no sense for the (usually closed registry) .brands.

The Registrar Stakeholder Group has no sub-group option at all.

⁴ For example, CSG was limited to one representative for the WHOIS AoC review team, CWG –Stewardship IANA transition working group, the CCWG- Accountability Working Group, both ATRT1 and ATRT2, and the SSR review.

3. The bicameral structure is not conclusive to effective leadership structures and leadership planning.. Our comments stem from the experience of BC members who have served as GNSO officers, Council reps and members of past Council leadership teams. The current leadership structure is organized to reflect the 2-house structure of the Council, not to deliver the most effective team possible. As an example, there is no mechanism built in to the current system to allow for effective and predictable selection of each Vice Chair. As a result of the unfortunate bicameral structure and having each house determine its own Vice Chair selection procedures, there is no incentive for Vice Chairs to serve the Council as a whole, even though they are part of its leadership structure. Lastly, there are no provisions in the current structure to allow for training of future leaders, or to provide support for newly appointed leaders from individuals that may have served in these roles previously and would therefore be able to offer their experience in service of the group as a whole. As leadership is a key part of any group's effectiveness, the BC feels these oversights in the Draft Report are unfortunate.

The Draft Report looks at, but avoids the opportunity to more deeply analyze, these concerns and challenges, then somehow concludes that the existing structure actually “works” (e.g. in reference to the Council on page 81: *“The current structure has been implemented relatively recently. It is not broken, and we do not recommend any change at this time”*). Instead, the Report focuses on increased diversity at the individual participant level as the solution to any perceived problems.

To be clear, the Business Constituency does not disagree with the concept that greater diversity at the individual participant level is a desirable goal and one that might improve GNSO operations by providing additional cultural, geographic and other insights not regularly available to the GNSO now.

What we object to is the Draft Report’s complete failure to consider whether some of its goals for both participation and effectiveness might be also - and better - addressed by structural changes. The suggestion on page 14 – *“We consider that if the GNSO collectively decided that structural change was desirable and a priority, it would be within its mandate to agree what changes to make and propose them to the Board”* seems to circumvent the whole point of an external review.

We are hopeful that despite the Draft Report’s perplexing conclusion that the existing structure “works”, the Board will take to heart SIC advice in response to Working Party scope questions that “[w]hether structural changes are needed and when such changes should be considered would be topics for discussion after the GNSO review is finalized, possibly during the implementation planning, depending on the nature of findings and recommendations.” We wholeheartedly encourage the topic of structural changes to be pursued further.

We would like to see Westlake flesh out their findings on constituencies further, taking into account the frustrations they documented in the report and their research, to better analyze whether the constituency model effectively serves the GNSO and the constituencies.

In sum, the BC believes that the GNSO review 2014 - 2015 failed to meet the direction of the ICANN Board [resolution](#) of 28 September 2013 (see above) and we call for a Structural Review of the GNSO to ensure that the mandated GNSO review aligns with the goal stated in the Board’s resolution.

B. The recommendations

For ease of reference, the BC followed the Draft Report's grouping of the recommendations by theme:

1. Participation & Representation

The BC would like to stress that participation in the GNSO, as with the entire community, is voluntary. While some of the observations found in the Draft Report are valid, the general tone takes no account of it being the choice of the individual to be involved (or not), or his or her respective workload or available time.

a. Funding

Participation in ICANN policy development is not a remunerated position, and neither should it be. The BC, therefore, believes that ICANN must be prudent when it considers recommendations calling on it to expend additional funds to encourage participation. Specifically, we refer here to Recommendations 2 (*Develop and fund more targeted programs to recruit volunteers and broaden participation in PDP WGs, given the vital role volunteers play in Working Groups and policy development*) and 4 (*Explore a tailored incentive system to increase the motivation of volunteers. (For example, this may include training & development opportunities or greater recognition of individuals)*).

While we agree that ICANN benefits from as diverse an expert participation as feasible, we do not agree with ICANN funds being used to compensate individuals for participation within the GNSO. A number of funding support schemes already exist, such as the CROPP fund, constituency outreach, Council on-boarding training and the Fellowship Program. GNSO councilors and SG/C officers receive both free travel and accommodation for ICANN meetings, and travel support is also available for a number of intersessional and working group events. For this reason, we believe that the additional expenditures called for in Recommendations 2 and 4 must be tailored in such a way as to enhance/supplement the current funding ICANN provides.

Further, Recommendation 3 (*Review the level, scope and targeting of financial assistance to ensure volunteers are able to participate on a footing comparable with those who participate in GNSO as part of their profession*) shows a fundamental misunderstanding of the volunteer process.

Even if "part of their profession", this is not the day job of any BC member. The majority of business participants within ICANN receive no travel support, so while it is true that it is their employer, and not them personally, who pays for the travel expenses, for most professionals all the time spent on ICANN matters is above and beyond their day-to-day work. Their daily (including client) work still mounts up awaiting evenings or their return to the office. In addition, Recommendation 3 is unclear and seems to suggest that ICANN offer some type of remuneration to participants. As stated above, the BC does not support the use of ICANN funds to compensate volunteers.

As noted by the respondent quoted on page 104: "*Process in GNSO is so onerous that GAC members (who have day jobs) can't stay in touch with PDPs*". The BC respectfully notes that BC member representatives also have day jobs. Likewise we dispute the simplistic business vs non-commercial divide proffered on page 98: "*It reflects the differing incentives on volunteers discussed above – non-commercial representatives generally have limits to the time they can spend on what, to them, is a public-good issue, so they can effectively be "waited out" by people who are paid to attend*". This suggests that commercial participants are not interested in coming to timely and efficient solutions but instead can afford to waste their (professional) time. This is not the case.

b. Diversity

The BC fully agrees with Recommendation 5, that we should *continue initiatives that aim to reduce the barriers to newcomers*. We are fully committed to diversity which can only bring benefits. We therefore also clearly agree with Recommendations 32 (*That ICANN define “cultural diversity” and that relevant metrics (encompassing geographic, gender, age group and cultural, possibly by using birth language, be monitored and published)*) and 33 (*That SGs, Cs and the Nominating Committee, in selecting their candidates for appointment to the GNSO Council, should aim to increase the geographic, gender and cultural diversity of its participants, as defined in ICANN Core Value 4*). We also support Recommendation 34 (*That PDP WGs rotate the start time of their meetings in order not to disadvantage people who wish to participate from anywhere in the world. This should be the norm for PDP WG meetings even if at first all the WG’s members come from the “traditional” regions of North America and Europe*).

Nevertheless, while the goal of diversity is certainly laudable and aspirational, a mandatory requirement to ensure geographic diversity only increases the difficulty of finding volunteers willing to commit the time and effort required to serve on the GNSO Council or on any particular PDP WG.⁵ For this reason, the BC cannot support a mandatory diversity requirement. This language should focus on best efforts, not a priority for geographic diversity over all other considerations.

We also agree that we could *explore and implement ways to engage more deeply with community members whose first language is other than English, as a means to overcoming language barriers* (Recommendation 7) and that ICANN could *assess the feasibility of providing a real-time transcribing service in audio conferences for prioritized PDP WGs* (Recommendation 12).

However, we have to be realistic as to what ICANN can achieve. While real-time transcripts may indeed help (perhaps funded by the new gTLD auction fees), it is difficult to see how it is ICANN’s role to overcome non-comprehension, cultural interpersonal norms or “unconscious biases”. Thus, while the BC does not object to Recommendation 35 (*That the GNSO Council establish a WG, whose membership specifically reflects the demographic, cultural and gender diversity of the Internet as a whole, to identify and develop ways to reduce barriers to participation in the GNSO by non-English speakers and those with limited command of English*) we should be realistic and guard against such a WG becoming an academic discussion forum for global linguistic variation.

We also have concerns about Recommendation 36: (*That, when approving the formation of a PDP WG, the GNSO Council require that its membership represent as far as reasonably practicable the geographic, cultural and gender diversity of the Internet as a whole. Additionally, that when approving GNSO Policy, the ICANN Board explicitly satisfy itself that the GNSO Council undertook these actions when approving the formation of a PDP WG.*) Once again, we note that all WGs are made up of volunteers and we fundamentally disagree with any suggestion that the Board could choose not to approve GNSO Policy because insufficiently diverse volunteers came forward for a particular PDP WG. The Community should do its best to have experts from everywhere – the Board should accept that and not be able to override the GNSO’s choices of elected representatives.

⁵ See Report at 14 (suggesting that “*the GNSO... must ensure that the demographic make-up of the GNSO Council and the GNSO community reflects the demographics of Internet users worldwide...*”).

c. New constituencies

The BC fully supports Recommendations 23 – (*That the GNSO Council and SGs and Cs adhere to the published process for applications for new constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed due process. Subject to the application meeting the conditions, the default outcome should be that a new Constituency is admitted*) - and 25 - (*That the GNSO Council commission the development of, and implement, guidelines to provide assistance for groups wishing to establish a new Constituency.*) However, we refer you to our comments on the overall GNSO structure set out in Section A above..

2. Continuous development

a. Policy development

The goal of any PDP should be to agree a draft policy in the least complex and most resource-efficient manner. We thus agree with Recommendation 15 (*That the GNSO continues current PDP Improvements Project initiatives to address timeliness of the PDP*) noting that it is a question of doing it right: neither too fast nor unnecessarily (nor artificially) slow.

As such the BC is concerned that rather than reducing complexity, some of the Recommendations set out in the Draft Report may serve to complicate the PDP process even further. With that overall concern in mind, the BC makes the following specific comments:

Recommendation 11 (*That the face-to-face PDP WG pilot project be assessed when completed. If the results are beneficial, guidelines should be developed and support funding made available*) should be treated with caution. All of the issues listed are common to anyone who works with people in different locations. There is no question that some physical meetings are essential, and beneficial, but physically travelling to many/most WG meetings is neither practicable nor possible. Resource constraints, both time and financial, other professional (and personal) commitments and venue choice issues cannot be easily discounted. While the Draft Report suggests on page 60 that: “*Where possible, face-to-face meetings should be held in conjunction with ICANN meetings, before or after the main meeting*”, we also note that this is the exact opposite of what we have been told in relation to the new meeting structure. Moreover, we are concerned that the need for additional travel may also serve to discourage volunteers from participating.

We are unclear as to the meaning of Recommendation 13: (*That ICANN evaluate one or more alternative decision support systems and experiment with these for supporting WGs.*) If this is simply a suggestion that we stay open to alternative technologies than Adobe Connect then of course we see no issue. In contrast, if the recommendation is suggesting that ICANN adopt a decision model different from the current consensus- based decision model, the BC fears that any such experiment would call into question any policy initiative developed under an alternative model and, therefore, cannot agree with any such suggestion.

Recommendation 14: (*That the GNSO further explores PDP ‘chunking’ and examines each potential PDP as to its feasibility for breaking into discrete stages*) is logical: breaking complex issues into different aspects should be at the discretion of the WG on a case-by-case basis. Additional ICANN resources could be crucial in successfully “chunking” a PDP.

The BC offers qualified support of Recommendation 16 (*That a policy impact assessment (PIA) be included as a standard part of any policy process*). GNSO discussions are not adequately informed by hard data, and should strive to increase metrics-driven policy decisions. We request clarification on who would serve in the role of assessor, and what would be the result if the policy impact were found wanting.

Likewise, is Recommendation 17 (*That the practice of Working Group self-evaluation becomes standard at the completion of the WG's work; and that these evaluations should be published and used as a basis for continual process improvement in the PDP*) - genuinely going to add to the effectiveness of a PDP or simply make it even longer?

The BC welcomes the suggestion of KPIs in Recommendation 18 - (*That the GNSO Council evaluate post implementation policy effectiveness on an ongoing basis (rather than periodically as stated in the current GNSO Operating Procedures); and that these evaluations are analyzed by the GNSO Council to monitor and improve the drafting and scope of future PDP Charters and facilitate the effectiveness of GNSO policy outcomes over time*) - although notes that we will need to define both the KPIs themselves and their benchmarks.

On the organization of the GNSO, the BC supports Recommendation 30 (*That the GNSO develop and implement a policy for the provision of administrative support for SGs and Cs; and that SGs and Cs annually review and evaluate the effectiveness of administrative support they receive*) although we would also insist on transparent and cost-efficient funding and equal treatment of all SGs and Cs.

On communication, the BC supports Recommendation 31: (*That the GAC-GNSO Consultation Group on GAC Early Engagement in the GNSO Policy Development Process continue its two work streams as priority projects. As a part of its work it should consider how the GAC could appoint a non-binding, non-voting liaison to the WG of each relevant GNSO PDP as a means of providing timely input.*) Early engagement with GAC representatives is crucial to avoiding surprises at the end of the policymaking process. If fully embraced, it should lead to better policy outcomes and faster policy development.

b. People

The BC supports Recommendation 9 (*That a formal Working Group leadership assessment program be developed as part of the overall training and development program*).

The BC also notes with interest Recommendation 10: (*That a professional facilitator/moderator is used in certain situations (for example, when policy issues are complex, where members of the WG are generally inexperienced and/or where WG members have interests that conflict), and that the GNSO develop guidelines for the circumstances in which professional facilitators/moderators are used for Working Groups.*) The BC agrees professional facilitators may provide either subject matter expertise or experience in getting participants to reach consensus. However, the decision to use an outside facilitator or moderator should rest with the GNSO Council, as Policy Development manager, and the working group in question should have the opportunity to provide input on the selection of the facilitator or moderator.

While generally supportive of training for GNSO councilors, the BC does have specific concerns about Recommendation 22: *(That the GNSO should review and implement a revised training and development programme encompassing:*

- *Skills and competencies for each Council member*
- *Training and development needs identified*
- *Training and development relevant to each Council member*
- *Formal assessment system with objective measures*
- *Continual assessment and review*

Assessment by whom? What is the “assessment and review” outcome/sanction? What if the one constituency “assesses” a councilor from another and finds them wanting – can they vote them off?

Councilors are there at the choice of their constituency, not of anyone else. Pages 9 and 82 state that *“There is no means to measure the level of competence and skills of incumbents, or the effectiveness of the training undertaken”*: respectfully, we repeat that these individuals are volunteers, elected by their SGs or Constituencies.

The BC supports Recommendation 29: *(That new members of WGs and newcomers at ICANN meetings be surveyed to determine how well their input is solicited and accepted by the community, and that the results be published and considered by the GNSO Council at its next meeting).*

3. Transparency

The BC supports Recommendation 24: *(That all applications for new constituencies, including historic applications, be published on the ICANN website with full transparency of decision-making.)*

We also support Recommendations 26: *(That GNSO Council members, Executive Committee members of SGs and Cs and members of WGs complete and maintain a current, comprehensive Sol. Where individuals represent bodies or clients, this information is to be posted. If not posted because of client confidentiality, the participant’s interest or position must be disclosed. Failing either of these, the individual [would] not be permitted to participate)* and 27 *(That the GNSO establish and maintain a centralised publicly available list of members and individual participants of every Constituency and Stakeholder Group (with a link to the individual’s SOI where one is required and posted).*

The BC already maintains a public list of its members – <http://www.bizconst.org/members/> - and we fully support transparency and a robust system that requires complete and up-to-date SOI’s. We need clarity, however, on who would decide, and how, that an individual “would not be permitted to participate”.

As to Recommendation 28 – *(That section 6.1.2 of the GNSO Operating Procedures be revised, as shown in Appendix 6, to clarify that key clauses are mandatory rather than advisory, and to institute meaningful sanctions for non-compliance where appropriate)* – again, we ask: who would define/apply “meaningful sanctions”?

4. Alignment with ICANN's future

While having no issue with Recommendation 20 - (*That the GNSO Council should review annually ICANN's Strategic Objectives with a view to planning future policy development that strikes a balance between ICANN's Strategic Objectives and the GNSO resources available for policy development*) - we should also remember that part of the GNSO's job is to identify and react to new issues/propose solutions to new problems as they become apparent.

This concern is partly covered by Recommendation 21 – (*The GNSO Council should regularly undertake or commission analysis of trends in gTLDs in order to forecast their likely requirements for policy and to ensure those affected are well-represented in the policy-making process.*) However, given the wealth of expertise available within the GNSO we would caution against paying third parties to conduct (funded) analysis.

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This comment was drafted by Laura Covington, J Scott Evans, and Marie Pattullo.

It was approved in accordance with the BC charter.