

Comments of the Non-Commercial Users Constituency (NCUC) on the GNSO Review: LSE Report and Recommendations

December 2006

ICANN's Non-Commercial User Constituency (NCUC)¹ welcomes the London School of Economics (LSE) report on the GNSO and urges the Board to implement many, but not all, of its recommendations.

Recommendation 1

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

[no opinion developed]

Recommendation 2

“GNSO Constituencies should be required to show how many members have participated in the policy positions they adopt.”

* While NCUC is in favor of transparency, we find this recommendation to be unrealistic. The issue is not "how many" participated but whether the members support the position and whether the membership has had an opportunity to review and disagree with a position, and an opportunity to re-elect or rebuff representatives who do things that do not reflect their views. Domain names are a small part of the mission of most nonprofits. Members in our constituency do not have the time or resources to track in detail every single action taken by ICANN's GNSO. Of necessity, constituency participants must focus their time on the specific issues that interest them the most and leave to others the ones that don't.

Recommendation 3

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

* NCUC does not support recommendation 3. Constituencies should be funded by ICANN so they can provide their own staff support for these roles. It does not have to be an ICANN staff member that fulfills this function and role, which NCUC agrees needs to be filled.

¹ NCUC website: <http://www.ncdnhc.org/>

Recommendation 4

“A GNSO Constituency support officer should be appointed to help Constituencies develop their operations, websites and outreach activity.”

* NCUC supports recommendation 4 as it would enable constituencies, particularly the less-funded constituencies to carry out the work of the organization in a more consistent fashion.

Recommendation 5

“Constituencies should focus on growing balanced representation and active participation broadly proportional to wider global distributions for relevant indicators.”

* NCUC supports recommendation 5 and notes that according to the LSE report the NCUC has the best record in this regard, although there is still room for improvement.

Recommendation 6

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

* NCUC supports recommendation 6 since many people or entities do not fit neatly into any ICANN constituency and it is important the ICANN hear from all viewpoints. Also, because hardly anyone in the public has heard of the GNSO, participation in ICANN via the GNSO will not garner much interest and remain at a low level.

Recommendation 7

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

* NCUC supports recommendation 7. Since the website is the main tool through which GNSO policy discussions are made available to the world, it is extremely important the information be accessible and easy to find. Most agree that ICANN should continue to upgrade its website, including the GNSO website.

Recommendation 8

“Document management within the GNSO needs to be improved and the presentation of policy development work made much more accessible.”

* NCUC supports recommendation 8. Closely tied to recommendation 7, an online document management system to better provide the public with GNSO policymaking discussions and reports would be an important improvement.

Recommendation 9

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

* NCUC supports recommendation 9. Developing policy development plans at the GNSO will encourage long-term thinking and prioritization of issues.

Recommendation 10

“The GNSO and ICANN should work proactively to provide information-based incentives for stakeholder organizations to monitor and participate in GNSO issues.”
[no opinion developed]

Recommendation 11

“The position of the GNSO Council Chair needs to become much more visible within ICANN and to carry more institutional weight.”

* NCUC supports recommendation 11. In general the GNSO needs to be more widely recognized as the appropriate forum for public policymaking at ICANN.

Recommendation 12

“The policy on GNSO Councilors declaring interests should be strengthened. Provision for a vote of ‘no confidence’ leading to resignation should be introduced for noncompliance.”

* NCUC supports recommendation 12. Transparency and accountability regarding the various interests of GNSO Councilors is always an appropriate objective for good public policy making.

Recommendation 13

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

* NCUC strongly supports recommendation 13. In order for there to be an even playing field across all constituencies, they should all have term limits. Otherwise the constituencies who do have limits have an advantage over those that do not in directing GNSO policy work over time. Being a GNSO councilor should not be a “career”, but rather a public service done only for a few years. The GNSO election structures should discourage career GNSO councilors and encourage the widest range of participation and a diversity of viewpoints. NCUC supports either a three term limit for two-year terms, or 2 terms of 3 years for each constituency.

Recommendation 14

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

* NCUC does not support recommendation 14. The GNSO policy decisions and recommendations should be made by the various constituencies, not by ICANN policy staff as the text supporting this recommendation suggested. ICANN policy staff officers best serve in the role of facilitators of the discussion, not arbiters of competing policy issues.

Recommendation 15

“The GNSO Council should rely on face-to-face meetings supplemented by online collaborative methods of working. The Chair should seek to reduce the use of whole-Council teleconferencing.”

* NCUC does not support recommendation 15. Even if ICANN were able to pay for the travel costs of the meeting participants, it is unlikely NCUC members (or members of other constituencies) can donate a number of days of their time to attend more face-to-face meetings. Most NCUC members (as with other constituencies) have full-time jobs that do not allow for frequent face-to-face meetings at different corners of the globe for ICANN policy work. NCUC supports getting as much work done via telephone and email as possible, and to rely upon holding face-to-face meetings, only when absolutely necessary.

Recommendation 16

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

* NCUC strongly supports recommendation 16. The lack of funding available to constituencies is one of the biggest impediments to participation at ICANN meetings. ICANN should be serious about its attempt to engage in policymaking by providing for the travel of the councilors doing the work of the organization. ICANN should automatically fund the reasonable travel costs of all GNSO council members and an executive member of each constituency to ICANN Board members. ICANN should also provide for the reasonable travel costs of task force members who are carrying out the work of the organization.

Recommendation 17

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

* NCUC supports recommendation 17. Better use of task forces would help the GNSO to carryout its work much for effectively and through a wider range of stakeholders.

However, unless these taskforces are better managed and pushed to reach agreement or defined areas of no agreement more rapidly, a larger number of simultaneous Task Forces will only create more confusion and gaming of the policy development process.

Recommendation 18

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

* While NCUC supports more diversity of viewpoints and a broader range of expertise in GNSO policy making discussions, who would choose these "stakeholders"? Who will decide that they are "experts"? How can we ensure that they are balanced in terms of their policy perspectives? Unless these questions are answered, we cannot support this recommendation.

Recommendation 19

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

* NCUC strongly supports recommendation 19. The LSE report suggests that GNSO be restructured into three basic groupings: the registration supply industry, business interests, and civil society. NCUC agrees that this is a cleaner and more workable constituency structure than now exists. There are important details to be worked out, however.

The existing structure gives business, particularly entertainment companies or other intellectual property interests, too much power in GNSO policy making and an unfair advantage. Non-commercial interests should be given equal weight to commercial interests in GNSO policy making as a matter of principle.

Recommendation 20

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

* NCUC strongly disagrees with recommendation 20. While the Council should be made smaller, the details for implementing that vague goal are unsupportable.

We disagree with the report's proposal that registration suppliers and business users be given 5 votes on the policy making Council, while civil society be given only 3. This kind of discrimination against a particular sector of societal interests is unjustified. Nothing in the factual findings of the report supports this discrimination. The report does not even mount an argument for it. We suggest that the supply industry be given 5 members, and business and civil society each given 4, with the remaining 3 appointed by the NomCom.

We note that the existence of three "at large" GNSO Council members appointed by the Nominating Committee does not compensate for this inequality. The NomCom-appointed Council members can come from any constituency; the NomCom contains diverse interests and is not guaranteed to appoint members sympathetic to civil society.

How the civil society representatives on the Council are selected is very important condition upon our support. We note that the concept of a "civil society" category leaves unresolved issues about the relationship between NCUC and ALAC. While we strongly favor a more unified structure for civil society participation in ICANN, NCUC representatives are elected under a formal and legitimate membership structure, whereas the process of selecting ALAC Board members is complicated and non-transparent. As long as ALAC and GNSO are structurally separate, and ALAC's structures are incomplete, civil society representation within the GNSO will have to be mediated by NCUC.

Recommendation 21

“The definition of achieving consensus should be raised to 75 per cent. Weighted voting should be abolished. Both measures could be used to create more incentives for different constituencies to engage constructively with each other, rather than simply reiterating a ‘bloc’ position in hopes of picking up enough uncommitted votes so as to win.”

* NCUC does not support recommendation 21. The LSE Report proposes to raise the threshold for a "consensus policy" to 75% of the vote. We do not support this recommendation and would prefer to retain a 2/3 supermajority as the threshold for "consensus." Under the LSE proposal, supplier interests and business interests could, if only 4 of their representatives agreed, prevent a 75% majority from forming and thus block any policy. The public interest advocates in civil society, even if they were completely unified, could not exercise such a veto. This is not a correct balance of policy influence. Moreover the very high 75% requirement would basically freeze the status quo in place. If the status quo were a very good state of affairs, this might be an acceptable approach. The LSE's recommendation would give commercial interests an automatic veto over the public-interest without any explanation or justification.

If representation on the council is to be weighted, it is reasonable that the registration industry, whose survival depends entirely on ICANN contracts and policies, have some kind of special status in the outcome of policies. They need to be protected against various forms of crippling regulation or expropriation at the hands of GNSO Council legislators who do not have to directly bear the costs of their policies. But there is no legitimate reason why commercial interests should be given the same veto power while non-commercial ordinary Internet users denied it. We also think that registrars and registries often have conflicting interests and therefore it is better for there to be wider representation for them in order to accommodate this structural difference.

Recommendation 22

“The way in which the GNSO Council votes to elect two directors to the ICANN Board should be changed to use the Supplementary Vote system.”

[no opinion developed]

Recommendation 23

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

*NCUC supports recommendation 23. The current structure in the ICANN Bylaws is far too micro-managing of the GNSO work to be useful. Much of the detailed prescriptive provisions in the ICANN Bylaws for GNSO work should be removed. The GNSO is the best position to manage its internal operations and objectives.

Recommendation 24

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

[no opinion developed]