

Draft Report to the Board of ALAC/GNSO WG on User Involvement in the GNSO

Origin of Request

Board Resolution of 11 December 2008

Whereas, the Board has received varying recommendations on registrant and user involvement in the GNSO, and the issue of how to incorporate the legitimate interests of individual Internet users in constructive yet non-duplicative ways remains an open issue that affects GNSO restructuring.

Resolved, (2008-12-11-02) the Board requests that members of the GNSO community work with members of the ALAC/At-Large community and representatives of potential new "non-commercial" constituencies to jointly develop a recommendation for the composition and organizational structure of a Non-Commercial Stakeholder Group that does not duplicate the ALAC and its supporting structures, yet ensures that the gTLD interests of individual Internet users (along with the broader non-commercial community) are effectively represented within the GNSO. This recommendation should be submitted no later than 24 January 2009 for consideration by the Board.

Extract of e-mail from Denise Michel elaborating on the resolution: “...it is important to emphasize that it is not intended to be a referendum on the different approaches that have been advanced by groups working on proposed NCSG charters. Proposed charters are not intended to be within the scope of the 11 December Resolution. When community members formally submit to the Board one or more petitions/charters for NCSG formation (and other Stakeholder Group charters), those efforts will be publicly posted for comment by all members of the community and will subsequently be evaluated by the Board.”

These two statements are somewhat at odds with each other, as the first requests recommendations on the composition and structure of the NCSG, and the second specifically excludes discussion of charters which are the vehicles describing (among other things) the composition and structure of the a SG. The WG is acting on the premise of the Board resolution and on the second statement because we believe that the task of proposing charters for the internal structure for a SG is up to the SG (with appropriate community input and consultation) subject to the Board's approval; and that this group sees the issue of individual user participation as the appropriate area for our recommendation.

Background

Article X of the ICANN Bylaws defines, inter alia, two constituencies for “users”.

- *Commercial and Business Users (representing both large and small commercial entity users of the Internet);*
- *Non-Commercial Users (representing the full range of non-commercial entity users of the Internet).*

The GNSO reorganization proposal accepted by the Board Governance Committee recommended the creation of stakeholder groups, presumably in some fashion

incorporating the current constituencies, but that the stakeholder groups for non-contracted parties be designated as representing commercial and non-commercial *registrants* instead of users.

Several reasons were given for opposing the BGC proposal on this issue including:

- Given ICANN's Mission and Core Values, it seemed to make little sense to proscribe the involvement of users and those representing their interests in the GNSO, all the more so because the change explicitly removed the possibility of such involvement.
- The formal change from "user" to "registrant" could be easily bypassed, given that registrations are readily available for about US\$9.00 per year – anyone can buy a name. But the negative optics of ICANN formally saying that "User" issues were not welcomed would be great.
- Curiously the term "registrant" was never formally defined in the recommendation and thus had its normal meaning which could include a registrant of a ccTLD domain. Thus the gTLD policy process could include those who exclusively focus on the ccTLD space, but exclude those for whom the gTLD space on Internet exists.

The Working Group on GNSO Council Restructuring convened by the Board in July recommended that the term "user" be re-instated instead of "registrant".

This has caused great confusion due to the existence of the At-Large Advisory Committee and its At-Large infrastructure, despite repeated statements that the recommendation did not imply that the ALAC be seated at the GNSO Council or within its stakeholder groups. This current effort has been charged with clarifying this issue.

It should be noted that although the major discussion has focused on the Non-Commercial Stakeholder Group, the move to reinstate the term "user" applied to the Commercial Stakeholder Group as well. This present WG is considering its charter to include that aspect of user involvement. Moreover, it is felt that the term "entity users" in the current Bylaws is overly restrictive - Constituencies and Stakeholder Groups must be allowed to frame their membership rules so as to allow individual members and not solely groups or organizations.

It should further be noted that the intent has always been that the term "user" be wider than "registrant", and there is no question that registrants are de facto included in this larger basket. The Bylaws implementing the GNSO reorganization should make this explicit.

ALAC vs Users Involvement in the GNSO

The issue of overlap with ALAC/At-Large has often been raised. In fact, the issue should be relatively moot. ALAC has a wide scope crossing all aspects of ICANN. gTLD Policy is of course included, but few current At-Large participants or even ALAC members have the interest to focus on in-depth gTLD policy which is the focus of the GNSO. So the difference is very much one of focus and interest and not one of trying to assign different genetic make-up to the two groups.

Each ALS existed as an organization with interests prior to becoming an ALS. Becoming an ALS added some dimension to their organization. It is possible that any particular At-Large ALS might have a specific interest in gTLD issues which will cause it to join an appropriate Constituency or SG. ICANN does not legislate what else an ALS can do in their non-At-Large activities, and this should be extended to not legislating whether they can participate in GNSO activities. It is not expected that many ALSs will go this route.

Today, there is a tendency for some parties to feel that since individual users, and even many registrants, have no home within the GNSO, that the ALAC should be used as the conduit to address their needs (either through the Issues Report process, or in direct communications with the Board). If such groups have direct access to the GNSO mechanism, this need may well be reduced, since they will be able to act directly instead of through At-Large/ALAC as an intermediary. This WG finds nothing wrong with such a shift and in fact supports it.

With regard to the ALAC itself, and the RALOs, we see no ongoing role with respect to the GNSO, other than what is in place with the existing structure.

It should be noted that just as there is a strong movement within ICANN for cooperation between and among the various Supporting Organizations and Advisory Committees, there will be a need for good communications and cooperation between the various groups representing users within ICANN.

User Participation

In relation to the ALAC, and now in relation to the GNSO, ICANN and its participants have at times used expressions such as “we want to hear from users” or “user participation”. This should not be taken to mean that vast numbers of users must be consulted on all ICANN issues. Rather, there must be mechanisms by which the needs of all users can be factored in when decisions are made and policy is set. Some of this input will come from those who speak on behalf of specific user communities or user interests. Some will come from individuals who have the interest and knowledge to participate in ICANN processes. The typical user may not understand ICANN issues and their subtleties, but that does not mean that they will not be impacted by them.

ICANN is already making some efforts to allow ICANN issues to be understood by those whose lives are not focused on gTLD issues. We encourage this as it will facilitate more input from those who are potentially affected by ICANN policy development.

With regard to GNSO Constituencies and SGs, ICANN should not put in place artificial constraints which preclude involvement of users and those who represent them.

The Problem of Involvement

Although the current Bylaws allow the formation of new Constituencies, none have been formed. By accepting the BGC report, the Board made it clear that it wants to see a real possibility of active involvement in gTLD policy by new groups. Thus the intent is not to just reorganize the current players, but to get more players involved in the rather arcane domain of gTLD domains (pun intended).

To accomplish this, there is no doubt that minimizing the overhead associated with Constituencies and/or Stakeholder Groups, likely with active ongoing support from ICANN (as envisioned in the BGC report, but henceforth rarely mentioned again) is important. Moreover, the model used for each SG and its Constituencies should be well thought out to minimize bureaucracy and overhead.

Equally important is that these groups and individuals believe that their efforts have the possibility of impacting outcomes in the realm of gTLD policy. This latter issue is crucial or the large effort needed to participate in the GNSO will not be maintained.

Working Group Recommendations

The following recommendations apply to both the Non-Commercial and Commercial Stakeholder Groups

1. GNSO Constituencies and Stakeholder Groups (however they may ultimately be defined) must be receptive to involvement by and on behalf of users. It is hard to formulate exactly what that means without knowing how the above organizations will be structured. It presumably means that those speaking on behalf of users of any class or group or even of themselves must be allowed to join a Stakeholder Group or to form a Constituency within one.
2. Such involvement in eventual policy working groups is implicitly ensured by the likely rules governing the composition of such groups. However, it is similarly important that the views of such participants have an opportunity to be expressed at the GNSO Council level, and that they effectively participate, in ways that are to be defined by Stakeholder Groups, in the decisions of the Council. This will need to be considered as SG charters are approved.
3. The resolution calls for suggestions so as to ensure that users “are effectively represented within the GNSO”. How effectively they are represented will depend largely on how attractive and how easy it is for them to carry out their mandate, as above, and how effective ICANN is in making the new GNSO structure known and understood by the wider Internet community. Just as ICANN is widely publicizing its new gTLD initiative, the new GNSO organization must be the subject of a concerted public relations effort. Outreach and capacity building will be both required and crucial to success and must be supported by adequate ongoing funding.