**Policy Status Report: GNSO Policy & Implementation Working Group Recommendations**

2-Jul-2024

**Comment of the ICANN Business Constituency (BC)**

This document is submitted by the Business Constituency (BC) regarding the **Policy Status Report: GNSO Policy & Implementation Working Group Recommendations,** which closes 2-Jul-2024.

The Policy Status Report is intended to assist Council in its review of the 2015 Policy and Implementation recommendations in the GNSO context.

Our goal must be to ensure that efficient procedures and processes are in place, allowing for the delivery of timely, evidence-based reports upon which practical recommendations and actions can be formulated. We do not see the need for a proliferation of new working methods and structures within the policy development process.

**The EPDP**
We agree that there are misconceptions around the use of the term "expedited", which leads to the erroneous expectation that such work will be completed rapidly. Perhaps the best solution would be to change that name.

While accepting that the EPDPs to date have indeed been shorter than other PDPs, they are still not "short". Many PDPs have, unfortunately, been excessively long, resulting in volunteer burnout and attrition, so this may not be the best benchmark. Greater care must be given to clearly defined and structured charters and the pre-collation of relevant data and subject matter expert input (where appropriate) so that the work is clearly scoped and understood by all participants from the start and lengthy clarification debates can be avoided. We also note that community members who devote substantial time and effort to any working group do, quite understandably, feel rather aggrieved when there is no practical result, which may impact their decision to remain active in ICANN.

It must also be remembered that the time to develop and deliver reports and recommendations is not the end of the process: we then need the Board to adopt and an IRT to implement. Unfortunately, we have seen frequently lengthy gaps between the Council adopting a report and its recommendations and their entry into force: some adopted recommendations have been effectively shelved for several years, sometimes for apparent "dependencies" which in fact are little more than top-down prioritization choices.

We would not advocate for the removal of the requirement to solicit early input statements from stakeholder groups and constituencies. Such statements ensure not only that all SG/Cs have been duly consulted but they provide useful, coherent syntheses of the various perspectives that are key to ensuring the cross-community understanding of all working group participants before they delve into

the substance. However, we would support the other acceleration methods proposed, i.e. using the representative membership model and more frequent face-to-face meetings. We are unclear as to what is meant by "a standardized set of working practices that could be deployed flexibly within an EPDP project."

**The GGP**

This process allows for a small team of experts to consider a specific issue, and call upon subject matter experts (internal or external) as appropriate. The GGP on the Applicant Support Program was heavily dependent on staff as they made the call on almost every aspect of the process and language that eventually formed the final outcomes. Members of the GGP were consulted at all times but made to deliberate along a regimented scope that could not defray the outcomes to a large extent.
The GGP had a very limited scope that took time to break into and important work with close dependencies on the process seemed to be taken up by other small teams. Care should be taken in the future to properly scope the remit of work or outcomes desired and where a need for the GGP scope of work to be revised for the desired outcome, proper mechanisms put in place for such.
To hasten the work of the GGP, in-person meetings for at least a week at the initial process of the work should be encouraged to help with networking and team bonding as well as allow for the adoption of the GGP work style. Regular periodic calls within acceptable timeframes and working sessions during public meetings should be encouraged.
There must also be guard rails to ensure all parts of the community are heard and the consensus reached on final outcomes acceptable to all.
The criticism put forward in the PSR about some absent findings is unmerited. It was not for the working group to define budgetary allocations or relevant recipients, but to identify the potential recipient buckets. We also note GDS' apparent disappointment that the GGP did not deliver its results more quickly: was the necessary timeline communicated to and agreed by the GGP? Given the years that can intervene between a Council-adopted report and its implementation, why the spotlight on this (as perceived by staff) delay when community-agreed recommendations languish for years with no action? We find this somewhat subjective.

**The GIP**

We do not see a correlation between this (to date, unused) process and the use of small teams of councilors who address specific issues then bring them to the entire Council for debate and decision. The latter is an efficient use of expertise that allows the Council to understand and thus act appropriately on specific issues. Should there be a need to formalize the creation and operation of small teams, that should be done.

**IRT principles and guidelines**

Given that the intention of all these work products is efficient flow through of the various policy processes, we agree that IRTs should be timely. Their overarching goal is to turn recommendations into implemented actions, not to relitigate community-agreed recommendations. Speaking purely for the BC, we note that our representatives are guided by the entire BC, report back to us regularly in our meetings and thus would align with our constituency's views rather than delivering the cited "surprises". We also

note that by default, volunteers to any IRT need to have both interest and expertise in the subject matter to be effective (IRTs are not learning exercises) so we do not find it concerning that not every part of the community will be represented in every IRT.

**CPIF**
If there are contradictions or duplications between the CPIF and IRT principles then of course there should be a comparison and integration exercise, perhaps starting with a staff draft that can be considered by Council.

As for the many gaps identified in the 2021 Modifying gTLD Consensus Policies Discussion Paper, we believe that this must be treated with due care. For example, modification of an agreed policy, or a Board decision to reconsider its approval for implementation, should be very transparent, with a clear rationale and due consultation. We should avoid scenarios where community members feel that their recommendations are ignored or overridden. While we agree that clarity and the closing of any gaps should be the goal, this must be handled correctly by Council.

We also note that the Operational Design Phase was introduced not by the community but by the Org, with the intention of ensuring that the Board has a better appreciation of the necessary steps and resources for a policy to be put into effect during its consideration of community recommendations. A review of the effectiveness of this additional procedural step should also be conducted; we believe this is the intention of the GNSO Council.

**Next Steps**
Any new studies must have practical, and not academic, goals: for example, we do not need to devote staff's limited resources to data gathering where that data would not lead to an improved process. Any research into effectiveness of IRTs (etc.) must also include surveys of participants and not be limited to the experiences or expectations of staff.

**Fitness for Purpose**
As we stated at the top of this comment:
> Our goal must be to ensure that efficient procedures and processes are in place, allowing for the delivery of timely, evidence-based reports upon which practical recommendations and actions can be formulated. We do not see the need for a proliferation of new working methods and structures within the policy development process.

It is worth highlighting the implication that when the policies and policies are implemented, it is expected they will actually accomplish the intended purpose. Unfortunately, in some cases, it has become evident that even after a policy has been adopted through the consensus process, it may not be fit for purpose. Fitness for purpose is a prerequisite. If a policy and its implementation cannot accomplish its purpose, no amount of consensus and approval process will change the situation.

Accordingly, the question of fitness for purpose must be included in the considerations at each step of the process. During an IRT process, although it is out of scope to relitigate the policy, the discovery of flaws that cannot be corrected within the agreed-upon policy and implementation must nonetheless be attended to. Of course, it is far better to find and dispose of such issues earlier in the process, but such questions must never be excluded no matter how far along the process has progressed.[1]

With this in mind, we suggest that checking for fitness for purpose be included in all stages of the process.

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This comment was drafted by Marie Pattullo, with edits by Lawrence Olawale-Roberts and Steve Crocker.

It was approved in accord with our charter.

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[1] The Law of Holes: "If you find yourself in a hole, stop digging." https://en.wikipedia.org/wiki/Law_of_holes