

**LSE Public Policy Group and Enterprise LSE**

**A Review of the Generic Names  
Supporting Organization (GNSO)**

**for the Internet Corporation for Assigned  
Names and Numbers (ICANN)**

**Main Report  
September 2006**

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## Contents

<b>Executive Summary</b>	<b>5</b>
List of Recommendations	9
<b>Part 1: Introduction</b>	<b>12</b>
An overview of the Generic Names Supporting Organization (GNSO)	12
Terms of reference for this Review	13
Methodology for the Review	14
<b>Part 2: The quality of participation and representation of stakeholders in the Internet community achieved by the GNSO and its Constituencies</b>	<b>17</b>
How actively do stakeholders participate in policy development?	18
How effectively do Constituencies represent their members' interests?	21
How well do the current Constituencies represent the diversity of stakeholders in their areas of interest?	30
<b>Part 3: The visibility, transparency and openness of the GNSO process</b>	<b>45</b>
The external visibility of GNSO	45
Document management	50
The visibility of GNSO <i>within</i> the ICANN community	55
<b>Part 4: How effective the GNSO has been in undertaking its work and developing policy positions</b>	<b>63</b>
The operations of the Policy Development Process	63
The GNSO Council's working methods	72
Voting in the GNSO Council	79
Achieving a coherent vision for policy development	86
<b>Part 5: The regularity of the GNSO's operations in complying with ICANN's Bylaws and operating procedures</b>	<b>89</b>
The impact of GNSO operations	94

**Annexes**

- A. Supporting graphs and tables
- B. Summary table of GNSO Constituencies
- C. Case studies comparator organizations
- D. Methodology
- E. Online survey results – Constituency members
- F. Online survey results – Individuals
- G. Online survey results – Non-members
- H. Terms of reference for the GNSO Review
- I. Bibliography

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## Executive Summary

**1. *Scope of the Review.*** The Internet Corporation for Assigned Names and Numbers (ICANN) seeks to put in place a unique model of governance for the Internet's domain name system, one that rests on 'bottom-up stakeholder involvement'. ICANN has several Supporting Organizations that form a key part of this model, along with a statement of values underpinning how this system should operate (see Annex Figure A3). The Supporting Organizations make possible the policy development processes which provide the foundations for ICANN's legitimacy as an open and global policy-making body for the Internet.

**2.** One of these bodies, the Generic Names Supporting Organization (GNSO) plays a key role in relation to policy development about generic domain names (such as .com, .net, .info, .biz etc). The GNSO is a relatively new body, but in the space of a few years it has responded to rapid changes in the operations and stakeholders of the Internet. It has successfully generated a set of institutions and procedures for policy development on generic names issues, and has generated policy on a wide range of issues involving complicated and often technical issues, such as access to personal data, integrity of domain names, and procedures for growing the gTLD space. This study reviews the operations of the GNSO in terms of their representativeness, transparency, effectiveness and compliance with ICANN's Bylaws.

**3. *Representativeness.*** There are six GNSO Constituencies that firms, other organizations or individuals in the area of generic names may join as members. The Constituencies and their councilors on the GNSO Council undertake a large amount of work to do with policy development on generic domain names. The Constituencies are necessarily diverse in their nature and activity, and generally take the view that a reasonable amount of autonomy from ICANN staff structures are an important component of their bottom-up consultation work. The Constituencies show a mixed pattern of participation, with relatively high levels of involvement in two Constituencies covering Registries and Registrars, but relatively

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narrow participation in four others, covering business users, intellectual property, internet service providers and non-commercial users.

4. The current pattern of Constituencies is relatively complex and no longer seems well-adapted to the needs of all stakeholders in the rapidly changing Internet community. Although the Constituency structure does provide a potential home for almost all types of interest, there are signs that the current structures tend to reflect a snapshot of interests that were present at the beginning of this decade and lack internal flexibility to incorporate new types of stakeholders from commercial and civil society. There is consequently much scope to grow and diversify membership of the GNSO, and to adapt structures in a such a way that they are flexible and agile enough to respond to new policy development issues. There are some worrying signs of dominance of some constituencies by a small core people and of low participation rates in policy development work by Constituency members.

5. *Transparency.* ICANN itself is a highly visible international body and its decisions and activities are much discussed in the Internet community. However, the external visibility of the GNSO Council is poor, largely because of past inadequacies in the ICANN website. Potential members of ICANN with interests in generic domain names currently have to join sub-organizations (GNSO constituencies) rather than being able to join ICANN itself. Yet GNSO Constituencies are even less visible internationally than GNSO itself. So joining a Constituency has unacceptably high information costs for anyone who is not already a deep insider in ICANN. This presents considerable barriers to a functioning and diversified bottom-up policy development process. The processes and policy development exchanges of the GNSO Council are highly transparent, more so than most similar organizations. There are however some signs that Constituencies are hard to penetrate for newcomers and that baseline standards such as disclosure of interests are not adequately enforced.

6. *Effectiveness.* The work of the GNSO Council focuses on formally designated 'policy development processes' (PDPs) whose supposedly rapid timings are laid down in ICANN's Bylaws, timings which it has not proved practicable to adhere to. Many PDPs take quite a long time to complete and their impacts are not easy to

assess. Council members devote huge amounts of unpaid time to its deliberations with face-to-face meetings, many conference calls and much email business. The GNSO Council has a ‘legislative’ pattern of operating with frequent votes, while task forces have become essentially only sub-committees of Council members. The process of reaching ‘consensus’ on major policy issues is often arduous because of conflicting interests and weak structural incentive for Constituencies to identify core issues early and work deliberatively to agree widely acceptable positions. The current arrangements for voting introduce further complexities by assigning double-weight votes to two Constituencies (Registries and Registrars).

*7. Compliance.* Apart from the unrealistic timings for policy development process, the GNSO’s operations comply with the ICANN Bylaws. There is however relatively little sign that policies developed by the GNSO since its establishment have been subject to comprehensive impact assessment.

*8. Principles for making changes.* Any changes made to the GNSO’s operations need to follow through on four key principles:

- The GNSO’s operations need to become more visible and transparent to a wider range of stakeholders than at present.
- Any reforms made need to enhance the representativeness of the GNSO Council and its Constituencies.
- The GNSO’s structures need to be more flexible and adaptable, able to respond more effectively to the needs of new and old stakeholders in a rapidly changing Internet environment.
- Changes in the GNSO Council’s operations are needed to enhance its ability to reach genuinely consensus positions, enjoying wide support in the Internet community.

*9. Specific suggestions for reform.* We formulate a set of 24 evidence-based and practicable recommendations to help GNSO to improve where there are currently problems. These suggestions can be accepted or not individually, but they hang together as a coherent body of reforms. Some main points include:

- cutting down the number of Constituencies from six to three, covering registration interests, business users and civil society;

- 
- creating a direct (primary) membership in ICANN for firms, other organizations and individuals. Newly joined members interested in generic names issues would then be directed to also join one of the new, simpler and easier to understand Constituencies that we outline below. The Constituencies would receive more ICANN support to sustain their activities and outreach work, while being run by and accountable to their members as now;
  - creating radically improved ICANN and GNSO websites that can effectively represent the GNSO to the Internet community as a whole;
  - abolishing the current weighted voting for registration interests but giving both them and business users (broadly construed) an effective veto over non-consensus change;
  - raising the threshold for consensus policy from 66 to 75 per cent agreement;
  - radically reducing the use of telephone conferencing and shifting to more face to face GNSO Council meetings, for which all participants would receive reasonable travel and accommodation expenses;
  - making more use of intensive task forces to bring in external expertise, to broaden the involvement of interests from the Internet community and to speed up policy development;
  - using staff expertise more fully and constructively to speed up policy development and to help focus GNSO Council's attention on making key issues and decisions;
  - creating term limits for GNSO councilors (of either three or four years) and putting in place stronger protections against the non-disclosure of interests.



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## List of recommendations

*(In this list the paragraph number given in black refer to the specific point in the main text where the full recommendation is spelt out and explained. There is generally some analysis of the need for change given in the main text paragraphs immediately before each recommendation).*

### *Recommendation 1*

*A centralized register of all GNSO stakeholders should be established, which is up-to-date and publicly accessible. It should include the members of Constituencies and others involved in the GNSO task forces. (Paragraph 2.5)*

### *Recommendation 2*

*GNSO Constituencies should be required to show how many members have participated in developing the policy positions they adopt. (Paragraph 2.14)*

### *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. (Paragraph 2.22)*

### *Recommendation 4*

*A GNSO Constituency support officer should be appointed to help Constituencies develop their operations, websites and outreach activity. (Paragraph 2.23)*

### *Recommendation 5*

*Constituencies should focus on growing balanced representation and active participation broadly proportional to wider global distributions for relevant indicators. (Paragraph 2.39)*

### *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. (Paragraph 2.44)*

### *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. (Paragraph 3.10)*

### *Recommendation 8*

*Document management within the GNSO needs to be improved and the presentation of policy development work made much more accessible. (Paragraph 3.14)*

*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. (Paragraph 3.16)*

*Recommendation 10*

*The GNSO and ICANN should work proactively to provide information-based incentives for stakeholder organizations to monitor and participate in GNSO issues. (Paragraph 3.19)*

*Recommendation 11*

*The position of the GNSO Council Chair needs to become much more visible within ICANN and to carry more institutional weight. (Paragraph 3.26)*

*Recommendation 12*

*The policies on GNSO Councilors declaring interests should be strengthened. Provision for a vote of 'no confidence' leading to resignation should be introduced for non-compliance. (Paragraph 3.28)*

*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. (Paragraph 3.30)*

*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). (Paragraph 4.14)*

*Recommendation 15*

*The GNSO Council should rely more on face-to-face meetings supplemented by online collaborative methods of working. The Chair should seek to reduce the use of whole-Council teleconferencing. (Paragraph 4.19)*

*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. (Paragraph 4.21)*

*Recommendation 17*

*The GNSO Council should make more use 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. (Paragraph 4.26)*

*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. (Paragraph 4.27)*

*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 the rapid changes in the make-up of Internet stakeholders. We suggest a set of three larger Constituencies to represent respectively Registration interests, Businesses and Civil Society. (Paragraph 4.35)*

*Recommendation 20*

*A reorganization of GNSO Constituencies would also allow the Council to be made somewhat smaller (we suggest 16 members) and hence easier to manage. (Paragraph 4.36)*

*Recommendation 21*

*The definition of achieving a consensus should be raised to 75 per cent. Weighted voting should be abolished. Both measures could help 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. (Paragraph 4.38)*

*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. (Paragraph 4.40)*

*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. (Paragraph 5.7)*

*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. (Paragraph 5.12)*

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## Part 1: Introduction

### An overview of the Generic Names Supporting Organization (GNSO)

**1.1** The Internet Corporation for Assigned Names and Numbers (ICANN) was established in September 1998 as a non-profit corporation responsible for the assignment of unique identifiers making up the Internet domain name and numbering system, and the technical coordination required to ensure the system's stability and interoperability. A major part of ICANN's mission is to develop global policy relating to its technical and management functions in the generic and country code top-level domain (TLD) systems. Its current structure consists of three Supporting Organizations responsible for the policy development role. (See Annex A, Figures A1 and A2 for more information on ICANN's internal organization.)

**1.2** In ICANN terminology a Supporting Organization (SO) is a consultative and policy-development body, whose function is to allow multiple stakeholders in the global Internet community to contribute to policy-making on matters that fall within ICANN's remit. The views of SOs go to the ICANN Board, and where the SO can achieve a consensus their view has special force in guiding and shaping Board policy. It has been an important part of ICANN's distinctive character as the body guiding Internet development in respect of domain names and numbers that SOs allow for bottom-up involvement by diverse stakeholders. SOs also play a key role in fostering the development of consensus policies, i.e. those enjoying a broad and substantial level of agreement amongst different interests and communities involved in the Internet (even if not always universal agreement).

**1.3** The GNSO was set up in December 2002. It is responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. The GNSO consists of six Constituencies designed to represent the interests of different groups of stakeholders in generic names: gTLD Registries, Registrars, Business and Commercial Users, Intellectual Property, Internet Service and Connectivity Providers, and Non-Commercial Users. Each Constituency recruits members and arranges to consult them, usually establishing a chair and executive structures to help process GNSO business and to collate the views of Constituency

members. The Constituencies are summarized in Figure 1 below and further information is contained in Annex B at the end of the report.

**Figure 1: Summary of the six GNSO Constituencies**

<i>Constituency name</i>	<i>Who the Constituency mainly represents</i>
gTLD Registries	Registries are firms that operate top level domains and provide connections to the Internet's root servers. This Constituency also includes 'sponsors' (organizations representing user communities to which ICANN has delegated rights to manage top level domains).
Registrars	Registrars are firms marketing the registration of domain names to final customers, businesses and other users
Business and Commercial Users (known hereafter as the Business Constituency or 'BC')	Corporations, small and medium enterprises and trade and professional associations representing such corporations and SMEs
Intellectual Property (known hereafter as the IP Constituency or 'IPC')	Trade associations in the US, Europe and internationally who monitor intellectual property (IP) rights issues and infringements, and lawyers in the IP area
Internet Service and Connectivity Providers (known hereafter as the ISP Constituency)	Firms marketing Internet connectivity, email services and often Web site domains to final customers
Non-commercial Users (known hereafter as the NCU Constituency or the 'NCUC')	Noncommercial organizations with registered domain names in gTLDs or ccTLDs, such as the universities, charities and NGOs

Each Constituency elects three members to the GNSO Council. In addition, three other members of the Council are appointed by another part of the ICANN organization called the Nominating Committee (whose role is to bring into ICANN talented people with a disinterested stance). The GNSO Council thus has 21 members and its operations are the core of the Supporting Organization. The Council meets three times a year, face to face, at the ICANN meetings.

## Terms of reference for this Review

1.4 Since December 2002, ICANN's Bylaws have stated that periodic reviews should take place of its SOs to examine how their procedures are working. Following competitive tender, in February 2005 the ICANN Board commissioned the LSE Public

Policy Group to conduct an independent review of the GNSO. The ICANN Bylaws (Article IV, Section 4) stipulate that two high-level questions should form the basis for the review of its supporting organizations as follows:

- Whether the organization has a continuing purpose in the ICANN structure;  
*and*
- Whether any change in the structure or operations is desirable to improve its effectiveness.

The ICANN Board additionally asked the LSE Public Policy Group to look at the following four issues:

- Representativeness;
- Transparency;
- Effectiveness; *and*
- Compliance.

We have grouped the exact specifications in the Terms of Reference by each of these four broad issues. Annex H provides a full listing of the Terms of Reference, arranged by these four grouped areas.

## Methodology for the review

**1.5** To conduct this enquiry we used a range of different methods, designed to generate a wealth of objective evidence, and to yield different kinds of data that ‘triangulate’ with each other. Triangulation is a technique where the inevitable limitations on the usefulness of any one method, can be countered by drawing on the strengths of other methods so as to yield more reliable judgments and estimations. Our approach is set out in detail in Annex D of this report, but briefly our main methods were:

- From the extensive document archives on the ICANN website, and with the generous assistance of ICANN staff, we assembled a thorough documentation of GNSO’s activity since its formation in 2002.
- We collated data on the conduct of GNSO’s policy development process, looked at the issues and debates covered and examined the viewpoints expressed in the GNSO Council by Constituency representatives. We also collated data on GNSO Council votes.

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- We examined all the documentation available on GNSO Constituencies, looking at membership details, participation in policy consultation, and the involvement of personnel.
  - We established a website for the GNSO Review and wrote to all Constituency members that we could identify asking them to give us their views in response to an online survey posted there, and to send us views by email or contact us to give their views in person. In the review period 107 people filled in the survey and a considerable number of people contacted us additionally.
  - We conducted lengthy and detailed face-to-face or phone interviews with over 100 people who were experienced and knowledgeable about GNSO's role in ICANN, including all but one current GNSO Council members and relevant members of the ICANN Board.
  - We visited the ICANN meeting in Wellington and observed a range of different meetings of Constituencies, meetings of GNSO Council and public presentations by GNSO Council and the ICANN Board. We also observed a phone conference of GNSO Council.
  - We systematically scanned the Web for comments or discussions on the work of GNSO and ICANN.

**1.6** The operations of GNSO are of central importance for those of ICANN as a whole, but it is important to note that the scope of our enquiry was limited to GNSO alone. However, some of our findings and recommendations below have a certain degree of broader relevance. They may raise some issues with implications for the other parts of ICANN with whom GNSO links and interacts.

**1.7** In our online survey, we asked respondents to score a range of different challenges facing the GNSO in the future in terms of importance. We used a Likert scale from 1 to 7, where 1 = Not at all important to 7 = Very important. Figure 2 below gives a summary of the number of times different challenges ranked highest in people's selections and the number of time different challenges ranked lowest. The net score gives some indication of overall importance. The most important challenges for the GNSO involve improving the quality of gTLD policy making, and improving transparency and openness.



**Figure 2: Survey respondents' views on the main challenges facing the GNSO in the future**

	Ranked highest	Ranked lowest	Net score (highest-lowest)
Improving the quality of gTLD policy making	35	17	18
Improving transparency and openness in gTLD policy development	40	22	18
Representing more effectively the views of the Internet users worldwide	36	24	12
Broadening the range of organizations participating in gTLD policy development	28	23	5
Some other challenge	7	2	5
Encouraging more intensive participation by major organizations in gTLD policy development	22	25	- 3
Raising the profile of the GNSO as a policy development body	24	34	-10
Notes: Rows in black font were more commonly ranked highest than lowest as a priority. Rows in red font were more often seen as a low priority.			
Source: LSE PPG online survey of Constituency members and individuals			

**1.8** The Review is structured into four main substantive Parts looking at:

- The quality of the participation and representation of stakeholders in the Internet community achieved by the GNSO and its six Constituencies (Part 2);
- The visibility, transparency and openness of the GNSO process (Part 3);
- How effective the GNSO has been in undertaking its work and developing policy positions (Part 4); *and*
- The regularity of GNSO's operations in compliance with ICANN's Bylaws (effectively its internal constitution) and the implementation of GNSO policy positions (Part 5).



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## **Part 2:**

# **The quality of the representation of stakeholders in the Internet community achieved by the GNSO and its six Constituencies**

**2.1** This Part of the report examines the quality of participation and representation achieved by the GNSO and its six Constituencies. It focuses on the following questions:

- How actively do stakeholders participate in policy development?
- How effectively do Constituencies represent their members' interests?
- How well do the current Constituencies represent the diversity of stakeholders they claim to represent?
- How can the GNSO further enhance participation and representation?

**2.2** Achieving a reliable comparative picture of representation and participation across the Constituencies has not been particularly easy. Our interviews have generated a wide range of views about practices and activities in other Constituencies. We have often found that strong perceptions prevail across Constituency members about the quality of participation and representation in other Constituencies. At times, perceptions have seemed quite predictable in that certain groupings of Constituencies tend to hold quite entrenched views about other groupings. Our unobtrusive analysis of Constituency data has also generated a great diversity of information about the nature and extent of participation and representation across Constituencies. As with all our findings in this report, we have sought to triangulate different types of evidence as thoroughly as possible in order to control for misleading perceptions.

**2.3** The existence of strong perceptions across Constituencies is perhaps an inevitable function of the strong and diverse interests at stake in the GNSO (particularly business interests). There is a danger that perceptions put forward by competing interests work with equal and opposite forces, a 'superstructure' consisting of all possible perceptions. From the point of view of the researcher attempting to sort perception from reality, the trick is to break down this superstructure and clear a space on which to build analysis. More importantly, from the point of view of the GNSO and its policy development goals, this kind of self-perpetuating superstructure can have a corrosive impact on

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policy consensus. For there is little incentive for one Constituency to trust the behavior of opposing Constituencies to a sufficient extent that prevailing perceptions may be put aside. Constituencies may therefore be inclined to take up default positions in ‘equal and opposite mode’ based on prevailing perceptions, and the potential for meaningful consensus will be greatly reduced. (Annex Figures A9 and A10 give a broad picture of some of the prevailing perceptions that surfaced, which we do not explore in more detail here.)

### How actively do stakeholders participate in policy development?

**2.4** Although the ICANN model itself is not predicated on the idea of membership, the GNSO Constituency model does operate through a membership system involving relatively autonomous mechanisms for bottom-up participation. Constituencies have considerable flexibility in how they support, and are accountable to, their members. One minimal requirement for this system however should be that current and potential members across all Constituencies should be able to see which other organizations are currently members, and should be able to get in touch with other member organizations via designated individual representatives who are easy to identify. We were not clear that this requirement is currently met. A great deal of time has been spent during this research seeking to identify and follow up on organizations listed as members of the GNSO Constituencies. The GNSO Secretariat kindly requested that the six Constituencies complete a questionnaire containing core information about their organizational structures, processes, and current members. Three Constituencies responded to this questionnaire, the GTLD Registry Constituency, the BC, and the NCU Constituency. However it took our research team considerable time and effort to compile a full list of members for all six Constituencies, and to identify individual participants and their links to particular member organizations. Some Constituency websites do not even keep an up-to-date list of members. The current difficulty of finding full and accurate information on which organizations are currently members of Constituencies makes it hard for prospective members to determine how representative constituencies are and how worthwhile it would be for them to participate. This has some obvious adverse implications for transparency (see Part 3 below).

*Recommendation 1*

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

**2.5** We recommend setting up a centrally held online register of GNSO Constituency stakeholders, with generic information about member organizations showing what type of firm or body they are, its contact details, and the name and email of a designated representative. Where a stakeholder is itself a representative organization (such as an interest group or trade association) acting on behalf of others, some basic information should be given about the number of organizations represented. The stakeholder register should be publicly available on the GNSO or ICANN website.

**2.6** Turning to the issue of how current members of Constituencies participate in their affairs, we again found wide disparities across Constituencies in the information available on participation. Having established some kind of comprehensive spreadsheet of Constituency members and possible designated contacts, our evidence suggests that there are gaps of varying sizes between the organizations listed as members, and the actual participation by these organizations in Constituency policy development. Our researchers trawled Constituency websites and the GNSO website for as many indicators of participation as possible. We followed this up with a formal request to the Constituencies for any data on participation not publicly available. Only one Constituency, the gTLD Registry Constituency responded to our request with detailed information. We also received a written response from the BC.

**2.7** There is no single, perfect way to gauge participation in constituencies given the diversity of the industry communities represented. One way of gauging the level of activity at Constituency level is to analyze the extent to which mailing lists are used. Some Constituencies such as the Registrar and the NCUC have open access mailing lists, which give a good indication of the extent of participation in the Constituency and the range of organizations involved. Figure 3 shows a basic analysis of mailing lists of four Constituencies out of six. It is useful to compare the number of contributors with total current members, and the number of postings by half-year period. The number of contributors for the supply-side Constituency lists, Registries and Registrars, are broadly equivalent to the number of current members. Registry postings have increased

by around 50 per cent in the period 2003 to 2006, while Registrar postings to their public list have decreased by roughly the same proportion (a new private mailing list for Registrars may explain this decrease). The NCU Constituency shows slightly less activity on its public list compared to the

**Figure 3: Analysis of activity on Constituency public mailing lists**

	Current members	Total participants	Number of contributors in half year period	Number of postings in half year period	Core ratio (25 : 75)
Registry	14	<i>No data</i>	Up, 14 to 18	Up, 700 to 1100	<i>No data</i>
Registrar	56	101	Steady, 40 to 50	Down, 1000 to 400	25 : 78
NCU	44	51	Down, 28 to 17	Down, 330 to 230	25 : 71
ISP	42	8	Steady, 4 to 8	20 to 80	
BC	39	<i>No data</i>	<i>No data</i>	<i>No data</i>	<i>No data</i>
IP	33	<i>No data</i>	<i>No data</i>	<i>No data</i>	<i>No data</i>

NOTE 1: The figures in this table summarize more detailed data presented in Annex A, Figures A11 to A14, of this report. The number of postings and individual contributors are given for half year periods from January 2003 to June 2006. **Total participants** show the total number of individuals contributing to the list at least once during this time period. **Number of contributors in half year period** indicates how many individuals are participating in the list. **Number of postings in half year period** indicates how much the list is being used. **Core ratio** gives an estimate of the concentration of usage by showing the percentage of total postings sent by the top 25 per cent contributors. The ratio 25:75 indicates that the top 25 per cent of contributors account for 75 per cent of total postings.

NOTE 2: For the NCUC, 2003 was a period in which they completely revised their charter and instituted new membership criteria, leading to a higher than normal level of activity.

NOTE 3: The BC pointed out to us that although we compare fluctuations in participation rates in this table, absolute figures are not strictly comparable for the purposes of drawing conclusions.

Source: LSE PPG analysis of Constituency public mailing lists

registration Constituencies, and had just fewer than 20 contributors to the list in the first half of 2006 (equivalent to just under half of total membership). Mailing list data was not available for the Business and IP Constituencies. The actual participation levels tend to suggest a ‘rule of thumb’ ratio of 25:75, where one quarter of the members are generally responsible for at least three quarters of the participatory activity.

**2.8** We looked for alternative ways to evaluate the extent of participation at Constituency level. Three out of six Constituencies provided data on the number of participants attending Constituency meetings since early 2003. The BC and the IP Constituency publish minutes of meetings on their websites. We received data from the Registry Constituency on meeting attendance. Figure 4 shows the findings. Again the Registry Constituency shows solid attendance in relation to total members over 115 meetings for which data was available. The BC and IP Constituencies also show steady attendance even if the regularity of the meetings held appears to be much less than the

Registry Constituency. We were not able to find any data on meeting attendance for the other three Constituencies, either on their websites or in response to formal requests.

**Figure 4: Analysis of average levels of attendance at Constituency meetings**

	Current members	Total participants	Average participants at face-to-face meetings	Average participants at teleconference meetings	Meetings for which data were available
Registry	13	<i>Not available</i>	Up 10 to 17	Steady 10 to 12	115
IP	33	133	Steady around 20	From 40 to 10	13
BC	39	51	Steady 10 to 12	Steady 10 to 12	21
Registrar	56	<i>No data</i>	<i>No data</i>	<i>No data</i>	Nil
NCU	44	<i>No data</i>	<i>No data</i>	<i>No data</i>	Nil
ISP	42	<i>No data</i>	<i>No data</i>	<i>No data</i>	Nil

Note: The figures in this table summarize more detailed data presented in Annex A, Figures A15 to A18, of this report. Participation is calculated for all meetings for which minutes were available, and figures show average number of participants per meeting for all years available. **Total participants** show the total number of individuals attending any meeting at least once since the start of 2003.

Source: LSE PPG analysis of publicly available minutes of Constituency meetings

## How effectively do Constituencies represent their members' interests?

**2.9** Our online survey sought to capture the views of Constituency member organizations on how well represented they felt by their respective Constituency. In all, 51 current members of Constituencies (around one fifth of the total) took the trouble to complete a survey. Although this response rate makes it difficult to draw rock-solid conclusions for individual Constituencies, it is possible to draw some limited conclusions, especially if there are any signs of dissatisfaction with the Constituency process.

**2.10** Amongst respondents Figure 5 shows that there seems to be general satisfaction with the way in which Constituencies represent their members' interests. All ten Registry respondents rated their Constituency at five or above, reflecting a general feeling that was buttressed in interviews that the Constituency is largely representative. In other Constituencies, although there is general satisfaction, there are also signs that some members feel there is scope for improvement in the way that their Constituency represents the wider array of organizations of their type. Our interviews with Constituency members confirmed these signs of dissatisfaction around the edges.

Smaller registrars we spoke to suggested that the Registrar Constituency tends to be more representative of larger registrars and could do more to encourage membership across the smaller organizations. Some members of the BC also suggested that the influence of one or two individuals tended to detract from the overall quality of representation in the Constituency.

**Figure 5: Survey respondents' views on how effectively their Constituencies take account of their views**

<i>Scores given for</i>	Registry	Registrar	NCU	IP	BC	ISP
<b>How effectively [your Constituency] takes account of the views of your organization</b>						
1 to 3		2	2		1	
4		1				
5 to 7	10	11	7	4	6	
<b>How effectively [your Constituency] takes account of all organizations of your type</b>						
1 to 3		4	1		2	
4		1	2			
5 to 7	10	9	6	4	5	
NOTE: More details on the online survey questions can be found in Annex E. Respondents were asked to give a score for each of these questions on a Likert scale from 1 to 7, where 1 = Not at all effectively and 7 = Very effectively. We received insufficient responses from the ISP Constituency.						
Source: LSE PPG online survey of Constituency members						

**2.11** Looking in more detail at satisfaction levels amongst Constituency member organizations, we asked a series of questions in our survey about the way in which respective Constituencies develop policy positions. There are some interesting variations in Figure 6, particularly in the relative scores within Constituencies. The highest scoring aspect across all Constituencies is for the production of authoritative written statements of Constituency positions. Apart from the Registry Constituency which scored distinctly highly across all three questions here, respondents tended to score their Constituencies comparatively lower on making data available on the degree of consensus across Constituency members. The Registrar Constituency and the BC also scored comparatively lower on the use of consistent procedures to canvas views across their members.

**Figure 6: Survey respondents' views on how effectively their Constituencies develop and evidence policy positions**

	Use consistent procedures for establishing consensus across Constituency members	Produce authoritative written statements of Constituency positions	Make data available on the degree of consensus across Constituency members
Registry	6.4	6.3	6.3
NCU	5.4	5.3	4.3
IP	5.5	5.5	3.5
Registrar	4.6	5.3	3.1
BC	4.6	5.3	3.1
ISP	<i>Insufficient data available</i>		
<b>Total average</b>	<b>5.3</b>	<b>5.5</b>	<b>4.0</b>
NOTE: More details on the online survey questions can be found in Annex A. Respondents were asked to give a score for each of these questions on a Likert scale from 1 to 7, where 1 = Not at all effectively and 7 = Very effectively. We received insufficient responses from the ISP Constituency.			
Source: LSE PPG online survey of Constituency members			

**2.12** There was considerable variation in number and availability of Constituency statements and other formalized policy positions. In order to assess range and availability across Constituencies, we compiled a list of 18 policy issues that Constituencies might reasonably have commented on in recent years (see Figure 7). These included all Constituency statements produced as part of formal policy development processes (PDPs), as well other relevant issues which were not subject to a PDP such as Constituency responses to the ICANN Strategic Plan (Annex A, Figure A22 lists these 18 policy issues in full). The Registry Constituency pointed out that some of its Constituency statements had not been included in our list of 18 possibles. Figure 7 also shows the extent to which statements gave basic information on the number of Constituency members participating in the development of the statement. We have contrasted these data with another proxy for the intensity of representation and participation, the proportion of postings by the GNSO Councilors to the GNSO public mailing list. Statements published by the Registry and Registrar Constituencies were the only ones that showed any sign of containing data on the number or range of organizations participating in the development of the Constituency position. None of the Constituencies representing Internet users displayed any data on the number of organizations actively participating in the development of policy positions. These Constituencies are very active in the work of the GNSO Council. For example, the BC



made available a very high proportion of Constituency statements and has easily been the most vocal Constituency on the GNSO mailing list in recent years.

**Figure 7: Analysis of published Constituency statements and levels of contribution from Constituencies on the GNSO public mailing list**

	Publication of Constituency statements (out of 18)	Number of Constituency statements containing data on Constituency member participating
<i>Based on:</i>	<i>Annex A Figure A22</i>	
Registry	11	3
Registrar	9	1
BC	15	0
IP	13	0
NCU	12	0
ISP	9	0
Source: LSE PPG analysis of Constituency statements published on Constituency websites or published in issue reports of the GNSO NOTE 1: For a full list of the 18 policy issues selected by the LSE team, please refer to Annex A Figure A22. It should be noted that the policy issues selected are only a sub-set of all issues discussed by Constituencies, and were chosen independently by the LSE team. NOTE 2: The Registry Constituency confirmed that all statements issued by the Constituency were issued as a result of a majority vote whether or not the document contained detailed data on participation. NOTE 3: In one instance, the BC filed a comment that their views were still consistent with their original filing.		

**2.13** The GNSO has made progress in recent policy development work to establish a more systematic structure to Constituency statements in terms of a more formulaic question and answer format. We discuss in Part 4 how the initial report in the policy development process might be structured around a key issues analysis or issue-based questions. We also discuss the possibility of integrating some quantitative questions into the Constituency statement to distinguish between different priorities and interests in Constituency positions. However, currently only a small minority of policy statements developed by Constituencies have any kind of data indicating the level of participation or support for a particular Constituency position. One or two recent statements from the Registry Constituency have contained data on the number of members participating in the process. We have heard a range of arguments for and against the introduction of some basic underlying data of this kind. Senior personnel, including Board members, have suggested that more in-depth information on levels of participation and agreement from the Constituency members would facilitate weighing up and interpreting any final policy recommendations from the GNSO Council. Other



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interviewees argue that Constituencies are often not required to achieve consensus across their members (and at times cannot). Some have said that members cannot be forced to participate, and so silence from member organizations on a particular issue can legitimately be taken as agreement on a consultation document. There have been attempts in some recent policy development processes to collect underlying data from Constituencies.

*Recommendation 2*

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

**2.14** We recommend that all Constituencies should be required to poll members on Constituency statements produced as part of a policy development process (as some Constituencies already do), and Constituencies should provide a summary of poll results when submitting statements to the policy development process. Constituency statements feeding into the policy development process should incorporate evidence of how many members have *actively* agreed to Constituency positions. Silence from member organizations should not be interpreted as agreement (contrary to what some Constituency members suggested to us in interviews). Furthermore, we suggest that Constituency members have a means to indicate their level of agreement on Constituency-wide positions, on a simple category scale such as: Strongly Agree, Agree, Neither agree nor disagree, Disagree, Strongly disagree. This data may feed into reports in an aggregated and anonymized format as an indication of the levels of consensus views at Constituency level.

**2.15** Any discussion of how effectively Constituencies are able to represent their membership should take into account the resources available to the Constituencies to fund their operations. The GNSO Constituencies receive revenues of their own through annual membership fees paid by their members to cover their administrative and program costs. These fees vary considerably across the Constituencies, from less than USD100 to nearly USD1000, with a (guess)timated total revenue of around USD 85,000 across four constituencies (excluding the gTLD Registry and ISP Constituencies, see Annex B).

**2.16** GNSO Councilors are not currently paid for their work on the Council and in their Constituency. Some Councilors may have business interests relevant to Council discussions and can sometimes be compensated for time invested in Council business

**Figure 8: GNSO proportion of ICANN expenditure and revenues**

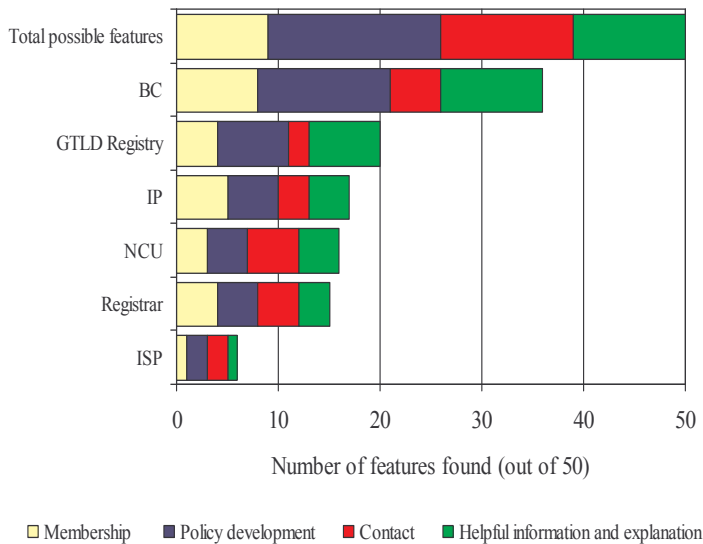
<i>USD thousands</i>	Fiscal year			
	2003-04	2004-05	2005-06	2006-07
ICANN annual expenditure	8,273	15,834	22,988	30,977
ICANN revenues	8,618	16,032	23,566	34,179
<i>Revenue from gTLD Registries and Registrars as a percentage of total ICANN revenue</i>	87	91	90	97
<i>Estimated expenditure on the GNSO as a percentage of total ICANN expenditure</i>	2	4	6	7
NOTE: For details of how estimated expenditure for the GNSO was calculated please see the notes to Figure A41 in Annex A. ICANN annual expenditure and revenue figures for 2003-04, 2004-05, and 2005-06 are approved budget figures from ICANN Financial Reports. Data for 2006-07 are proposed budget figures.				

and cover travel costs through their employers. Members of the Council appointed by the Nominating Committee receive travel costs for attending ICANN and other GNSO-related meetings.

**2.17** In Figure 8 above we estimate that the proportion of total ICANN expenditure specifically on, or in support of, the GNSO increased from around 2 per cent in 2003-04 to around 6 per cent in 2005-06, with a provisional increase of another one percentage point for the fiscal year 2006-07. We were not able to obtain exact figures for ICANN expenditure on the GNSO, and so these estimates are based on staff costs, overheads and other related expenditure (see Annex A, Figure A41 for details). The increase in expenditure is largely accounted for by salary and overhead costs for additional ICANN staff support. Although the benefits from this increased expenditure are realized in terms of stronger executive policy coordination, the Constituencies have not received incremental funds from ICANN over the years to help build administrative and outreach activity.

**2.18** For Constituencies, their website is (or should be) one of the primary interfaces with potential new members or participants in the policy process who are not already involved. We found considerable variation in the quality and content of Constituency websites (see Figure 9 below). Some Constituency websites were lamentably out-of-date or lacking in basic

**Figure 9: Analysis of Constituency websites and the presence of 50 desirable features**



NOTE: The gTLD Registries have self-defined membership and therefore would not need to use their website to encourage new members. We would therefore expect a relatively lower score on the membership and contact category.

Source: LSE PPG analysis of Constituency websites

details on how to join or any explanation of the potential benefits from joining. The Registrar Constituency currently has two separate websites, [www.icann-registrars.org](http://www.icann-registrars.org) signposted from the ICANN website and a newer version hidden away at [www.icannregistrars.org](http://www.icannregistrars.org). The ISP website ceased to function during this research, and still refers to the Names Council, suggesting that it has not been updated since early 2003. We carried out an ‘unobtrusive measures’ analysis of Constituency websites. We compiled a list of around 50 possible features that one might reasonably expect Constituency websites to have. This is not an exhaustive list, neither is it based on any definitive list of features websites should have. The list of questions is reproduced in Annex Figure A24. We coded each Constituency website for each of these 50 items to

get a sense of the diversity of information available. The ‘Total’ row bar shows the maximum number of coded features per category, and the bars show how Constituencies actually performed by comparison. The quality of Constituency websites varied greatly, with five out of six Constituencies exhibiting less than two fifths of our coded features. By far the most comprehensive website belonged to the BC, with just under four fifths of coded features.

**2.19** We asked Constituency member organizations in our online survey to score different aspects of their own Constituency websites. We counted the number of times each aspect ranked highest or lowest in each response, shown in Figure 10. Here positive numbers in the net score column show overall satisfaction and negative scores show dissatisfaction. Current members tend to be most satisfied with the way in which Constituency websites do quite straightforward administrative functions, such as making reports and minutes available and posting contact details for office holders. Respondents tend to be less positive about more sophisticated functions, such as facilitating open discussion and especially attracting new members. The strong consensus amongst our interviewees is that Constituency websites currently do very little to attract new members to the GNSO.

**Figure 10: Survey respondents’ views on different aspects of their Constituency website**

	Ranked highest	Ranked lowest	Net score (highest – lowest)
Posting contact details of office holders	26	5	21
Making reports and minutes available	21	8	13
Keeping up-to-date with relevant GNSO news and issues	21	8	13
Keeping members’ contact details up-to-date	20	9	11
Facilitating open discussion on key issues	21	13	8
Attracting new members to the Constituency	9	24	-15

Source: LSE PPG online survey of Constituency members

**2.20** There are currently considerable variations in the constitutional and operational arrangements across Constituencies. These differences raise the transaction costs of participation for organizations and individuals who might want to participate in ICANN’s work, especially if they are interested in more than one Constituency. The Constituency websites are diverse in terms of their branding and content and may

appear confusing to potential new members. In some cases websites are dormant even for existing members. This is an example where diversity can undermine representation rather than encouraging it. We do not believe that relying on Constituencies to improve this situation on their own will be feasible (particularly given the varying levels of scarce resources). There are currently some important cross-Constituency groups and meetings, but these generally involve clusters of specific Constituencies rather than regularized and inclusive interaction across all Constituency executives.

**2.21** We recognize that the Constituencies are by nature diverse and rely on a certain level of autonomy in terms of establishing procedures and positions. Nevertheless it is our view that much can be gained from a more coherent approach to managing and growing shared functions and capabilities across the Constituencies. Despite obvious diversity, Constituencies share important administrative and strategic functions. A more standardized approach to supporting constituencies from ICANN staff has the potential to lower costs for Constituencies and to greatly increase their accessibility for members, and potential member (and non-member) organizations.

*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.*

**2.22** A more ‘off-the-shelf’ approach by ICANN to supporting Constituencies might involve making available to Constituencies some pre-packaged products that they could apply to their own administration and membership-attracting strategies. For example, this might involve consolidation of Constituency websites as sub-parts of the ICANN website in such a way that each Constituency has a section that is coherently branded but which allows them the flexibility to publish and communicate in their own way. Each Constituency might have direct content management access to their respective sub-sites. Mailing lists and other correspondence should be secure to Constituency members only. Although Constituencies are inherently different, there is great potential for them to develop, with ICANN’s help, common products to facilitate administration and outreach at Constituency level. This might include design of generic ICANN marketing literature which can be tailored by Constituencies according to their own

needs. We reviewed Constituency statements in the paragraphs above, and there is certainly opportunity to develop more standardized formatting for statements based around issue analysis for different pieces of policy. Generic ICANN email alerts or RSS feeds might also be developed from this more coherent platform, allowing Constituencies to offer members ICANN news updates and latest policy work. The essential objective here is that the link between Constituencies, the GNSO, and ICANN should be far more obvious and understandable to potential members (and the wider Internet community).

#### *Recommendation 4*

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

**2.23** Following on from Recommendation 3, it is important to consider how best to organize the resources for developing an ‘off-the-shelf’ approach to supporting the needs of Constituencies, at minimal cost. ICANN policy and operational staff could institute some kind of forum for developing and sharing professional tools and practices across Constituencies. But there also seems a strong rationale for strengthening the support available to Constituencies by creating a GNSO Constituency Officer, with a key role of supporting common corporate development work across the Constituencies.

#### **How well do the current Constituencies represent the diversity of stakeholders in their areas of interest?**

**2.24** In evaluating the representativeness of Constituencies we also sought to look at the extent to which the range of current Constituency member organizations reflects the global distribution of domain names registered under gTLDs and Internet usage in general. We do not believe that it would be a meaningful exercise to try to establish the extent to which Constituency member organizations are actually statistically representative of the global population of individuals or organizations, particularly not in relation to the global commercial and third sectors. This is because ICANN’s role in the governance of the Internet is a relatively specific one. At any one time only a small (and inherently hard to establish) proportion of civil society organizations will be interested in or concerned about its policy decisions and detailed debates on Internet names and numbers. However it is possible to evaluate very broadly to what extent

current membership broadly reflects global diversity. We looked at Constituency member lists, allocated each member to a global region, and then calculated the maximum number of Constituency votes that could be cast by organizations in each region. Where information was available, we have used specific Constituency voting allocations to do this. A distribution of voting power for each Constituency can be constructed for each global region (assuming that all Constituency members vote). We

**Figure 11: Estimated global distribution of Constituency membership**

	Approximate ICANN global regions					Categorized as International
	Europe	Africa	Asia Pacific	North America	Latin America and Caribbean	
Estimated proportion of domain names registered in GTLD space (% of total)	19	0.2	11	66	4	<i>Na</i>
Estimated percentage of Internet users worldwide (% of total)	29	3	38	23	7	<i>Na</i>
The following figures give an indication of the percentage distribution of maximum possible votes across ICANN global regions for each Constituency.						
Registry	42	0	0	58	0	
Registrar	28	0	15	55	2	
BC	26	3	4	35	0	31
IP	26	0	7	35	2	30
NCU	12	8	28	30	11	12
ISP	41	3	10	8	10	21
NOTE 1: We coded each Constituency member by its allotted number of votes at Constituency level, and the global region in which it is registered. This gives a very general indication of the extent to which Constituencies are over or under-represented in different global regions.						
NOTE 2: The data in this table is based on the ICANN regions confirmed at the ICANN annual meeting in Montreal in June 2003 ( <a href="http://www.icann.org/montreal/geo-regions-topic.htm">http://www.icann.org/montreal/geo-regions-topic.htm</a> ). This categorization puts countries in the Middle East and the Caucasus in the Asia Pacific global region. We are not aware of any further modifications to ICANN global regions since June 2003.						
NOTE 3: The BC asked us to categorize one of their members based in Jordan in the Africa region, particularly as much of the activity of this organization is situated in North Africa. The data above reflects this request.						
Source: LSE PPG analysis of global Internet data and Constituency membership data						

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then calculated the proportions of ‘total domain names registered under gTLDs’ and ‘total Internet users’ for each region. Figure 11 above compares the Constituency vote distribution by global region with these two indicators of distribution of global Internet activity. It is worth mentioning that the data in Figure 11 is based on the ICANN global regions, which have not been subject to change since 2000. Turkey and countries in the Middle East are currently categorized as Asia Pacific (perhaps a slight anomaly), and it may be worth the GNSO and ICANN as a whole working to refine global region definitions to capture changing patterns in Internet usage in these regions. Also, representative organizations are often international in focus and therefore cannot be easily categorized by global region. We have established an International category for members, which have a global spread (most commonly in the IP and BC). Although Constituencies provide guidelines for voting rights for Constituency members, we found it at times difficult to establish how many votes member organizations actually received.

**2.25** A first rough indication of the proportionality of Constituency membership in Figure 11 is in terms of global distribution of gTLD registrations. There is a heavy skew here towards domain name registrations in North America (two thirds of the total), and to assist comparison the Constituencies are ordered by the representation of North America users. By comparison with the proportion of United States gTLD registrations most constituencies are lower, while gTLD Registries and Registrars are somewhat closer to the North America percentage figure. The NCU Constituency has some indication of over-representation stakeholders in three out of five global regions, which of course is no bad thing. This suggests that diversity of membership in the NCU is relatively strong. The Registrar Constituency is also relatively proportional across all five regions. The BC and IP Constituency are interesting as they both show relatively similar distributions across the five regions and patterns which are quite close to the overall distribution of registrations, suggesting a balance of membership power close to the actual global distribution of gTLDs. The ISP Constituency has a strong over-representation in Europe. The ISP Constituency has organized a global meeting for ISPs.

**2.26** However, the second row of Figure 11 shows an alternative comparator, an estimated distribution for the number of global Internet users (at the end of 2005). This



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gives a very different picture, with much less of a skew towards North America, and a much stronger showing in Europe and Asia Pacific. Whereas two thirds of all gTLD registrations are in North America, just under one quarter of Internet users are located in this region. In terms of objectives for Constituencies, particularly user Constituencies, the user distribution might be closer to the one which Constituencies could aspire to approximate in terms of growing their own membership. The NCU Constituency shows quite a close fit to the distribution of global Internet users across at least four out of five regions. The BC and IP Constituencies show under-representation in two out of five regions, but it is important to take into account that around one third of the members for each of these Constituencies are internationally-oriented representative bodies.

**2.27** We looked for a way of evaluating the size and profile of Constituency member organizations, particularly the organizations represented by the most active individuals in each Constituency. We noted above an apparent rule of thumb that around one quarter of Constituency members are responsible for around three quarters of the activity. Using mailing lists or meeting attendance as indicators of activity, we ordered the most active participants for each Constituency since early 2002, recorded the organizations they represented, and focused on the Top Ten most active organizations for each of the four user Constituencies - BC, IP, ISP and NCU. We collected Alexa metrics data for these active member organizations' website homepages, including 'reach per one million users' and 'traffic ranking of the website'. For each Constituency we looked at the top-ranking member organization and the median member organization for each of these two indicators. Figure 12 below shows the results for each of the four user Constituencies.

**Figure 12: Estimating the web profiles of the top ten most active member organizations in four user Constituencies**

	Reach per million users		Traffic rank of website		Number of organizations too small to feature
	Top member	Median member	Top member	Median member	
BC	18,135	21	26	62,284	2
IP	1,720	21	586	69,154	0
NCU	128	3	12,131	290,960	1
ISP	<i>Insufficient data available</i>				
<p>Note: This table gives an indication of the web profile of those member organizations that are most active at Constituency level. We have reviewed available data on the Top 10 most actively represented organizations in each Constituency since June 2003. We have used <a href="http://www.alexa.com">www.alexa.com</a> to get an indicative traffic rank and 'reach per million users' profile for each organization. The data shows the top and the median score for each Constituency.</p>					
<p>Source: LSE PPG analysis of Alexa website traffic and website user data</p>					

**2.28** Looking in more detail first at *the Business Constituency* (BC) the mix of top ten most active organizations appears to be somewhat miscellaneous. Not all are household names, and although one or two big brand names appear, they tend to be towards the bottom of the table and have largely IP based interests. The top ranking member organization in terms of 'reach per million users' is the Walt Disney Company, with on average two in every 100 people visiting this website (the 26<sup>th</sup> highest ranked website in terms of overall traffic): however, representatives from the Walt Disney Company have attended six meetings out of 24 since 2002, and infrequently in the last two years, suggesting 'distanced' participation at best. Big name organizations such as Verizon and the News Corporation give the Top 10 commercial credibility and explain why the median scores in Figure 11 for the Business Constituency are on a par with the IP Constituency.

**2.29** Our evidence clearly shows that there is a committed core of BC representatives some of whom are affiliated to large and well-known commercial corporations and trade associations. However, data (in Annex A, Figures A15 and A18), suggest that direct participation rates tend to fall off relatively quickly. Although around 33 representatives of BC member organizations have attended at least one BC meeting since 2002, around 25 representatives have attended 5 meetings or less (out of a possible total of 24). We estimate that 5 member organizations have attended more than

10 of the 24 meetings for which minutes were available. Since 2002 only the three current Constituency representatives have attended at least three quarters of all meetings for which minutes were available. Three major corporations and four representative associations listed as Constituency members have never attended a BC meeting as far as our analysis shows.

**2.30** Looking at the type of organizations most active in the BC, there are three representative organizations for businesses, two major global telecommunications companies, two major global content provider companies, a leading Middle Eastern accountancy and IP firm, and a range of small single-person consultancy businesses (see Annex A, Figure A27). Looking at the BC membership list in full, there is a much wider spread of organizations, including some well-known Internet-specific names like Yahoo, Inc. It is very hard to establish to what extent these organizations actually play a part in the GNSO process. Some interviewees argued to us that the BC should aim to grow its coverage of new Internet-related markets, particularly e-commerce and web hosting companies, and encourage new organizations to participate actively in policy development. Our interviews with technology business associations familiar with the BC echoed this point, suggesting that BC does not currently provide a home for new types of organizations in the world of e-commerce. Other interviewees suggested that other major Internet-related business sectors such as financial services and retail industries did not seem to figure on the current membership list. Figure 13 below gives an indication of the level of direct penetration of the current membership into some key business sectors.

**Figure 13: The market value of corporations who are members of the Business and Intellectual Property Constituencies**

Sector	Total cumulative market value of the Top 25 companies in this sector (\$bn)	Number of BC and IP Constituency members amongst the Top 25	Market value of these Constituency members as a percentage of Top 25 sector market value
Banking	2,317	0	0
Telecommunications	1,237	4	2
Diversified Financials	1,115	0	0
Hardware and equipment	1,050	2	9
Software services	831	1	6
Food, Drink and Tobacco	980	1	7
Insurance	926	0	0
Retailing	796	0	0
Media	607	3	31
Conglomerates	575	0	0
Source: Forbes Global 2000			

**2.31** Turning to *the IP Constituency*, the ten most active member organizations tend to be representative associations. These organizations have large and well-known corporate clients and members, and so a similar website analysis can be slightly misleading, because websites of the representative organizations may not always be as well visited as the websites of their members. The median figures for the IP Constituency in Figure 12 suggest a similar profile to the BC Constituency in terms of users per million Internet users and traffic volumes. However, perhaps not surprisingly, the largest member organization in this Constituency has a much smaller web profile than the largest one in the BC. It is interesting that all but none of the most active member organizations in the IP Constituency have a recognizable and active website (a possible sign that the ten most active member organizations in the IP Constituency are all well established enough to have a functioning website).

**2.32** Our data on the IP Constituency tends to confirm a picture of relatively solid participation by some major global IP stakeholders. Detailed data (at Annex A, Figures

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A28) show that at least 17 out of 20 major international representative bodies have attended at least one IP Constituency meeting. However, there is still quite a high proportion of Constituency members in the categories of regional and national members that have never attended a Constituency meeting. Again the picture is one of a strong and relatively small core of active participants. The top 12 participant organizations include some major names, both representative bodies and corporations. Evidence on participation elsewhere in this report shows that the IP Constituency Council representatives are perhaps less active than other Constituencies at Council level, and have shown quite high rate of Councilor turnover (see Annex Figures A17 and A45). Despite numerous reminders to the Constituency members about our online survey, we received surprisingly few returns given the apparently reasonable levels of activity by Constituency members that our data indicates.

**2.33** For *the ISP Constituency* we were unable to establish a top ten most active organizations, due to lack of data and insufficient survey responses. However, the ISPC have told us that that the level of participation in the last five ICANN meetings averaged over 20 individuals with more than 14 different organizations represented, a point borne out in observation of an ISPCP session at the ICANN annual meeting in Wellington.

**2.34** The *NCU Constituency* appears to be quite diversely representative at least in terms of distribution of its members. It nevertheless scores comparatively lower in the size and profile of its most active members in comparison to the BC and the IP Constituencies. This is perhaps understandable considering the organizations involved in these three Constituencies are very different. The websites of the most active NCUC members tend to be significantly less visited and have significantly less incoming traffic, although only one active member organization has a website which is not recognizable by Alexa. These indicators suggest therefore that the NCUC tends to be diverse yet relatively small-scale in its membership profile. The very limited resources available to this Constituency constrain the extent to which outreach work can take place.

**2.35** Although the NCU Constituency membership is quite diverse when looked at from within, it is largely meaningless to try to come to any statistical conclusion about how

reflective the current membership is of the wider population of global non-commercial organizations. One way forward for the NCU Constituency however might be to identify some key indicators of spread against which its membership can be evaluated. We suggested above that global Internet users and registered domain names in the gTLD space could be two generic indicators of balance. More specific indicators for the NCU Constituency are entirely feasible, such as density of non-governmental organizations by global region and percentage of organizations operating in different policy areas. Figure 14 gives an indication of density of non-governmental organizations by global region. It is interesting here to see that NGOs are much better developed in higher income than lower income economies, although the gap is less in Latin America. Looking at the vote share for the NCUC, Latin America comes fourth out of five in terms of global spread, and so we might conclude, in very tentative terms of course, that the NCUC could look to grow its presence in Latin American non-governmental networks. Figure 15 shows the distribution of NGOs activity across different types of activity. Again this might serve as a function-specific guide for growing NCU Constituency activity.

**Figure 14: The density of non-governmental organizations by global region and level of economic development**

	Global Civil Society		
	Low and middle income economies	High income economies	Total
Europe / Middle East	1.9	34.8	<b>16.1</b>
North America		13.0	<b>13.0</b>
Latin America / Caribbean	9.6	20.3	<b>10.0</b>
Asia Pacific	3.5	12.0	<b>5.1</b>
Africa	1.5		<b>1.5</b>
NOTE: Figures in this table show density by 'number of NGOs per million of population'. For each global region we have calculated average density.			
<i>Source: LSE PPG analysis of data from Global Civil Society Yearbook 2004/05</i>			

**Figure 15: The average percentage of activity by non-governmental organizations across different areas of activity by the level of economic development**

<i>NGOs active in</i>	Global Civil Society		
	Low and middle income economies	High income economies	<b>Total</b>
Economic development, infrastructure	25.3	23.6	<b>24.6</b>
Research	20.2	22.1	<b>21.0</b>
Law, policy and advocacy	12.6	11.6	<b>12.3</b>
Social development	12.1	10.3	<b>11.5</b>
Education	6.6	6.0	<b>6.4</b>
NOTE: Figures in this table show the average percentage of total NGO activity relating to different areas.			
<i>Source: LSE PPG analysis of data from Global Civil Society Yearbook 2004/05</i>			

**2.36** The current system of GNSO's operations is not very old, stemming from a decision made in 2002 to separate out the Supporting Organizations for generic names (gTLDs) and for country code names (ccTLDs). Prior to this decision there was a single Domain Name Supporting Organization (DNSO), where country code names were represented by one of seven Constituencies (the other six effectively making up the current Constituencies in the GNSO). When the GNSO was established in December 2002 as a separate body dealing specifically with gTLD policy development, the six Constituencies were largely carried over. Yet even in the course of a few years, there are mixed signs of growth and atrophy in the quality of representation and the degree of actual participation across the Constituencies.

**2.37** Some aspects of the current GNSO Constituency system seem to reflect a snapshot of the interest groupings most active on generic names issues in the founding stages of ICANN in the late 1990s. Many interviewees told us that the origins of the current Constituency system are found in the organized interests that played key roles in establishing ICANN at that period. These included major American computer and telecommunications corporations (such as AT&T, MCI, IBM and Telstra) who were engaged with the process; some major content provider corporations (such as Disney and Time Warner); representative associations in the intellectual property area; and early-established elements of the registration industry (basically Network Solutions). Internet service providers (ISPs) were also represented since they were playing a major role in helping consumers to gain access to domains and URLs. Constituencies at this

time were ‘self-organizing’ (as stated in the GNSO Bylaws), which some interviewees told us meant the ‘loudest voices prevailed’.

**2.38** A further piece of the snapshot involved the presence of intellectual property interests. Many of our interviewees agreed that by the end of the 1990s intellectual property issues relating to the use of domain names were in the late stages of formalization with the development of the Uniform Domain Name Resolution Process (UDRP). The World Intellectual Property Organization (WIPO) held a public hearing in the period between the 1998 White Paper and the formal recognition of ICANN in early 1999, and issued a report suggesting features of the UDRP. The rules eventually adopted by ICANN differed from those in certain respects. ICANN’s Board and a ‘small drafting group’ composed of various ICANN Constituency representatives drafted the UDRP in use today. Analysis of some of the major public forum discussions shows that the original UDRP adoption generated the largest amount of discussion (in terms of numbers of contributors and words written) of any subsequent policy development process discussion. Subsequently the UDRP has come to be widely regarded as a successful initiative, and a good cross-section of our interviewees suggested in varying degrees that it could be viewed as one of ICANN’s successes. However, some critics and researchers argue that it is biased towards complainants. This necessarily brief historical background in the previous paragraphs brings out the importance of factoring in the context under which the GNSO Constituencies were established. This is particularly the case when considering the current picture of representation and participation in the GNSO and thinking about feasible participation conditions for the future.

*Recommendation 5*

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

**2.39** It would not be useful to recommend any specific targets or thresholds for membership or participation, which would be a largely meaningless exercise. However, there are a number of possible examples of global indicators that Constituencies could use to guide future work on outreach and effort to grow membership and participation. These may be very general such as the percentage of domain names registered under gTLDs, or they may be specific to particular Constituencies, such as the global



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distribution of non-governmental organizations working in the field of new technologies. Growth in membership should be monitored by Constituencies to ensure that distribution is as balanced and proportional as possible in relation to key indicators.

**2.40** In response to questions about representation and participation, many interviewees argued to us that although the security and stability of the Internet is of vital importance to many organizations, it is unrealistic to expect people from these organizations to want to continuously participate in developing policy on it. As one person shrewdly put it, ‘most people want to use the Internet, not develop policy on it’. Although this view seems intuitively compelling, there are currently policy issues on the horizon which are directly relevant and interesting to a wide range of actors, notably data privacy and IDNs. Individuals or organizations who find they have lost a valuable domain name to fraudulent or overly exuberant resale activity have a direct interest in institutional structures that allow them to influence policy (or at least have a say on policy issues). Government organizations have also shown themselves increasingly interested in work that the GNSO is doing on issues relating to website registration data. These are two examples of how technical and often complicated GNSO policy issues translate into actual, real-life issues for a wide range of people. So we believe that there is scope to improve the current level of involvement in the GNSO’s work.

**2.41** In our survey completed by non-member organizations (that is, any organization not currently a member of a GNSO Constituency) we asked respondents to score factors which would be important to them and would encourage them to become a member of the relevant GNSO Constituency. We also asked respondents about potential barriers that would explain why they are not currently members of the relevant Constituency. Figure 16 (below) summarizes the most popular responses and suggests two important points. First, while it confirms that ensuring the stability and security of the Internet is a vitally important consideration for organizations, it illustrates that another important motivation involves helping to shape the future of the Internet. So the view put forward in the previous paragraph (that very few organizations actually want to make policy on gTLDs) is perhaps too pessimistic. A second, closely related point is that the main barriers that organizations identified are to do with feeling alienated or distanced from the ICANN process, not really knowing how to participate, or simply not being aware of the GNSO process. In fact, the least cited reason for not joining GNSO was that

‘generic domain name policy is not a primary concern for our organization’, suggesting a positive potential to grow the membership of GNSO Constituencies.

**Figure 16: Reasons given by survey respondents for why their organization would consider joining a GNSO Constituency, and why their organization is not currently a member of the relevant GNSO Constituency**

	HIGHEST	2 <sup>nd</sup> HIGHEST
Reason to get Involved	Ensuring security and stability of the Internet	Helping to shape the future of the Internet
Reason not to get Involved	It is difficult for an organization like ours to influence these kinds of issues	We were not aware of the GNSO Constituency system
NOTE: Annex A Figures A30 and A31 show the full results.		
Source: LSE PPG online survey of non-member organizations		

**2.42** Our interviews and research into other major international representative bodies such as the International Chamber of Commerce (ICC) or the World Information Technology Services Association (WITSA) suggest that the entry level for membership can be a decisive factor in encouraging a wide variety of organizations to participate in policy development. In both these comparators, firms and bodies become members at the corporate or ‘whole organization’ level, and are then filtered towards the relevant policy forums or commissions. For example, organizations interested in participating in the work of the ICC join the ICC as local or national level members, and are channeled towards the relevant Commissions or special working groups. Similarly, organizations can join the ITU and then participate in one of the three Sectors according to their own interests. We found little sense that ‘authentic’ bottom-up processes of participation are undermined by having this whole-organization route in. In our discussions with representatives from a range of representative associations (see Annex C), interviewees suggested that this system provides a range of obvious benefits: in particular a more professionalized support environment for member organizations; greater flexibility for members to pick and choose policy discussions; and lower administrative costs for the member organization itself in terms of communicating with members and keeping them aware of ongoing work and so on.

**2.43** Currently the main interface with the GNSO is solely through becoming a member of a relevant Constituency. Many interviewees pointed out to us that joining existing Constituencies that (rightly or wrongly) appear to be subject to control by relatively small groups of interests is often very off-putting to prospective members. If they react adversely to perceiving such defects in Constituencies, potential members may then steer clear of any involvement with GNSO and ICANN as a whole. There are also dissatisfactions about the variation in practices across Constituencies and the apparently restrictive and now dated missions of current Constituencies. Resources at the Constituency level are often limited and lack standardization – a consequence of the bottom-up stakeholder philosophy, but also a factor that considerably increases the perceived complexity and impenetrability of GNSO’s operations. The activities of Constituency executives and their levels of outreach activity and membership support have been variable and are hard to predict. Finally having to take out membership only via an amateur-run Constituency gives the impression to potential members of being far removed from the heart of ICANN and from influence on its policy processes. Consequently the marginal benefits of being a stakeholder in the ICANN process may seem diffuse.

*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.*

**2.44** A key change that could help boost GNSO membership would be for organizations and individuals to become stakeholders in ICANN through a centralized stakeholder process. The primary interface would be with ICANN rather than with GNSO Constituencies. And a more standardized and coherent ICANN stakeholder package should be developed so as to allow new organizations to feel much more directly involved. We also show below (paragraphs 3.2 and 3.3) that ICANN is much more visible to the Internet community as a whole than is GNSO, so that for users especially the information costs of joining ICANN will be much less than those involved in finding out about, understanding and joining the current GNSO Constituencies. Depending on their interests and legal status, new ICANN members would be channeled towards the relevant stakeholder Constituencies (or to other representative channels if member interests lay in non-gTLD issues). Membership fees could be tiered to individuals and to the size and type of organizations or firms (as is currently the case

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with some Constituencies), but a single scale would prevail. Revenues from fees would be centrally collected by ICANN. Expenditure on Constituency professional work and outreach development would come from a remitted major element of ICANN stakeholder fees. And performing successfully (such as attracting a high rate of potential members as actual members, or improving participation levels appreciably) should also attract a commensurate contribution from the central ICANN budget, so as to give (reformed) Constituencies incentives to be proactive in attracting members and contributors.

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## **Part 3:**

### **The visibility, transparency and openness of the GNSO process**

**3.1** The transparency criterion is concerned primarily with the GNSO process being open to inspection and scrutiny by internal and external actors. If a decision-making process is to be transparent, it must first of all be easily visible and accessible. Potentially interested stakeholders must be able to find out what is going on, which organizations are involved, what timetables and policy processes are in operation, what kinds of consideration are being looked at, and how they themselves can best follow and influence discussions. A key question is therefore whether the current operations of GNSO create sufficient visibility to allow the essential foundation stone of transparency to be seen to be in place?

#### **The external visibility of the GNSO**

**3.2** The operations of ICANN have been well described in a number of recent extensive and detailed published accounts by academics or impartial observers. However, in all such accounts the Generic Names Supporting Organization has very low visibility compared to that of ICANN as a whole. For instance, in a 414 page report on ICANN written by the National Academy of Sciences in the United States there is a detailed contents page running to 7 pages, which does not include any mention of the GNSO. Similarly, a search in Google Books generates 3 hits on the GNSO compared to around 1,600 for ICANN. Turning to the coverage of ICANN on the Web and in Internet mailing lists, we have found only a very tiny proportion of references to ICANN which make any reference at all to GNSO as a whole or to the GNSO Council. A basic search for the terms ‘ICANN’ and ‘GNSO’ in major international written media databases such as Nexus Lexis Executive shows that GNSO results tend to be significantly less than 1 per cent of equivalent results for ICANN. Searching the IETF website, we find around 80 results for the GNSO compared to just over 34,000 for ICANN (see Annex A, Figure A32 for some indicative search results).

**Figure 17: Comparing the web visibility of the GNSO and ICANN**

	Search for 'GNSO'	Search for 'ICANN'
Average number of results across four different search engines ( <i>Google, Yahoo, AltaVista, and MSN</i> )	150,000	13 million
Estimated percentage of total results in...		
<b>.com</b> gTLD	8	53
<b>.org</b> gTLD	71	21
<i>(Of which were <a href="http://icann.org">icann.org</a>)</i>	<i>(45)</i>	<i>(4)</i>
Country code TLDs	9	16
Other gTLDs	12	10
Total percentage	100	100
Source: LSE PPG analysis of search results from four established Internet search engines		

**3.3** A further insight into the relative visibility of ICANN compared to GNSO is the scale of their two web presences given in Figure 17 above. In order to get a rough picture of where the GNSO web presence was strongest (i.e. in terms of TLDs), we ran searches for the terms 'ICANN' and 'GNSO' using four established search engines, restricting the searches to individual generic TLDs and all country TLDs. We took the estimated total number of results for each search, across each search engine, and calculated an average across the four. The average number of search results for 'ICANN' was around 13 million compared to 150,000 for 'GNSO' (about 1 per cent). An interesting contrast also appears in the lines below. Around half of the results for 'ICANN' appear in the dot.com domain (including press, commercial sector, and other private sites), compared to 8 per cent for 'GNSO'. Perhaps not surprisingly, the great proportion of results for 'GNSO' appear in the dot.org domain. However, using the Google page link function, we found that around 50 per cent of links to the GNSO homepage originate from within the [icann.org](http://icann.org) domain, with a further 48 per cent originating from one website [www.latinamericann.org](http://www.latinamericann.org), a Latin American NGO with a link to the GNSO on every page of its website. These results are suggestive of the extent to which current knowledge of and commentary about GNSO is confined to 'deep insiders'.

**3.4** At the outset of our work for this Review we set up a multilingual research website at [www.icann-gnsoreview.org](http://www.icann-gnsoreview.org) in order to canvas as many views on the GNSO as possible from around the world. The research was advertised in the global press, and we employed a group of ten international post-graduate students over a period of six weeks to identify key organizations from the commercial and civil society, contact relevant individuals within these organizations, and invite them to comment on the GNSO or more generally on generic TLD policy development at ICANN. The response to this intensive work to build awareness for the Review was extremely disappointing. We received a very limited response, suggesting to us that the range of opinions about, and the level of awareness of, the GNSO outside of the already active ICANN community itself was very low. Our discussions with members of government agencies in the USA, UK, the EU, the OECD and with members of the Government Advisory Committee (GAC) also revealed relatively low awareness amongst officials directly involved with ICANN of the work of the GNSO. Our interviewees assured us that we should expect general levels of awareness of GNSO in the country governments themselves and in major international organizations to be even lower. This view was also partially confirmed by several senior government officials with extensive involvement in Internet issues whom we approached for interviews, who declined because they said that they did not know enough about GNSO's operations to comment.

**3.5** Many insiders have argued to us that 'GNSO is ICANN', in two important senses. First, looking at revenue data and other outputs, GNSO issues, or at least issues relating to GNSO stakeholders, are at the heart of the ICANN process. Second, GNSO is in many ways the most distinctive and most established piece of machinery supporting ICANN's claim to facilitate 'bottom-up, stakeholder participation' in an open and transparent way in the governance of the Internet. The GNSO is therefore a strange combination of being a critical and integral part of ICANN, but one that is almost invisible to people who are not already closely involved with ICANN.

**3.6** A main reason why GNSO's visibility on the Internet is currently very low is that there have been serious deficiencies in the design of ICANN's overall website over recent years. These problems have long been known to the Board and the ICANN Chief Executive, arising from previous restrictions on resources and particular personnel

issues. However, website problems in the modern age cannot be treated as peripheral or as involving only a dispensable or luxury good. Especially for a body such as ICANN and its main components such as GNSO, a properly working and designed website is an integral element of being an effective organization at all, and its role in respect of facilitating transparency is of critical importance. Our interviewees almost universally expressed deep frustration with the current Web provision. Respondents to our survey also gave overall negative evaluations to two aspects of current GNSO website provision, as shown in Figure 18 below, those relating to engaging external groups and building up the profile of GNSO. Steps have been taken in the recent months to address this issue and the current consultation and first signs of design change on the ICANN website are a positive development. But there remains much more to do.

**Figure 18: How respondents evaluated different aspects of the GNSO website**

	Ranked highest	Ranked lowest	Net highest - lowest score
Making relevant reports and minutes available	39	8	31
Keeping up-to-date with relevant GNSO news and issues	30	11	19
Facilitating open discussion on key issues	18	20	-2
Encouraging views and comments from a wide range of interests	15	31	-16
Building the organizational profile of the GNSO	12	36	-24
Source: LSE PPG online survey of Constituency members and individuals			

3.7 The parts of ICANN's website concerned with GNSO are currently set up and used as a working tool for Councilors and a repository for all policy-related documentation that is produced. In many ways they provide a very comprehensive information resource that is potentially of considerable value. Openness is also pursued to a high degree. For instance, Council phone conferences are recorded as MP3 files and deposited on the Website, so that an interested observer could potentially replay the whole event, should they wish to do so. There is an extensive mailing list that impressively has averaged between 1 and 2 postings per day since mid June 2003. All minutes of Council meetings are freely available. Figure 18 above also shows that respondents to our survey evaluated the internal roles of the GNSO website more positively. However, currently accessing and understanding this data is only feasible for



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people with high levels of skills and who already know what they are doing and what they are looking for. Many interviewees were particularly frank with us about the lack of the design and poor organization of the website for outsiders and even experienced insiders to cope with. A previous review of the GNSO Council carried out by a consultant in 2004 recommended that the GNSO website be overhauled – yet subsequently no progress has been made. In terms of building the wider profile of GNSO as part of the ICANN organization, the current Web provision is weak.

**3.8** It is generally commonplace nowadays for major commercial, government and other non-commercial organizations to monitor the use of their website, collect and process usage statistics or metrics, and then feed these back into their web strategy and overall operational activity. Basic structural and user metrics can provide invaluable information to an organization about how customers are interacting with them and the types of information that they find most valuable. For a policy development body such as the GNSO, any feedback on which kinds of policy information people are searching for would seem to be an invaluable commodity in terms of building a policy resource, attracting further visits to the site, and potentially recruiting new stakeholders. We are therefore surprised to find that the GNSO (and indeed ICANN more widely) do not routinely collect website usage statistics on a regular basis, nor use them to inform their communication and marketing strategies and to help shape their operational activity.

**3.9** There can be no transparency without visibility, and for a body whose central task is Internet governance that means critically immediate visibility on the web. Organizations with imperfect websites often react to deficiencies being pointed out by implying that such problems can be easily corrected by a simple application of finances and effort. We do not share this confidence. In our experience website problems normally reflect some substantial political problems inside organizations, and they can only be successfully addressed when such problems are resolved.

*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.*

**3.10** We recommend that the GNSO (and necessarily the wider ICANN) website is redesigned, maintaining the wealth of information currently available at lower tiers of pages, but also incorporating a properly designed top three or four levels. The website should aim to present systematically GNSO's (and necessarily ICANN's) activities to a global public in an accessible fashion, but also in some useful detail. Following on from recommendation 7 above, Constituency sections should be clearly labeled from the GNSO homepage along with other relevant sections, such as 'Access our policy reports', 'Policy work in progress', Events and meetings, and so on. Designated ICANN staff members will need to be assigned responsibility for maintaining the top layers of pages in a 'fit for purpose' state and to ensure that corporate branding is consistent. A specific plan and funding for website improvements need to be incorporated into ICANN's operational plan as a high priority. The GNSO Council needs to review web statistics relating to its pages at least annually. It should aim to grow traffic to the site year on year, and to keep track of (and develop) parts of the site that are most frequently visited.

### Document management

**3.11** It is not always easy to establish the narrative of policy development from information and documentation available on the GNSO website. Many policy papers are labeled in confusing or arcane ways, and the labels are nowhere explained. Many of our interviewees, particularly relatively new participants in the GNSO process, have suggested that document management practices on the GNSO website currently make it difficult to get an overview of policy issues over recent years. Even highly experienced Council members acknowledged that it takes a considerable amount of time to get acquainted with the informal protocols and working procedures of the GNSO. And the current documentation pathways and numerous iterations of policy reports often make it confusing to orientate oneself in terms of overall narrative of policy development.

**3.12** At the start of our research, we trawled the GNSO website to get a comprehensive picture of all policy development that has been carried out since December 2002 (see Annex A, Figure A5 for a summary). We found that the GNSO website provided very little overall explanation of how documents published on the site related to different stages of the policy development process. It is often hard to tell from the headings and

introductory text whether documents are preliminary reports, final reports, revised final reports and so on. Having spent four months crawling over the ICANN and GNSO websites for relevant background documentation, we were able to compile a comprehensive table of all policy development work by the GNSO (see Figure 22 below in Part 4). However, it is still not clear to our experienced research team whether we have read all relevant iterations of key documents. In cases where the website groups documents under particular areas of policy work, generally documents were ordered in a chronological order with scant information about which documents were most authoritative. It seems very important that this work is presented to the Internet community in a form which facilitates getting up-to-speed, establishing what has been achieved, and what remains to be done.

**3.13** In addition some policy narratives on the GNSO website seem to get lost. Figure 22 (in Part 4) presents a summary of how long different policies have taken to develop through to implementation. In some cases, a final GNSO report or the report of a Task Force will be published on the website. But subsequently there will be very little information about how the findings or recommendations in this report have been progressed or what has happened as a consequence. For example, the recent policy development process work on the introduction of new gTLD registry services was formally adopted by the ICANN Board in November 2005, but then there was a long gap with no information on the website about how the implementation program would proceed. Only very recently has ICANN announced that implementation of this policy would take effect from August 2006. The emphasis of the policy process on formal stages of development make it crucial that newcomers or interested observers are able to get a clear picture at a glance about where the GNSO (and ICANN) is on progressing key pieces of work.

*Recommendation 8*

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

**3.14** We recommend that any redesign of the website include a forensic trawl through the existing documentation, removal of extraneous documentation from the main pages (and creation of archives if necessary), and the introduction of crystal-clear labeling practices. For example, for each policy development process (PDP) that has been

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carried out in recent years, there should be a page with an up-to-date document narrative available, documents clearly labeled, and some basic summary information about the Task Force membership (where relevant) and the final outcomes that resulted. We also recommend that any ‘Access our policy reports’ section of the GNSO website contain a full list of currently relevant policy reports, coherently titled, dated, available in HTML and PDF format, and all in one place, ordered chronologically.

**3.15** Currently there is no one document that can be used effectively to promote or raise awareness externally of the type of policy issues that GNSO handles. This might be the equivalent of an annual report or a business plan, essentially the kind of document that markets the whole of an organization’s activities to a general and external audience. A good number of interviewees, Council members included, raised the point that it is difficult to get potential organizations interested at events and conferences without some kind of summary document that encapsulates the work of the GNSO. There is currently an Excel table, circulated and updated by GNSO staff, giving an overview of the current work that the GNSO is involved in. However, as in other cases, this working document would not be at all useful as a marketing tool for an external audience, since it is not in an appropriate format nor sufficiently accessible for lay readers. After thorough search and interview discussion, we are unable to find a document which might be used as a marketing and communication tool as much as a factual description of the work in progress and under proposal at the GNSO.

*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.*

**3.16** This change would set in place a realistic program of work for the GNSO over a provisional two-year period. It would help to prioritize upcoming issues, standardize programs of work, and break any major and complicated issues (such as WHOIS privacy or IDNs) into modular and digestible chunks of work. It should be based on consultation across Constituencies, but also involving other ICANN supporting organizations, and perhaps also the Government Advisory Committee (GAC) and external national and international policy development expertise. The work program

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should be presented as a formal document, breaking down policy development work into some key areas, and setting out some broad timeframes for completion. It should be based on notional calculations of an average cost per PDP, and fit within the available time and resources given the existing GNSO arrangements. The first year of the Plan would need to be regarded as firmly committed but the second year could be more indicative, so as to retain flexibility to respond agilely. It is important to give stakeholders a clearer picture not just of what GNSO is doing at present but of what topics it will cover in the near future. Such a work plan should also help to neutralize any controversy about the scope of the GNSO's policy work, and to ensure commitment and buy-in across all Constituencies for upcoming work.

**3.17** The GNSO does not currently have a communications or marketing strategy. Some interviewees have suggested to us that given its relatively narrow policy development role vis-à-vis the ICANN Board, there is perhaps no justification for it to have one. Under the existing system of GNSO Constituency membership, however, some kind of communications with Constituency members and indeed potential new members would seem to be a core plank of the creating incentives for continued and new forms of participation. Providing incentives for members to participate (or more fundamentally to pay their dues) is certainly a central plank of almost all membership-based organizations. As illustrated in Part 2, Constituency membership lists and communications with members are largely disaggregated across Constituencies, and consequently there is no central register of GNSO members and certainly no proactive work to keep members up-to-date with GNSO activities and issues. Neither the GNSO nor ICANN appear to use RSS feeds with stakeholders. As a result, the onus is on stakeholders to keep up with events through trawling the GNSO website.

**3.18** Given that GNSO councilors and Constituency activists voluntarily commit thousands of hours of their time to policy development work, it seems strange that there is currently no policy publication series or any sign of ICANN branded output that is linked to GNSO or represents its activities to any wider public. For example, in a comparator organization the e-Business, IT and Telecoms (EBITT) Commission within the ICC produces relatively short PDF policy reports or digests, consistently branded with an ICC header but presented as the work of the EBITT commission. GNSO policy reports tend to come in all shapes and sizes, without consistent ICANN branding. Our

previous recommendation in paragraph 2.22 relates to greater use of ‘off-the-shelf’ tools and corporate material by Constituencies in order to strengthen the working and marketing link between the GNSO and ICANN as a whole. Establishing ICANN policy or working paper series might be a fruitful opportunity to brand existing work by Constituencies and other committees in a more coherent and accessible way, and to develop more graduated outputs from the policy development process. Graduated outputs might well focus on different potential audiences for policy work, ranging from formal PDP output, through to press and media friendly output, and short and digestible think-pieces or discussion pieces that could be circulated to universities, non-governmental and research sectors, and other Internet stakeholders.

*Recommendation 10*

*The GNSO and ICANN should work proactively to provide information-based incentives for stakeholder organizations to monitor and participate in GNSO issues.*

**3.19** In Part 2 we recommended a fundamental change to the way in which organizations interface with the GNSO and ICANN, by shifting from a GNSO Constituency membership model to an ICANN stakeholder model. An ICANN-level interface in our view would greatly enhance the prospects of involvement by a wider range of organizations in GNSO’s policy development, and it should create new possibilities for growing clearer incentives for new organizations to take part as ICANN stakeholders. There would be obvious opportunities here to develop a comprehensive database or register of ICANN stakeholders, to segment ICANN stakeholders according to their interests or extent of participation, and then to develop ‘selective incentives’ for these organizations in the form of regular and accessible information, news alerts, policy digests and so on. An ICANN stakeholder register would promise a range of wider marketing benefits, would allow for more coherent communication across different ICANN areas. There is a vast wealth of institutional and technical knowledge within the ICANN community, and a more integrated communications strategy at ICANN level could help to feed a much greater range of this knowledge into GNSO’s policy development work. An ICANN working paper series on gTLD issues would be one example of a selective incentive for organizations to become ICANN stakeholders, and get more deeply involved in policy development work. In the contemporary theory of interest group and NGO participation, making available to members ‘selective

incentives' that are not available to non-members is assigned a great deal of salience. GNSO and its Constituencies need to enhance their efforts in this respect.

### The visibility of the GNSO *within* the ICANN community

**3.20** In addition to the problems clouding GNSO's external visibility, there are also important issues about how visible or well-understood its work is even within the confines of the ICANN community. There were indications that GNSO in some respects has a low profile role even within the ICANN community itself. For instance, our interviewees' perceptions tended to vary widely on how high profile the GNSO is at ICANN Board level. We asked interviewees to estimate roughly what percentage of Board time is taken up dealing specifically with policies developed by the GNSO. Responses varied from around 30 per cent to around 10 per cent. Some people have said to us that the GNSO is a vital influence in the Board's deliberations on gTLD issues, and indeed our survey respondents scored 'Delivering practicable recommendations to the ICANN Board' highest in a list of aspects of the PDP. Other interviewees have been uncertain about how important the GNSO has been on key issues, notably IDNs and policies on selection of new gTLDs.

**3.21** In order to create a clearer picture of how much Board time is spent discussing policy recommendations specifically originating from the GNSO, we did some analysis of all available Board transcripts and minutes since 2002. We counted the total number of words in each document, and estimated what proportion of words related to specific GNSO policies, and what proportion of words related to wider gTLD issues (not necessarily emanating from the GNSO). Figure 19 below suggests that around one third of Board discussion relates to gTLD issues. The estimated proportion of GNSO-specific discussion however is significantly less; never more than 8 per cent and 2 per cent on average for 2003-04 and 2004-05 (for more on both these categories year-on-year, please see Annex A, Figures A38 and A39). This seems significantly less than the 10 per cent lower estimates that we were receiving from more skeptical interviewees. We cross-checked these percentages with the percentage of words in the ICANN adopted budget relating specifically to the GNSO. We found here that there has been a gradual increase to 10 per cent in 2006-07, providing some rough corroboration for the visibility factor of 10 per cent for the GNSO at Board level.



**Figure 19: Estimating the importance of GNSO issues in ICANN Board level meetings**

<i>Figures show % of text</i>	2002-03	2003-04	2004-05	2005-06	2006-07
Estimated proportion of ICANN Board meeting discussion relating to gTLDs	45	28	35	36	<i>na</i>
Estimated proportion of ICANN Board meeting discussion relating to the GNSO	8	2	2	8	<i>na</i>
Estimated proportion of ICANN annual adopted budget documents relating specifically to the GNSO	3	4	2	6	10
NOTE: Rows 1 and 2 in this table show results of basic textual analysis of transcripts and minutes of ICANN Board meetings (see Figures A38 and A39 in Annex A for more details). Row 3 shows results from a similar analysis on Adopted Budget documents available on the ICANN website. We reviewed these documents for direct references to the GNSO and the gTLD supporting organization.					
Source: LSE PPG analysis of ICANN Board meeting transcripts and minutes					

**3.22** Achieving balanced growth in the relationship between the GNSO and ICANN as a whole would seem to a sensible objective to aim for in terms of development over the next ten years. It is interesting to look at data for time spent by the ICANN Board discussing issues/policy work emerging directly from the GNSO, and compare these percentages with total ICANN expenditure on GNSO as a percentage of total ICANN expenditure (see Figure 8 above in Part 2). We might expect to see a broad balance between these two percentages, suggesting that the ICANN Board is roughly ‘getting its money’s worth’ in terms of the amount of expenditure it is allocating to the GNSO and the policy development returns it is seeing on this investment. In terms of balanced development, these figures seem quite encouraging. There currently seems to be a ‘10 per cent trend’, the consequence of gradual growth over recent years. We estimate that:

- ICANN expenditure on the GNSO is currently around **10 per cent** of total expenditure;
- ICANN spent roughly **8 per cent** of its time in 2005-06 discussing policy work of the GNSO;
- around **10 per cent** of ICANN budget documentation relates specifically or indirectly to the GNSO and its activities.

It would be important to keep under review indicators which give an idea of return on expenditure in this way – a kind of ‘bangs per buck’ guide to balanced growth. Our



indicators are relatively broad estimates, and there is obviously room for refinement of such indicators.

**3.23** Transparency in the relationship between the ICANN Board and the GNSO was an important concern in many interviewees' comments to us. Decision-making processes were often seen as rather opaque, and channels of communication between the Board and the GNSO were seen as lacking. The GNSO Council currently elects two Directors to the ICANN Board by majority vote. Although these Directors have played the role of liaison between the GNSO Council and the Board in recent years, they do not have a formal role as representatives of the GNSO during Board deliberations. All ICANN Board members have a duty to act in the best interests of the organization as a whole and its mission, rather than to represent particular interests. At times the communications and understanding between the Council and the Board have been strained. Recent controversy over the way in which the Verisign settlement was handled raises serious questions about the quality of communication between the ICANN Board and the GNSO. Many views expressed by Council members during our interviews, and indeed much of the written documentation on this particular decision, suggest a need for more formalized and transparent, two-way channels of communication on how GNSO views are taken into account and how decisions at Board level are made. Figure 20 below shows the number of GNSO Council meetings at which Board members have been present since 2002. The number of meetings attended per year has increased from zero out of 13 meetings in 2003-04 to eight out of 18 meetings in 2005-06.

**Figure 20: Attendance of ICANN Board members at GNSO Council meetings**

	2002-03	2003-04	2004-05	2005-06	2006-07
Number of Council meetings	18	13	13	18	4
<i>At which at least one Board member was present</i>	0	0	4	8	2
<i>At which at least two Board members were present</i>	0	0	0	2	0
NOTE: Figures in this table cover January 2002 to May 2006. The number of Council meetings in 2002 refers specifically to the number of meetings of the Names Council of the former DNSO. Meetings include face-to-face and teleconference calls. The number of Council meetings listed is based on meetings for which data was available.					
Source: LSE PPG analysis of GNSO Council meeting attendance					

**3.24** Yet there are very few formalized and institutional channels through which the GNSO Council may communicate with the Board and other senior representatives across ICANN organizations. Our interviews suggested that the current communications channels between the Board and the GNSO rely a great deal on the constructive working relationships established between the current Chair of the GNSO Council, the ICANN President and Chief Executive, and key Board members. The GNSO Chair is a very important and internally influential figure within ICANN, whose agenda management capabilities play a key role in progressing GNSO's work and facilitating constructive debate. The Chair does not currently attend Board meetings, and there is no automatic progression from the position of GNSO Council Chair to a place on the Board. This lack of formalized communication channels (and the consequent emphasis on informal channels between the GNSO Council Chair, the ICANN President and Chief Executive, and the Board) may be a relatively high risk strategy to maintain for two reasons. First, the system is reliant on constructive working relationships between senior personalities. Although the current Council Chair has ready access to the ICANN Chief Executive, this arrangement is rather informal and might not continue with other personnel in these posts. If personal relationships break down or do not function adequately, there are few institutional safeguards to protect the interests of the GNSO and its Council as a whole. Second, the lack of open and regularized communication channels between the GNSO and the Board increases the risk of perhaps unnecessary resentment and confrontation at GNSO level, such as surfaced in the aftermath of the 2006 decision on the Verisign settlement.

**3.25** Sub-units within complex organizations are generally made more visible and salient when they have a clear personal embodiment, that is, someone who clearly represents them in other important forums. Some interviewees strongly suggested to us that the role of the Chair of the GNSO Council should be enhanced so as to help GNSO become more influential. For instance, the Chair could act as a non-voting liaison to the Board, or he/she could automatically take a seat on the Board for two years after their Council term had ended. Another potentially useful idea put to us is that an overall ICANN central executive committee should be established, perhaps including the Chair of the Board, the President and Chief Executive, the GNSO Chair and chairs of other Supporting Organizations, and the chair of the Government Advisory Committee. This central executive committee would be a regularized and minuted discussion of work

going on across ICANN and GNSO and other represented bodies, and give a chance to maintain open channels of communication on the many cross-cutting issues now in discussion.

*Recommendation 11*

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

**3.26** It is important to stress that this is an area where we cannot put forward very specific recommendations, because ICANN's central organization was outside the scope of this Review. In addition, the role of Council Chair is already onerous enough, so that adding any new duties or roles would require a slimming down of other activities (such as Council teleconferences, see below). But what is not sensible is to continue with the GNSO Council operating as a large body with only a diffuse identity elsewhere in ICANN and with an apparently 'submerged' or under-visible leadership.

**3.27** Turning to GNSO's internal rules, a transparent organization is also one where the reasons for people saying what they do are fully understandable to internal and external observers. In contexts like GNSO, where decisions can often impact on the economic life chances and financial situations of participants in decision-making, it is particularly important that people acting in representative roles should meticulously document and declare any relevant interests that they may have. Somewhat under half our interviewees complained strongly to us that in their view disclosure of interests by GNSO Councilors was not always upheld. They felt that it was often impossible to tell which organizations individuals were representing. Other interviewees argued that the current approach of relying on self-regulation of disclosure works relatively well, particularly given the close knit community of ICANN, the few degrees of separation between most principal actors, and the intensity of discussion between them. The general view amongst councilors themselves is that any compromising relationships and interests will be uncovered one way or another. Yet however useful these self-correcting tendencies may be, suspicions of conflicts of interest are currently widely held elsewhere in the ICANN community. Especially in tandem with perceived cliqueness in some constituencies, these perceptions are highly corrosive of the legitimacy of GNSO's deliberations.

*Recommendation 12*

*The policies on GNSO Councilors declaring interests should be strengthened. Provision for a vote of 'no confidence' leading to resignation should be introduced for non-compliance.*

**3.28** We recommend strongly that the GNSO Council establishes a written policy on disclosure of interests, circulated to each new member and to existing members annually. The Council should discuss and agree some mechanism of enforcement requiring a vote-of-no-confidence in the Council with a qualified majority (15 or more members) if interests are not declared. This extra incentive would help encourage members to comply.

**3.29** Where the number of active members in Constituencies become low or very low, there is a risk that those who sustain the Constituencies participation in GNSO processes will be perceived externally (rightly or wrongly) as running a clique-dominated process, one perhaps unreceptive to the involvement of new actors or players. The current GNSO Bylaws stipulate that any Councilor serves for a two year term, with a staggered changeover of two of a Constituency's Councilors in one year and then one in the next, and so on. Some Constituencies, such as the Registrars, stipulate term limits for Council representatives. However, councilors in other Constituencies may currently continue to serve for more than two years (indeed they may serve indefinitely) if re-elected by a majority of their Constituency members. Our analysis of turnover of individual GNSO Councilors terms of service since 2002

**Figure 21: Turnover of individual DNSO/GNSO Councilors, since January 2001**

	Number of individual Council members since Jan 2001	Number of changes of representatives since Jan 2001	Number of changes of representatives since Jan 2003
NCU	15	5	8
gTLD Registry	9	2	6
IP	11	3	5
Registrar	7	2	2
BC	5	2	1
ISP	5	2	0

NOTE 1: The figures in this table cover the period from January 2001 to June 2006. Column 1 shows the total number of different individuals who have served as a Member of either the Names Council (prior to end 2002) or the GNSO Council (since beginning 2003). Columns 2 and 3 show the number of changes of personnel that took place in the Names Council up to Jan 2003, and then subsequently in the GNSO Council since Jan 2003.

NOTE 2: The IP Constituency pointed out their relatively high rate of turnover of Councilors is due to the fact that after the decision to move from a system of 3 Councilors to 2 Councilors per Constituency, it took the decision to re-run elections for its representatives to the Council

Source: LSE PPG analysis of data on terms of service of GNSO Council representatives

shows a wide variation across Constituencies (see Figure 21 above). In the case of the Business and ISP Constituencies there has been very low turnover of personnel amongst their representative on the Council, and only five people have served as one of their councilors since 2001. At the other end of the spectrum, some Constituencies show comparatively high rates of turnover, such as the Non-Commercial Users. Some interviewees have suggested that this is due difficulty in retaining Councilors long enough and the fact that NCUC Councilors are often not funded. Other NCU representatives have suggested that high turnover reflects an open and dynamic culture within the Constituency. In addition to achieving some reasonable degree of circulation amongst GNSO councilors, it will also be important to have sufficient people involved in how Constituencies are run to prevent their officers being the same people for long periods of time. In addition to achieving some reasonable degree of circulation amongst GNSO councilors, it is also important to have sufficient people involved in the running of Constituencies so as to ensure stability when people change jobs and therefore leave the constituency, etc. Thus a reasonable pool of involved leaders is an important goal for the long term health and functioning of any constituency.

*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.*

**3.30** Because of the small numbers of councilors in some constituencies and the potential for delegitimizing perceptions to arise, there should be a term limit of three or four years, after which councilors must step down from membership for at least a term. Standardizing a term limit of two two-year terms would be one solution, Individuals who reach the end of their terms would need to step down from the Council until a new election was held. Given the regional representation that Constituencies aim for this would in practice be two years off (so a four years on/ two years off cycle), unless the person changed region, which does happen. Some interviewees suggested to us that councilors should serve only a single three year term and then step down for a year, an arrangement that with staggered retirements would also allow for more stability in Constituency representation. One possible disadvantage would be that with regional representation a leaving councilor would not in practice be able to return for three years, when their region's seat was once again being contested, creating a 3 years on/3 years off cycle, again unless the person changed region. Both GNSO Council and the Board will need to consider which of these options to pursue, having regard to the need to marshal and conserve expertise while also avoiding any creation of cliques. It should be born in mind, however, that individuals who reach the ends of their term could still be active in the leadership of their Constituency and in task forces, so that there is no need for their talents or commitment to be completely lost to ICANN in an 'off' period.

## Part 4:

### How effective the GNSO has been in undertaking its work and developing policy positions

#### The operations of the Policy Development Process

**4.1** The GNSO Council discusses issues associated with generic domain names that are relatively complex and often quite technical. The GNSO Council has a set of formal procedures for looking at new issues, seeking views from the Constituencies and other stakeholders in the Internet community who want to comment, debating the views expressed in the Council, seeking common ground and trying to reach a consensus view of the issue. These procedures are called a Policy Development Process (usually referred to by the initials PDP within ICANN). The stages and timings for a PDP are set out in the ICANN Bylaws. As Figure 22 below sets out, the GNSO has been involved in around 12 major pieces of policy development work since December 2002. This policy development work has dealt with potentially highly technical issues, which when reviewed for wider relevance to society at large, reveal some direct implications (many at an everyday level) for Internet users and service providers. We briefly summarize these in the next few paragraphs.

**4.2** Policy work relating to the WHOIS database is a prime example of how such narratives could be made more accessible and transparent to interested newcomers or observers. Since December 2002 the GNSO has conducted 12 separate policy development processes ranging across four general areas (see Figure 22 below). Policy work relating to the procedures and functions of the WHOIS information service has accounted for seven out of the PDPs listed. Task Forces have been established, combined, disbanded, and even after close analysis, it is difficult for our research team to establish exactly where issues currently lie, and what might be a realistic timeframe for future progress. WHOIS has involved a huge amount of time and expertise from GNSO stakeholders. We estimate very roughly that this policy development work on WHOIS has involved roughly 39,000 hours of Task Force member and GNSO Councilor time since the first Task Force was launched in 2001.

**Figure 22: Summary of the GNSO policy development work since December 2002**

<i>GNSO policy work</i>	PDP launched	Task Force or final report	Adopted by Board	Policy Implemented
WHOIS Review			Mar 03	Nov 04
Inter-registrar Transfer Policy		Feb 03	Apr 03	Nov 04
Expired Domain Deletion Policy	Sept 02	June 03	Sept 04	Nov 04
WHOIS Task Force 1	Oct 03	<i>Task Forces Combined (see below)</i>		
WHOIS Task Force 2	Oct 03			
WHOIS Task Force 3	Oct 03			
New Registry Services	Nov 03	Jun 05	Nov 05	<i>Planned for 2006</i>
GNSO resolution on new .net operator	<i>NA</i>	Aug 04		
WHOIS Combined 1	Dec 04	Apr 05	<i>Task Forces Combined (see below)</i>	
WHOIS Combined 2	Dec 04	Sept 05		
Purpose of WHOIS and WHOIS contact	Jun 05	Mar 06		
Introduction of new gTLDs	Dec 05			
Amendments to conditions for existing gTLD Registry contracts	Feb 06			
Source: Documentation on the ICANN website				

Applying a notional ‘cost per hour’ figure of USD 180, the total policy resource expended on WHOIS policy since 2001 amounts to just under USD 7 million (see Annex A, Figures A5 and A6 for details on how these estimates were calculated).

**4.3** The GNSO has also developed procedures to safeguard the integrity of domain names, particularly the way in which market interactions between registration stakeholders impact on the domain name holders. The policy on inter-registrar transfers developed standardized procedures covering the way in which a registered domain name may be transferred from one registrar to another. This policy established procedures for allocating administrative obligations on ‘gaining’ and ‘losing’ registrars, so as to reduce duplication of workload and harmful consequences to the registrant. The policy on ‘expired domain name deletions’ sought to provide safeguards for registrants in cases where a domain name registration period expires, and without the original registrant’s knowledge the domain name is put back on the market and purchased by

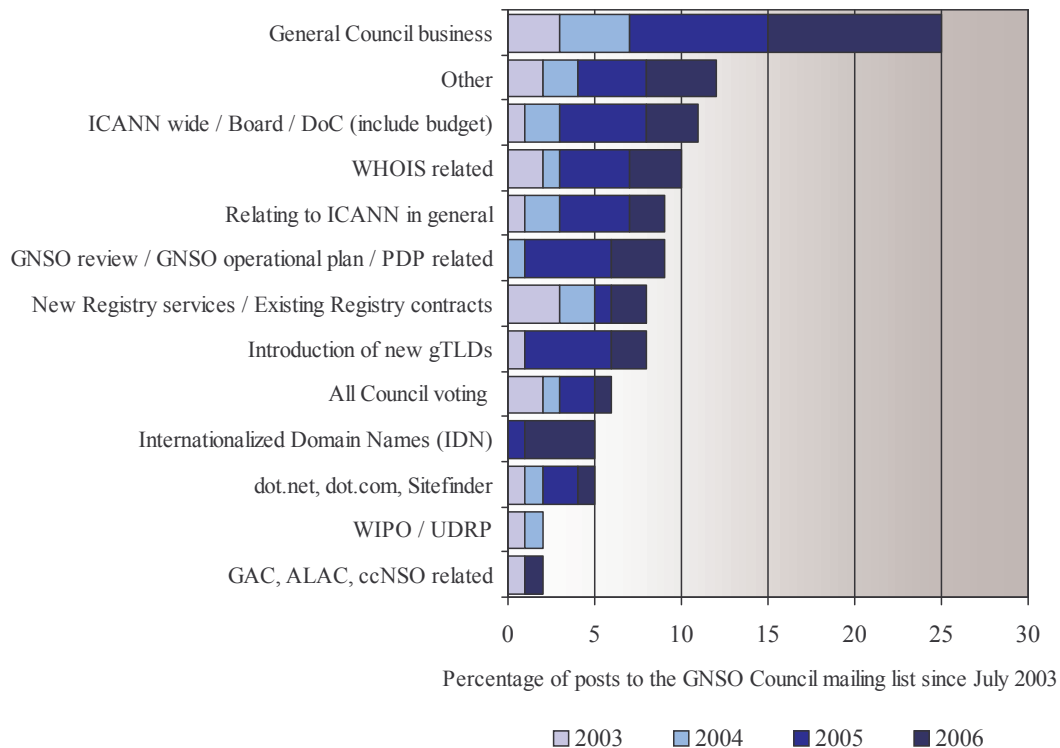


other registrants. This policy work set some ground rules for notification of the registrant and a redemption grace period.

**4.4** In 2004 the GNSO initiated policy work on procedures to ensure that gTLD Registries notify ICANN of any new services or changes to service delivery that are introduced. The final report was published in June 2005, setting out consensus policy on the steps that should be followed by gTLD Registries and ICANN staff for reviewing and agreeing to specific changes to existing services or introduction of new services. More recently, in February 2006, a much larger and potentially more controversial piece of policy development work has begun on possible improvements that could be made to conditions specified in existing gTLD Registry contracts.

**4.5** In December 2005 the GNSO initiated new policy development on procedures governing the introduction of new generic TLDs. This new PDP examines what types of generic TLD are most desirable, how many should be introduced and during what time span, and by which allocation mechanism new TLDs should be introduced. This is currently one of major pieces of policy development under way in the GNSO. Related to new gTLDs, but not quite under way as formal policy development work, is the issue of Internationalized Domain Names (again often abbreviated to IDNs). The first ICANN committee was formed back in September 2001 to discuss all issues relating to the introduction of IDNs. The ICANN President's Advisory Committee announced at the start of 2006 that ICANN would be running a test-bed for the first IDN prototype forms. Now the GNSO Council is currently in the process of setting up an informal working group to consider key policy issues that will arise from this work on IDNs.

**4.6** The use of open access mailing lists is a rather distinctive feature of the way in which the GNSO operates. Lists provide a vital working tool for GNSO stakeholders, not to mention a vast source of information for potential participants and observers who have enough patience and expertise to follow policy development discussions. Open mailing lists give the impression of a highly transparent organization, despite the caveat that open mailing lists can be used for strategic purposes and a large amount of correspondence takes place off list. A review of the GNSO Council's main public mailing list shows that it has averaged (rather impressively) at least 2 or 3 postings per

**Figure 23: Main themes discussed on the GNSO Council mailing list, by year**

Source: LSE PPG analysis of the GNSO public mailing list June 2003 to June 2006.

day since June 2003 with at least one third of total postings dealing with general or day-to-day business. In terms of substantive policy development, Figure 23 shows that work relating to WHOIS ranks highly in terms of coverage, accounting for just over 10 per cent of all postings to the list since June 2003. Other major policy development issues have been work relating to the introduction of new registry services and more recently procedures for managing the introduction of new generic Top Level Domains.

**4.7** We noted above the importance of the formal Policy Development Process (PDP), the set of formal procedures used by GNSO Council for looking at new issues. The PDP rules govern how the Council requests views from the Constituencies and other stakeholders in the Internet community who want to comment, debates the views expressed, and seeks common ground in an effort to reach a consensus view of the issue. The ICANN Bylaws lay down demanding deadlines for how long a PDP process can last, designed to help ICANN respond at ‘Internet speed’ to problems or issues and

to avoid the long timelines sometimes perceived as characteristic of governmentally-run international forums and bodies (see Annex A, Figure A46 for a stage overview of a PDP). We encountered a range of views about how well the PDP is working. Most current Council members view the process as generally effective. However, many other interviewees were critical or even scathing about how PDPs operate, with some experienced ICANN observers describing it as ‘Byzantine’ or ‘archaic’. For outsiders, it is a complicated process to understand and internalize, punctured by strict time deadlines for particular stages, regular voting, and public comments periods. Our analysis below shows that PDPs vary greatly in the quality and diversity of comments received.

**4.8** We asked our survey respondents to rate different aspects of the PDP in terms of strengths and weaknesses. Figure 24 below identifies the highest and lowest scoring aspects. Respondents were generally positive about the extent to which the PDP delivers practicable recommendations to the ICANN Board, and the way in which the GNSO makes the best use of policy support functions, perhaps reflecting the recent strengthening of staff support functions to assist GNSO in the last year or so. Three major weaknesses were raised by insiders. It is often difficult to keep to the time schedules outlined in the ICANN Bylaws. There are differing views of how best to draw on and incorporate external expertise in the Council’s policy development work. And as mentioned in Part 2, difficulties have been encountered under current arrangements in ensuring that Constituencies provide adequate documentation on the number of members who have participated in defining a position they have adopted.

**4.9** The global context of the GNSO policy development work and the need to coordinate input across a wide range of different stakeholders increases the importance of relatively formalized management of time schedules and delivery. The PDP is nothing if not prescriptive about time periods allocated to different processes. As one interviewee neatly summed up: ‘the PDP is about delivery by management of *process* rather than management of *outputs*’. Despite the current stress on a prescriptive approach to process management, we found a general acceptance that the PDP does struggle to stick to time schedules set out in the Bylaws. According to the Bylaws the

**Figure 24: Survey respondents' views on different aspects of the PDP**

	Ranked highest	Ranked lowest	Net score
Delivering practicable recommendations to the ICANN Board	24	11	13
Making the best use of policy support functions	22	12	10
Picking the right issues	20	16	4
Scoping policy work appropriately	14	16	-2
Identifying issues early enough	15	20	-5
Ensuring that the PDP incorporates the widest practicable range of views	15	21	-6
Making use of external expertise and research	20	30	-10
Sticking to agreed time schedules	11	25	-14

Source: LSE PPG online survey of Constituency members and individuals

PDP is supposed to last around 150 days from the initial request to a Board adoption. A quick glance at the overview of policy development work in Part 1 of this report suggests that in the few cases where this is measurable, the PDP has taken up to 2 years or more.

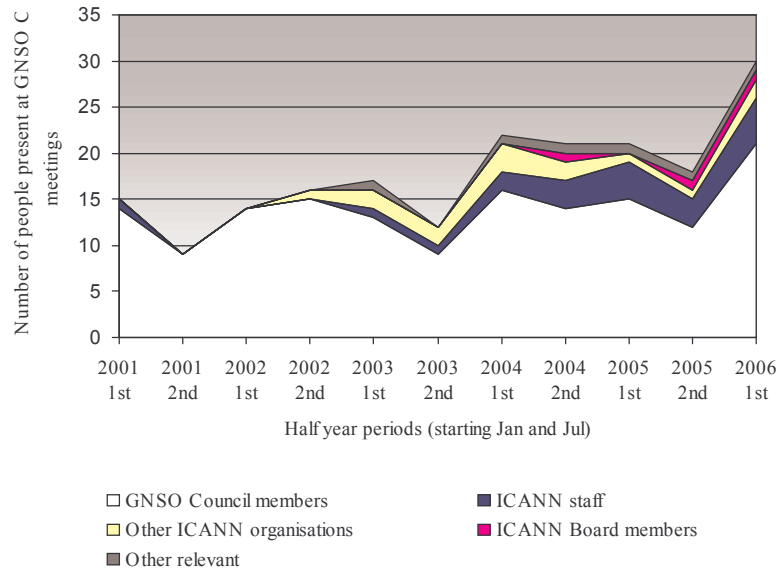
**4.10** In most organizations there is inevitably some degree of divergence between theory (or regulation) and practice. Councilors suggested to us that the GNSO Council is well aware that it does not stick to time schedules specified in the Bylaws, but it does tend to stick to more informal and specific schedules that are determined consensually in the Council. These 'effective' timings respond to the differing levels of difficulty associated with individual PDP topics. A limited review of the GNSO Council by a consultant in 2004 recommended that the stages of the PDP should be revised and clarified. Since then there are clear signs that the GNSO has made some progress to address this issue. Nevertheless, under the current arrangements there are some good reasons to think that newcomers or potential participants in the policy development process might well be confused or put off by the wide divergence between what is formally supposed to happen and what happens in practice on the timings of stages. For prospective members wishing to get involved in policy development, just getting acquainted with the different arrangements framing the PDP involves a steep learning curve. Having internalized the rules involved, potential participants are then faced with the prospect that these rules are generally viewed as largely symbolic, and that in general, the PDP can take up to 2 years in reality. As one representative from a Fortune 500 corporation told us: 'it may not come as a surprise that commercial corporations

choose not to get involved in a process which can take up to two years for any results to filter through'. There is also a risk with such large divergences that GNSO becomes habituated to crashing formal deadlines, and thereafter treats all deadlines as elastic. We looked carefully for but did not detect such an attitude, but instead a general concern to expedite matters as fast as feasible. None the less, in general it is desirable for more effective and realistic timings for PDP phases to be formulated and then wherever possible stuck to.

**4.11** In terms of staff support, there has long been provision for secretarial, recording and agenda support to the GNSO Council. As its revenues have grown in recent years ICANN has considerably increased the numbers of its policy support staff centrally. In the last year (2005-06) much more staff support has been allocated to the GNSO Council supplementing previous provision. Our analysis of attendance at the GNSO Council meetings shows clearly the increasing level of attendance of ICANN staff since early to mid 2003 (see Figure 25 below). ICANN policy staff now play an enhanced role in informing and assisting the work of the Council. There is already evidence from our interviews with Council members and staff that a more intensive resourcing and management of the PDP has had a positive impact on performance. A wide range of Councilors mentioned identifiable benefits of more intensive staff support, particularly more systematic approach to gathering and processing Constituency statements, keeping policy development on track, facilitating dissemination of materials, and shaping final reports. Greater staff support should facilitate quicker time-to-market and delivery of outputs potentially within a year, which may help to bring actual PDP timeframes closer to those set out in the Bylaws.

**4.12** One of the strongest themes to emerge from our interviews on the PDP relates to the distinction (and link) between management of delivery by process and management of delivery by outputs. The language of the Policy Development *Process* is programmed from the start to emphasize process rather than outputs being achieved. In the last year ICANN staff has worked intensively to grow the use of project management methodologies across the organization, and there is clearly great potential for the more systematic application of project-based working to the policy development work of the GNSO, that is, with a much more explicit link between a managed process

**Figure 25: Attendance of ICANN staff and other ICANN representatives at GNSO Council meetings**



Source: LSE PPG analysis of GNSO Council meeting attendance

and a set of outputs. It might be worth changing the meaning of the PDP to denote a ‘Policy Development *Project*’, with the emphasis upon achieving agreed change, rather than PDP denoting a *process*.

**4.13** A large minority of interviewees experienced with the PDP argued that the issue reports in the past have tended to summarize different points of views rather than to identify and provide a preliminary discussion of the core issues and potential divisions that need to be bridged. In their view, issue reports should be premised on and written around core issues, rather than focusing on presenting the divergent range of opinion across relevant stakeholders (not just Constituencies). The suggestion is that the issue reports should be driven by getting to grips with the pressing substantive issues as outputs, rather than (as now) going through the process of collecting views from all Constituencies and then presenting them to the Council. As one experienced commentator put it: ‘it is about asking the right questions early enough’. The recent PDP on the purpose of WHOIS illustrates how potentially intractable divisions can persist if the core policy issues are not isolated early on in the process, and allowed to

drive the consequent discussion. Most project management methodologies strongly emphasize *issue analysis* as a driver for data collection and research, rather than issues being the product of data collection and research.

*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).*

**4.14** The application of project management methodologies to the work of the GNSO Council and its Constituencies could greatly enhance the effectiveness and the speed of policy development. We would recommend that project management training is rolled out across Council members and relevant policy staff. Advice taken on this issue suggests the costs of such training would not be unreasonable. Project management methodologies would help to de-emphasize adherence to process and achieve a more effective balance between envisaging outputs and managing required processes. Issue reports produced by policy staff should focus on targeting the ‘crux’ or core issues or potential divisions at stake, and present parameters for potential negotiation and agreement between stakeholders. Currently issue reports tend to simply describe the range of existent views on a subject, and tend not to synthesize views down to issues. This enhanced analytical requirement would require a high level of trust between the GNSO Council and policy staff, as policy staff would be framing issues more explicitly. Some signs of tension and lack of communication between policy staff and the GNSO Council would need to be addressed as part of this growth.

**4.15** An underlying problem in developing better working may be that in quite a range of our interviews with GNSO insiders, we identified some unusual tensions in the relationship between the staff assisting GNSO and some Council members. There has apparently been a strong feeling in parts of the Council that the policy staff owe their primary allegiance to ICANN management, who appoint them, rather than to the Council itself. Some councilors have a strong preference for a do-it-yourself approach to policy-making, believing that almost all stages of the process should be undertaken collectively by Council members drawing on their own expertise and contacts with Constituencies to determine what the issues and evidence are, what conflicts exist and

how they should be resolved. This approach is resistant to too much ICANN staff intervention as undermining GNSO's independence. It is distrustful of outside expertise as inimical to bottom-up stakeholder involvement, a stance also reflected in a tendency for task forces to be staffed by GNSO councilors or active Constituency members. Some interviewees argued that a formal service level agreement between the Council and ICANN staff is needed, which would tightly specify what was to be done and in what timeframes. A range of interviewees suggested to us that because of the history of these past attitudes Council members can often take staff for granted and unnecessarily limit their role in informing discussion. By contrast, a majority of other Councilors wholeheartedly supported a strengthening of the policy expertise available to the Council and believe that too little staff time has been allocated to the needs of the GNSO Council vis-à-vis wider ICANN functions. In extensive interviews with staff we did not find a conflict of loyalties between an ICANN or a GNSO orientation, but noted instead a strong and neutral dedication to helping GNSO work in a more expert, effective and speedy manner. We do not think that a framework agreement between the Council and staff is necessary or helpful: creating it would serve more as the symptom of a problem rather than the cure. However, there does need to be a review and clarification of the basis on which staff attending GNSO meetings operate, especially for those working extensively or primarily for GNSO. It is important to provide some additional assurance to GNSO stakeholders that staff working to support both the Council and the Constituencies have strong loyalties to these tasks and have appropriate professional autonomy in those roles, while also being accountable in a matrix fashion to ICANN's staff management.

### GNSO Council's working methods

**4.16** Looking at other aspects of the Council's work, it is apparent that it is painstaking and requires a lot of commitment from councilors. Data kindly collated and provided by the GNSO Secretariat suggest that Councilors spend on average 12 hours per week on GNSO work. Council interaction has tended to rely on regular teleconference calls and intensive use of email (both public and private). There is relatively intense monthly teleconference call schedule, with calls taking place at times that are necessarily inconvenient for some members scattered across the globe's time zones. Our analysis of attendance at these calls reveals a remarkably high level of commitment. The



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teleconference call on which our research team sat in was very skillfully and neutrally moderated by the Chair of the Council. However, in interviews many participants suggested that teleconferencing allows only limited opportunity for in-depth discussion between Constituency members. Calls tend to favor the more outspoken participants who have English as a first language.

**4.17** The GNSO Council has made efforts in the last six months or so to increase the frequency of face-to-face meetings. Council members told us that the format of the face-to-face meeting provides a far more constructive opportunity for Constituency members to sit and discuss policy work (often informally). It is often the case that informal ‘whiteboard sessions’ can help to break down seemingly intractable positions. Council members referred to a common syndrome that Constituencies will tend to formulate positions early on in the policy process, and then stick to these positions in the absence of an opportunity to be challenged on them or discuss options for consensus. Our extensive analysis of Council public mailing lists has unearthed many examples suggestive of how email correspondence can often perpetuate rather inflexible positions and mildly confrontational exchanges. Face-to-face sessions can help to break down this syndrome.

**4.18** Since January 2002 there have been around 70 GNSO Council calls averaging just less than two hours each. A high proportion of current and former Council members suggested to us that it is not necessary to convene Council calls so frequently. They feel that much of the work and discussion that takes place on these calls is largely procedural and could satisfactorily be carried out using widely available online software tools. In their view an unnecessary and somewhat ritualistic emphasis on frequent teleconferencing with the whole Council is not only extremely taxing on participants (and off-putting for potential participants), but it also does not lend itself to soft discursive communication required for effective issue analysis.

*Recommendation 15*

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

**4.19** The human interaction between Councilors is an important part of a successful project management approach. We recommend therefore that the balance in communications is shifted towards four or five face-to-face meetings per year, with meetings over and above those held at ICANN conferences in accessible hub locations (possibly west or east coast USA or Europe). This approach could be combined with an intensive push to grow the use of online collaborative software tools. ICANN staff and the GNSO have recently introduced new communication management tools, such as Shinkuro, and pilots have received mixed but generally positive responses. Listservs could also be used for general communication between GNSO stakeholders. (At least two collaborative software designers at the ICANN annual conference in Wellington offered their development services free of charge for a year - see the transcript of public forum for details.) We would expect to see the GNSO leading the line for ideas on how to innovate with freely available collaborative software tools.

**4.20** It is an essential principle of representation that the selection of representatives should not be limited only to those who can afford to bear onerous costs. The current set of arrangements where GNSO councilors are not supported to attend face-to-face meetings reflects the paucity of ICANN's resources in its early days. It also causes potential conflicts of interest problems, since it means that Councilors must search for the wherewithal to fulfill their duties. (The only current exceptions are the councilors selected by the Nominating Committee, who are reimbursed.) ICANN's budget is due to increase considerably in the next year and it should be feasible to meet reasonable (that is, non-luxury) costs for travel and hotel accommodation only. Council members who are funded anyway might be allowed to donate their expenses allowance to their Constituency's funds or to other ICANN pro bono activities. Alternatively it might be possible to set up a ring-fenced discretionary fund for the Chair of the Council to allocate. We note also that the ICANN proposed budget for 2006-07 contains financial provision to investigate and implement a travel assistance policy for Supporting Organization volunteers.

*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.*

**4.21** The onerous costs imposed on Council members, particularly those from the NCU Constituency, in attending ICANN annual meetings (often in far flung corners of the globe) is an obvious barrier to participation. We heard a range of views about how to tackle this issue. Some interviewees suggested that all Council members should receive basic travel and accommodation expenses for a limited number of meetings per year. This may involve a significant increase in expenditure for ICANN, and such arrangements may need to be integrated over a longer term as part of a process of quid pro quo. As an interim measure, we recommend that ICANN make available to the GNSO an annual fund for travel and accommodation, and that Constituencies are able to apply to the fund to cover a designated minimum attendance at face-to-face meetings. This fund might be administered at the discretion of the Chair, and payments should be agreed by vote in the Council. GNSO and ICANN may want to consider moving in the longer term to an arrangement for covering all travel and accommodation expenses for Councilors.

**4.22** We turn next to the issue of Task Forces and GNSO's use of external expertise in the policy development process. There is currently a juncture in the PDP, where the decision is taken to either launch a Task Force or to continue with ICANN staff managers coordinating policy development by the Council as a whole (see Annex A, Figure A46). The distinction between these two routes is not clear to us. Some interviewees suggested that the Task Force route is more suited to narrower and more focused study. However, there seems to be some variation from this model. For example, the most recent Task Force launched by the GNSO Council is a wide-ranging review of the purpose of the WHOIS database and privacy issues relating to data stored on it.

**4.23** We analyzed the membership of Task Forces (and indeed steering groups overseeing Task Force work) and found that the current mix of participation has largely been limited to Council members and representatives from Constituency organizations, see Figure 26 below (and Annex A, Figure A48 and A50 for more details). There is no representation from external policy or technical experts and there has been very limited representation from the private sector or governments. This approach has meant that Task Forces have commonly demonstrated the same intractable policy divides that have been visible in the Council. Because many of the people on Task Forces are GNSO

Councilors, they generally help develop the Constituency policies themselves, and then have to vote for the policies they have created.

**Figure 26: The backgrounds of participants on WHOIS Task Forces since February 2001**

	Council members	Constituency members	Other ICANN bodies	Total
WHOIS Review 2001	5	10	4	19
WHOIS TF 1, 2, and 3 May 2003	14	17	3	34
WHOIS Privacy Steering Group May 2003	10	6	2	18
WHOIS TF12 Jul 2004	16	9	2	27
WHOIS TF123 Jan 2005	10	12	2	24
<b>Total participant seats</b>	<b>55</b>	<b>54</b>	<b>13</b>	<b>122</b>
<i>Filled by</i> Total individuals	20	30	7	57
NOTE: Other ICANN bodies consist of ccNSO representatives after 2003, General Assembly representatives, and ALAC representatives.				
Source: LSE PPG analysis of GNSO Task Force participants				

**4.24** By comparison with other global and international bodies with policy development roles, the reliance on GNSO-dominated Task Forces in the PDP seems to be a somewhat inward-looking approach. Annex C gives information on a number of comparator bodies to support this view and we have discussed variations quite widely with interviewees. This inwardness is particularly marked because much of this policy work is inevitably linked to national and regional policies that are already in place in different countries and zones across the world (like the European Union bloc). Partly because of a tendency for American and Anglo-Saxon participants to be the most influential members, some interviewees told us that GNSO outputs can sometimes seem disconnected from the wider world and from debates going on in more mainstream international channels. Letters to the ICANN Chairman on the recent WHOIS formulation from major national government bodies (such as the UK Office of Fair Trading) are cases in point.

**4.25** Another example perhaps illustrating how GNSO policy output can follow its own internally driven logic is the final WHOIS Task Force report on resolving conflicts for registries and registrars between compliance with national privacy laws and ICANN

contractual obligations. This policy stipulates that national competition authorities will have 45 days to provide their ruling in response to a conflict. More than one of our interviewees suggested that it was somewhat optimistic to expect any competition authority to provide a ruling (as opposed to guidance), and even more optimistic to stipulate that this be produced within 45 days. The general opinion from other interviewees is that if push came to shove, ICANN would have to respect the laws of the country.

*Recommendation 17*

*The GNSO Council should make more use 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.*

**4.26** Task Forces provide a structured way of prizing open policy issues and developing informed and focused issue analysis for review by the Council. They also provide a useful opportunity to integrate new faces and different sources of expertise into the policy making process. Because the current make-up of Task Forces has generally mirrored the balance of constituent interests in the Council, their debates and outputs too often reproduce the same problems of intractable interests that are seen at Council level. A workable rule of thumb should be that Council members and Constituency representatives should make up no more than half of future task forces. If six Constituencies are retained as now, we do not believe that it is necessary for Task Forces to include two representatives from each Constituency. A Task Force of 12 members could instead include no more than from each Constituency, plus (where appropriate) representatives from ICANN Advisory Committees such as ALAC and the GAC. Depending on the nature of the issue under consideration, the remaining 4 to 6 members could be chosen from other organizations from the private and intergovernmental sectors, ideally drawing in people with distinctive expertise and information/analysis capabilities.

*Recommendation 18*

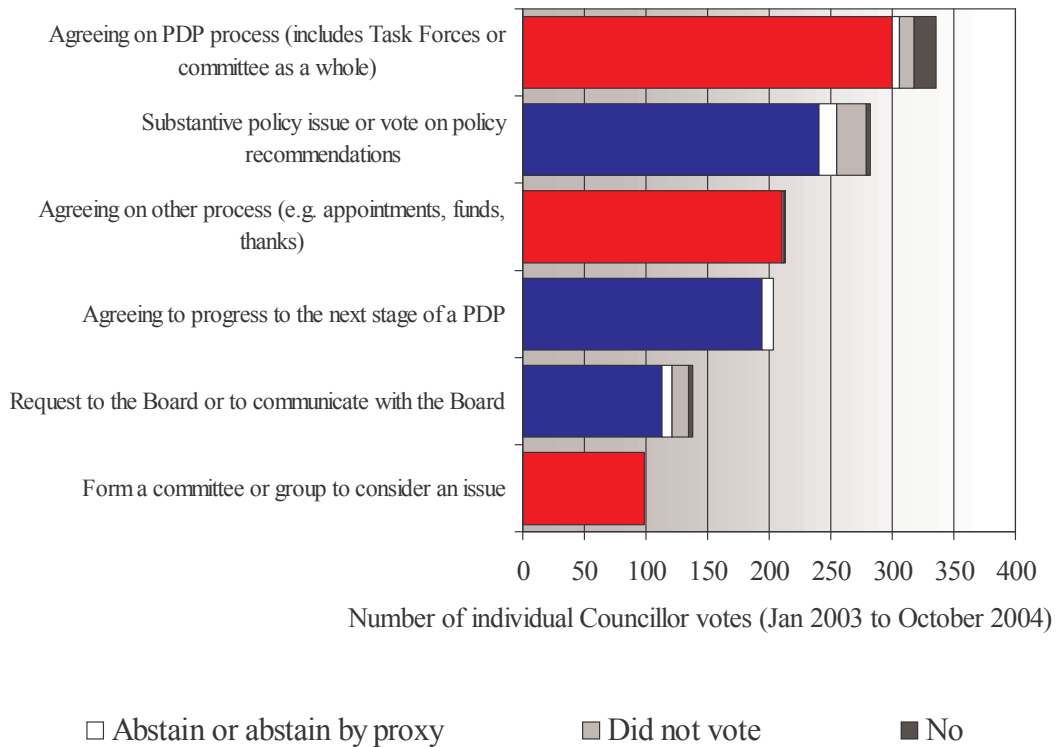
*An ICANN Associate stakeholder category of participation should be created, so as to create a pool of readily available external expertise, which can be drawn upon to populate Task Forces where relevant.*

**4.27** There is strong research evidence from many voluntary organizations and networks in many different countries and sectors that people get involved primarily in their operations because others whom they know personally tell them about the organization or ask them to join or support its work. An ICANN consultant or associate stakeholder category could also be established with a view to encouraging ongoing participation in the ICANN process by people with appropriate technical or policy expertise. Other international and global bodies working in similar areas to GNSO make extensive use of expert-dominated task forces and find that this approach allows for much more expeditious and constructive working on detailed policy development. Many interviewees stressed to us that it is important to recognize that task forces can be organized in many different work patterns, as opposed to the long-drawn out and multi-stage process emphasized in GNSO Council at present. For instance, a pattern of paying predominantly expert and committed people to come and conduct business intensively, face to face and then to produce a comprehensive draft policy for GNSO Council to consider, might allow GNSO to become more expeditious and consensual at the same time. It could also be an effective way of disseminating better information about GNSO's processes and modes of operation to a wide audience of contacts who might then become potential participants in GNSO work more generally.

**4.28** We turn next to an important aspect of the policy development process, the stage when GNSO requests Constituencies to seek public comments on options and proposals. Public comments vary considerably in their numbers and volume (see Annex A, Figure A51). Historically, the early public comments periods on the UDRP proved comparatively active, with intellectual property interests debating with privacy and civil liberty advocates. Much of this debate has continued through the public comments on the recent WHOIS work. By contrast, policy development work on registry services has attracted very little public interest. The topic of bringing in new generic top-level domains has shown a slight increase in public interest. The available documentation shows that GNSO's public comment periods have frequently involved individual members of Constituencies resubmitting their views under the guise of 'public' stakeholders. Analysis of comments shows clearly that a high proportion of 'public' contributors are Constituency members. There may be understandable reasons for these patterns, but it does tend to give the public comment period a somewhat phony identity if little widening out of debate occurs during them.

## Voting in the GNSO Council

**Figure 27: Proportion of all votes taken by members of the GNSO Council showing disagreement, abstention, or ‘did not vote’**



Source: LSE PPG analysis of GNSO data on GNSO Council voting

**4.29** Turning to the way in which the GNSO Council itself operates, a number of interviewees suggested that there is too much of a ‘legislative’ approach rather than a deliberative approach, despite the best efforts of the Chair to try to move members towards ‘consensus policies’. Critics argue that there are too many votes in the Council. Our analysis shows that there are a large number of votes on procedural and administrative matters. For example, between January 2003 and October 2004, 63 votes were held in 27 teleconference meetings, an average of more than two per conversation (see Figure 27 above). Many procedural/administrative votes are non-controversial and therefore generate high levels of consensus amongst members. However, a limited set of the large substantive policy votes generated intractable blocs of interests. The current voting rule requires 66 per cent agreement for consensus policies, but its impact needs



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to be assessed against weighted voting for Registries and Registrars, plus the strong overlap of interests between three commercial user Constituencies interests (the Business, IP and ISP Constituencies). Both our interviews and review of voting patterns across large policy issues such as WHOIS suggested that these blocs can often undermine consensus-making. However, some interviewees also suggested that alignments between Constituencies can often shift depending on the issue. It would certainly be an oversimplification to suggest that registration and user constituencies are *always* aligned against each other. Taken together these features appear to provide little systematic incentive for opposing blocs to want to find common ground for consensus. Major blocs (of Registries/Registrars on the one hand and the cross-Constituency grouping on the other) seem to view the super-majority vote of 66 per cent as attainable if they can succeed in attracting a relatively few ‘swing’ voters either from the Non-commercial Users Constituency or some or all of the Nominating Committee members. So the currently rather low ‘consensus’ threshold may actually foster major blocs or may at least provide little incentive for Constituencies to work from an early stage to reach agreement.

**4.30** When the GNSO in its current form was established as a separate body for generic names in 2002, some key innovations were made to the voting system within the Council. In particular, the gTLD registries and the registrars are the only stakeholders who are contractually tied to ICANN. Because they were seen as vulnerable to having their business models changed as a result of GNSO deliberations and policy proposals, and because registration stakeholders account for at least 90 per cent of ICANN revenue, they were accorded extra protection in the GNSO’s institutional set-up. Therefore the votes of the Registry and Registrar Constituency representatives count as double-weighted in formal votes. Thus although GNSO’s normal operations are conducted by counting voices amongst the 21 members, on formal ballots there are in fact 27 votes cast (with double-weights for the three registry and three registrar members). When the original DNSO was established steps were taken to define the level of support needed for it to make ‘consensus’ policy, which was set as policy commanding the support of two thirds or more of the Council. The GNSO adopted the same policy consensus threshold. Thus the Registry and Registrar votes combined add up to less than half (12) of all weighted votes (27) and they are well short of being able to define ‘consensus’ policies in the GNSO Council (18 votes).



**4.31** ‘Consensus’ decisions reached may not be very meaningful in cases where opposing blocs cannot agree on an acceptable compromise. A recent 2006 example of the vote on the purpose of WHOIS shows how a super-majority can take place, giving the impression of consensus. However, as many people have suggested, the vote in early 2006 after the ICANN annual conference in Wellington generated what is effectively an unsustainable policy position, in that national governments and law enforcement agencies will insist on access to WHOIS database information, as will IP interests investigating potential abusive behavior relating to registered trademark domain names. This interpretation also seems to be underpinned by subsequent letters from major government and law enforcement agencies to the ICANN Chair.

**4.32** The combination of the current Constituency system, the voting system, and the PDP’s somewhat formulaic and inflexible mechanisms for developing globally relevant policy does seem to mean that GNSO policy-making is unusually vote-focused and ‘legislative’ in character, when set against some comparator bodies. In our discussions with officials from other global policy development bodies such as those listed in Annex C, we found that voting was actually extremely rare and that consensus was generally the product of discursive and iterative work around pre-prepared policy drafts. One senior official explained: ‘We almost never take a vote...we have processes in place for a vote to be taken...but in my five years of experience and the 20 or 30 policy papers produced, we have hardly ever voted.’ The trick is to develop policy positions comprehensively and inclusively enough so that votes do not need to be taken. Project management, issue analysis, inclusion of relevant experts, and giving adequate opportunity to discuss issues in-depth face-to-face are all currently somewhat missing elements of policy development mix covered in this Part. Where they can be properly articulated, the experience of other bodies is that votes are ‘rubber stamping’ rather than ‘conflict resolving’ devices.

**4.33** Consideration of the voting systems used in the GNSO Council forms the last theme of this Part. But it is important here also to bring back into focus that the Terms of Reference for this Review asked that the LSE consider whether the current Constituency structure should be amended in some way to better reflect the diversity of global opinion on generic TLDs. We have discussed the operations of the current

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Constituency system in Part 2 above, but it is important to look also at the implications of any recommendations on the number and form of GNSO constituencies for the way in which the Council itself operates. In addition to interviewees' comments to us about particular Constituencies, many of those critical of GNSO's current operations argued strongly for different amendments to the Constituency system, ranging from minor tinkering to radical deconstruction. Given the detailed evidence reviewed in Part 2, we formed the view that although the current six Constituencies were created only seven years ago, they already constitute something of a 'legacy' structure whose contemporary rationale is no longer clear. The current structure has been made inappropriate by a range of subsequent changes - such as the resolution of the most pressing intellectual property issues via UDRP, the changing character of registration businesses, developments in the secondary market for domain names, the rapid growth of web hosting companies and other forms of e-commerce markets. The logic behind creating the current six Constituencies has thus proved highly time-specific. It is not clear to many potential stakeholders where their interests fit within this pattern, and the structure of six Constituencies with double-voting for two of them creates arrangements that are relatively complex and off-putting. At the same time, having to have three representatives for each of six constituencies makes the GNSO Council a relatively large body, perhaps larger than needed to be able to handle effective policy development and certainly contributing to the 'legislative' style of operating noted above.

**4.34** Focusing on the separate Constituencies representing Business, Intellectual Property and Internet Service Providers (ISPs), a wide range of interviewees argued to us that the reasons for there to be three distinct constituencies are not now apparent. In recent GNSO Council processes representatives from these three constituencies have tended to adopt closely aligned positions, and the three also hold an influential 'cross-constituency' joint meeting at ICANN conferences. Some of the BC members tend to have relatively specific and open interests in IP issues (for example, Walt Disney, Time Warner, and TAGI). By contrast, many of our interviewees argued strongly that IP interests are no longer a distinctive subset of business and commercial interests and therefore no longer warrant a separate organizational division of their own.

*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 the rapid changes in the make-up of Internet stakeholders. We suggest a set of three larger Constituencies to represent respectively Registration interests, Businesses and Civil Society.*

**4.35** In tandem with Recommendation 5 above that individuals' and organizations' primary membership should be of ICANN as a whole rather than of specific Constituencies, we suggest creating a simpler Constituency structure with only three main divisions

- *Registration*, including the current Registries and Registrars Constituencies;
- *Business Users*, including the current Business, Intellectual Property and ISP Constituencies; and
- *Civil Society*, including the current Non-Commercial Users Constituency, but also ordinary domain holders, and possibly individuals currently represented via the At Large Advisory Committee of ICANN.

Once organizations and individuals have joined ICANN they would choose to join one of the three generic domain names Constituencies above that most related to their interests. The definition of the Constituencies should be inclusive, so as to ensure that there are no gaps where organizations and individuals cannot find an appropriate Constituency. We believe that the suggested reorganization here responds to multiple pieces of evidence about how interests are currently organizing themselves within GNSO. Yet it also creates a structure that is simpler, balanced, clearer to explain to potential members and time-proofed against future changes in the Internet that are certain to occur. In place of a highly time-specific structure that Part 2 demonstrates has had great difficulties in adapting to changes over as little as seven years, the suggested new structure can flexibly accommodate changes in the balance and weights of different sectors and types of involvement with Internet policy issues.

*Recommendation 20*

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

**4.36** Clearly the Council must represent diverse points of view, but a body of 21 people is a hard one to convene in one place and to get agreement from. With a simplified Constituency structure as above, the number of representatives per Constituency could be arranged within wide range of permutations that should be for the ICANN Board in consultation with GNSO to decide. However, as an indicative guide we would suggest that allocating 5 seats to Registration, 5 to Business Users and 3 to Civil Society, along with 3 Nominating Committee seats would reduce the overall membership to 16 but yet preserve the current balance of interests on GNSO Council. (It would be possible to allocate more seats to Civil Society, but there are already indications that perhaps it would not be easy to fill them.) For ordinary votes, not using weighted voting, the Chair would gain a casting vote in the event of a tie, reflecting the recommendation above to increase his/her role.

**4.37** Moving on to the Council's voting rules, the two thirds majority for achieving formal consensus policies seems somewhat too low, given the current mix of interests in the Council. At present weighted voting creates some avoidable complications in the GNSO Council. For instance, a lot of normal business and the early stages of a PDP is done by 'collecting voices'. But a majority painstakingly assembled in this way by the Chair can then be easily overturned later on in a weighted vote, where a different calculus of support applies. The result is a lot of unnecessary maneuvering, plus resentment among those Councilors not enjoying weighted votes. Clearly there is a need to provide assurance to registries and registrars that their interests will not be lightly or inadvisably affected by new PDP decisions. But we do not believe that weighted voting is the best way of doing that. As one experienced ICANN participant observed on the current arrangements in the Council: '[Weighted voting] was, and still is, a symptom of much deeper set of problems...and certainly not the solution'.

*Recommendation 21*

*The definition of achieving a consensus should be raised to 75 per cent. Weighted voting should be abolished. Both measures could help to create more incentives for different Constituencies to engage constructively with each other, rather than simply*

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*reiterating a 'bloc' position in hopes of picking up enough uncommitted votes so as to win.*

**4.38** The voting system should be set up in such a way that achieving broad consensus is in the interests of all stakeholders from the start of policy development, regardless of the issue. With a Council of 16 members, and without any weighted voting for the Registration Constituency, we suggest that the consensus level be set at 12 votes (75 per cent). Note that weighted voting would not be needed here to protect the undoubtedly salient interests of registries and registrars, because the Registration Constituency would already have a blocking vote of 5 (44 per cent). Accordingly, any new consensus policy would require the assent of at least one Registration Constituency representative to be approved. Note also that with a Council of 16 and 5 Business User votes this Constituency too could also block. (If for any reason weighted voting is still retained, consensus policy-making would be best fostered by allowing a block by Business Users. With a GNSO Council of 16 and a Registration Constituency of 5, retaining weighted voting would give a total of 21 votes, of which 10 would be in the Registration Constituency. In this case, we recommend that the level of support needed for consensus policy should be raised to 17 votes [82 per cent], so that with 5 votes Business Users too would have a capability to block.)

**4.39** The GNSO Council elects two Directors (Seats 13 and 14) to the ICANN Board at least every three years, and councilors also elect the Chair of the Council. In both cases each member of the GNSO Council casts one vote in the first round for a preferred candidate (with no weighted voting). If there is a majority winner, then there is no second round. If no majority winner is produced in the first round, the top two candidates are separated off, and a second round takes place. The winner is decided by simple majority. Under this system Councilors whose candidate progresses to a second round may vote for the same candidate in both rounds. Councilors whose candidate does not progress to the second round must vote for another candidate (or abstain). This system does not create strong incentives for candidates to 'reach out' to people from other Constituencies.

*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.*

**4.40** We therefore recommend introduction of a simple multi-preference system called the Supplementary Vote currently used to elect the executive Mayor of London (also called the ‘instant run-off’ system in the USA). Here each Councilor has a ballot paper where they can express two preferences, one for their first preference candidate and another for a second preference candidate. In electing the GNSO Chair (a single office holder) first preference votes are counted and any candidate with majority support is elected. If no candidate has majority support, then the top two candidates (let’s call them A and B) stay in the race but all others are eliminated. We look at the second preferences of voters for the eliminated candidates, to see if any are for A or B, and if so they are added to that candidate’s pile. The winner as Chair is whichever of A and B now has most votes. In electing two Board members, if two candidates have majority support in first preferences they are elected and the process ends. If no candidate has majority support in the first preference votes, then in the Supplementary Vote system to select two winners then the top *three* candidates (A, B and C) stay in the race and all others are eliminated. We next look at the second preferences of voters for eliminated candidates, adding any for candidates still in the race to their respective piles. The winners are now the two most popular of A, B and C on the basis of their combined first and second round votes. The remaining Board seat is then whichever of B and C now has most first and second preference votes. A slightly more complex case for the Board member election is when one candidate A has majority support on first preferences: here A is elected and their votes are removed from the election. The top two remaining candidates (B and C) stay in the contest and all other candidates are eliminated. We look at the second preferences of the eliminated candidates and if any are for B or C we add them to their pile. The last Board seat goes to whichever of B and C now has the most first and second preference votes.

### Achieving a coherent vision for policy development

**4.41** There are very few (if any) organizations in the world which combine such a range of different functions in the way that ICANN does. By implication the GNSO shares this somewhat *sui generis* profile. It is a body charged with developing policy that incorporates the views of global society as a whole. It also contains and represents the stakeholders that account for over 90 per cent of ICANN revenue. It must somehow

develop practicable policies based on consensus of a wide yet at the same time rather narrow range of interests and bodies. Our interviews have shown a general consensus that there is greater benefit to be gained from having all relevant stakeholders involved in the policy development process, than not. A number of interviewees have suggested that the registration Constituencies (both Registries and Registrars) should be separated off from the GNSO, on the grounds that their business interests generate obvious conflicts of interest in their participating in policy development. A strong counterview has been that ICANN is not a regulatory body (although it has regulatory aspects) and so it is not the role of the GNSO to develop regulatory policy.

**4.42** The changes suggested here address the problem of how to interpret and control for this range of interests, some of which claim to represent wide sets of stakeholders and some of which are clearly based on narrower business interests. There are often predictable positions taken by Constituencies, and equally predictable differences between them, and therefore fashioning consensus (or something resembling consensus) is gigantic challenge. As one Board member suggested: ‘it leaves me with uncertainty about how to achieve bottom-up consensus policies when the parties who help to formulate these policies have fundamental conflicts’. This chimes with many other views that we heard from interviews, basically pointing out that most Constituencies have too much at stake both in terms of day-to-day business and in terms of personal livelihood and status to concede on issues where they would be better off either perpetuating a status quo position, or sticking dogmatically to an intractable stance.

**4.43** This syndrome presents problems for the ICANN Board in terms of its ability to interpret Council recommendations and make a judgment on whether to adopt them. On policy development such as the new registry services PDP, which involved some procedural ground rules for reviewing changes implemented by gTLD Registries, issues may be relatively uncontroversial and therefore relatively easy for the Board to agree. Any policy issues, which are anything more than uncontroversial or completely watered down will inevitably bear the predictable signs of partisanship. As another Board member told us: ‘the Board will receive diverse interests that it will now have to resolve or reconcile...it is unlikely that the Board will get from its various policy initiatives a coherent view that doesn’t contain some of the inescapable conflicts that these groups exhibit’.



**4.44** To effectively counteract these difficulties we believe that applying a *coherent vision* (like that behind the whole package of measures set out here) is needed. The GNSO Council should have a simpler, more inclusive and more understandable set of Constituencies, one that can flexibly accommodate changes in the ICANN community and environment. The Council's internal operations should not be clouded by the complications of weighted voting. Instead all parties should know from the start that a demanding consensus level (75 per cent) must be reached for a decision to be made. The Registration and new (integrated) Business constituencies should both have a capacity to block change that does not elicit their agreement. The involvement of all other users should be simplified and the base of interests represented here should be broadened. The GNSO Council should become a somewhat smaller body and its deliberations should take place overwhelmingly face-to-face. It should focus its activities on an expanded number of meetings per year, with less use of teleconferencing. The Council should also focus on making key policy decisions and it should delegate detailed work more, making stronger use of more diverse and expert task forces to bring in expertise and to help speed up policy processes, as well as using the ICANN staff supporting its deliberations more constructively at all stages of the process. Our illustrative examples above show how these guiding principles might be achieved, and how the different elements can work together harmoniously. But there are many other possible combinations that could also be made to work consistently together.



## **Part 5:**

### **The regularity of the GNSO's operations in complying with ICANN's Bylaws and operating procedures**

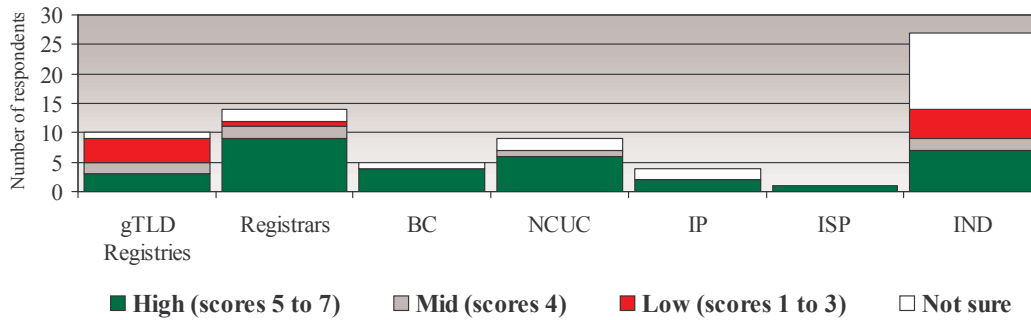
**5.1** In this short Part we review evidence on the extent to which the GNSO Council and its Constituencies are encouraging and maintaining an environment of policy compliance. In particular we look at the extent to which:

- GNSO complies with ICANN Bylaws and operating procedures;
- GNSO complies with its own rules and procedures;
- There are sound linkages between the GNSO policy development process and the ICANN policy compliance program;
- ICANN and the GNSO have worked to follow up on the impact of previous policy development work.

We have not looked here at issues concerning the compliance of registrars and registries with ICANN operating contracts, which is outside our research scope.

**5.2** The evidence we have collected and our many interactions with GNSO Council members and ICANN staff all show that they are clearly concerned to operate within the ICANN Bylaws and operating procedures. The ICANN Bylaws set out in detailed and prescriptive language the structural and procedural parameters of the GNSO, including the Policy Development Process. We asked our survey respondents, both Constituency members and individuals, to give us their views on the extent to which the GNSO complies with ICANN Bylaws and operating procedures. Figure 28 below shows a relatively high degree of convergence on the view that the GNSO is compliant in its work (taking into account the relatively small number of organizations responding for some Constituencies). However, gTLD Registries and a group of individuals show signs of disagreeing with the views that the GNSO is compliant.

**Figure 28: Perceptions of survey respondents on the extent to the GNSO complies with ICANN bylaws and operating procedures**



NOTE: IND = individuals.

**5.3** We examined what factors might cause four out of ten gTLD Registries responding to our survey to take the view that the GNSO shows low levels of compliance with ICANN Bylaws and procedures. Elsewhere in our survey we asked respondents to give us a score on a Likert scale from 1 to 7 for different aspects of the Policy Development Process (see Annex A Figure A54 for a list of these aspects and Annex E for full results). Figure 29 below gives a summary of the highest and lowest ranking aspects for each Constituency. These results suggest that the gTLD Registries have major concerns with the way that the GNSO scopes its policy work. Interviewees from this Constituency also suggested strongly to us that the GNSO (and indeed ICANN as a whole) has tended recently to venture out of scope and interpret certain issues, particularly those relating to Registry contracts, as policy relevant. The current PDP work on amendments to conditions of existing contracts with gTLD Registries has led to a high level of controversy about whether or not the GNSO should be allowed to develop policy in this area.

**5.4** It is perhaps not too surprising that gTLD Registries have concerns over the scope of the GNSO policy development work, given the obvious business implications of allowing the GNSO to amend their contractual conditions. In our interviews, experienced ICANN participants have suggested that scope issues are often used instrumentally to deflect and delay issues. As mentioned above, the

**Figure 29: Constituency survey responses on how well the GNSO performs on different aspects of its policy development work**

<i>GNSO Constituency</i>	RANKED HIGHEST	RANKED LOWEST
gTLD Registries	Making the best use of policy support resources	Scoping policy work appropriately
Registrars	Delivering practicable recommendations to the ICANN Board	Making use of external expertise and research
BC	Picking the right issues for development	Sticking to agreed time schedules
NCU	Identifying issues early enough	Making use of external expertise and research
IP	Ensuring that the PDP incorporates the widest practicable range of views	Sticking to agreed time schedules
ISP	<i>Insufficient data available</i>	
NOTE: In our online survey we asked Constituency members to score how effectively the GNSO performed on different aspects of its policy development work. The list of aspects is available in Annex A, Figure A44. Scores were given on a Likert scale from 1 to 7, where 1 = Not at all effectively and 7 = Very effectively.		
Source: LSE PPG online survey of Constituency members		

Council and ICANN staff engaged in various discussions around the scope for the new PDP on contractual conditions. Also scope issues have framed the recent discussion on the purpose of the WHOIS database, in this case relating more to the scope of the database itself rather than to the coverage of the policy work. In general, registries and registrars support much narrower interpretations of GNSO scope. This translates into similar views about the scope of ICANN’s activities as a whole. Some people argued that the GNSO has taken on too wide a concept of its responsibilities, seeking to pronounce on issues that affect the whole of ICANN and without co-ordinating its work sufficiently with other supporting organizations or parts of ICANN (like the Government Advisory Committee). They also feel that GNSO has declared too many PDPs at once, without achieving resolution on ongoing issues. However, as the table above and more detailed data in Annex E suggest, most Constituency members do not see scope of the GNSO as too much of a problem: they believe that the scope of ICANN and the GNSO responsibilities are essentially compatible. This view is confirmed by a wide range of interviews across other Constituencies. We recommend in Part 3 that the GNSO should develop a more formal expression of its upcoming policy work (possibly covering 2 years),

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and we believe that many current concerns about possible over-scoping could be ironed out in the process of thinking about such a planning document.

**5.5** Another area which raises questions about the extent to which the GNSO is compliant with ICANN Bylaws concerns sticking to time schedules. As we discuss at length in Part 4, a wide range of interviewees argue that the GNSO Council complies with the principles of the ICANN Bylaws and the key steps on the PDP, but does not comply with the currently unrealistic time-frame set out in the Bylaws for the PDP. We would take the view that the PDP could benefit from a more relaxed and more output-focused approach to time management, maintaining some key delivery milestones in order to ensure the structural integrity of the process. Either way we argue above that it is not helpful to continue with the current mix of high regard for ICANN Bylaws, unrealistic timeframes in the Bylaws, and significant time overrun on policy development work.

**5.6** The constitutional relationship between the GNSO and ICANN is framed by the ICANN Bylaws and the GNSO Rules of Procedures. The current GNSO operating procedures run to just under 8,000 words. As one would expect, they contain detailed provision covering structures and process relating to the GNSO. The current passages in the ICANN Bylaws relating either specifically to the GNSO or Supporting Organizations runs to about 6,000 words. There is considerable duplication between the two documents, particularly on issues relating to the PDP. A small but significant minority of interviewees have questioned the need to have the PDP procedures for the GNSO written out in full in both documents. In most legal-constitutional and legislative contexts, it is generally the case that the volume of prescriptive detail gets heavier as one moves down institutional rungs or levels. Most national legislation for example would not contain such detailed prescription that one finds in the PDP section of the ICANN Bylaws. Instead, this kind of prescription would be left to statutory instruments, executive orders and so on. The implications of this point for the GNSO is that by removing the detailed provision on the PDP from the ICANN Bylaws it would free up the GNSO Council to amend or innovate with more project-based working, without the stigma of contravening top-level constitutional rules. The Bylaws themselves could refer to the PDP or to

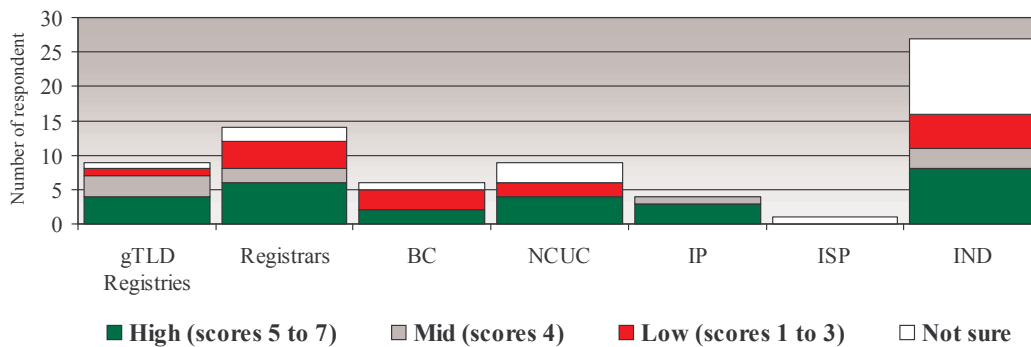
fostering bottom-up policy development, but in terms of the core principles involved and the main objectives to be achieved.

*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.*

**5.7** We have carried out this Review at an interesting juncture in terms of the relationship between the GNSO and the ICANN Board. The provisional settlement with Verisign Inc. (still to be completely finalized at the time of writing) has undoubtedly caused controversy amongst the ICANN community at exactly the time that our fieldwork took place. Although this decision is not within our study's scope, it has led to wider questions in our research on how a 'consensus policy' passed by the GNSO Council should be treated by the ICANN Board. This question certainly has direct implications for perceptions of compliance across the ICANN community, as well as for people on the outside looking in. In our survey, we asked Constituency members to give a score for the extent that ICANN (as distinct from the GNSO) complies with its own bylaws and procedures. Figure 30 below gives a summary of responses by Constituency. Although there is general agreement that ICANN does follow its own rules, each Constituency shows a pocket of skepticism (low score from 1 to 3). In our interviews some people on the Council took the view that if GNSO reaches a consensus decision then it should be binding on the Board and cannot be ignored or overturned. Others argued that the Board must not lightly reject a policy developed by GNSO and meeting the two thirds of weighted votes criterion, but must explain and offer reasons. But equally they argued that the Board has to take account of the views of all the Supporting Organizations plus other bodies (such as the Government Advisory Committee) in reaching an overall

**Figure 30: Perceptions of survey respondents on the extent to which ICANN follows its own bylaws and procedures**



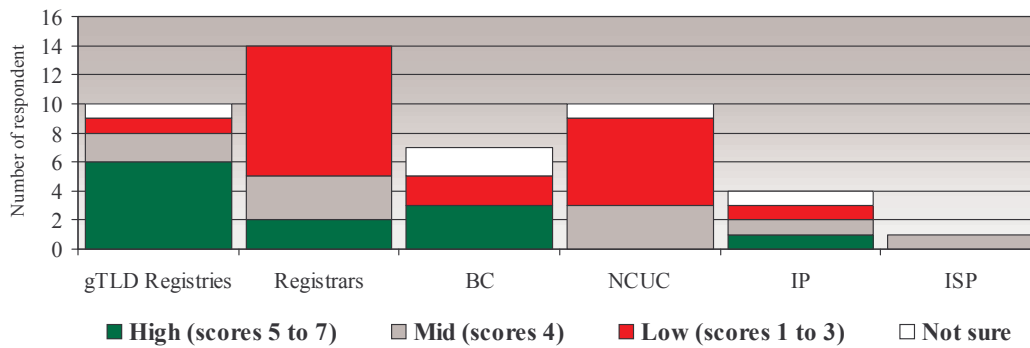
ICANN view on complex issues spanning beyond generic domain names alone in their implications.

### The impact of GNSO's operations

**5.8** Pushing this point in the previous paragraph slightly further, Figure 31 below shows responses from Constituency members in our online survey on the extent to which ICANN Board takes into account the views of particular Constituencies.

**5.9** Very little work has been done by ICANN or the GNSO to follow up on the effectiveness of consensus policies that are implemented. Very few of the early consensus policies on procedures covering transfer of domain names from one registrar to another, or procedures for deleting domain names from registry files, have ever been measured for impact or compliance. A question that arises is whether GNSO policy is specific and mainstream enough for any follow-up or measurement work to be done? Policy on the transfers and deletions of domain names might well provide opportunities for implementation studies. However, much of the WHOIS work is very generalized and peripheral for serious impact study work. For example, the policy covering conflicts between national laws and ICANN contractual obligations relates to decisions, which, in the words of one senior ICANN official, 'may never in actuality have to be taken'.

**Figure 31: Perceptions of Constituency survey respondents on the extent to which the ICANN Board takes into account the views of their Constituency**



**5.10** None the less a broad range of survey respondents and interviews raised the issue of impact assessment work. There has been no empirical analysis of early policies relating to the accuracy of WHOIS data. The General Accounting Office (GAO) undertook an empirical study of the accuracy of WHOIS data, finding that around 6 to 7 per cent of data was incorrect or missing. This study was relatively limited however in its sample, and there is clearly scope for further empirical work in this area. Encouraging the registration industry to evaluate levels of accuracy of WHOIS data is not an easy prospect given the high costs and logistical challenges that are involved. Our review of the GNSO mailing lists over recent years reveals somewhat tense and confrontational emails between ICANN staff and GNSO representatives from the registration Constituencies. ICANN has discussed the possibility of introducing graded penalties for registration stakeholders for inaccurate WHOIS data records (in fact this was suggested in the previous informal GNSO Council review). It is not clear to us to what extent progress has been made in this area.

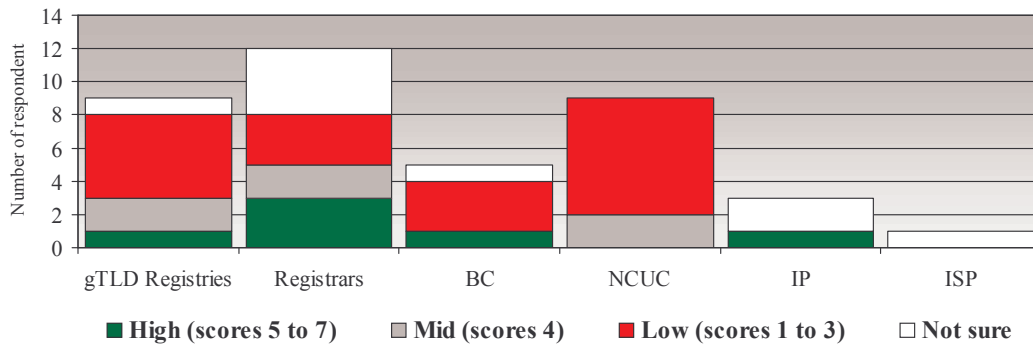
**5.11** Following up on the impact of the GNSO policy development work should not necessarily be limited to large empirical studies of formalized policy. Policy work does not have to be judged exclusively on the number of pages of text produced or the number of organizations complying with procedures (although this is one very important aspect). Much of the value of the GNSO and its style of policy development lies in highly regularized and inclusive discussion around issues that are technical and multi-faceted. Participants in the policy development process are

highly experienced and well-qualified, and so the intensity and detail of the discussion comes at a high premium. (We should not forget that the GNSO has devoted over 30,000 hours in total to the subject of WHOIS). The result of this should be that the GNSO (and ICANN) should be attempting to evaluate the impact of its policy development work in wider circles, and over time working on the assumption that impact can be measured in lots of different ways. For example, many private sector organizations now devote significant resources to measuring the asset value of their website, beyond simple financial projections. A similar approach might be taken by the GNSO, focusing on ‘What is the value-added of our policy development work?’

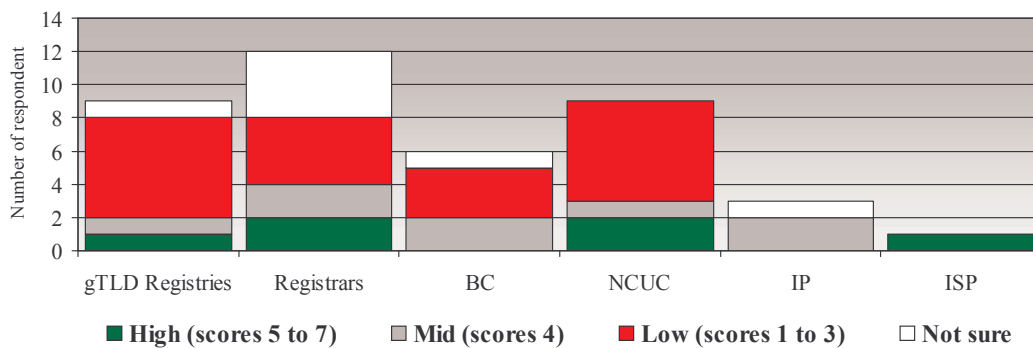
**5.12** We demonstrated earlier (in Part 2) that the GNSO has chronically low visibility outside the ICANN community. We also asked Constituency members to rate the impact of the GNSO and its policy work on government and international policy making organizations, and on commercial organizations. Figures 32 and 33 suggest that they feel that the GNSO has little or no impact. Our struggle to canvas opinion about the GNSO across wider commercial and non-commercial sectors has tended to reinforce such low estimates of its influence. Nevertheless, the policy development activity of the GNSO, in areas such as new gTLDs and IDNs, not to mention ongoing hot issues around access to personal data through the WHOIS database, has direct (if small) relevance for a vast range of individuals and organizations using and providing services relating to the Internet. More formally measuring the extent to which the GNSO and its Constituencies are influencing discussions and debates should therefore be a high priority for ICANN.



**Figure 32: Perceptions of Constituency survey respondents on the extent to which the GNSO influences governments and international policy makers on relevant issues**



**Figure 33: Perceptions of Constituency survey respondents on the extent to which the GNSO influences commercial organizations on relevant issues**



*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.*