

RECOMMENDATIONS 24/25: NEW CONSTITUENCY APPLICATION PROCESS	
STRATEGIC ALIGNMENT	
Part One – Which ICANN Objective does this meet	
Promote role clarity and establish mechanisms to increase trust within the ecosystem rooted in the public interest. Also, evolve policy development and governance processes, structures and meetings to be more accountable, inclusive, efficient, effective and responsive. See Strategic Plan main web page at: https://www.icann.org/resources/pages/strategic-engagement-2013-10-10-en .	
Alignment with Strategic Goals	
Goal	- Shared understanding by Board, staff and stakeholders of the allocation of responsibilities for design, development and implementation of policy and operational processes. - Shared understanding of the roles, responsibilities and accountability of the Board, staff and stakeholders. - Board, staff, and stakeholders use best practices and exercises appropriate behavioral norms.
Project/Recommendation	Recommendation 24: That the GNSO Council and Stakeholder Groups and Constituencies adhere to the published process for applications for new Constituencies. That the ICANN Board in assessing an application satisfy itself that all parties have followed the published process, subject to which the default outcome is that a new Constituency is admitted. That all applications for new Constituencies, including historic applications, be published on the ICANN website with full transparency of decision-making. Recommendation 25: That the GNSO Council commission the development of, and implement, guidelines to provide assistance for groups wishing to establish a new Constituency.

SCOPE DESCRIPTION
Scope Statement
Recommendation 24: GNSO action items: i) Determine whether new Constituency application processes are clearly posted and easily accessible, ii) determine what steps are taken to ensure compliance with those processes and whether those steps are adequate; iii) determine if all Constituency applications, including historic ones, are publicly posted along with full transparency of the decision-making process; iv) determine whether or not there is a presumption that a new Constituency should be admitted if all requirements are met and if such a presumption is appropriate; v) determine what process the Board uses to evaluate new Constituency applications and whether they are ensuring process compliance; vi) make recommendations for any modifications to the process, if any. Recommendation 25: GNSO action items: i) Evaluate the effectiveness and accessibility of guidance for new Constituency applications; ii) recommend improvements to the guidance and the available assistance as appropriate. Upon completion of the above steps, the GNSO Review Working Group to determine whether these recommendation has been implemented.
Out of Scope
The above scope is sufficiently clear.

Assumptions
That there currently exists some guidance on Constituency applications, but it may need to be augmented.
Deliverables
Possible additional guidelines on Constituency applications.

OPTION ANALYSIS

None were considered or were necessary to be considered.

SOLUTION

Staff research found the following:

Recommendation 24:

1. Determine whether new Constituency application processes are clearly posted and easily accessible:

Staff found that the [new Constituency](#) processes are clearly posted and easily accessible at the following web pages: Current activities and procedures at: <https://gnso.icann.org/en/about/form-new-constituency.htm> and historical activities and procedures (before the procedures established in 2011) at: <https://gnso.icann.org/en/group-activities/inactive/2012/improvements/newco-process-en.htm>.

The processes are detailed in the following documents:

- [New Constituency Recognition Process](#) [PDF]
- [Application for Candidacy \(AFC\) Form](#) [Word Template]
- [Request for Recognition \(RFR\) Form](#) [Word Template]
- [Flowchart of the Process](#) [PDF]

However, staff notes that it might be helpful to have both the current and historic information available at one web page.

In addition, at the request of the Working Group staff provides the following links to the procedures relating to membership in the Commercial Stakeholder Group (CSG) and the Non-Commercial Stakeholder Group (NCSG).

1. CSG: <https://gnso.icann.org/en/improvements/csg-charter-01nov10-en.pdf>, Section 2 Membership of the CSG; and <https://gnso.icann.org/en/about/stakeholders-constituencies/csg>, which states: "Membership to the CSG is coordinated through membership with one of its Constituencies. Please see the Constituency page for more details."
2. NCSG: <https://gnso.icann.org/en/improvements/ncsg-charter-05may11-en.pdf>, Section 2.0 Organization and Membership, <http://www.ncuc.org/get-involved/join-ncuc/>, and https://members.ncsg.is/membership_application.

2. Determine 1) what steps are taken to ensure compliance with those processes and 2) whether those steps are adequate:

- 1) Staff found that the determination of "what steps are taken to ensure compliance with those processes" is determined via the evaluation of the ICANN Board of Directors, in its procedures "Process for Recognition of GNSO Constituencies" in Step 1 and Step 2 sections C, D, and F re: Stakeholder Group and Board Ratification required in the applicant and candidate evaluation processes. See: <https://gnso.icann.org/en/improvements/new-constituency-recog-process-24jun11en.pdf>, 24 June 2011.
- 2) Staff found that the determination of whether "those steps are adequate" could be via evaluation of applications received thus far (post-2011 procedures): Public Internet Access/Cybercafé Ecosystem (PIA/CC) Constituency Application – denied by the Non-Commercial Stakeholder Group: See: [NCSG Decision Regarding PIA-CC Application](#). Specifically, "After careful review of the application document, the supplement to this application as well as the cover letter submitted, the NCSG has concluded that the application for candidacy does not meet the required criteria as per

Comment [A1]: Wolf-Ulrich Knoen: Agree!

the process to recognize a new GNSO constituency, and recommends the rejection of this application and that the ICANN board of directors ratify this rejection.”

3. Determine if all Constituency applications, including historic ones, are publicly posted along with full transparency of the decision-making process:

Staff notes that all Constituency applications, including historic ones, are publicly posted along with the full transparency of the decision-making process on the web pages at Current activities and procedures at: <https://gns0.icann.org/en/about/form-new-constituency.htm> and historical activities and procedures (before the procedures established in 2011) at: <https://gns0.icann.org/en/group-activities/inactive/2012/improvements/newco-process-en.htm>.

However, staff notes that it might be helpful to have both the current and historic information available at one web page.

4. Determine whether or not there is 1) a presumption that a new Constituency should be admitted if all requirements are met and 2) if such a presumption is appropriate:

- 1) Staff review of the ICANN Board “Process for Recognition of GNSO Constituencies” (<https://gns0.icann.org/en/improvements/new-constituency-recog-process-24jun11en.pdf>, 24 June 2011) suggests that there *is not* a presumption of admission if all requirements are met, and there is a two-step process that requires evaluation and ratification at the end of each step by both the Stakeholder Group and the Board and at each point it could be found that despite following the required processes an applicant/candidate might still not be ratified:

“There are two steps defined within this process. At the end of each of step, an evaluation will be conducted by the applicable Stakeholder Group (SG), according to its internal charter provisions, which will determine whether the application is approved to proceed to the next phase subject to Board ratification. Specific evaluation criteria are documented in the appendices so that proponents can learn, in advance, what tasks and activities are expected of them and how each one will be measured and assessed.”

Step 1 is the Application Phase and step 2 is the Candidate Phase. Each phase requires careful evaluation by both the Stakeholder Group and the Board, as well as the option for reconsideration of the Board’s decisions by the Stakeholder Group. Moreover, in step 2 ICANN staff must “analyze the proposed charter provisions for consistency with the ICANN Bylaws as well as documented procedures within the GNSO; and provide an impact assessment of the Request on ICANN resources”. The staff review could result in requested revisions by the Candidate. The final charter must be sent out for a 30-day public comment period and comments from that forum must be summarized, which could result in changes to the charter.

Furthermore, detailed criteria must be followed, as described in the “Applicant Constituency Evaluation Criteria”, Appendix 1, and the “Candidate Constituency Evaluation Criteria”, Appendix 2.

Finally, staff notes also that in the case of the application by the Public Internet Access/Cybercafé Ecosystem (PIA/CC) Constituency Application, this application was denied by the Non-Commercial Stakeholder Group: [NCSG Decision Regarding PIA-CC Application](#). Specifically, “After careful review of the application document, the supplement to this application as well as the cover letter submitted, the NCSG has concluded that the application for candidacy does not meet the required criteria as per the process to recognize a new GNSO constituency, and recommends the rejection of this application and that the ICANN board of directors ratify this rejection.”

5. Determine 1) what process the Board uses to evaluate new Constituency applications and 2) whether they are ensuring process compliance:

- 1) Staff notes that the process the Board uses to evaluate Constituency applications is detailed in the "Process for Recognition of GNSO Constituencies" at: <https://gns0.icann.org/en/improvements/new-constituency-recog-process-24jun11en.pdf>, 24 June 2011, with the evaluation criteria clearly stated in Appendices 1 and 2. See #4 above concerning the evaluation steps to ensure compliance and also in Step 1 and Step 2 sections C, D, and F re: Board Ratification required at various stages.
- 2) At completion of each step the evaluation by the the Stakeholder Group and the Board determines whether the applicant or candidate is in compliance with the procedures.

Staff suggested determination for Recommendation 24:

1. That the GNSO Council and Stakeholder Groups and Constituencies do adhere to the published process for applications for new Constituencies.
2. That the ICANN Board processes in assessing an application satisfy that all parties have followed the published process. **Staff suggests that with respect to this part of the recommendation, "subject to which the default outcome is that a new Constituency is admitted" the Working Group, as noted in the recommendation, should decide whether the presumption of admission (the "default outcome") is appropriate given the fact that even if a new Constituency has met the criteria, it still could fail the evaluation by the Stakeholder Group or the Board for other reasons. For example, the "default" recommendation is challenging because the process as set up now demands that the new Constituency "prove" itself during the Candidate Phase through active participation in policy development activities. There is not just an assumption of recognition without demonstrated commitment.**
3. That all applications for new Constituencies, including historic applications, are published on the ICANN website with full transparency of decision-making. **However, staff notes that it might be helpful to have both the current and historic information available at one web page.**

Comment [A2]: Wolf-Ulrich Knoen: To me the process doesn't look presumptive in terms of a default outcome since the board as a last resort of decision making in both phases can ratify or reject the SG decision.

Recommendation 25:

1. Evaluate the effectiveness and accessibility of guidance for new Constituency applications.
2. Recommend improvements to the guidance and the available assistance as appropriate.

Staff suggested determination for Recommendation 25:

1. Staff reviewed the processes as detailed above in Recommendation 24 and suggests that they are effective and accessible.
2. It seems to staff that the current processes address Recommendation 25 and that improvements to the guidance are not necessary.

Upon completion of the above steps, the GNSO Review Working Group to determine whether these recommendations have been implemented.

KEY DEPENDENCIES

1. Approval of any additional guidelines, if necessary, on Constituency applications.
2. Publication of additional guidelines, in necessary, on Constituency applications.

RISK IDENTIFICATION
Risk was identified as lack of approval.

KEY PERFORMANCE INDICATORS
It is not clear to staff whether a KPI applies in the implementation of these recommendations.

NECESSARY TO PROCEED
Next Phase Activities/Resources
None.

REVIEWERS		
Name	Title	Date Sent
GNSO Review Working Group		

APPROVERS				
Name	Title	Approval Status	Date	
GNSO Review Working Group				
GNSO Council				

REVISION HISTORY			
Date	Version	Description	Author
23 May 2017	V1	Original charter.	Julie Hedlund, Policy Director
02 June 2017	V2	Revisions based on discussion at the Working Group meeting on 25 May	Julie Hedlund, Policy Director

Attachments:

- None.