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Generic Names Supporting Organization

GNSO Policy Development Process 3.0

How to increase the effectiveness and efficiency of the GNSO Policy Development Process

Final Report – Summary of Feedback Received from GNSO SG/Cs

This document sets out the feedback received on the GNSO Council's proposed incremental improvements to the GNSO Policy Development Process project ("PDP 3.0"). This document forms reference material for the GNSO Council's PDP 3.0 webinar on 11 September 2018. The aim of the webinar is to identify all recommendations with in-principle agreement, with the next step to be amending the Final Report for Council vote at the ICANN63 AGM.

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1 Summary of feedback received

This section summarizes the feedback received on each of the recommendations set out in the draft Final Report of GNSO Policy Development Process 3.0.

Feedback was received by 15 August 2018 from the following:
- Business Constituency (BC)
- Chuck Gomes (CG)
- Intellectual Property Constituency (IPC)
- Petter Rindforth (PR)
- Phil Corwin (PC)
- Registry Stakeholder Group (RrSG)

1.1 Working Group Dynamics – Incremental Improvements

Improvement	#1. Terms of participation for WG members
Description	Require those joining a WG to sign up to a WG member terms of participation outlining the commitment expected from WG members as well as the expectation with regards to multi-stakeholder, bottom up, consensus policy development. This could also include, in certain cases, expected knowledge / expertise required to participate (with options being provided to those not having the requested knowledge / expertise to obtain relevant knowledge / expertise). Different levels of commitment could be attributed to full membership versus observer status.
Objective	Ensure that WG members are committed to working together to find consensus, respecting the ICANN standards of behavior
Focus	Current and future WGs.
Possible Implementation Steps	Develop a Commitment of Participation template that WG members need to actively confirm before they can participate in the WG.
High-level summary of feedback received	May be worthwhile, but question practical effect on participation. (BC) Good idea but any such form should include min. participation requirements. Only useful if enforced (CG). Should also include a draft initial timeline (PR). Support outlining commitments and make this already clear in call for volunteers (RrSG) Support - "social" contract implicit in PDP WG participation needs to be made explicit. (IPC)

Improvement	#2. Consider alternatives to open WG model
Description	The PDP Manual provides the flexibility to consider different types of PDP Team structures, for example, reference is made to working group, task force, committee of the whole or drafting team. To ensure representation as well as empowerment of WG members, different team structures should be considered, for example, having

	members designated by SO/AC/SG/Cs while individuals can join as participants or observers. This model has worked efficiently in recent Cross-Community Working Groups. At the same time, there may not be a one-size fits all so different alternatives could be explored so that the approach that is best fit for a specific PDP can be chosen.
Objective	Find the model(s) that best balances representation, inclusivity, expertise, empowerment, accountability and participation.
Focus	Current and future WGs.
Possible Implementation Steps	
High-level summary of feedback received	Designation by SO/AC/SG/Cs should help to ensure more objectivity and expertise - designee should also act as the conduit for their designator's views and not in their personal capacity. Individuals must be allowed to join as either participants or observers. Consider weighted voting. (BC) Could work depending on topic (PR) Support for balanced representation but one-size-fits all is not appropriate. Council to consider for each effort specific team make up. (RrSG) Support, but with some reservations. Need to take care to not shut out people (IPC)

Improvement	**#3. Limitations to joining of new members after a certain time**
Description	Consider a cut-off date after which no new members can join a PDP WG unless the PDP leadership team decides that new volunteers bring a perspective that is not present in the WG and/or underrepresented.
Objective	Limit disruption as a result of members joining after the WG has already been engaged in deliberations for quite some time but allow for flexibility in case new volunteers bring new perspectives or are currently underrepresented in the WG.
Focus	Current and future WGs.
Possible Implementation Steps	
High-level summary of feedback received	If so, new observers must still be allowed to join and newsletters issued regularly to ensure transparency. Should not be a decision of just PDP leadership (BC). Any exception procedure should require written commitment to review all work to date (CG). Agree, but should also apply to observers (PR). Rather than prohibiting, new members must come up to speed to avoid any delay. (RrSG) Support but with a pathway for observers to become full members (IPC).

1.2 WG Leadership – Incremental Improvements

Improvement	**#4. Capture vs. Consensus Playbook**
Description	A playbook or expansion of the GNSO Working Group Guidelines to help WG leaders, members, or participants identify capture tactics as such, along with a toolkit of possible responses to help the WG

	get back on track without escalating the situation. Example: "Die in the ditch" test - is this a position you are willing to die in a ditch for or is it just an opinion that you are expressing, and you are happy to move on if no one else supports that opinion?
Objective	Empower WG Chairs with additional tools and support to ensure effective and efficient leadership
Focus	Future WG.
Possible Implementation Steps	
High-level summary of feedback received	Any practical tools and support to ensure effective and efficient leadership should be seen as a positive - experienced Chairs/leadership to draft (BC) Should address inactive members becoming active and rules for reopening a topic. (PR) Support but also need to look at replenishing community "lake of goodwill" (RrSG) Support, maybe look at "Simple Sabotage Field Manual". WG Chairs should also be more empowered. (IPC)

Improvement	#5. **Active role for and clear description of Council liaison to PDP WGs**
Description	Ensure that there is a clear understanding with regards to the role of the Council liaison and how he/she can assist the WG leadership. This may require PDP WG leadership teams to actively involve the liaison in leadership / preparatory meetings.
Objective	Ensure optimal use of GNSO Council liaisons to PDP WGs
Focus	Current and future WGs.
Possible Implementation Steps	Develop clear role description (COMPLETED – see https://gnso.icann.org/en/council/gnso-liaison-wg-22feb18-en.pdf) PDP WG leadership team to consider how to better utilize Council liaison
High-level summary of feedback received	Support. (BC, RrSG) Agree, Council liaison should participate in leadership meetings. (PR) Support, liaison should also take part in prep meetings and may need to act as referee. (IPC)

Improvement	#6. **Document expectations for WG leaders that outlines role & responsibilities as well as minimum skills / expertise required**
Description	The GNSO WG guidelines provide a general description of the role of a WG chair, but this is not generally considered in WG Chair selection processes. WGs would benefit from a more detailed description of the role and responsibilities, including expected time commitment, of a WG chair. This could then be coupled with a list of skills and expertise that would also be desirable. This would be helpful for WG selection of, and potential candidates for, leadership positions. WG Chair(s) would be expected to sign off on this job description and agree to the role & responsibility as outlined, and would also serve as a means to hold the Chair accountable to the WG. Similarly, it could be indicated whether there are any incompatibilities that should be considered such as whether

	someone can be in a leadership role in multiple PDPs at the same time.
Objective	Ensure clear understanding of what the role of a WG chair entails as well as what are considered some of the qualifying skills and criteria.
Focus	Future WGs.
Possible Implementation Steps	Develop a job description for WG Chairs that can be tailored for working groups.
High-level summary of feedback received	Support. (BC) Depends on topic, may consider creating general description which can then be further specified for each WG. (PR) No strong position. (RrSG) Support – especially Chair neutrality needs to be addressed heads-on. (IPC)

1.3 Complexity of Subject Matter – Incremental Improvements

Improvement	#7. Creation of Cooperative Teams
Description	WG members could form "Cooperative Teams", which would be distinct from subgroups and drafting teams. "Cooperative Teams" would be comprised of a minimum number of active, committed WG members who attend the majority of WG meetings and are committed to catching up others that are not able to attend meetings. The active members would assist the WG members who are unable to attend all meetings in staying up-to-date on the WG's progress. The teams could be formed at SG/C level, but this would be for SG/Cs to consider.
Objective	Provide a mechanism for observers / less active members to stay up to date and engaged in a PDP.
Focus	Current and future WGs.
Possible Implementation Steps	
High-level summary of feedback received	This goes against the idea of the "Commitment of Participation", could develop into a shortcut for those who do not/cannot engage (BC, PR, IPC) It would also lead to further complexity. (BC) Useful idea. (CG) Better to use traditional subgroups. (PR) Disagree – information is already available in the form of recordings and transcripts (RrSG)

Improvement	#8. PDP Plenary or Model PDP
Description	For those that are new to the subject matter and/or PDPs, provide the opportunity to first learn and observe before being able to join the PDP team. This could be done, for example, in the form of a PDP plenary during which the PDP leadership team explains the status of work and briefs newcomers on the topics under review (this could be done in combination with expert briefings) or a model PDP which would introduce newcomers to GNSO policy development as well as the consensus building.
Objective	Create a mechanism whereby newcomers can observe and learn before getting involved in active PDPs.

Focus	Current and future WGs.
Possible Implementation Steps	
Summary of high-level feedback received	Full support. (BC) Generally recommendable to summarize results. There should be a deadline by which observers can switch to member status. (PR) Purpose is already achieved by allowing observers to observe and education materials available. No need to spend additional resources (RrSG) Support for both concepts. (IPC)

1.4 Consensus Building – Incremental Improvements

Improvement	#9. Provide further guidance for sections 3.6 (Standard Methodology for decision making)
Description	Provide further guidance for WG Chairs and WG membership with regards to what is consensus, how consensus designations are made and what tools can or cannot be used. Similarly, further guidance may be welcome in case there is an appeal under section 3.7 that would result in a faster response to allow a WG to move forward more efficiently during and after the appeal process. Lessons could potentially be learned from other organizations applying consensus as a decision-making methodology.
Objective	Ensure there is clarity around how consensus is established and what tools can be used in that regard.
Focus	Future WGs.
Possible Implementation Steps	
High-level summary of feedback received	General support but note "Consensus" means different things to different organisations so at the beginning of a PDP it would be to train the PDP re. "consensus" in the PDP process. (BC, RrSG) Agreed, but also clarify that a 3.7 appeal does not halt ongoing work. (PR, IPC) Support. (RrSG)

Improvement	#10. Document positions at the outset
Description	Scope the different positions at the outset of a PDP so that it is clear from the start where a possible middle / common ground lies. Any restating of positions established at the outset of a PDP should as a result be minimized as these are already known at the outset which will allow focus on finding consensus.
Objective	Ensure that the focus is on finding a consensus position instead of digging in and only defending one's own position.
Focus	Future WGs.
Possible Implementation Steps	
High-level summary of feedback received	Possible, but would this not extend the opening phases of the PDP before substantive work could start? Not convinced that this would be of benefit. (BC) Should also include WG members and time limit on making statements on position during meetings. (PR) Support,

	==but limitations on restating positions should be carefully considered and outlined. (RrSG) Support as it can help define the "playing field" and "goal posts". (IPC)==

1.5 Role of Council as Manager of the PDP – Incremental Improvements

Improvement	#11. Enforce deadlines and ensure bite size pieces
Description	A PDP should have a narrow scope and, in those cases where a subject is broad, it needs to be broken into manageable pieces to make the deadline pressure more understandable and achievable. This may require a more regular use of a drafting team to prepare a charter for Council consideration. There is a need for pressure, but it must be coupled with limited scope, so that pressure for data and dependency would be able to produce results. This would also require the Council to regularly review PDP WG work plans.
Objective	Ensure clear expectations concerning deliverables as well as a manageable scope of work.
Focus	Future PDP WGs.
Possible Implementation Steps	At the outset of the PDP, the Council or Council leadership meets with the PDP WG to brief the PDP WG on the charter and its expectations. This would allow for any clarifications and/or confirmations at the outset of the process. Council to review PDP WG charters and determine what works well and what doesn't. This could include discussions with current PDP leadership teams to establish what helped PDP WGs in their efforts and what did not.
==High-level summary of feedback received==	==Full support. (BC) Agree. (PR) Each PDP leadership team should engage with Council in a post-PDP evaluation. A standardized summary template should be created to provide Council with relevant data. (RrSG) Support, need to look at more formal and better developed set of project management tools. (IPC)==

Improvement	#12. Notification to Council of changes in work plan
Description	Require PDP WGs to notify the Council when a work plan, and in particular the expected delivery dates for the different PDP milestones, are revised with a rationale for why these changes were made and how this impacts interdependencies.
Objective	Enhance accountability of PDP WGs and oversight by GNSO Council
Focus	Current and future PDP WGs.
Possible Implementation Steps	GNSO Council to review all current PDP WG work plans and advise PDP leadership teams that any changes to timeline for deliverables are expected to be communicated to the GNSO Council, including a rationale for these changes. Make better use of project management skills and expertise when developing the work plan

	Council to provide additional guidance and/or timeframe with regards to the expected delivery of milestones
High-level summary of feedback received	Full Support (BC) Agree. (PR) Agree, continually extending the work plan is not acceptable. (RrSG) Support. (IPC)

Improvement	#13. Review of Chair(s)
Description	Despite running possibly for multiple years, there is currently no system in place that allows for the regular review of the functioning of PDP WG leadership teams. The Council could run an anonymous survey amongst the PDP WG to obtain feedback on the WG Chair(s) on a regular basis to facilitate its role as a manager of the PDP. Similarly, there is no process in place that allows a WG to challenge and/or replace its leadership team.
Objective	Allow for regular review of PDP leadership team to be able to identify early on potential issues
Focus	Current and future PDP WGs
Possible Implementation Steps	Chairs could be appointed for a 12 month period, and be required to be reconfirmed by the WG to continue for another 12 month period.
High-level summary of feedback received	This leads to a further question – do we need a policy on the appointment of Chairs in the first place? (BC) Should apply to full leadership team. In addition to anonymous reviews by WG, self reviews should be considered (CG) Even more difficult to replace a WG member. (PR, IPC) Anonymous survey could be abused, instead consider monthly reporting to determine if issues exist. (RrSG) Support, chair neutrality needs to be addressed heads-on. (IPC)

Improvement	#14. Make better use of existing flexibility in PDP to allow for data gathering, chartering and termination when it is clear that no consensus can be achieved.
Description	The existing PDP procedures provide for a lot of flexibility with regards to work that is undertaken upfront, such as data gathering to establish whether there is really an issue that needs to be addressed, chartering - creation of a charter drafting team to ensure that the charter questions are clear and unambiguous but also the ability to terminate a PDP in case of deadlock. As the manager of the PDP, the GNSO Council should make optimal use of this flexibility to facilitate its role as a manager of the PDP as well as setting up PDP teams as best as possible for success. Care should be taken that PDPs are not used to prove / disprove theories – such information should be gathered beforehand.
Objective	Make use of existing flexibility in PDP procedures to ensure that each PDP is set up for success from the outset.
Focus	Current and future PDP WGs.
Possible Implementation Steps	

High-level summary of feedback received	Support.(BC) No objections. (PR) Data and metrics should be a standalone item, but not to test academic or philosophical theories. (RrSG) Support, but needs to be better developed. (IPC)

Improvement	#15. Independent conflict resolution.
Description	In those cases where conflict in WGs is preventing progress and/or existing conflict mechanisms have been exhausted, the Council should have access to independent conflict resolution and/or mediation experts.
Objective	Provide additional mechanisms for conflict resolution for those cases where existing tools have not delivered results.
Focus	Current and future PDP WGs.
Possible Implementation Steps	Council liaison to be proactive in identifying potential issues / challenges that may need mitigation and Council attention.
High-level summary of feedback received	Concern that an independent conflict resolution process would become default way to resolve Who would do this? If external – cost implications? (BC) Agree to have Council liaison more involved. (PR) Consider standing panel of volunteer mediators that could be called upon. (RrSG) Support, Council liaison could be more proactive in identifying issues and then turn to mediation. Need for improved conflict resolution processes.

Improvement	#16. Criteria for PDP WG Updates
Description	GNSO Council to provide criteria for information that needs to be provided by PDP WG leadership teams as part of their updates to be in a position to closely track progress and identify issues at an early stage. This would include a requirement for a PDP WG to provide early warning as well as identify potential risks that could hamper progress.
Objective	Ensure standardized set of information provided by PDP WGs
Focus	Current and future PDP WGs.
Possible Implementation Steps	
High-level summary of feedback received	Support (BC, IPC) Good suggestion. (PR) Council should set up parameters for reporting. (RrSG)

Improvement	#17. Resource reporting for PDP WGs
Description	Require PDP WGs to provide regular resource reporting updates to allow for a better tracking of the use of resources and budget as well as giving leadership teams the responsibility for managing these resources.
Objective	Allow for resource tracking and oversight, enhancing accountability
Focus	Current and future PDP WGs.
Possible Implementation Steps	Adapt fact sheets used for review teams to monitor and report on progress as well as resources for PDP WGs.

High-level summary of feedback received	Support (BC, RrSG) To be done in co-operation with ICANN staff. (PR, IPC)

2 New ideas and recommendations

In addition to commenting on the recommendations set out in the PDP 3.0 Report, some commenters raised new ideas and recommendations. These are set out below for later consideration by the Council.

- A WG should likely not be permitted to proceed if a key constituency that is a central focus of its work is unwilling to actively participate as a member. (PC)
- The WG Guidelines should be clarified so that when a chair provides information to WG members regarding other developments within the ICANN community that are relevant to the WG's task this does not elicit charges of bias and political manipulation. (PC)
- Steps must be taken to ensure that WG chairs can exercise their reasonable discretion in administration of WG activities. (PC)
- Consider reforms to 3.7 Appeal Process. (PC)
- If review of chairs is introduced there should be an additional part: "The Council could run an anonymous survey amongst the PDP WG to obtain feedback on the WG members on a regular basis to facilitate their roles as positively active members of the PDP. Similarly, there is no process in place that allows a WG to challenge and/or replace their co-members". (PR)
- Have each agenda clear with a time at the end of each call to wrap up – Decisions, Action Items, Requests. (PR, IPC)
- Look at time schedule on each meeting and keep it visible and online. (PR, IPC)
- Clarify when it is ok to vote on how to proceed vs. adopting group consensus. (PR, IPC)
- If a topic is divided into separate issues – avoid members going back to earlier decisions and reopen. (PR, IPC)
- Empower Chairs and GNSO liaison to remove bad actors – those who malign, make things personal, attack WG members in social media, etc. (PR, IPC)
- Council should consider the limitations of the PDP process and its utility in making decisions vs. finding compromise. (RrSG)
- Consider how to determine the right timing for policy development. (RrSG)
- Consider defining specific restrictions or other actions for members that are identified by misbehavior, and/or abusive use of policies. (IPC)

3 Record of feedback as received

3.1 Business Constituency

The BC welcomes the discussion of how to improve the GNSO Policy Development Process (PDP). Ensuring an efficient and effective way to gather, synthesise and advance community-based policies is a vital part of ICANN's DNA.

As a starting point, not only has the current average timeline for PDPs increased, so has the amount of working groups, reviews and policy dossiers – not least the unprecedented EPDP/Temporary Specification work. A balance must be found between allowing enough time and community input on the one hand and an efficient and timely process on the other; we thank the Council leadership and staff for setting out the challenges in a concise and realistic way. Taking the potential incremental improvements in order:

Working Group Dynamics
- *Terms of participation for WG members*: while a "Commitment of Participation" template may be worthwhile, in practice this is unlikely to have a practical effect on participation. We already have standards of behaviour but experience shows that this does not stop bad faith or even the wilfully unpleasant, and at a lesser level one person's joke is another's affront. This would have to be policed carefully.
- *Consider alternatives to open WG model*: designation by SO/AC/SG/Cs should help to ensure more objectivity and expertise, but we would add that the designee should also act as the conduit for their designator's views and not in their personal capacity. Individuals must be allowed to join as either participants or observers to preserve the multistakeholder model; would it however be possible to consider "weighted voting" in contentious matters (so more "weight" for designees)? For example, could the Chair call a vote on a discussion point when it seems that deadlock has been reached based on ideology rather than reason and community benefit?
- *Limitations to joining of new members after a certain time*: if this is to happen, new observers must still be allowed to join and newsletters issued regularly to ensure transparency. The decision to widen/restrict the membership should not fall on the PDP leadership alone, but on Council as a whole to prevent unwarranted pressure/capture of the Chairs.

WG Leadership
- *Capture vs. Consensus Playbook*: any practical tools and support to ensure effective and efficient leadership should be seen as a positive. Experienced Chairs/leadership would be the most obvious drafters to share hands-on experience and solutions.
- *Active role for and clear description of Council liaison to PDP WGs*: support.
- *Document expectations for WG leaders that outlines role & responsibilities as well as minimum skills / expertise required*: support.

Complexity of Subject Matter
- *Creation of Cooperative Teams*: while we understand the good faith reasoning, this goes against the idea of the "Commitment of Participation" and could develop into a shortcut for those who do not/cannot engage who then rely on these Teams to do extra work/outreach to compensate for their lack of engagement. It would also lead to further complexity by adding another structural element that could cause confusion about who really is the shaping the PDP – the drafting team, the subgroup, the Chair, Cooperative Team..? It could also be vulnerable to claims that the Teams were misdirecting the members/ misrepresenting the discussions.
· *PDP Plenary or Model PDP*: full support.

Consensus Building
- *Provide further guidance for sections 3.6 (Standard Methodology for decision making)*: general support but a note of caution: "Consensus" means different things to different organisations and at the beginning of a PDP it would be helpful to remind everyone about what "consensus" will mean in the PDP process. However there is value in considering consensus-building lessons and approaches used by other organisations.
- *Document positions at the outset*: possible, but would this not extend the opening phases of the PDP before substantive work could start? And whose positions – those of members, or aggregate views? There will also by default be sub-positions of positions. We are not convinced that this would be of benefit.

Role of Council as Manager of the PDP
- *Enforce deadlines and ensure bite size pieces*: full support.
- *Notification to Council of changes in work plan*: full support.
- *Review of Chair(s)*: this leads to a further question – do we need a policy on the appointment of Chairs in the first place? While we support the idea of a "process... that allows a WG to challenge and/or replace its leadership team" this should be carefully crafted. The 12-month reappointment seems sensible.
- *Make better use of existing flexibility in PDP to allow for data gathering, chartering and termination when it is clear that no consensus can be achieved*: support.
- *Independent conflict resolution*: We are concerned that an independent conflict resolution process has the potential of becoming the default way to resolve seemingly intractable WG disagreements rather than forcing WG members to do the hard work of consensus-building and employing the toolkit of possible responses mentioned under WG Leadership. After two years under the revised PDP process, we might then reconsider the desirability/need for recourse to independent conflict resolution. Further - who would do this? If external – cost implications? Could it fall under the remit of (e.g.) the Standing Selection Committee? Whoever it is, this should be known to all WGs from the outset.
- *Criteria for PDP WG Updates*: support.
- *Resource reporting for PDP WGs*: support.

3.2 Chuck Gomes

Input from Chuck Gomes for PDP 3.0 – 30 July 2018

This document contains my personal observations regarding the GNSO Policy Development Process 3.0 document dated 8 May 2018. They are organized under document headings with quoted excerpts and/or other document references. My observations and suggestions are listed in bullet points.

3.4 Consensus Building – Challenges
"In order to build consensus, WG members need to be willing and able to compromise on previously established positions." (p.7)
- In my opinion, this is one of the most critical issues, if not the most critical one.
- It may be impossible to meaningfully improve the PDP if ways are not found to solve this problem.
- There are lots of good observations and improvement suggestions contained in the document but implementing them without making improvements to the consensus building challenge will probably not make a big difference.
- In my input below, I used **bold font** to highlight ideas and suggestions that I believe have the potential to help solve the consensus building challenge.

4.1 Working Group Dynamics – Incremental Improvements
Improvement #1. Terms of participation for WG members (p.8) – "Require those joining a WG to sign up to a WG member terms of participation outlining the **commitment expected from WG members** as well as the expectation with regards to multi-stakeholder, bottom up, consensus policy development."
- I think that requiring WG members (in contrast to WG observers) to sign a commitment form is a very good idea; any such form should include minimal participation requirements for list participation, meeting attendance, key documents review, missed meeting review and promise to abide by ICANN behavior standards.
- In cases where a WG member serves as an official representative of a group (Constituency, SG, Advisory Group, or other group of interested parties), that group should also make a similar commitment.
- Commitments by individual WG members or groups are only useful if they are enforced, so processes would need to be developed and implemented to track and enforce requirements.

Improvement #3. Limitations to joining of new members after a certain time (p.9)
- An exception procedure for joining late must require a **written commitment to review all work done to date**.

4.3 Complexity of Subject Matter – Incremental Improvements
Improvement #7. Creation of Cooperative Teams (p.9)
- This could be a very useful idea.

4.5 Role of Council as Manager of the PDP – Incremental Improvements

Improvement #13. Review of Chair(s) (p.12)

- In cases where there is a WG leadership team consisting of more than a chair or co-chairs, the effectiveness of leaders should be evaluated, not just the chair(s).
- In addition to asking WGs to anonymously review the effectiveness of WG leadership, self-evaluations by the leadership team members should also be considered. These could be done anonymously by individual leaders or by the team as a whole or both.

3.3 Phil Corwin

Based upon my experience in this WG, the vast majority of it spent as a co-chair, I would make the following suggestions for consideration as the PDP 3.0 project continues:

- A WG should likely not be permitted to proceed if a key constituency that is a central focus of its work is unwilling to actively participate as a member. In the case of this WG, while IGO representatives did on occasion attend and speak at face-to-face meetings, and provide some other limited input to the WG, those IGO representatives stressed they were doing so solely in an individual capacity and not on behalf of the IGOs that employed them, and no IGO representative ever joined the WG as a member. In addition, these and other IGO representatives, along with GAC members, were engaged during much of the WG's existence in parallel "IGO small group" discussions with the Board. That parallel effort originally started as a forum to address a prior WG's contentious policy recommendations regarding permanent protections for IGO names and acronyms in new gTLDs, but eventually took up discussion of the same CRP issues being addressed simultaneously by this WG. It appeared that some IGO and GAC participants in those talks were under the misimpression that the "small group" discussions could deliver results on CRP policy matters that can only be properly decided under ICANN Bylaws through the GNSO's PDP mechanism.

  The absence of IGO membership and continuous participation in the WG had two undesirable effects. First, the views of domain investors came to dominate the WG's policy discussion with no countervailing input from IGOs regarding potential compromises. Second, when the co-chairs on occasion attempted to "play devil's advocate" and inject what we understood of the IGO perspective into ongoing discussions, this ultimately eroded co-chair authority as some WG members appeared to incorrectly believe that this balancing attempt constituted bias and lack of concern for registrant rights.

- The WG Guidelines should be clarified so that when a chair provides information to WG members regarding other developments within the ICANN community that are relevant to the WG's task, or conveys views based upon experience with the stages of the PDP mechanisms beyond initial WG efforts (Council and Board consideration of WG recommendations), doing so does not elicit charges of bias and political manipulation.

  The co-chairs of this WG were asked to participate by the Board in several discussions it held with IGO representatives and GAC members regarding outstanding IGO-related issues, and we naturally consented. We subsequently conveyed back to the WG the substance of these discussions, as well as the fact that the CRP issue was of great concern to the GAC and that resolving it in a balanced manner could influence future

governmental support for ICANN and its MSM. Also, as my co-chair had just left GNSO Council, and I was serving on it for much of this WG's tenure, we conveyed our personal views on what type of policy resolution could achieve both Council and Board approval, especially given the likelihood of contrary GAC advice to the Board.

Rather than being welcomed by the WG, this information and observations elicited charges from some WG members that we were attempting to manipulate its outcome, and were seeking a final result based on internal ICANN politics rather than objective analysis of relevant law and policy considerations.

- Steps must be taken to ensure that WG chairs can exercise their reasonable discretion in administration of WG activities. While I was a co-chair we always consulted with ICANN policy staff to ensure that our suggestions for the way forward were within any reasonable reading of WG Guidelines. Yet we faced substantial challenges, culminating in the filing of a 3.7 appeal when we proposed to initiate an anonymous poll of all WG members in order to gain better understanding of their policy preferences; and that 3.7 appeal was continued even after we offered to conduct the poll transparently. After I departed as co-chair a second 3.7 appeal was filed by the same WG member in regard to procedures for completing the Final Report that had been communicated by the Chair and the Council Liaison. (I should also note that, while the filing of a 3.7 appeal should not necessitate the halting of WG activities, the initial one we faced was filed as the WG was about to enter the final decisional stage of its work, and the co-chairs expected it to be resolved expeditiously and never anticipated that it would result in a five-month halt.)

Given the impending launch of the first-ever EPDP, to address the Board's Temporary Specification on collection and dissemination of WHOIS data in relationship to the EU's GDPR privacy regulation, 3.7 appeal reform should be undertaken at once to minimize the possibility that this potent mechanism may be utilized to inordinately delay completion of the EPDP's work within the limited time available.

At least three substantial reforms should be made to the 3.7 appeal process—
   o A minimum threshold, akin to "probable cause", should be required to be stated when an action is filed. In addition, ICANN support staff for the WG should file an explanatory statement regarding whether the administrative action being challenged was taken in consultation with staff and whether, in staff's opinion, the challenged action is consistent with WG Guidelines. These steps can assist the Liaison and Council leadership in quickly assessing whether the challenge is meritorious or should be summarily dismissed.
   o A meritorious challenge should be rapidly resolved under clear standards, and available forms of relief should be specified in the Guidelines. Absent expeditious action within a pre-stated framework, 3.7 appeals can cast a pall over a WG for an extended period or even bring its work to a halt for an indeterminate time.
   o Sanctions should be established to deter the filing of non-meritorious 3.7 challenges to WG administrative proposals, including a public warning or termination of member status. If the only penalty for a substantially baseless challenge is its dismissal, there will be no effective disincentive for this mechanism being used to unduly delay or derail a WG's efforts.

- Finally, under current WG Guidelines a 3.7 challenge can be used in reaction to a chair decision regarding WG administration, as well as to appeal a 3.5 finding that a WG member has acted in a disruptive and/or obstructive manner. These are very different situations, with the first regarding decisions about the best path forward for a WG, and the second relating to a member's personal conduct. They should be clearly differentiated in the Guidelines and not lumped together as at present.

The GNSO Policy Development Process 3.0 document contains multiple sections relevant to the above concerns and suggestions as well as to observations made in the first section of my Minority Statement, including:

- That "topics under discussion are arguably more complex and divisive compared to previous efforts", an apt description for the legal treatment of IGO immunity and balancing the respective rights of domain registrants and IGOs. (section 3, p.5)
- While the IGO CRP WG was not large, it nonetheless experienced "discussions turning into zero sum games rather than efforts at compromise"; and it definitely demonstrated that the "longer the PDP lifecycle, the more WG members that drop out, potentially resulting in a 'consensus by exhaustion' situation" (section 3.1, p.5).
- Noting that three of the eleven individuals who supported Recommendation Five were not affiliated with any ICANN constituency or stakeholder group, this confirms the observation that, "Recently, WGs have seen a significant increase in individual members who do not represent anyone but themselves and individuals who have been engaged to represent the interests of a third party. There appears to be a fear of giving in and giving up ground at the expense of others. This leads at times to an apparent difficulty (sometimes unwillingness) to listen and meaningfully consider others' viewpoints." This was exacerbated by the unwillingness of IGO representatives to participate as WG members and make the case for, and work toward, compromise. (section 3.4, p.8)
- The existence and activities of the "IGO small group" dis-incentivized IGOs from participating in the WG, which exacerbated the imbalance in WG member interests and affiliations, and thereby resulted in "circumvention" of the PDP mechanism and provided "incentives to work around and outside of the PDP, for example, by petitioning the Board or working through respective governments". Unfortunately, the Board contributed to this situation by allowing the IGO small group to discuss not just the previously addressed topic of permanent protections for IGOs in new gTLDs, but also the very access to CRP issue that was simultaneously being addressed in the WG (section 3.5, p.7).
- All of the Incremental improvements described in the document -- terms of participation for WG members; alternatives to open WG model; and limitations to joining of new members after a certain time – might have been of assistance in delivering a more balanced result from this WG (section 4.1, pp.8-9).
- Likewise, it might have been of assistance to the co-chairs had there been "A playbook or expansion of the GNSO Working Group Guidelines to help WG leaders, members, or participants identify capture tactics as such, along with a toolkit of possible responses to help the WG get back on track without escalating the situation". (section 4.2, p.9)
- Given that the Section 3.7 appeal was brought against the co-chairs' proposal for the means of initiating the consensus call process resulted in a delay in WG activity of five months, it is demonstrably correct that "further guidance may be welcome in case there is an appeal under section 3.7 that would result in a faster response to allow a WG to move forward more efficiently during and after the appeal process" (section 4.4, p.11).

- Finally, while it might be useful to "scope the different positions at the outset of a PDP so that it is clear from the start where a possible middle / common ground lies", the utility of that would be reduced where, as in the case of this WG, the central policy recommendation required an understanding of international law applicable to IGOs that was not available at the start of the WG's activities, and where the WG comes to be operationally captured by a self-interested faction that has no interest in compromise. (section 4.4, p.11)

In conclusion, it is my hope that this Minority Statement will be of use to Council as it considers how to respond to the Final Report of the WG, as well as how to substantially improve the PDP mechanism for future WGs.

3.4 Petter Rindforth

Below please see my comments and suggestions:

4.1 Working Group Dynamics – Incremental Improvements
#1. Terms of participation for WG members
Good suggestion. Should however also include an initial draft timeline and clear topics with basic timelines for each decisions, in order for potential WG members to make the right decision if they can keep the active work and timelines.

#2. Consider alternatives to open WG model
Can work, depending on the topic. Especially if the topic is rather focused on solving a problem that is identified by specific groups of interest rather than for Internet users in general.

#3. Limitations to joining of new members after a certain time
I agree with the suggested text. However, it should include observers that after a while decide to become active/full members.
 This is to avoid already discussed and decided topics to be re-opened and thereby also unnecessary extension of the WG time.

4.2 WG Leadership – Incremental Improvements

#4. Capture vs. Consensus Playbook
If possible, the recommendation should also involve inactive full members, that have not participated at WG meetings or online, and for some reason suddenly decides to activate. It should be clear in the policy that re-opening a topic that the WG has formally closed or decided upon, needs some kind of majority decision in the WG, and/or recommendations from the GNSO Council.

#5. Active role for and clear description of Council liaison to PDP WGs
Agree with the recommendation. If possible, the Council liaison should participate in the preparatory WG Chair meetings, as well as at the WG meetings as such. One role of the Council liaison should be to remind all about the schedule and timelines.

#6. Document expectations for WG leaders that outlines role & responsibilities as well as minimum skills / expertise required
Depends on the topic of the WG. My suggestion is to create some simple general description and then one more specific for each new WG.

4.3 Complexity of Subject Matter – Incremental Improvements

#7. Creation of Cooperative Teams
The risk with this suggestion is that some WG members may find it more easier to be less active and rely upon the support of and reports from Cooperative Teams. Better to use traditional subgroups for different kind of topics.

#8. PDP Plenary or Model PDP
PDP plenary is in fact generally recommendable for PDPs that have worked for some time, in order to summarize the work and result. However, as to newcomers, there should be a specific due date when they have to decided whether or not to active members – again, in order to avoid extension of the WG timeline.

4.4 Consensus Building – Incremental Improvements

#9. Provide further guidance for sections 3.6 (Standard Methodology for decision making)
"Ensure there is clarity around how consensus is established and what tools can be used in that regard". This is indeed needed! And, it should be clear that informal discussions by e-mail among WG members can never be recorded as consensus votes.
 As to 3.7 cases: It should be clear that this can not be used by a WG member to stop the process and work of the WG. A 3.7 appeal process has to go on side by side with the WG normal meetings.

#10. Document positions at the outset
This recommendation should also include WG members, and give the WG chairs a possibility to refer to clear guidelines that there is a specific time limit on each call for each WG member to speak (such as max 5 min's) if they are not formally asked to make a presentation on the topic.

4.5 Role of Council as Manager of the PDP – Incremental Improvements

#11. Enforce deadlines and ensure bite size pieces
Agree!

#12. Notification to Council of changes in work plan
Good suggestion.

#13. Review of Chair(s)
Well, it is in fact even more difficult to replace a WG member.

If #13 is introduced, there should be a #13.b:
"The Council could run an anonymous survey amongst the PDP WG to obtain feedback on the WG members on a regular basis to facilitate their roles as positively active members of the PDP. Similarly, there is no process in place that allows a WG to challenge and/or replace their co-members."

#14. Make better use of existing flexibility in PDP to allow for data gathering, chartering and termination when it is clear that no consensus can be achieved.
No objections to this.

#15. Independent conflict resolution
I agree with the suggestion to have "Council liaison to be proactive in identifying potential issues / challenges that may need mitigation and Council attention".

#16. Criteria for PDP WG Updates
Good suggestion.

#17. Resource reporting for PDP WGs
Must be done in co-operation with ICANN staff.

Further general suggestions:

- Have each agenda clear with a time at the end of each call to wrap up – Decisions, Action Items, Requests

- Look at time schedule on each meeting and keep it visible and online
- Clarify when it is ok to vote on how to proceed vs. adopting group consensus
- If a topic is divided into separate issues – avoid members going back to earlier decisions and reopen
- Empower Chairs and GNSO liaison to remove bad actors – those who malign, make things personal, attack WG members in social media, etc

3.5 Registrar Stakeholder Group

4.1 Working Group Dynamics – Incremental Improvements

#1. Terms of participation for WG members

The RrSG supports outlining commitment expectations for WG members, so long as it doesn't adversely impact the ability to coordinate volunteers and solicit appropriate representation for a PDP based on its charter and specified structure. To ensure volunteers understand what will be asked of them, the RrSG suggests any call for volunteers include some basic commitments/expectations, such as:

- anticipated duration of the PDP, meeting commitment (e.g., weekly meetings of 90 minutes) and expected availability to attend [the majority of] meetings and devote sufficient time to prepare for meetings (e.g., require reading);
- recommended expertise, if necessary, for the subject matter of the PDP;
- knowledge of and respect for the GNSO policy development process; and
- good faith commitment to working to build consensus.

PDP participants should be appropriately trained on how to use ICANN's remote meeting tools, including AdobeConnect, to ensure that PDP work is not disrupted due to user challenges with the technology.

#2. Consider alternatives to open WG model

The RrSG supports balanced representation when it comes to policy development. However, a one-size-fits-all approach to PDP team structures is not appropriate. The RrSG encourages the Council to consider team make up specific to each PDP, just as it does with drafting the scope, to ensure that the team make up is fit for purpose. The RrSG believes the Council's approach to the recent EPDP is a good example of considering the uniqueness of the issue and creating a suitable team model.

#3. Limitations to joining of new members after a certain time

The RrSG cautions the Council to remember that, at times, a PDP participant withdraws due to unforeseen circumstances (e.g., job change, medical issue, etc.). Rather than prohibiting new members in such cases, an expectation should be made of replacement members to come up to speed on what has transpired, understand where consensus has been reached, etc., to avoid any delay in the PDP's work or the rehashing of previously decided issues as a result of the new member's concern.

4.2 WG Leadership – Incremental Improvements

#4. Capture vs. Consensus Playbook

The RrSG supports the idea of a "playbook" or expanded guidelines to assist WG leaders, but we are also concerned that there may be a more systemic issue. Groups seem ever more willing to "lay down on the tracks" for almost any issue. The community as a whole needs to determine a way to replenish its "lake of goodwill" which appears in a severe drought.

#5. Active role for and clear description of Council liaison to PDP WGs

The RrSG supports the idea of the Council liaison having a more active role in PDP WGs, including the ability to actively be involved in leadership/preparatory meetings.

#6. Document expectations for WG leaders that outlines role & responsibilities as well as minimum skills/expertise required

No strong position here.

4.3 Complexity of Subject Matter – Incremental Improvements

#7. Creation of Cooperative Teams

Effective policy development requires participation from the PDP team members, especially active members responsible for responding to calls for consensus. ICANN staff ensures that meetings are recorded with audio recordings and written transcripts available to participants.

The RrSG strongly disagrees that any subset of members should be preparing summaries for "observers / less active" members to utilize in place of the recordings and transcripts. That information is already available without interpretation by others that could alter the message.

#8. PDP Plenary or Model PDP

Since there are no limitations on observers in most PDPs, the RrSG has no objections to allowing individuals to observe to learn more about the subject matter. However, given the demand already placed on PDP leadership and participants, it is an unnecessary burden to ask PDP leadership to hold plenary sessions specifically to educate newcomers on PDP subjects.

Further, ICANN already offers a number of methods of education on the GNSO policy development process. These tools are already available, and the RrSG questions the need for further resources to be developed in that arena.

4.4 Consensus Building – Incremental Improvements

#9. Provide further guidance for sections 3.6 (Standard Methodology for decision making)

The RrSG supports this improvement. We would suggest that Council and staff meet with PDP leadership at the outset to discuss the consensus categories outlined in each PDP charter and acceptable methods for identifying consensus status. We also suggest providing a basic training to PDP team members on the same.

#10. Document positions at the outset

The RrSG generally supports using surveys or other methods to try to find middle ground on issues in order to make the policy development process more efficient. However, the RrSG is concerned that limitations on restating positions be carefully considered and outlined. It would undermine the policy development process to refuse to allow a participant to restate a position during a formal call for consensus when that participant's knowledge and understanding of the full scope of the issue has changed, based on PDP discussions, since the initial survey on middle ground.

4.5 Role of Council as Manager of the PDP – Incremental Improvements

#11. Enforce deadlines and ensure bite size pieces

Adequate, narrow PDP scoping is critical to creating an attainable, realistic work plan. The RrSG recommends that each PDP leadership team engage with Council in a PDP evaluation process following PDP completion. Similar to #16 below, we recommend a standardized summary template be created to provide Council with data to indicate the effectiveness and efficiency the PDP had in achieving its work plan, meeting the scope of the PDP, etc.

#12. Notification to Council of changes in work plan

Not only is it important that PDP leadership communicate changes to the work plan and the rationale for such changes, but both the PDP leadership and the Council should be sure to

consider the effect the change may have on the totality of the PDP and how do accommodate for the changes. Continually extending a PDP because of work plan changes isn't acceptable. Further, if work plan changes are necessitated by challenges with the PDP scope, the Council should consider whether the original scope was appropriate and, if not, review the scope for necessary changes in order to ensure the PDP accomplishes the necessary goal(s).

#13. Review of Chair(s)

The RrSG is concerned that an anonymous survey could easily be gamed or abused. Instead of an anonymous survey, the RrSG suggests using the monthly reporting (comparing performance to the work plan) in #16 as a better means to ascertain if potential issues exist. Council would then be able to speak with the PDP leadership to determine what has gone off track and why.

#14. Make better use of existing flexibility in PDP to allow for data gathering, chartering and termination when it is clear that no consensus can be achieved.

Data and metrics are vitally important and should be a stand-alone item, instead of being lumped with chartering and termination. The DMPM WG made the following observations in its Final Report, which seem still relevant today (see pages 12 & 13, https://gnso.icann.org/sites/default/files/filefield_48169/dmpm-final-09oct15-en [gnso.icann.org].pdf):

- Lacking baseline data hampers the understanding of problems which should be a primary rationale for making changes to policy. Therefore, ensuring relevant baseline data as one element guiding the policy process is critical and should be mandated by WGs.
- ... ideally, data gathering and analysis should occur prior to and/or while scoping the issue with the policy development process to follow. Note however, at the working group phase, a group should not be limited in seeking further data and metrics should additional analysis be required, especially when new forms of data may become available.
- When a WG makes recommendations, it should include a policy impact assessment, and recommend suitable metrics to measure the impact.
- Specifically, implementation of Consensus Policies should ensure post- implementation data is collected to analyze whether or not policy goals are achieved using defined metrics.

The RrSG, however, also believes that it is important to ensure that WGs do not engage in data gathering exercises for the sake of gathering data. Data gathering should not be used as a fishing expedition. We are concerned, for example, that some in the RPM PDP have used the "date gathering" requirement as an exercise to try to either 1) delay the progress or the group or 2) test hypotheses that have yet to have any supporting detail. In other words, a data gathering exercise should not be used to test academic or philosophical theories, but rather should be used only where there is at least some evidence or reliable anecdotal data that support the notion of a more comprehensive data collection exercise.

#15. Independent conflict resolution

Possible implementation: ICANN org put out a call for expressions of interests seeking volunteer mediators to form a standing panel that could be called upon by PDP WGs if and when needed.

#16. Criteria for PDP WG Updates

The RrSG encourages the Council to set the parameters (e.g., timing, content) for PDP WG updates to ensure reporting provides the Council with the information needed to *effectively* management the policy development process. For example, request monthly data that indicates: (a) which issues contained in the scope are complete and which are not; (b) whether or not the PDP is on track to the work plan; (c) identify roadblocks causing the PDP to miss work plan deadlines; (d) identify resource concerns. Providing such regular reporting will allow the Council to more effectively manage policy development, evaluate timelines and issues, and ensure overall policy work is efficient and effective.

#17. Resource reporting for PDP WGs

The RrSG understands that ICANN has not done any sort of resourcing data collection or analysis in the past, but that is expected from the EPDP. The RrSG encourages such reporting and analysis. In order for the Council to effectively prioritize policy development work, one component it needs to understand is the resourcing efforts involved.

Further general comments/suggestions:

- The RrSG asks that Council consider the limitations of the PDP process, and its utility in making *decisions*, versus finding *compromise*.
- The PDP excels at identifying issues, convening diverse stakeholders and perspectives, and conducting an analysis of potential solutions. The PDP fails, however, when it is tasked with an either-or proposition, where the implications and views are known and well-established, and where the solutions are not suited for private contracts (unenforceable). In these situations, the Council should prevent SGs and Cs from proposing or initiating PDPs, and instead look for other avenues to advance the work.
- The RrSG encourages the Council to consider how to determine the right timing for policy development. For example, at times policy development has begun while technical analysis may have been the more appropriate first step (e.g., IRTP-C (Change of Registrant), Across Field Validation (AFAV)). We encourage the Council to consider what issues or information are necessary prior to policy development, and engage those avenues first to ensure policy development is as effective as possible. In addition, there have been times when multiple PDPs are underway and competing for resources. Sometimes PDPs are working on similar issues but working separately and are, therefore, somewhat out of alignment. We encourage the Council to consider competing resources, timing, etc., to ensure that policy development is getting the attention it deserves, is adequately resourced, and is aligned with other ICANN community work to avoid duplication of efforts or competing results.

3.6 Intellectual Property Constituency

Comment of the Intellectual Property Constituency on the "GNSO Policy Development Process 3.0" document August 16, 2018

The Intellectual Property Constituency (IPC) appreciates the opportunity to comment on "GNSO Policy Development Process 3.0: How to increase the effectiveness and efficiency of the GNSO Policy Development Process." The IPC applauds the ongoing Council effort to identify and resolve concerns relating to, and improve the functioning of, the consensus-based policy development process central to ICANN governance and decision-making. In the spirit of the suggested improvements, the IPC offers the following comments.

4.1 Working Group Dynamics – Incremental Improvements

#1. Terms of Participation for WG members.

The IPC supports the concept of "Terms of Participation" for Working Group members. It is apparent that the "social contract" implicit in PDP Working Group participation needs to be made explicit. The IPC suggests that the Terms should expressly confirm the commitment of each Working Group participant to the proposed timeline for the Working Group. Basic information regarding the expected timeline, the expected topics, and the timelines for each decision or set of decisions should be provided to the extent possible. This can also help potential WG members decide whether they can keep up with the active work and timelines.

The Terms need to emphasize that PDP participants must look beyond the parochial concerns and positions of their sector or ICANN structure and actively, collaboratively, and constructively seek out solutions that balance the concerns of various sectors and structures. This cannot be left to the Working Group and subgroup chairs alone, especially where some chairs, while meeting their responsibility for being objective, may be strongly identified with a particular viewpoint or constituency. Worse, there may be some chairs who are in fact struggling with or even ignoring their responsibility for being objective. (See IPC responses to Items #6 and 12 below.)

#2. Consider alternatives to open WG model.

The IPC supports this suggestion, with some reservations. This could work, depending on the topic – particularly where the problem to be solved relates to a topic identified by specific groups or sectors rather than a broad issue affecting Internet users in general.

Care should be taken not to shut out participants who are not "ICANN insiders."

Another danger is that the proportions in the structure of the GNSO Council will also be used to set the proportions for Working Groups, for which they were not intended. This has the "knock-on" effect of setting and codifying relative levels of influence and importance for the concerns of different stakeholder types.

Again, an important reason to limit participation is to create groups where everyone is pulling their weight and making important contributions to the work of the group. This could include a process where participants who are not active are moved to observer status and, depending on the stage of the group's work, cannot re-enter as a participant. This can be used to combat a problem related to "social loafing" or "free loading" – participants who are not participating but only waiting to add their "vote" to consensus. This makes a mockery of consensus building, since these "participants" have not done any of the work to build consensus, yet could affect the ultimate outcome with their "vote." Further, the notion of "voting" to determine consensus is clearly inconsistent with the GNSO WG Guidelines, which consider consensus to be qualitative rather than quantitative.

#3. Limitations to joining of new members after a certain time.

The IPC supports this suggestion. If this is implemented, it should provide a "pathway to participation" for observers who after a while decide to become active/full members, and who are able to fully commit to the group's Terms of Participation.

This suggestion relates strongly to concerns about "discussed and decided" topics being re-opened, which tends to result in unnecessary extension in the WG timeframe and may even lead to "consensus by exhaustion." This issue overlaps with the issue of inactive participants noted above. It should be clear in the PDP WG Guidelines and the WG charter that re-opening a topic that the WG has formally closed or decided upon must be the result of a majority decision in the WG, and/or recommendation/approval from the GNSO Council.

4.2 WG Leadership – Incremental Improvements

#4. Capture vs. Consensus Playbook.

The IPC supports this suggestion. With regard to capture and counterproductive behavior, the IPC suggests that the Council review the "Simple Sabotage Field Manual" (https://www.cia.gov/news-information/featured-story-archive/2012-featured-storyarchive/CleanedUOSSSimpleSabotage_sm.pdf). This document, though prepared long ago and under different circumstances, presciently identifies numerous behaviors that undermine Working Group progress and effectiveness.

Tactics and scripts for moving toward consensus should be laid out. This also suggests that ongoing training, workshops and even "support groups" for WG and subgroup

leaders needs to be revisited and refined.

On a related topic, the WG Chairs need to be more empowered to actively manage the mailing lists, adherence to agendas and reining in of off-topic, repetitive or filibustering "interventions" from members. There is a tendency to allow all members to "speak their piece" regardless of the quality of that contribution or the likelihood of disruption to the work of the group. The participants need to acknowledge and accept (perhaps explicitly through the Terms of Participation?) from the outset that the Chairs will be taking a firmer hand in this regard, to minimize the likelihood that participants take it personally, feel they are being singled out or even "silenced" (usually said by those who are the least silent…).

#5. Active role for and clear description of Council liaison to PDP WGs.

The IPC supports this recommendation. If possible, the Council liaison should participate in the preparatory WG Chair meetings, as well as at the WG meetings as such. One role of the Council liaison should be to remind all about the schedule and timelines, the expected Standards of Behavior and the consensus building methodology. Where necessary the liaison may need to act as a "referee." In addition, the liaisons should feel free to relay concerns about the effectiveness of the WG to the GNSO Council. Since the GNSO Council is the overall manager of the policy development process, the liaison should be empowered to manage the policy development process and working methods in a particular group.

#6. Document expectations for WG leaders that outlines role & responsibilities as well as minimum skills / expertise required.

The IPC supports this suggestion. There should be a "generic" document that covers these topics for any WG, supplemented by another more specific document keyed to the topics and issues in each new WG.

Chair neutrality (or the lack thereof) is a specific concern that needs to be addressed head-on. Neutrality needs to be specifically emphasized in documenting expectations of Working Group chairs, and reinforced in the charter of all PDPs going forward. When a Chair is not neutral, it is highly corrosive to the process and undermines the legitimacy of the outcomes. This need to be managed throughout the lifecycle of the WG, with clearly defined roles for the Liaison and the Council, and policy Staff as well. It is inappropriate to put the responsibility of managing Chair neutrality on the Working Group members, for several reasons: since the members are not neutral, nor expected to be, their motives will often be questioned, particularly by groups that may be the beneficiaries of a lack of neutrality. This can then polarize the participants, taking the group off course and further degrading the functioning of the group.

4.3 Complexity of Subject Matter – Incremental Improvements

#7. Creation of Cooperative Teams.

The IPC expresses reservations regarding this recommendation. Perhaps the concept of a "Cooperative Team" needs to be better described. As written, the risk with this suggestion is that some WG members may find it easier to be less active and rely upon the support of and reports from Cooperative Teams. Concurrently, it adds to the burden of the most active participants – those who least need "extra work."

#8. PDP Plenary or Model PDP.

These are two rather different suggestions, both of which the IPC supports. The PDP plenary is, in many ways, already in use, at least when the PDP first commences its work. It may also be useful in PDPs that have been active for some time, in order to summarize the work and results to date.
A "model PDP" (along the lines of "model UN"), as well as PDP workshops and other training, onboarding and "capacity building" programs, should be given serious consideration. The development of knowledgeable participants needs to be supported in a comprehensive manner.

4.4 Consensus Building – Incremental Improvements

#9. Provide further guidance for sections 3.6 (Standard Methodology for decision making).

"Ensure there is clarity around how consensus is established and what tools can be used in that regard." This is most certainly needed. Among other things, it should be clear that informal discussions by e-mail among WG members can never be considered consensus calls. Similarly, attempts by WG members to "call consensus" prematurely (and always in favor of their own positions…) need to be actively discouraged. The solution to these is the same – WG leadership needs to be more proactive in setting consensus call and in rebuffing attempts to call consensus prematurely.
As to 3.7 cases: It should be clear that this process cannot be used by a WG member to stop the process and work of the WG. A 3.7 appeal process must proceed in parallel with the WG's regular business and normal meetings. Otherwise, the 3.7 process becomes a form of gaming, and even a method by which dissenting participants can "punish" the rest of the Working Group and stave off consensus that does not favor their positions.

#10. Document positions at the outset.

This recommendation can help define the "playing field" and "goalposts" at each end of the field, providing an express starting point for exploring compromise and consensus. This should include both the positions of WG members and their stakeholder structures,

as well as positions or options that are not represented in the WG but which should be put on the table.

This can also be used to identify a minimum dataset of information and data that all WG members need to have to participate effectively. This may become clear where stated positions reflect a lack of knowledge, information or understanding of the subject matter.

WG leaders – and staff – should feel free to identify and take action on these concerns at the outset, or else they will fester throughout the work of the group.

4.5 Role of Council as Manager of the PDP – Incremental Improvements

#11. Enforce deadlines and ensure bite-size pieces.

The IPC supports this suggestion. This relates to the larger issue of effective project management and project management tools. The GNSO and ICANN need to look specifically at more formal and better developed set of project management skills and tools. WG leadership is often forced to invent project management tools on an ad hoc basis or to turn to very basic project management tools (like work plans and timelines). Project Management is really a defined set of skills and approaches. Software development and other business processes often use very well-developed approaches and tools. GNSO WGs are stuck at a kindergarten level in this regard. This is also influenced by an inconsistent level of skill and experience on the part of staff, usually based on their experience prior to ICANN or on picking up skills on a "catch as catch can" basis (since ICANN does not seem to provide training or tools on a consistent basis). A well-developed and consistent "tool kit" (in both the literal sense and the larger sense of shared skills) would be of great assistance to WG leaders, ICANN staff and participants alike.

#12. Notification to Council of changes in work plan.

The IPC supports this recommendation.

#13. Review of Chair(s).

The IPC supports this recommendation. As noted above, there is precious little oversight over chair performance and the WG members can hardly be expected to evaluate and police chairs on members' own initiative. Conversely, this can be used to identify highly effective chairs, to provide constructive criticism in a structured manner and to identify and re-use "good practices" by particular chairs.

The issue of chair neutrality – or the lack thereof – cannot be overemphasized. Although discussed in response to #6 above, the IPC repeats its response in full here:

Chair neutrality (or the lack thereof) is a specific concern that needs to be addressed head-on. Neutrality needs to be specifically emphasized in documenting expectations of Working Group chairs, and reinforced in the charter of all PDPs going forward. When a Chair is not neutral, it is highly corrosive to the process and undermines the legitimacy of the outcomes. This need to be managed throughout the lifecycle of the WG, with clearly defined roles for the Liaison and the Council, and policy Staff as well. It is inappropriate to put the responsibility of managing Chair neutrality on the Working Group members, for several reasons: since the members are not neutral, nor expected to be, their motives will often be questioned, particularly by groups that may be the beneficiaries of a lack of neutrality. This can then polarize the participants, taking the group off course and further degrading the functioning of the group.

Removing a WG Chair is a difficult and uncertain process. While it should never be easy, it should be more clearly defined and should be part of a larger system of Chair review and (if necessary) various levels of private and public "discipline," which would typically precede (and hopefully obviate the need for) the removal of Chair.
The IPC notes that it is even more difficult to remove or replace a Working Group member. Review of WG members and their contributions, lack of contributions and negative contributions should also be considered. Among other things, the Council could run an anonymous survey amongst the PDP WG members to obtain feedback on the WG members on a regular basis to facilitate their roles as active and positive members of the PDP. Similarly, there is no process in place that allows a WG to challenge and/or replace their fellow members. This should also be considered.

#14. Make better use of existing flexibility in PDP to allow for data gathering, chartering and termination when it is clear that no consensus can be achieved.

The IPC supports this suggestion, though it needs to be better developed, and separated into different suggestions as needed. An overall improvement in developing data, using metrics, establishing key performance indicators, etc. would be most welcome. Separately, more active and creative management will be helpful; in some cases, the PDP can take on a mindless "momentum" that masks a lack of real progress but which is not being actively managed by the WG leadership or the Council. Such WGs may need to be shaken up, redirected or, in extreme cases, simply put out of their misery.

#15. Independent conflict resolution.

As indicated previously, the IPC supports the suggestion for "Council liaison to be proactive in identifying potential issues / challenges that may need mitigation and Council attention". The Council and/or the liaison should then be able to turn to independent conflict resolution or mediation experts, especially where there is a real or perceived lack of neutrality. A perceived lack of neutrality can even be used by disruptive members to "game" or further disrupt the WG.

Related to this, there needs to be improved processes for conflict resolution; the rules and standards for participation and for violating norms need to be clarified.

#16. Criteria for PDP WG Updates.

The IPC supports this suggestion.

#17. Resource reporting for PDP WGs.

The IPC supports this suggestion, but notes that it must be done in cooperation with ICANN staff.

Further General Suggestions of the IPC:

a. The agenda should include time for wrapping up and clearly identifying "Decisions, Action Items, Requests" (DAIRs).
b. Meetings should follow a better defined and articulated time schedule. This can be noted on the agenda. In any event, it should be visible to participants and enforced by the Chairs. Where further time is needed, this should be an express decision of the Chairs.
c. Clarify when (if ever) it is acceptable to vote on how to proceed (e.g., on processes but not recommendations) vs. requiring consensus.
d. For reemphasis: If a topic is divided into separate issues, avoid members going back to earlier decisions to reopen these.
e. For reemphasis: Empower Chairs and GNSO liaison to remove bad actors –those who malign, make things personal, attack WG members in social media,etc.
f. For reemphasis: Confront the issue of questionable Chair neutrality. One specific suggestion – consider limiting when, how and often a Chair may intervene in a "personal capacity" in a non-neutral manner over the life span of the WG. As a corollary, it should be made clear that when a Chair does take a non-neutral position, they must expressly state that they are speaking in their "personal capacity." Anything less leverages the power and position of the Chair to advance a partisan position. To be sure, this needs to be distinguished from the Chair's efforts to build consensus by identifying positions that are "gaining traction" or otherwise appear to be "consensus in the making."
g. Consider defining specific restrictions or other actions with regard to members that are identified by misbehavior, and/or abusive use of policies, etc. This includes participants who have exhibited this behavior in multiple Working Groups – particularly where the WGs are running simultaneously. For such offenders, restrictions could include being restricted from participating in Working Groups for (at least) one year.

Respectfully Submitted, Intellectual Property Constituency