gTLD Registry Constituency Comments re. GNSO Structure Recommendations

14 August 2008

The RyC thanks ICANN Policy Staff for the invitation to provide input regarding the proposals set forth in the report of the GNSO Council Restructuring Working Group (WG) and accepted by the ICANN Board on 31 July 2008.

The most important point that the RyC wants to make is that the GNSO structure recommendations should be considered as a total package and not as a set of individual recommendations. As further discussed below, there are lots of interdependencies between the various elements of the recommendations. The one exception to this that we acknowledge is the issue of Council chair selection; regardless what chair selection process is adopted, we believe that the impact on the proposed GNSO structure will not be significantly impacted. Moreover, we believe that the overall structure recommendations can be approved even if resolution of the chair selection issue is delayed.

Before commenting on the particular areas noted in the Board's considerations, we would like to make the following general comments:
- The proposals presented in the WG report were the result of many hours of intense effort on the part of representatives from all of the GNSO constituencies, from the Nominating Committee appointees and from two ICANN advisory committees.
- In the case of the RyC, there was diligent effort to collaborate with the full constituency membership throughout the one-month process. The constituency was regularly kept informed of WG activities and given the opportunity to provide input via its representative.
- Like all other groups represented in the WG, the proposals in the report do not include everything the RyC wanted, but we believe that the overall solution is one that contains reasonable compromises by all and results in a structure that a large majority, if not all, can support. (For more detail in this regard, please see the comments included in the WG report from Chuck Gomes, the RyC representative on the WG.)
- At this stage, some may want to change certain details of the recommended structure, but we caution that that should be done with extreme caution. A change in one area could negatively impact a compromise that was reached in another area. The total package of proposals should be looked at as a whole because compromises made in one area are likely dependent on compromises made in other areas. Simply stated, any effort to make significant changes in one area could derail the total level of support achieved and undo the effective collaborative effort that occurred.
- If all of the GNSO improvement recommendations of the BGC WG are implemented successfully, then the significance of voting in the GNSO should significantly diminish. Moreover, at the working group level where the real policy development work will occur, voting may not happen at all. The GNSO

structure proposed by the consensus WG will only apply at the Council level and, if the Council indeed becomes a policy management body instead of a legislative body as recommended by the BGC WG, then all the focus on voting will eventually become much less important.

Regarding the particular areas noted in the Board's considerations our comments follow.

Implications regarding the selection of Board seats

This is an area where the RyC compromised. We preferred an approach where the full Council always voted on director seats with the restriction that the two directors come from different houses. We also proposed that the changes proposed take effect when Board seat 14 expires so as to not impact current directors. But we believe that serious efforts to reach a compromise were made by all parties and we think that the compromise reached should be respected.

The proposed voting method should be very easy to implement.

Implications of new voting thresholds

The details of the voting thresholds were critical components of the overall structure proposed. No group got everything they wanted and all sides made compromises. Consistent with one the general comments above, to change any of the thresholds now could have a domino effect on other thresholds.

It is our understanding that the WG fully recognized that the topic of voting thresholds is one that rightfully would be considered in the future task of revising the PDP, but it is critical to recognize that the ability for participants to support other elements of the overall structure recommendations was dependent on the specific voting thresholds. Therefore, it was essential for the WG to focus on specific thresholds in conjunction with the GNSO structure work.

In essence, what the WG did was to jump start the PDP revision task that will be tackled in the near future. Because of the vast experience the GNSO has had with the existing PDP, WG participants were well aware of the issues regarding different voting thresholds and took those into careful consideration. To cite one example of the thought that went into voting thresholds, all WG participants supported the distinction between 'in scope' policy development efforts and 'out of scope' efforts and, hence, a higher threshold was recommended for 'out of scope' efforts.

Two key principles that WG participants supported were: 1) no one stakeholder group should be able to veto a policy decision; 2) a true consensus policy recommendation should have the support of more than a meager simple majority. As best as possible, the thresholds apply these two principles.

In every case, as can be seen in the WG report, the corresponding current thresholds were cited so a comparison is already available in the report.

Implications regarding the future roles of Nominating Committee appointees

This particular issue turned out to be a fairly divisive one in the WG and hence one that resulted in compromises by all participants. It is true that in cases where a simple majority is required in a house that the Nominating Committee appointee could make the deciding vote but the following should be noted in that regard: 1) under the current model, Nominating Committee appointees can cast deciding votes; 2) it should not be assumed, especially as the GNSO expands its constituencies, that stakeholder groups will always vote in blocks, something that has not always happened even in the current model.

Potential effects of various stakeholder representation options

The GNSO structure recommendations from the consensus WG should not have any direct impact on stakeholder representation options because it assumes the same four stakeholder groups as proposed by the BGC WG. The most important factor in terms of stakeholder representation options will be the implementation of the BGC WG recommendations related to constituency and stakeholder group openness, a process that is still yet to happen. It seems essential that that process will need to focus on how different constituencies within each stakeholder group will be represented within the applicable stakeholder group and then at the Council level. This would have needed to happen whatever GNSO structure was adopted, so the proposed bicameral voting structure does not add any new burden in that regard. In fact, it may provide some added flexibility if the number of Council representatives per stakeholder group is larger than the four as recommended by the BGC WG.

At the same time, larger numbers of representatives on the Council might have the following negative effects:
- To the extent that a stakeholder group has difficulty finding qualified individuals who are willing and have the time to serve as a Council representative, it might be difficult to fill all seats.
- To the extent that geographical diversity requirements are rigidly defined (e.g., all representatives have to be from different regions unless the number of representatives are more than five), increasing the number of Council representatives per stakeholder group could make it hard to fill all seats. The RyC could especially have a problem in this regard because of the fact that there are currently no registries in Africa or South America; that may change in the future but it will probably be gradual and, in the case of new registries, they are often staffed thinly and very focused on getting their business up and running so it is difficult to assign a person to serve in a time consuming Council seat.
- Council efficiency could be reduced if the size of the Council is too large.

Clarity and openness of the proposed Council structure

The RyC does not believe that the bicameral voting structure is any harder to understand than the current weighted voting system. Moreover, many governments of the world have bicameral governance bodies so that concept should be familiar to many.

Openness to formation and participation of new constituency groups will largely happen at the stakeholder level, not the Council level. The key here will be to ensure that procedures and policies are implemented that adequately allow new constituencies to participate on a proportionate level with existing constituencies, including in the process for selecting Council representatives. It will be especially important that procedures are implemented that allow for the full integration of new constituencies once they are formed and operational.

As noted in the BGC WG recommendations, an important qualification for both existing and new constituencies will be to demonstrate that they are representative of the communities they claim to represent. The GNSO structure WG made one proposal in this regard and this issue will need to be developed further in the implementation of the BGC WG recommendation regarding constituencies.

Transition issues

Any changes to GNSO structure will require transition planning and implementation. This is true of the BGC WG proposed structure, the GNSO consensus WG recommended structure and any others except possibly the status quo.

Work has already been done to develop a high level implementation plan for GNSO improvements. Once a final decision is made regarding GNSO structure, the implementation plan will need to be finalized, approved by the Board and implemented.

A key part of the work outlined in the implementation plan will need to be transition. This will require a significant amount of work and hopefully will be done by a broad spectrum of GNSO participants in the coming months. This is not a task that should be done by the GNSO structure WG, by the Council or by ICANN staff but rather one that must be done by the full GNSO community. The GNSO community is made up of a large number of stakeholders with lots of varied experience and expertise so the RyC is confident that an orderly and predictable transition plan can be developed and implemented. The sooner we are able to move forward on it, the sooner we can make it happen.

Conclusion

The RyC wants to close by repeating the following key points:
1. A very successful collaborative effort was achieved by the GNSO Structure Consensus WG, one that is a good sign of things to come as we move to a rough consensus working group model. Therefore, it is very important to respect the work that was done.

2. The GNSO structure recommendations should be viewed as a total package and any changes in essential elements should be considered with great caution.