

Request to ICANN Board to extend the comment period on the structural aspects of GNSO reform until 25 April 2008

From: The Commercial and Business Users, the Intellectual Property, and the Internet Service and Connection Providers constituencies.

Background

The Board received on 15 February 2008 a report from its own governance committee. The report is out for 30 days comment ending 25 March and the Board is aiming to take a decision at the June 27 Board meeting in Paris. The report is almost unchanged from previous versions and includes a radical structural change of the GNSO Council.

The proposal has two key objectives:

- Effective policy development
- Maximizing stakeholders' participation.

The proposal maintains the dominance of the registries and registrars (the contract parties), and diminishes the influence of commercial interests. The proposal is to group commercial interests together (BC, IPC, ISP) and to expand the non-commercial interests into a broader group. The proposed voting is: registrars 4, registries 4, commercial interests 4, non-commercial interests 4, nominating committee 3 (subject to forthcoming review). This represents a substantial diminution of the voting power of commercial interests, from 33% (9 of 27) today, to 21% (4 of 19). However, because the report favours a working group model for policy development, it assumes that Council-level voting as a consequence will be less important than today. The report has two minority reports and is open to alternative structural proposals.

Weakness in the existing structural proposal

The report's proposals have three key defects, which will undermine the stated goals of improving policy development and maximizing stakeholder participation: Moreover, it would effectively disenfranchise the same companies who invested a trillion dollars to bring the Internet to its first billion users. The weaknesses are:

1. **Incentive.** Contract parties have no incentive to make policy development more effective because the model still allows for intentional delay to improvement by the contract parties
2. **Credibility.** Proposed reduction in commercial interests representation will kill the incentive of commercial interests to participate and this calls ICANN's external credibility into question.
3. **Oversight.** ICANN's oversight and public interest responsibilities are being compromised meaning that accusations that ICANN is a trade association benefiting the contract parties start to gain credibility.

Response of constituencies

The BGC-WG's rejection of the various counter-proposals from our three constituencies was announced February 3, just before the New Delhi meeting. Beginning in New Delhi, and continuing since then, our constituencies have been working diligently, both internally and in conjunction with each other and reaching out to other entities within ICANN, on a new structural proposal that will better fulfil the objectives of the BGC report. We have made considerable progress but need more time to refine the proposal and to seek input and support for it from others.

Request to the ICANN Board

1. We recommend the Board proceed after 25 March with implementation of the administrative reforms with full stakeholder participation.

2. We request an extension to the comment period of a further 30 days until 25 April to allow time for a broad-based proposal ideally from the entire commercial interests and public interests community to be made to the Board on an alternative structure which avoids the defects above. An outline of this proposal follows. It has been endorsed in concept by our three constituencies.

Vision and Objectives

"ICANN is an experiment in the balancing of multiple stakeholder interests in policy about the implementation, operation and use of the Domain Name System and the address spaces of the Internet" (Vint Cerf, Looking Towards the Future, Oct. 2007). These stakeholders can be grouped as follows:

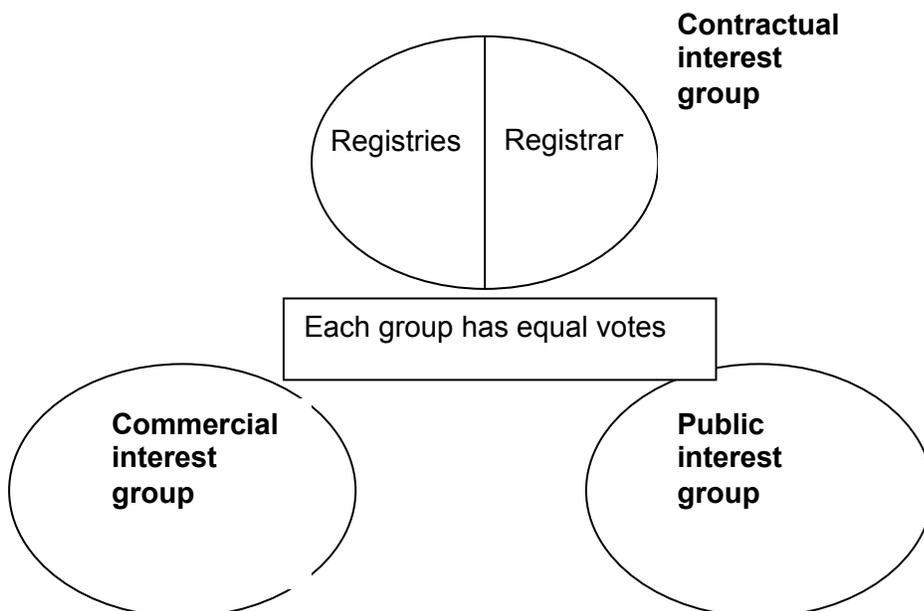
- a) registries and registrars ie the contractual interested parties
- b) commercial interests
- c) public interests.

Commercial interests seek a domain name structure that ensures the Internet is a safe place to do business both for business and users. We therefore need to be able to work within ICANN to correct market changes that deviate from that objective. That correction means that the influence of users must be greater than the influence of the ICANN contract parties. Only then, do the contract parties have an incentive to reach workable compromises in the policy-developing working groups.

Alternative structural proposal for GNSO Council

A parity triangle of equal representation for three umbrella interest groups is proposed through which all stakeholders will be represented:

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|---|---------|
| 1. Contractual interest (registries and registrars) | x votes |
| 2. Commercial interest (BC, IPC, ISPCP) | x votes |
| 3. Public interest (NCUC, At-large) | x votes |



Each of the groups would self-organize as it sees fit, within broad parameters. Each group would be left open to expansion from other parties who fit the profile.

The current constituencies that expect to participate in the Commercial Interest Group have prepared an administrative profile which is now under discussion within each constituency and at a cross-constituency level.

The Contractual Interest group could, if desired or if legally required, include a firewall with respect to issues that are not appropriate for joint action by registrars and registries.

Regarding the Public Interest Group, the BGC-WG recognized that it “must go far beyond the membership of the current Non-Commercial Users Constituency.” ICANN has invested substantially in developing an At-large structure to represent users. Now that structure is nearing completion it is time that it got voting seats at the table of the GNSO Council. A broad group representing Public Interests incorporating the current NCUC and importantly delegates from the At-large; and other interests such as consumer groups and universities is the way forward.

Such a tri-partite structure has four key advantages:

1. **WGs.** It ensures co-operation in the working groups
2. **Oversight.** It restores ICANN’s oversight role
3. **At-large.** It brings At-large to the table
4. **JPA.** It helps position ICANN for eventual independence from the US government.

Notes

A) The future need for nominating committee appointees is unclear. In the new proposed structure there is no longer a vote-related “balancing” role. The need for expert advice, which has been to a large extent the actual benefit brought to the Council by nom com appointees remains, and is achievable by direct appointments within the proposed working group model.

B) We prefer not to propose an exact voting structure now as more outreach is needed. However given the ambition of the existing proposal for a 19 member Council, a new structure giving 6 votes to the three new groups has the merit of dividing easily both into 3 (commercial interest), and 2 (contract parties). This would result in an 18 member Council not including any representation from the nominating committee.

C) The re-balancing of user and contract parties is not new. It reflects the original situation at ICANN’s inception when policy development was quicker and corrects the change made in the last ICANN reform process and embodied in weighted voting. The proposal above however goes much further in streamlining commercial interests and bringing ALAC to the table. It is a structure fit for the future.