

Position Paper: BRG principles for GNSO reform

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1. Executive summary

This paper provides some historical perspective, analyses current issues and suggests seven principles upon which to base a proposal for GNSO reform. There are three key issues.

- The current structure of the GNSO was a compromise and its voting bloc balances have no objective rationale.
- The current structure embeds the potential for conflicts of interest.
- The current structure disenfranchises one-third of all new registries and inadequately represents economically significant not-for-profit interests.

2. Background and perspectives

Background

The Generic Names Supporting Organization (GNSO) describes itself as the body within ICANN which “*fashions (and over time, recommends changes to) policies for generic top-level domains.*” It is ICANN’s policy development body whose past and future work will have a direct impact on Registries via contracts and other pathways. Its Council comprises 23 members: 18 are elected by four *Stakeholder Groups*, 3 are appointed and 2 are observers. Two of the Stakeholder Groups are sub-divided into *Constituencies*. For more see [here](#).

After an agreed delay, the Board Structural Improvements Committee launched in April 2014 a review of the GNSO. A previous GNSO review, which led to the current GNSO structure, began in 2008. Its recommendations were finally implemented by 2012. That review led to fundamental structural change in the GNSO. With the advent of 1000s of new top-level domain names, 400 of which are .brand-type, there is a need for a second wave of fundamental reform in the ICANN policy-development process to reflect ICANN’s new stakeholders.

Objective

The Brand Registry Group (BRG) is keen to be a part of ICANN's future policy-development framework with voting powers commensurate with its representative capacity. We seek to contribute manpower and thought-leadership on behalf of .brand registries to the ICANN policy-development process. This contribution includes the ability to participate in the GNSO.

Perspectives

ICANN Board

In its [resolution](#) of 28 September 2013 the ICANN Board stated:

"The expansion of the TLD space has increased the number and variety of stakeholders participating in GNSO policy making and a review needs to take place on schedule to examine whether the current model meets the needs of a new generation of stakeholders."

*GNSO Structure is unlikely to accommodate the anticipated new stream of stakeholders resulting from the expansion of the TLD space. The GNSO Review will be an important vehicle for considering and addressing this issue. **The unbalance that is already occurring needs to be addressed by the GNSO Review.**"*

Governments

In discussions with the Government Advisory Committee, there was broad agreement that: *"Post delegation of thousands of new TLDs the entire GNSO structure is no longer fit for purpose."*

BRG

The BRG is concerned at what may be an overly inward-looking 2014 GNSO review. The new domain name programme is the start of a fundamental shift in the structure of the Internet. It will bring into ICANN thousands of new stakeholders previously unengaged – not the least of these are some of the world's top businesses who will now have a web presence in their own brand name. The turnover of just the current members of the BRG is some \$1050 billion. Contrast that with the turnover of the current largest ICANN stakeholder (Verisign) which is some \$874 million (0.09%).

Given the fundamental shift in ICANN stakeholders, the upcoming GNSO reform needs to be clear about the difference between ICANN policy development and today's GNSO.

The GNSO reform of 2014 needs to consider three key questions:

- How do we most effectively involve all stakeholders in policy development?
- How do we incorporate new diversity?
- How do we adjust for the new reality of overlapping multiple interests?

3. Issues with the current GNSO structure and principles for reform

3.1. The current Houses structure is no longer relevant

Background

The 2008 GNSO reform created two Houses within the GNSO: the Contracted Party House and the Non-Contracted Party House. Put simply there is a suppliers House and a users House. And those Houses were given equal votes. This was a change from the GNSO of several separate Constituencies. This created a 4-tier structure.

The rationale for the 2008 reform was threefold.

a) Separable interests.

There was a belief that the underlying user groups and supplier groups had separable interests that could be divided into six separable entities (registries, registrars, business interests, intellectual property interests, internet service providers, non-commercial interests).

b) Commonality.

The rationale for the two Houses was that suppliers are impacted economically by policy and may be impacted in the same way: and users are impacted in a variety of ways by policy and may be impacted in the same way.

c) Balance between the Houses.

There was a belief that the interests of users and suppliers should be balanced.

Issues

In 2014, everything has changed. The rationale has changed. Indeed, the current structure creates new conflicts of interest.

a) Separable interests.

While different interests continue, it is no longer true that the separable interests are accurately reflected by the six separable entities (registries, registrars, business interests, intellectual property interests, internet service providers, non-commercial interests). There are two reasons for this.

- Conflicting relationships. There is a complex web of relationships that overlap and conflict within the six groups. A typical .brand registry may be simultaneously: a Registry, a Business Constituency member, an Intellectual Property Constituency member, and have a contractual relationship with other generic registries for back-end services.
- What is commercial? The old division within the users House between commercial and non-commercial is no longer relevant. Just within the 400 .brand registry applicants, some 15 are not-for-profit organisations representing some \$69 billion in annual turnover. Two of these are current BRG members.

b) Commonality.

The commonality assumption was historically questionable.

The commonality of interests within the old groups has changed.

- It was never true that users within each House acted as if they were impacted in the same way by policy. There has often been disagreement between commercial and non-commercial users, and between types of non-commercial user. This has been seen most clearly on issues connected with crime prevention (such as

accurate Whois records and a difference of opinion on the balance of freedom of speech versus crime prevention).

- It is no longer true that Registries are impacted economically by policy in the same way. The 400 .brand Registries will have a different view on many policy issues to the 800 generic Registries. This divide will be most clear where there is a choice between the costs imposed by a policy and the benefits of that policy such as crime prevention. In such a choice, generic registries and brand registries will typically have different opinions on cost versus benefit.

c) Balance between the Houses.

There is no objective reason for the current balance of votes.

- The belief that the interests of users and suppliers should be balanced was predicated not on an external objective reason but on an internal compromise. In the 1999 Names Council a number of groups self-formed. These groups became the Constituencies of the GNSO. These groups in 2008 were charged to agree GNSO reform but they disagreed. The Houses concept was a compromise proposed to overcome this disagreement by severing the link between seats and votes. It was adopted out of expediency.

d) Unnecessary complexity of Council /House /Stakeholder Group /Constituency

- The Houses structure has made voting unnecessarily complex.
- Post 2008, for some groups Council changed from a 2-tier to a 4-tier structure. This has created unnecessary complexity and duplicated meeting agendas.

Principles

1. Diversity and overlapping interests should be recognised and the Houses concept and its dated concept of balance should be abolished.
2. The participating groups within the GNSO should be re-cast.
3. Unnecessary complexity should be removed.

3.2. Economically significant non-commercial interest is under represented

Background

Behind the 2008 reform, there was a belief that non-commercial user interests should be significantly broadened.

Issues

This broadening has not occurred. In 2008 commercial users gave 3 of their 9 seats on Council to create 3 seats for a new type of non-commercial user. Commercial users were concerned that the commonality of user interests was poor. This contrasts with the real world where business and its customers have a common interest in an Internet that is free from crime. But ICANN history shows that often policy to fight crime was resisted by the non-commercial bloc. Commercial users wanted these 3 new seats for economically significant not-for-profit interests such as Treaty organisations, universities and foundations. The BRG applauds the effort of the Not-for-Profit Operational Concerns Constituency (NPOC) which was established in 2010 "*as the home for not-for-profit organizations wishing to have a voice in internet governance*". The BRG notes that NPOC has just 1 of 6 seats on the GNSO Council.

Principles

4. The GNSO should better represent economically significant non-commercial interest.

3.3. New types of registry are not represented

Background

The Registry Stakeholder Group (RySG) charter only allows for membership by individual registries, who may then form interest groups. Voting is proportionate to the volume of second-level registrations. In dialogue with the BRG the RySG has shown no interest to change.

Issues

a) Participation

An interest group within the RySG would duplicate the BRG and require organisations to pay to individually join both the BRG and the RySG; a process of duplication. The BRG consists of global organisations most of which have rationalised their participation in industry fora and which have no appetite to duplicate.

b) Voting

The base for voting in the RySG is not fit for purpose. Currently, voting is proportionate to second-level registrations because the number of second-level registrations is a proxy measure for the economic impact of policy for generic registries. But, registrations are not a proxy measure for the economic impact of policy for one third of all new registries.

Principles

5. New types of Registry should be directly represented on Council in their own right.

3.4. The rationale for appointed members of the Council is problematic

Background

Since the 2008 reform, the GNSO Council has comprised 18 elected members, 2 observers, and 3 members appointed by ICANN's Nominating Committee. (Significantly 7 of the 15 voting members of the Nominating Committee are representatives from the GNSO groups). The rationale for appointing 3 members was to select individuals to "*represent the broad public interest*" and to help with consensus building within Council. Two appointees join each House and vote with the House. The third is intended to advise Council as a whole and does not vote.

Issues

a) Finding individuals to represent the broad public interest and then allocating them to a House is counterintuitive.

b) There is little evidence to suggest that appointed members have added to consensus building within the GNSO Council.

c) Having GNSO representatives within the Nominating Committee (while useful for ICANN Board member selection) creates the potential for a conflict of interest for GNSO council member selection negating the public interest objective.

d) The Nominating Committee also comprises 5 representatives from the At-Large Supporting Organisation (ALAC) who vote for 3 GNSO members. ALAC also has one non-voting member on the GNSO Council itself. This complexity is unnecessary.

Principles

6. A better means of representing the public interest should be created and the selection of GNSO Council members by the Nominating Committee should cease.

3.5 Timelines

Background

The time lag from discussion to final implementation of all proposals of the 2008 reform was three/four years (2011). The proposed time line of the current reform is: a request for proposals in April 2014, a final report in January 2015, and all implementation by February 2016.

Issues

This timeline seems rather generous given the influx of hundreds of new stakeholders.

Principles

7. All recommendations from this review should be implemented by the ICANN annual meeting of October 2015.

4. Conclusion

The BRG intends to air these seven principles with stakeholders in the GNSO to gain support for them. The principles will then inform a Recommendation for a future structure of the GNSO and the seating allocation of the GNSO Council.

Annex

Summary of the seven principles.

Principles for GNSO reform

1. Diversity and overlapping interests should be recognised and the Houses concept and its dated concept of balance should be abolished.
2. The participating groups within the GNSO should be re-cast.
3. Unnecessary complexity should be removed.
4. The GNSO should better represent economically significant non-commercial interest.
5. New types of Registry should be directly represented on Council in their own right.
6. A better means of representing the public interest should be created and the selection of GNSO Council members by the Nominating Committee should cease.
7. All recommendations from this review should be implemented by the ICANN annual meeting of October 2015.

About Us

The Brand Registry Group (BRG) is an independent membership organisation of owners of a top-level domain name that matches their existing brand. The turnover of the respective groups behind these domain names is some \$1050 billion. The BRG is registered by Royal Decree as an international not-for-profit under Belgian law. It represents members' common interests and offers services paid for from fees.