To the members of the ICANN Board of Directors and its Structural Improvements Committee (SIC):

The interim Executive Committee of the Noncommercial Stakeholders Group is pleased to submit a proposed final charter for the Noncommercial Stakeholders Group (NCSG) to replace the current interim charter. The work was done pursuant to the Board resolution (2009.30.07.09) which adopted the interim charter, as follows:

> ... the Board approves each of the Charters of the Registries Stakeholder Group, The Registrars Stakeholder Group, The Commercial Stakeholder Group and the Non-Commercial Stakeholder Group as revised by the Structural Improvements Committee (copies of which accompany this resolution). The Board also approves additional charter elements to ensure the Bylaws principles of transparency, openness, fairness and representativeness and each Stakeholder Group is further directed to incorporate those additional charter elements into its permanent charter document at its earliest opportunity.

We have been working on this revision of the charter since the Seoul meeting and the publication of the NCSG Interim plan. The process has involved extensive consultations within the NCSG as well as informal discussions with members of the SIC. This cover letter is provided to accompany the proposed charter, to provide an executive summary of the charter and the principles on which it is based as well as an explanation of the steps taken in the process of reaching group consensus on the charter. The essential elements of this proposal are:

1. Noncommercial stakeholders join the NCSG directly; the NCSG Executive Committee keeps track of membership and administers voting for GNSO Council seats and the NCSG Chair by the membership as a whole;
2. The NCSG is administered by an annually elected, term-limited Chair, an Executive Committee, a Finance Committee and a Policy Committee;
3. There are three classes of membership: 1) large organizations (which receive 4 votes in an elections), small organizations (which receive 2 votes) and individuals (who receive 1 vote);
4. Interest- Groups are formed within the NCSG. Interest-Groups are self-organized groupings of NCSG members that give voice to specific policy perspectives of multiple stakeholders within the noncommercial stakeholder grouping. Recognized Interest-Groups appoint representatives to the Executive, Finance and Policy committees. Recognition is based on proof of contribution to the NCSG and to the GNSO processes, for example through working group memberships, statements submitted during public comment periods, and Interest-Group

statements during GNSO PDP processes. Prior to recognition, Interest-Groups have observer status in all NCSG committees;

5. An appeals process was created, whereby the NCSG membership can call for a vote to rescind any decision made by the Executive Committee.

**Principles of this charter**

In this section of this cover letter we would like to explain how this plan advances the principles and goals of the GNSO Improvements process. The Board has articulated four "vital principles" that are critical to the GNSO improvements process. They are:

- GNSO policy development activities should become more visible and transparent to a wider range of stakeholders;
- Reforms should enhance the representativeness of the GNSO Council and its SGs;
- Operational changes should help enhance the GNSO's ability to reach consensus on policy positions that enjoy wide support in the ICANN community; and
- GNSO stakeholder representation structures need to be flexible and adaptable.

Further, in its July 30, 2009 resolution creating the new Stakeholder Groups, the ICANN Board encouraged these groups to modify their charters to ensure the Bylaws principles of transparency, openness, fairness and representativeness.

The proposed final NCSG Charter meets these objectives, as further explained below.

*Principle 1: Visibility and transparency.*

NCSG increases visibility and transparency by forming an integrated SG with no constituency silos. When noncommercial stakeholders are fragmented into independent constituencies, each with their own mailing list, administrative structure and representatives, it is very difficult, if not impossible, for an ordinary noncommercial organization to keep track of them all. Noncommercial stakeholders in one constituency cannot fully participate or even follow what is happening in other constituencies. Our proposal integrates most policy deliberation and all key voting processes into a unified structure. This enhances the visibility and transparency of the SG. At the same time, it facilitates the formation of separate "Interest Groups", to reflect specialized, possibly divergent policy perspectives and to better channel members' contributions to the NCSG.

*Principle 2: Representativeness*

Our proposal enhances representation in two ways. By adopting a model of flexible and easy-to-form Interest-Groups as subunits under the NCSG, we allow a far more diverse set of interests and coalitions to form. Every established Interest-Group is given full membership in each of the Executive Committee, Policy Committee and Finance Committee. Most important, through unified voting for GNSO Council seats and the NCSG Chair, our proposal ensures that whoever represents noncommercial stakeholders on the Council has support across the entire membership, not just a bare majority of a small subgroup of the SG.

*Principle 3: Consensus and Fairness*

We believe that the old GNSO constituency structure, which assigns a specific number of Council seats to specific constituencies, is inimical to the formation of consensus. That approach encourages small subgroups to break away and form their "own" constituencies in order to gain a guaranteed Council seat and advance their own views. Once a constituency controls specific Council seats/votes, they have little incentive to seek support from other Council members for their views or their representatives. Our proposal is based on the requirement defined in the BGC report approved by the Board in February 2008 that policy development in the new GNSO will not come from the Council acting as a legislator, but from consensus-based Working Groups. Therefore, we encourage relatively small minorities of the NCSG to form Interest-Groups who can make policy proposals through the NCSG Policy Committee and/or participation in any GNSO Working Group. Additionally whether as members of an Interest-Group or just in a temporary coalition of eight (8) like-minded NCSG members (i.e. without the need to be part of a constituency), NCSG members can initiate bottom-up policy development processes within the SG, which can become GNSO proposals for policy action if they obtain sufficient support within the SG at large.

*Principle 4: Flexibility and Adaptability*

The old constituency model rigidly assigns Council seats and representation to fixed groups of users within a Stakeholder Group that is constantly changing, and where the categories of concern and participation may overlap in numerous ways. Dividing the world up into mutually exclusive categories known as "constituencies" is always bound to exclude those people who don't fit the categories, and at the same time over-represent those who qualify for more than one category. By detaching constituencies from Council seats, and by creating Interest-Groups, our charter allows for the formation of intra-NCSG working groups. NCSG members can join multiple Interest-Groups, which can form and disband more easily without disrupting the entire representational structure of the NCSG. Under the old model, once a constituency is formed, there was a strong

danger that it could be captured or controlled by a small group, especially as membership and participation decline. And as history has shown, once a constituency is formed, it cannot be disbanded but rather breeds a fortress mentality. The NCSG charter proposed here solves this problem by situating Interest-Groups in a larger NCSG membership that cannot be easily captured and by requiring these Interest-Groups to show continued contribution in order to achieve yearly renewal. At the same time it gives these Interest-Groups, when they do form, a platform from which to influence both the NCSG and the GNSO. It should be noted that there is a very low threshold required for forming an applicant Interest-Group (i.e. 10 members and a Statement of Interest). Recognition (required to transition the Interest-Group from observer status to full participation on the NCSG Committees) by the Executive Committee is relatively simple - proof of contribution to the processes of the NCSG and the GNSO, such as active WG participation, responses to public comments and active participation in NCSG Policy development processes. As with any other decision of the Executive committee, a negative decision on a request for recognition can be appealed to the membership.

**Issues resulting from Structural Improvement Committee's review of the Draft**

While the NCSG vote for the charter was ongoing, the SIC did an initial review of the charter and raised several issues. In this section of this cover letter, those issues are addressed as follows:
- Constituency based organization of the NCSG
- Financial resource and expectation regarding ICANN funding
- The possibilities of capture in regard to having or not having Board approved Constituencies

*Constituency Based Organization*

> 1. In the preamble (whereas clause 6) to Board resolution 2009.09.30, the Board expressed an assumption that the NCSG would be organized with constituencies. While this is not a Board mandate, we note that you did address the matter in the draft cover letter as to why constituencies would not be appropriate for the NCSG.[1]

In previous discussions with the Board and the SIC, we presented reasons for moving away from the strict silo-based constituency model, based on the four principles (described above) that formed the basis for the Board's requirements in a Stakeholder Group's Charter. In addition to those principle-based reasons for

---

[1] From letter addressed to Avri Doria from Ray Plzak on 29 May, 2010. It is expected that a copy of the letter exists in the stimprov-comm@icann.org archive as this list was cc'ed on that email as well as Doug Brent and John Jeffrey.

our decision not to center the Non Commercial Stakeholder Group around formal constituencies, we also looked to the examples from other Stakeholder Groups. Currently two Stakeholder Groups (the Registries (RySG) and the Registrars (RrSG) Stakeholder Groups) have been allowed to organize on the basis of direct membership without constituencies. These twoSGs have recognized, and managed to convince the Board and the SIC, that the better structure was one that made the existence of a constituency layer more of a problem than as a solution for effective management and participation. Both the RySG and the RrSG have been very successful in the last year in establishing their new structures. As a converse example, the Commercial Stakeholder Group (CSG) not only wanted to insure that no other constituencies were ever allowed to join their Stakeholder Group without their permission, but sought to maintain all decisions at the constituency level, thus making the Stakeholder Group model more of a hindrance (e.g. competition for resources) than as a means of better coordination, fuller transparency and consensus building.

*Financial resource and expectation regarding ICANN funding*

> 2. The draft proposed charter mentions several times activities that will require support in the form of ICANN staff members; hardware, software, and other resources; and financial. We note that charter makes no assumptions regarding this support nor does it describe any process by which such support could be obtained. We also note that the cover letter does not address this matter either.[2]

The NCSG has no expectation of ICANN Staff resources beyond those allocated to the other GSNO Stakeholder Groups. In fact, our experience during the last year showed that the NCSG was singled out by Staff for particularly disadvantageous treatment, due to the provisional nature of our charter and the possibility of exploiting the fact that 3 of our Council members where selected by the Board (rather than elected bottom-up by the membership[3]). The current proposal to form a  NCSG Financial Committee derived in part from our realization that we sometimes need to work hard to ensure that the NCSG receives the same treatment as other Stakeholder Groups from the Staff.

As to funding, the NCUC in the past succeeded in attracting donations from various foundations and other charitable sources that support its work.  The NCSG plans to do the same. We are also reviewing the possibility of introducing a voluntary contribution from the members who can afford such a contribution.

---

[2] ibid.

[3] It must be noted that the Board appointed council members were welcomed into the NCSG and are seen as our council members by the members of the NCSG. It is only the staff that still treats them as somewhat apart from the group.

To reiterate, the NCSG has no expectation of funding from ICANN beyond the travel and other assistance provided to all Stakeholder Groups in the GNSO.

*The possibility of capture in regard to having or not having Board approved Constituencies*

> 3. Lastly, we are concerned about the possibility of capture of the various elective offices in general and the GNSO Council seats in particular. Our concern arises from the criteria for membership selection (individual membership in particular) and imprecise description of the electorate. It would appear that it would be possible to "flood" the membership rolls and win an election with a small percentage of total number of the electorate. We note that proponents of the constituency model, point to the governance aspect of this model as a means of limiting the risk of capture of all the Council seats. In its current form we do not believe that the board would act favorably on this charter. Therefore, we ask you to examine means that would effectively reduce the possibility of capture.[4]

We maintain that this form of capture cannot occur in the weighted democratic model we are proposing, though we believe it is possible or even likely in a silo-based constituency model. Despite the capture issue having been raised consistently by numerous persons, no one has been able to explain how membership-based voting can be seen as open to capture by particular individuals, especially in a system where large organizational members have weighted voting (no one can seriously be suggesting that a large organization (or indeed, any organization that has to be accountable and responsible to its Board, members and/or stakeholders) will easily be persuaded to join a Stakeholder Group – or vote a particular way – simply to "lock in" certain candidates).

On the other hand, in silo-based constituencies, especially those who have incumbents in Council seats, a small group can completely control a constituency and thus the seat. The very small amount of turnover in some of the smaller historical constituencies clearly illustrates this effect. A splinter group can easily capture a constituency, especially a smaller or more specialized one, and particularly as time passes and the founders lose interest. In a large and diverse Stakeholder Group, the very diversity of the group serves to prevent capture by any splinter group.

The NCUC, and now the NCSG, have been open to individual memberships for well over a year. This is, in fact, the only avenue within the GNSO or ICANN where interested non-commercial individual registrants and users are allowed to participate in their personal capacities and our experience has shown that this is

---

[4] ibid.

an important entry vector for volunteers into the various GNSO Working Groups. We have not seen a single attempt at capture, nor have we seen a rush to control membership by stuffing the membership with a rush of last minute member applications. The proposed final charter disables this possibility in any case: : require a certain period of membership is required before a member is qualified to vote. The fact also remains that, for groups like NCSG, and ALAC for that matter, that there is very little incentive for participation. There are no business interests nor salaries to motivate membership. People participate out of public interest as described in the ICANN charter. No one can accuse NCSG members of participating for extraneous motives (such as the joy of travel to exotic places) as no one covers the cost of NCSG members' attendance at ICANN meetings, nor do NCSG members derive any direct professional benefit from their participation. Where NCSG differs from ALAC is that we do not get, nor do we expect, to have our way paid or various Staff members assigned to take care of our needs.

NCSG also imposes a strict geographic requirement (stricter in fact than the GNSO was willing to adopt) for Council representation and its officers. This serves as an additional, and effective, limitation on capture (since any conspiracy to effect capture would need to be highly international in nature).  It is important to note also that the NCUC historically has had the most diverse representation in the GNSO and exhibited the greatest turnover at Council and officer level - having had a term limit requirement for both long before ICANN required one.

Further, and unlike the Stakeholder Groups in the Contracted House, or the constituencies in the Commercial Stakeholder Group, NCSG Council members are not constrained in their votes by the NCSG in any way.  They are elected with the expectation that they will listen to the membership discussions held before each Council meeting and on the mailing list, and will then vote to in the interests of non-commercial registrants and users to the best of their understanding.  If they do not, they can expect to be questioned by the membership (as has happened) and quite likely fail to be reelected.

One needs to ask, given the difficulty (and lack of attempts) in capturing a large and diverse group like NCSG, why would anyone even bother? Even if one could see a way to organize such an international conspiracy and could actually effect the capture, what would they gain? The NCSG represents fewer than 1/4 of the votes in the GNSO Council, which is no longer a decision making body but is rather a management body. Capture of the NCSG seems to be a rather small prize for the amount of effort it would take. Certainly the members of the NCSG care enough about their Stakeholder Group to want to avoid such a occurrence, but in the larger scheme of the threats of capture that ICANN regularly faces, this risk would seem to be minimal at best.

We acknowledge that much of this fear of capture comes from a misapprehension that one or two people had control of the non-commercial group in the past. This was never the case. The reality was that at one time these few were the active and vocal representatives for the members and views of the overwhelming majority of NCUC. It is not just or reasonable that a group of over 80 organizations and over 100 individuals should be accused of being mindlessly controlled. Anyone who has even a passing understanding of the need for freedom of thought and expression that is critical to maintaining membership in a civil society based non-commercial group knows that no one can capture such a group, especially when it has a single email list where all members can speak her or his mind freely. As can be seen in the vote on the charter, over 72% of all possible votes were cast by both organizational and individual members. That is not an apathetic crowd that can be captured by individuals or a fringe group.

**Process of Developing this Charter**

As mentioned above, this charter is based on the Interim charter approved by the Board in July 2009. While it includes many elements of the initial charter that had received NCUC consensus in late 2008, each of these elements was subjected to further discussion and consensus building.  The most important elements included: (1) membership principles (including the notion of an SG-wide election of the leadership); and (2) the leadership structure and decision making processes (including the voting structure), which were subject to a process where first they were discussed and revised within the Interim Executive Committee, as defined by the Board, and then discussed and revised by the general NCSG membership. Only after these major elements had achieved consensus, were they edited into the existing Interim charter.  The Interim charter then was further edited to include elements such as the appeals mechanism and detailed descriptions of the activities within the leadership committees.

The issue of whether to limit Interest-Groups to NCSG approval mechanisms or subject them to a requirement of external approval to become Board approved Constituencies was left for the end.  By that time, the previous consensus on having a membership focus for electing Council members and the NCSG chair made the idea of forcing Interest-Groups into the old mold of constituencies impractical and even inappropriate. The decision to stick with the Interest-Group model was first tested in the Interim Executive Committee in the final review and revision process for the Charter. As there was no objection in the Executive Committee to sending this Charter to the membership, it then went through a formal members' process for discussion and review.

During the membership review of the charter many other issues were discussed. The process involved a cycle of discussion and proposed resolutions, with eventual changes to the charter made where warranted by the rough consensus

(a description of the issues discussed can be found at: https://st.icann.org/ncsg-ec/index.cgi?edits_to_charter_version_under_review).  On the topic of Interest-Groups versus Constituencies, two of the three Board appointed Council members did raise concerns that without a clear and formal prior mandate from the Board, eliminating Board approved Constituencies would put NCSG members at risk for lower levels of Stakeholder Group support from ICANN. While this was certainly the case during this Interim year, the bottom-up arguments for Interest-Groups remained the consensus position. To compensate for any disadvantage that the NCSG might experience due to the absence of Constituencies vis a vis equivalent treatment with other GNSO Stakeholder Groups, additional chartered requirements were placed on the leadership committees, especially the Finance Committee, to work on achieving equivalent treatment.

As a final step in this process, the completed charter was put to a vote by the full NCSG membership, using the procedure defined for modification of the charter, which specified that in order to gain final approval, 60% of the NCSG membership must approve the charter. The initial vote allocation showed 314 votes among the current membership, meaning that 189 votes would constitute 60%).

The vote ran from 12 May until 12 June. The vote was held using an online capability managed by the Registro de Dominios para a Internet no Brazil (registro.br).  There were, however, 2 members who could not be reached for the vote due to firewall and email black list issues. For these members, an arrangement was made with a trusted intermediary to receive the vote. Dr. Olga Cavalli, an ICANN Nomcom appointee to the GNSO Council and one of the Council's Vice Chairs, was asked to receive the votes, to confirm that they were not duplicates with those running the election, and to announce the results. Dr. Cavalli is not a member of the NCSG.

A decision was made not to release the names of those who voted in this election, to preserve the privacy of those who desired to abstain. Dr. Cavalli was also asked to not reveal who had voted but to only reveal the total votes for and total votes against from the ballots she received. The results from the general email ballot and the arranged email ballot with Dr. Cavalli are listed separately below, but are included in the final totals.

As reported on http://registro.br/ncuc/result, 225 votes were received using the online process of which 215 were in favor of accepting the Charter and 10 were against.

According to the report from Dr. Cavalli, 6 votes were received of which 6 were in favor of the charter and 0 were against the charter.

This means that of a possible total of 314 votes, 73.5% were received and 70.4% were in support of the charter, confirming its approval by an overwhelming majority of the NCSG membership.

The charter's procedural rules require that another full vote must be taken, if there are any further amendments proposed to this NCSG approved charter, in order for that amended charter to be accepted as the Charter of the Non-Commercial Stakeholder Group.

## Conclusion

The NCSG has taken seriously the Board's resolution and its mandate to arrive at changes in its charter to make it more transparent, open, fair and representative. It has done this through a deliberative bottom-up process that involved several cycles of discussion, revision and consensus building, and considerable time and volunteer effort from numerous NCSG members. On behalf of the NCSG, I appreciate the opportunity to submit this bottom-up effort to the Structural Improvements Committee and to the ICANN Board for endorsement.


Avri Doria
Chair, NCSG Executive Committee