**NCPH GNSO Futures Group**

**Interim draft report**

1. **Introduction**

This paper summarises the issues that have been identified by the GNSO Futures Group that was formed within the Non Contracted Parties House (NCPH) of the GNSO during their Intercessional meeting held in LA in February 2016.

It is an informal group of interested parties from within the NCPH with an interest in considering whether the existing bicameral structure of the GNSO is the best approach going forward, or whether structural reform could offer a better solution.

It was recognised that the last GNSO review undertaken by Westlake had not initially considered the possible option of structural reform of the GNSO and that during their late consideration of this point they had decided not to recommend any change. Yet that decision was made with the acknowledgment that they had received more comments on structural reform than any other issue.

Within both the CSG and the NCSG there are concerns over the existing bicameral structure which had been operation since 2009, even though when introduced it had been stated that it would be reviewed after a two year period by the community. That never happened and the recent GNSO review by Westlake was considered very inadequate on this point. During discussion with the ICANN Board where concerns over the lack of attention to this issue had been raised, it had been stated that the community should look to address their concerns by identifying alternative scenarios that could be considered. The aim of this document is to kick-start that process.

1. **The role of the GNSO futures Group**

The role of the GNSO Futures group, set up within the NCPH during their Intercessional meeting held in LA January 2016, was not to focus on or promote a single approach towards restructuring, but to identify a range of options that could provide the basis for further consideration when the bicameral approach undergoes its long overdue review.

That approach took full account of the different perspectives that exist within each of the two houses, formed to create the bicameral structure. The NCPH effectively brought together a number of diverse groups of ICANN stakeholders whose opinions were likely to differ widely due to the interests of the groups they were primarily responsible for representing. That distinctly contrasts with the Contracted Parties House (CPH) who are always likely to be more closely aligned as they share many of the same business prerogatives and have similar relationships with ICANN.

The work of the GNSO futures Group aims to provide a first step that would ultimately facilitate a full review of the GNSO. Once that initial work has been concluded it’s proposed that all impacted parties and indeed the broader ICANN community should be involved in the next phase of a review, particularly as the GNSO represents such a broad and diverse set of stakeholders who are concerned with many aspects of policy development, both within the GNSO itself and beyond.

1. **The starting point**

Prior to considering any options for structural reform a number of major considerations were identified that would need to be taken into account as the GNSO moves forward.

They include understanding the potential impact and requirements that will be placed on the GNSO due to increased community empowerment during the post IANA transition.

Whenever work undertaken within the GNSO is discussed it inevitably seems to lead to a discussion on how to balance what is generally accepted as an ever increasing workload, particularly with the volunteer nature of many of its stakeholders. That consideration must also take full account of the need to ensure ‘capture’ cannot occur from any one group on any issue. Obtaining the required degree of balance will always be challenging as some stakeholders are more geared towards responding to the demands of ICANN than others, often due to the nature of their activities or the direct manner in which impact ICANN’s policies impact their core business.

One point that was raised during the early discussions was the need to facilitate the inclusion of Internet Intermediaries’, a term used to refer to groups of stakeholders with a relevant interest who currently have no real home within the existing GNSO structure. As an example, those who provide infrastructure but aren’t ISPs or contracted parties such as those who simply run DNS resolvers. Whilst it was always anticipated that new Constituencies should be introduced with ease and that they would be placed on an equal footing to existing Constituencies, that has so far failed to be the case.

1. **The case for structural reform**

Overall within the NCPH there is support for a review of the existing GNSO structure and an urgent need for structural reform to be considered. It was noted that during their recent review of the GNSO, Westlake Consulting reported that they had received more comments on that issue than on any other part of their study. Yet initially it didn’t even form part of the remit given to them. When their studies did consider it at a late stage, despite the large volume of comments (both formally submitted and made verbally during their report sessions with the community), the decision was taken not to address those concerns.

Both at the time the Westlake review was being undertaken and since, some have commented that the GNSO structure is broken and beyond applying patches. Hence the level of support for taking a fresh look.

It was noted that a number of issues will require far more attention as ICANN moves forward. Of these one of the most important is the need to gain a full understanding of the role that the GNSO, GNSO Council, Stakeholder Groups and Constituencies will play in the post transition environment and how they will interact at various levels of broad policy development. The work of the GNSO Bylaws Implementation Drafting Team has also highlighted the importance of additional demands that will now be placed on the GNSO community, with the NCPH being split on the issue of whether the Council should concentrate solely on gTLD policy and nothing more, with other broader issues being handled in a different manner. That remains a very contentious issue, both within the NCPH and the GNSO itself.

For ICANN to remain legitimate it has to be able to grow and meet new requirements and embrace future challenges. As an organisation that means it cannot remain static, yet when we look at the current structure and bylaws of the GNSO it is unable to expand in a manner that would ensure new parties with a relevant interest can participate on an equal footing with the well-established Constituencies. That is a major failing that also underlines the need to undertake a detailed review and reconsideration of the existing structure.

1. **The adopted approach**

The following approach was adopted in order to move forward.

Step 1

Identify a set of core issues with the current GNSO structure that require attention.

Step 2

Identify a range of options that may assist in resolving the issues identified.

Step 3

Provide a rationale for each proposal for consideration and comment by the ICANN community.

1. **Core issues**

With the current bicameral approach the following issues were raised;

* The complexity of the existing structure and processes.
* Current barriers to entry for newcomers and new Constituencies.
* The constant need to balance demands against available resource.
* The level of representation of some parties within the model.
* Trying to maintain equilibrium between the two Houses in order to ensure balanced outcomes.
* Unbalanced representation on GNSO Council and within CCWG’s.

Broader issues identified that need specific consideration when looking at other options included;

* The need and impact of voting on representation within the GNSO Council.
* Ensuring the prime role of GNSO Council remains focused towards managing the gTLD policy development process
* How to increase the benefit gained from the use of WG’s, CWGs, CCWGs and their output.
* The increasing importance and use of CCWGs and the participation and representation of GNSO based groups within them.
* Whether there is always a legitimate need to try and achieve consensus within the GNSO on non-gTLD policy issues or whether direct representation by SO/ACs and Constituencies is more appropriate (possibly on a case by case basis?)
* The need to adopt procedures that recognise limitations placed on the volunteer community as opposed to those whose core business is dependent on contractual relationships with ICANN.
* Which approach best facilitates future growth and the inclusion of new Constituencies whilst retaining the required balance of representation.
* Which approach would deliver maximum benefits from increased efficiency and effectiveness.
* The perception (expressed by many during the review undertaken by Westlake) that the current GNSO operates and meets in ‘silo’s.
* Enhancing transparency
* The need to recognise changes within the market following the expansion of the namespace such as;
* several ccTLD operators operating gTLD registries,
* the changing relationships between many gTLD registries and registrars.
* The impact of any changes on the rest of the ICANN community
* The future role of the GNSO within the ICANN accountability framework.

1. **Options for structural change**

The following provides a top level description of some options identified in order to progress the required discussion. They do not form a complete set of proposals and elements of each could be further combined to produce additional options.

Option A: Cease the two house structure.

Revert to a GNSO and Council based on Constituencies with the balance between contracted parties and the rest being achieved by the allocation of Council seats and votes (electoral college style) to Constituencies/stakeholder groups in a manner that recognises the rights of all parties with a legitimate interest to participate on an equitable basis

Note: There are a number of different scenarios that should be explored based in this concept.

Option B: Cease the two house structure.

Revert to a GNSO and Council based on Constituencies

Allocate Council seat and votes equally between all Constituencies (taking no account of the existing contracted parties/non contracted parties split).

Option C: Cease the two house structure.

Revert to a GNSO and Council based on Constituencies

Allocate Council seat and votes equally between contracted parties and all other Constituencies.

Option D: Cease the two house structure

Introduce a structure that continues to recognise the contracted parties alongside a non-commercial grouping and a commercial grouping as separate entities with respect to Council seat and votes but not within a Bicameral House structure.

Seats and votes allocated to each grouping could take various forms e.g.

* Distributed equally across all 3 groupings
* Distributed equally between contracted parties and the other parties (combined NCSG and CSG) with the allocation between non-commercial and commercial groupings assigned equally between the groups. Note this is not the same as keeping the bicameral approach.
* Distributed equally between contracted parties and the other (combined) parties with the allocation between non-commercial and commercial groupings assigned equally between all Constituency groups involved e.g. NCUC, NPOC, DB, IPC, ISPCP.
* Distributed equally between contracted parties and the other (combined) parties with the allocation between non-commercial and commercial groupings assigned between all Constituency groups involved e.g. NCUC, NPOC, DB, IPC, ISPCP on a yet to be determined merits based approach.

Option E: Similar approach to the options outlined in D but with the ISPCP becoming an Advisory Group within ICANN based on the fact that much of the main focus of its members is the provision of infrastructure, coupled with security and stability of the Internet.

Others?

1. **Rationale for options listed**

TBC