Dear ,

The Noncommercial Users Constituency (N.C.U.C.), the largest and most diverse component of ICANN’s Generic Names Supporting Organization (G.N.S.O.), appreciates and welcomes this opportunity to comment on the Westlake Governance Draft Report of it’s Review of the G.N.S.O. We are very appreciative of the time and effort invested in this effort by Westlake, ICANN staff and many members of the ICANN community. Working together we have confidence we will produce a Review that is accurate, substantive and will provide a positive framework within which the G.N.S.O. can improve and better serve the ICANN community.

This draft Report does not provide such a framework. We have serious concerns about this study’s methodology, assumptions, criteria for analysis and policy recommendations. It is a deeply flawed study and major changes must be made if any credence can be given it as we work together to create a better, more effective G.N.S.O.

Our response today will not be comprehensive but rather will focus on what we believe are the more egregious flaws in the study. We note the substantial work that has been done in evaluating Working Groups, the G.N.S.O. Council and the PDP process. Although some of the methodological problems we discuss are present in those parts of the study, in this response we as a Constituency will be focusing on those areas of the study most closely related to our role in the G.N.S.O.

We actually are a bit puzzled about our prominence and portrayal in this study. No other unit of the G.N.S.O. is mentioned as often as the N.C.U.C. in the Report and, frankly, no other unit of the G.N.S.O. is characterized as negatively as we are. We found this deeply disturbing, particularly since many of the negative representations are easily disproven by verifiable facts. Many of the study’s recommendations consist of attributes and practices the N.C.U.C. already excel in, yet we do not receive acknowledgement for them in this draft Report. We look forward to setting the record straight in this Response.

**GENERAL METHODOLOGICAL CONCERNS**

The authors of this draft report repeatedly acknowledge this study’s methodological limitations. They described their approach to interviews as ‘less than ideally efficient’ (p. 9). There are recurrent references to the authors being ‘unable to find evidence’ (e.g., p. 51), the lack of ‘objective and quantifiable criteria’ (p. 7) and of the lack of quantitative data concerning volunteer participation rates, retention rates, diversity, gender and of statistics concerning the recruitment and intake of new volunteers (p. 8). While appreciative of the honesty of the Westlake team in mentioning their challenges, it should be noted that mere acknowledgement of a study’s deficiencies does not cleanse the study of those limitations. It certainly did not do so here.

We have the following concerns about this study’s construction and methodology:

1. This study seems to have a constantly changing and imprecise design that meanders between various means of investigation without fully investing in any one. As a qualitative study there is no perceptible strategy or control other than the relay of “observations” of Westlake staff and the selected use of anecdotes from unidentified parties. A clearly defined narrative approach may have proven useful here but there is no indication that was ever considered or actioned. The quantitative aspects of the study lack any rigor or application of standard statistical sampling or analysis techniques. Samples are generally undefined and too small to generate the conclusions extrapolated from them. Adjustment of methodology mid-study (e.g. the Supplementary Working Group survey) raise questions of corrective measures polluting the findings (e.g. strategic sampling).

2. All aspects of sampling in this study are problematic:

• The criteria used by Westlake for inclusion of subjects in various components of this study is unclear. There does appear to be some application of snowball sampling techniques in this work, which is itself a problem. Although useful when researching hard to identify or locate populations, snowball sampling is not a preferred technique when conducting research into easily identifiable, bounded (and divided) communities like the G.N.S.O.

• There is no indication that the sample used in the quantitative portion of this study was a result of anything other than self-selection. We are told that the quantitative portion of the study is based upon 152 surveys completed by 250 individuals who initially accessed the survey site. The Report states “this provided a wide and representative sample”(p. 8). We see no evidence of this.

There is no indication as to general population size, response or rejection rates or precise subgroup identification of those who responded. We have no indication that this survey in any way presents results representative, as indicated, of the G.N.S.O. community.

Although we have no indication as to the statistical validity of the 360º survey with reference to the general community, we can demonstrate that the subgroup responses relating to Constituencies contained on pages 78 and 79 of this draft Report have no practical value.

The report states, for example, that 52% of N.C.U.C. subgroup respondents believe that “the executive committee of the group is balanced and appropriately representative”. This is based upon a subgroup cohort of 27 respondents. There is no indication whether these 27 individuals are all N.C.U.C. members or self selected to answer questions related to the N.C.U.C. If all were members, a best case scenario for survey relevance, consider the statistical validity of this small sample:

Number of NCUC members: 404

NCUC respondents: 27

Confidence level: 95%

Agreement Percentage: 52%

Confidence Interval: 18.23

In this specific instance, if all 27 respondents attributed to the N.C.U.C. were N.C.U.C. members, something not in evidence, all that can be inferred from this question is that, with a 95% level of confidence, somewhere between 33.77% and 70.23% N.C.U.C. members agree with the statement “the executive committee of the group is balanced and appropriately representative”.

Clearly, the subgroup sample sizes are too small to provide statistically valid information of any real value. Further data is needed, as above, to determine whether the same holds true for statistical data relating to questions answered by all survey respondents.

3. The analysis is replete with generalities not adequately linked to facts, such as they are, in evidence. This is particularly problematic when so much of this study is based upon Westlake observation and anecdotal evidence.

A high degree of approximation occurs throughout the study. “There was a view that” (p. 82), “anecdotal but credible instances” (p. 7), “we received no comment…based on this, we conclude this is no longer a significant issue” (p. 95), “some survey respondents” (p. 81), “there is a perception among some” (p. 81), “there is an often expressed view” (p. 90), “we encountered active hostility to new leaders from a few participants” (p. 90). Instead of some, how many? Instead of often, how often?

A professional study should have recommendations based on specific facts in evidence. Too often this study does not. Of particular concern are the Westlake Review Recommendations on page 92 of this Report. Several of these recommendations, such as those involving travel, are not supported by anything substantive previously discussed in the draft Report.

4. Quotations used in this study are completely stripped of context and because of this are of limited value. It is certainly understandable that the identity of respondents are kept confidential. What is hard to understand is why other information, such as constituency or stakeholder group membership or other demographic information, is not provided. Knowing something about the speaker’s background adds context, value and enables one to better understand the comments themselves.

A professional study of this type should have as its base proper design, a reliance upon facts and opinions obtained in a credible and transparent manner that meet basic standards of empirical research. This study does not, at times by the admission of its own authors. Until it does, any recommendations made by Westlake should be considered as emanating from a very flawed and poorly constructed study.

**REPORT RECOMMENDATIONS – THE N.C.U.C. REALITY**

This draft Report is at it’s best when it is summarizing the recommendations of previous G.N.S.O. reviews (Sharry, Council Self Review, LSE, ATRT2). We agree with Westlake that previous recommendations concerning accessibility, transparency and diversity need to be implemented by all constituencies and stakeholder groups. We welcome the opportunity to work with other groups to help them do what the N.C.U.C. has already done in these areas:

• **Accessibility**

The draft Report notes that barriers to participation in constituencies include linguistic (e.g. p. 84) and financial roadblocks (p. 89). As to the later, we are happy to report that membership in the N.C.U.C. is free of charge: we have no membership dues.

In addition, through judicious fundraising and the wise management of scarce resources we have recently committed to spending up to $4,000 per ICANN meeting to enable one or two N.C.U.C. members to come to the meetings who would otherwise not be able to afford to attend (<http://www.ncuc.org/governance/travel-policy/>).

We take the problems associated with linguistic diversity very seriously. Our members have been at the forefront of efforts to create positive change in this area within ICANN. At the Constituency level we are committed to making our basic materials available in multiple languages. Note, for example, that our basic brochure is available in both English and Spanish, both online (<http://www.ncuc.org/brochure/>) and in hard copy. We hope to expand this effort as volunteer resources allow. It is also worth pointing out that while ICANN provides considerable language translation services to some segments of the ICANN community, it does not provide any at all to N.C.U.C.

• **Transparency**

The N.C.U.C. is a completely open and transparent organization. The draft Report calls for open membership lists published on the Constituency website (p. 88). Ours already is: <http://www.ncuc.org/about/members/>.

The Board Governance Committee called for open mailing lists that are publicly archived (p. 67). The N.C.U.C. already does this with all of it’s mailing lists: <http://lists.ncuc.org/pipermail/ncuc-ec/>.

• **Diversity**

The N.C.U.C. supports the call for increased diversity within ICANN. (e.g. p. 74-75). We are proud to be the largest and most diverse constituency within the G.N.S.O.

The Noncommercial Users Constituency currently consists of 402 members (102 NGO’s and 300 individuals) hailing from 92 countries and 5 continents. We recognize the problem identified by the draft Report’s authors concerning the predominance of individuals from developed countries in the G.N.S.O. (e.g., p. 70, p. 84). We’re having some success in changing that.

As currently constituted, a quarter of our current membership comes from, respectively, North America and Europe. Africa makes up nineteen percent of our member roll, Asia-Pacific just under eighteen percent and South America 12 percent. We can and want to do better, but we are making progress in bringing individuals and noncommercial organizations from the developing world into ICANN.

Our leadership is equally diverse. The N.C.U.C. Executive Committee is elected by region, with one member each from North America, Europe, Asia-Pacific, Africa and South America. We note the draft Report’s specific call for more participation from individuals from China and India (p. 87). We are pleased to note that one current member of the N.C.U.C. Executive Committee is a resident and citizen of the Peoples Republic of China. His predecessor was from India. We have experienced membership growth from both countries. Relative to any other GNSO constituency, N.C.U.C. continues to be the most diverse geographically.

We do have term limits for our Executive Committee members (three years) as recommended by the Board Governance Committee (p. 67).

The facts are clear: The Noncommercial Users Constituency is a leader in the G.N.S.O. in terms of accessibility, transparency and diversity. Yet the draft G.N.S.O. review does not any of acknowledge this. The Report’s faulty methodology has produced a perception of the N.C.U.C. that simply is not true. The negative perceptions created by Westlake’s poorly constructed survey will now be addressed, not by unsubstantiated opinion but by verifiable fact.

**TRUTH**

One of the more unsettling aspects of the draft Report is its substitution of opinion or conjecture for data that is readily available. We note that the authors of this independent study were guided in this process by ICANN staff who ‘on several occasions have directed us to information that we might not otherwise have been aware of or otherwise been able to find’ (p. 11). We certainly would have welcomed the same opportunity at an earlier time to help and guide the Westlake team in this manner. We are pleased to do so now in response to their draft Report.

We need to reiterate that the small sample size involved in the ‘numeric results’ of the 360º survey renders any result from the ‘Stakeholder Groups and Constituencies’ section of the survey invalid. In fact, by acting as if these numbers have any statistical validity whatsoever the authors of this report are misleading the G.N.S.O. community. The confidence interval is simply too large and the sample not random enough for any inference to the larger N.C.U.C. population to be made on the basis of this study.

As to specific unfounded statements based on this poorly designed study:

• **The Non-Commercial Stakeholders Group, unlike its commercial counterpart, has an executive committee. Some survey respondents considered this was lacking in balance and resisted new members. Several survey respondents and interviewees noted that leadership positions remain in the hands of only a few people.** (p. 81)

How widespread is this perspective? ‘Some’ or ‘several’ are approximations that should not be used when precise data is available and easily obtained. This study consisted of a survey completed by one hundred and fifty two respondents, limited interviews of “about 40” individuals (p. 9) and supplemental interviews of “fewer than 20 or so” (p. 10). What are the precise numbers?

Factually this “perspective”, no matter how few or many people hold it, is incorrect.

The Noncommercial Stakeholders Group Executive Committee (N.C.S.G. E.C.) is balanced: two members appointed by the N.C.U.C. and two members appointed by the N.P.O.C. The Chair is elected by the entire Stakeholder Group and is limited to two consecutive one-year terms. No Chair has been re-elected following an enforced leave caused by term limits.

The N.C.U.C. E.C appoints the constituency representatives on the N.C.S.G. E.C. There has been a complete turnover of N.C.U.C. appointees during the past two years, one each year. These positions factually do not “remain in the hands of only a few people”. In fact, they turn over regularly.

**• The NCSG is perceived by some as actively obstructing membership applications for the NPOC.** (p. 81)

Once again, the problem of approximation when precise data is available. How many is ‘some’?

Membership applications to the Noncommercial Stakeholders Group are considered, then accepted or rejected by the N.C.S.G. Executive Committee. The N.P.O.C. has two appointed representatives on this Committee and it’s membership participates in the election of the Chair. Membership applications are only rejected for cause. ‘Obstructing’ membership applications for any reason is not a valid cause and does not occur.

As a noncommercial stakeholder group it is essential that members are truly noncommercial – applicants with commercial components are not eligible for membership.

It should be noted that there are remedies, such as formal complaints with the Ombudsman, within ICANN that aggrieved parties can access should they believe the N.C.S.G. membership admissions process has treated them unfairly. We are unaware of any such complaint. Furthermore, the NCSG Charter provides the means for members of the stakeholder group who disagree with the EC’s practices to petition for a change to them. No such petitions have been lodged.

**• “The membership application process is not transparent or thorough. The applications are on a server that only 1 member can access.”** (p. 81)

Not true.

All members of the N.C.S.G. E.C. have access to the spreadsheet containing applicant data. Applicants with queries about their application status, or anything else, are encouraged to contact the N.C.S.G. Chair through an e-mail link provided on the N.C.S.G. membership website: <https://community.icann.org/display/gnsononcomstake/Membership>.

The membership application process is transparent. It is also thorough. All five members of the N.C.S.G. Executive Committee vet each applicant for membership eligibility before approval is given.

• **“The badly designed membership process between NCUC and NPOC further complicates things, placing organizations in the NCUC when they should be in NPOC.”** (p. 81)

Not true.

Applicants determine which constituency, if any, they wish to belong to, and may join up to three under NCSG’s Charter. When applying for membership applicants choose concurrently to apply to the N.P.O.C, the N.C.U.C., both, or to decline to apply for membership in any constituency. It is the applicant’s choice, the NCSG EC ‘process’ plays no role in constituency assignment.

• **Essentially the NCUC, dominated by small or single person groups, is always able to have the numbers to out-vote NPOC, which represents often larger but fewer NPOs. All four NCSG members recently elected to the GNSO Council have come from the NCUC because it has a far greater number of members than the NPOC, and voting is ‘first past the post’, rather than a form of proportional representation.** (p. 103)

Not true.

In stakeholder group elections the N.C.S.G. uses a weighted simple plurality voting system, not a pure ‘first past the post’ method, as alleged. Large organizations, defined as those with more than 600 members, receive 4 votes, small organizations receive 2 votes and individuals receive 1 vote. The weighted voting structure favors large organizations.

Excluding organizations that are members of both constituencies (5 in total), the N.C.U.C. actually has more large organizations as members (21) than does the N.P.O.C. (20). The allegation that the N.P.O.C. represents only large organizations and the N.C.U.C. small organizations is not true.

The Westlake Team’s analysis of the 2014 N.C.S.G. election to the G.N.S.O. Council assumes a causation that, again, simply is not true. For a constituency to have a member win a stakeholder group election it must run candidates. Only one N.P.O.C. member ran for the four available G.N.S.O. Council positions in 2014.

Although smaller in number, the N.P.O.C. is large enough to win stakeholder group elections within the N.C.S.G. on it’s own were it’s members to run and vote for their candidate. Under the weighted voting system the N.P.O.C. members, including those who are also members of the N.C.U.C., currently have a voting potential of 152 votes. In the election cited the lowest number of votes received by a winning Council candidate was 106 votes. The N.P.O.C. is certainly capable of winning N.C.S.G. elections under the weighted simple plurality voting system should their members both run for office and be motivated to vote for their candidate.

The electoral division within the N.C.S.G. is not as stark as the Westlake Team’s statement may indicate. There is widespread inter-constituency electoral interaction and support. Of the 114 ballots counted in the 2014 N.C.S.G. Council election, only one ballot voted exclusively for the member candidate from the N.P.O.C. All other ballots indicating support for the N.P.O.C. member also contained votes for N.C.U.C. member candidates. All four elected Councilors received support on the N.C.S.G. list from individual members of the N.P.O.C., some from former past N.P.O.C. chairs.

It should also be noted that the N.P.O.C. has had a member on the G.N.S.O. Council as recently as October of 2014. Appointed by the N.C.S.G. Executive Committee to fill the remainder of a term vacated by an ICANN Board appointee, that NPOC Council member was eligible to run for re-election but chose not to do so.

• **The NPOC’s difficulties in starting up and growing its membership has fed the perception that the NCUC sees it as competition for funding and travel support from ICANN.** (p. 81)

Not true.

This statement by the Westlake Review Team is not supported by any fact in evidence. It must be asked: 1) perceived by whom and 2) numerically, how widespread is this perception?

All N.C.U.C. lists and discussion forums are open, archived and available for public inspection. Is there any evidence on list for this asserted perception?

• **There was a view from some that the NCUC even questions the right of the NPOC to exist.** (p. 81)

Another approximation by the Westlake Team when actual data is available.

How many does ‘some’ represent? Is there any timely, verifiable factual basis for this assertion by ‘some’?

All N.C.U.C. lists and discussion forums are open, archived and available for public inspection. Is there any evidence on list for this asserted ‘view from some’?

• “**NCUC is a self perpetuating elite that uses the NCUC constituency as a basis for the realization of self interests. A small group does everything in their power to capture power and resources.”** (p. 81)

The inclusion of this anonymous ad hominem attack in a purported professional review is an absolute disgrace. Once, again, the issue of context arises. What is the background of the individual providing this quotation? In the absence of this information, it must be assumed the person making this unsubstantiated accusation has a personal or professional interest in disparaging certain unnamed N.C.U.C. volunteers. Since constituencies within the GNSO compete with each other for resources and relative power, there is a built-in incentive for those interviewed to embellish negative comments about competing constituencies.

• **There is a perception among some that the membership and Executive Committee of the NCUC has an element of self-perpetuation and that some of the NGOs represented in the NCUC are very small and may exist only for the purpose of ICANN participation.** (p. 81)

Factually, not true.

Again, the problem of approximation and context. This is a closed study. Actual numbers are available. How many is ‘some’? How widespread is this ‘perception’? In what context and by whom is this perception held?

The N.C.S.G. Executive Committee, consisting of representatives of both the N.P.O.C. and the N.C.U.C, vets all N.C.U.C. members for admission in the NCSG before a constituency (or none) is selected by the new member. The membership admissions process is designed specifically to prevent the admission of pseudo-organizations by any one constituency. The Centre for Democracy and Technology, Global Voices, Article 19, the Internet Governance Project, Electronic Frontier Finland, the Internet Society (Belgium Chapter) and the Franklin Pierce Center for Intellectual Property are all examples of small organization members of NCUC.

It should also be noted that, unlike the N.P.O.C., the N.C.U.C. admits individual members. There is very little incentive for an individual to create an organization to join the N.C.U.C. We welcome all organizations and individuals who meet our membership criteria.

The N.C.U.C. Bylaws are designed to prevent “self-perpetuation” of the executive committee - and they work. All members of the N.C.U.C. Executive Committee are limited to three consecutive one-year terms. E.C. members are elected by region to guarantee geographical diversity. *In the twelve years since the N.C.U.C. was created under it’s current name, there have been seven different Chairs and twenty-seven different Executive Committee members.* There is no element of self-perpetuation in the Noncommercial Users Constituency Executive Committee; rather there is great diversity.

We in the Noncommercial Users Constituency (N.C.U.C.) welcome this opportunity to provide feedback to the draft Report of the Westlake Review Team. We are disturbed at both the lack of methodological rigor of the study and the large amount of factually inaccurate information about the N.C.U.C. that has been presented in the Report. We look forward to working with Westlake to produce a Review worthy of the hardworking volunteers of the Generic Names Supporting Organization.

Kind Regards,