

03 March 2015

Dear GNSO Review Working Party:

The Noncommercial Users Constituency (NCUC) welcomes this opportunity to comment on the Westlake Governance Draft Report of its Review of the GNSO. We are 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 final report that is accurate, substantive and will provide a positive framework within which the GNSO can improve and better serve the ICANN community.

At present, the draft report does not provide such a framework. We have serious concerns about the study's methodology, assumptions, criteria for analysis and policy recommendations. It is a deeply flawed and major changes must be made in order for any credence to be given it as we work together to create a better, more effective GNSO.

Because key parts of the report including recommendations are still under development, this response will not be comprehensive and we will provide further commentary when able. Instead, we focus here on some of the more egregious flaws in the draft concerning the methodology and the consequent inclusion of multiple false statements about the NCUC (and by extension, the NonCommercial Stakeholder Group, NCSG). We note the substantial work that has been done in evaluating Working Groups, the GNSO 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 focus only on those areas of the study most closely related to our role in the GNSO.

We actually are a bit puzzled about our prominence and portrayal in the study. No other unit of the GNSO is mentioned as often as the NCUC, and no other unit of the GNSO is characterized as negatively as we are. We found this disturbing, particularly since many of the negative representations are easily disproven by readily available facts. In addition, many of the draft's initial recommendations involve improving on attributes and practices on which the NCUC already excels, yet there is no acknowledgement of this in the draft. So we would like to set the record straight.

## **GENERAL METHODOLOGICAL CONCERNS**

The authors of the draft report repeatedly acknowledge its 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 free the study of those limitations. It certainly did not do so here. Moreover, the false assertions about NCUC could easily have been "fact checked"

before inclusion by consulting our website and open mail list archives, or by asking us about them.

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

*1. The 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 acted upon. 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 GNSO.

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 provides results representative of the GNSO community as claimed.

Although we have no indication as to the statistical validity of the 360° 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.

For example, in the Table on pg. 78, the draft report shows that just 52% of the subgroup responding about NCUC believe that "the executive committee of the group is balanced and appropriately representative". This is based upon a cohort of 27 respondents. There is no indication whether these 27 individuals are all NCUC members (which would be surprising, given that the 360° review was conducted while we were gearing up to elect five regional representatives to the Executive Committee, EC) or self-selected to answer questions related to the NCUC based on whatever level of familiarity they had with our elections and EC composition. But if all were NCUC members, a best case scenario for survey relevance, consider the statistical validity of this small sample:

Number of NCUC members: 404  
 NCUC respondents: 27  
 Desired confidence level: 95%  
 Agreement Percentage: 52%  
 Confidence Interval: 18.23

In this specific instance, if all 27 respondents attributed to the NCUC were NCUC 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% of NCUC 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.

Parenthetically, the Table on pgs. 78-79 should not be introduced with the misleading phrase, “This table shows the extent to which,” because it does not. It shows the extent to which respondents made certain assertions, irrespective of their relationship to actual facts (some of which easily could have been checked, for all SG/Cs concerned).

*3. The analysis is replete with generalities not adequately linked to facts. This is particularly problematic when so much of this study is based upon Westlake’s observations and selected anecdotes.*

A high degree of approximation occurs throughout the study. Consider these examples: “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); and “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 speakers’ backgrounds 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 obtained in a credible and transparent manner that meet basic standards of empirical research. This study does not, as is acknowledged at times by its own authors. Until it does, any recommendations made by Westlake should be considered as emanating from a flawed and poorly constructed study.

## REPORT RECOMMENDATIONS AND THE NCUC REALITY

The draft report is at its best when it is summarizing the recommendations of previous GNSO 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 have raised this directly in the past with Fadi and other senior staff. We would welcome broad-based progress on these scores, which the NCUC has already pursued.

### *Accessibility*

The draft Report notes that barriers to participation in constituencies include linguistic (e.g. p. 84) and financial roadblocks (p. 89). Regarding the former, NCUC is trying to make our basic materials available in multiple languages, e.g. our outreach brochure is available in both English and Spanish. We hope to expand this effort, but whereas ICANN provides considerable language translation services to some segments of the community, it does not provide any at all to NCUC, which means members must donate their time to translate.

Regarding the latter, thanks to our own fundraising and management of scarce resources, we have recently committed to spending up to \$4,000 per ICANN meeting to enable one or two NCUC members to come to the meetings who would otherwise not be able to afford to attend <http://www.ncuc.org/governance/travel-policy/>. We just had a young African new member attend the Singapore meeting in this manner.

### *Transparency*

The NCUC is a completely open and transparent network. The draft report calls for open membership lists published on the Constituency website (p. 88). Ours is at <http://www.ncuc.org/about/members/>.

The Board Governance Committee called for open mailing lists that are publicly archived (p. 67). The NCUC has always done this with all of its mailing lists: <http://lists.ncuc.org/cgi-bin/mailman/listinfo>.

### *Diversity*

The NCUC supports the call for increased diversity within ICANN. (e.g., p. 74-75). In terms of membership numbers, we are arguably the largest and most diverse constituency within the GNSO. It bears emphasizing that **NCUC currently consists 404 members from 93 countries, including 102 noncommercial organizations and 302 individuals.**

We recognize the problem identified by the draft's authors concerning the predominance of individuals from developed countries in the GNSO (e.g., p. 70, p. 84). We are having success in changing the balance through volunteer outreach efforts. 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 already making progress in bringing individuals and noncommercial organizations from the developing world into ICANN.

Our leadership is equally diverse. The NCUC EC 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 NCUC EC 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, NCUC continues to be the most diverse geographically.

We do have term limits for our EC 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 GNSO in terms of accessibility, transparency and diversity. Yet the draft GNSO review does not acknowledge this, and instead portrays us as singularly problematic. The Report's faulty methodology and curious inclusion of individual negative comments results in a picture of the NCUC that is fundamentally inaccurate.

## **VERIFIABLE FACTS**

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

As to specific unfounded statements included in the draft:

*“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 152 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?

One wonders why these survey responses are flagged in the text when the same was not done with respect to other SG/Cs, for which the relevant numbers are not so different. Based on figures in the Table at pgs. 78-79, the draft could just as easily have observed that “some survey respondents considered that the [insert almost any SG/C name] EC is lacking in balance and resists new members.”

In any event, factually this “perspective” is incorrect, no matter how few or many people hold it.

The NCSG Executive Committee (EC) is balanced: two members appointed by the NCUC and two members appointed by the NPOC. 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 their term limits. The NCUC EC appoints the constituency representatives on the NCSG EC. Our 2015 representatives include one incumbent and one new appointee. There has been turn-over in previous years as well. A factual comparison of leadership turn-over across SG/C’s would have been rather more useful than such unsubstantiated assertions.

*“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 NCSG are considered, then accepted or rejected by the NCSG EC. The NPOC has two appointed representatives on this Committee and its membership participates in the election of the Chair. Membership applications are only rejected for cause, which in practice has principally meant that the applicants were not truly non-commercial organizations. As a noncommercial stakeholder group it is essential that members are truly noncommercial---applicants with commercial components are not eligible for membership. ‘Obstructing’ membership applications for any reason is not a valid cause and does not occur.

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 NCSG 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 ever 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 NCSG EC have access to the spreadsheet containing applicant data. Applicants with queries about their application status, or anything else, are encouraged to contact the NCSG Chair through an e-mail link provided on the website: <https://community.icann.org/display/gnsononcomstake/Membership>.

The membership application process is transparent. It is also thorough. All five members of the NCSG EC 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.

The applicants themselves 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 NPOC, the NCUC, both, or to decline to join any constituency. The basic membership that carries a vote on GNSO matters is in the NCSG. It is the applicant's choice, and the NCSG EC 'process' plays no role in constituency assignment. We have no idea on what basis it could be claimed that an organization "should be" in one constituency rather than the other, especially given that they can choose to be in both.

*"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 NCSG 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 NCUC actually has more large organizations as members (21) than does the NPOC (20). The allegation we have heard that the NPOC represents only large organizations and the NCUC small organizations and individuals is not true.

The Westlake Team's analysis of the 2014 NCSG election to the GNSO 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 NPOC member ran for the four available GNSO Council positions in 2014.

Although smaller in number, the NPOC is large enough to win stakeholder group elections within the NCSG on its own were its members to run and vote for their candidates. Under the weighted voting system the NPOC members, including those who are also members of the NCUC, 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 NPOC is certainly capable of winning NCSG elections under the weighted simple plurality voting system should their members both run for office and be motivated to vote for their candidate.

Moreover, the electoral division within the NCSG 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 NCSG Council election, only one ballot voted exclusively for the member candidate from the NPOC. All other ballots indicating support for the NPOC member also contained votes for NCUC member candidates. All four elected Councilors received support on the NCSG list from individual members of the NPOC, some from former past NPOC chairs.

In parallel, it should be noted that the NPOC has had a member on the GNSO Council as recently as October of 2014. Appointed by the NCSG EC---after a suggestion by NCUC---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.

There are three travel slots per constituency, full stop. NPOC is guaranteed these slots whatever NCUC does or thinks. And there are three slots for NCSG—one goes to the chair, one goes to a NCUC rep to the NCSG EC, the other goes to a NPOC rep to the NCSG EC. Support for other events from ICANN is based on ICANN decisions, and NCUC is not even aware of what NPOC applies for.

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

Not true, and another approximation by the Westlake Team. How many does 'some' represent? Is there any timely, verifiable factual basis for this assertion by 'some'?

All NCUC 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 NCUC volunteers. One wonders about the decision to include it in the report.

*“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)*

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?

With regard to our membership, the NCSG EC, consisting of representatives of both the NPOC and the NCUC, vets all applications 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.

As to the size of NCUC member organizations, they of course vary. The Centre for Democracy and Technology, Global Voices, Article 19, the Internet Governance Project, the Internet Society (Belgium Chapter) and the Franklin Pierce Center for Intellectual Property are examples of small organizational members. The Association for Progressive Communications, Electronic Frontier Finland, the Center for Technology and Society, Freedom House, and Internews International are examples of large organization members.

It should also be noted that as NCUC admits individual members, there is no need for an individual to create an organization to join the NCUC. We welcome all organizations and individuals who meet our membership criteria as defined in the NCSG charter. We are unaware of any member organization that “may exist only for the purpose of ICANN participation.” Since the authors deemed this assertion worthy of inclusion, perhaps they could identify these organizations for us.

With regard to the NCUC EC, there is regular turn-over rather than “self-perpetuation.” This can be easily verified anyone who bothers to look at <http://www.ncuc.org/governance/previous-executive-committees/>. All members of the NCUC EC are limited to three consecutive one-year terms. EC members are elected by region to guarantee geographical diversity. In the twelve years since the NCUC was created under its current name, there have been seven different Chairs and twenty-seven EC members. There

is no element of self-perpetuation in the NCUC EC, rather there is diversity. Can the same be said of all SG/Cs for whom no such allegation is made in the report?

We 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 NCUC that has been presented in the Report. We look forward to working with Westlake and the community to produce a Review worthy of the hardworking volunteers of the Generic Names Supporting Organization.

Kind Regards,

NCUC