

Report of Public Comments

Title:	Proposed ICANN Bylaws Amendments—GNSO Policy & Implementation Recommendations		
Publication Date:	21 September 2015		
Prepared By:	Marika Konings		
Comment Period:		Important Information Links	
Comment Open Date:	31 July 2015	Announcement	
Comment Close Date:	12 September 2015	Public Comment Box	
		View Comments Submitted	
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Section I: General Overview and Next Steps			
<p>During its meeting on 24 June 2015, the GNSO Council unanimously adopted the recommendations of the GNSO Policy & Implementation Working Group (see: http://gnso.icann.org/en/drafts/policy-implementation-recommendations-01jun15-en.pdf), which was tasked to address a number of questions as they relate to GNSO policy and implementation. Among others, these recommendations include three proposed new GNSO processes, two of which—the GNSO Guidance Process (GGP) and the GNSO Expedited Policy Development Process (EPDP)—require changes to the ICANN Bylaws subject to ICANN Board approval. Per its resolution of 28 July 2015 (see https://www.icann.org/resources/board-material/resolutions-2015-07-28-en#1.c), the ICANN Board directed that proposed changes to the ICANN Bylaws be posted for public comment prior to ICANN Board consideration. The ICANN Board will now consider the comments received as well as the proposed recommendations for adoption.</p>			
Section II: Contributors			
<p><i>At the time this report was prepared, a total of 3 (three) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor’s initials.</i></p>			
Organizations and Groups:			
Name	Submitted by	Initials	
International Trademark Association	Lori Schulman	INTA	
At-Large Advisory Committee (2x) ¹	Alan Greenberg	ALAC	
Section III: Summary of Comments			
<p><i>General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments</i></p>			

¹ The second submission was the official confirmation of ratification by the ALAC of the statement as originally submitted.

Submitted).

Both INTA and ALAC express their support for the adoption and implementation of the policy & implementation recommendations with INTA noting that these will ‘provide more flexibility and responsiveness to the growing needs of the community’.

Furthermore, INTA specifically expresses its support for the addition of the additional voting thresholds to Article X, Section 9.3 to accommodate the Expedited Policy Development Process (EPDP) and GNSO Guidance Process (GGP). INTA notes its general support for the new sections of the ICANN Bylaws that deal with the Expedited Policy Development Process (Annex A-1) and the Guidance Process (Annex-A-2) but expresses its disagreement with the requirement of including the opinion of ICANN staff and their rationale as to whether the Council should initiate the EPDP on the issue noting that ‘the initiation of an EPDP should be council led and not staff led’. Furthermore, INTA recommends that in relation to Board votes, the ‘voting record should be made public so that the process is transparent and that the Board should provide its rationale for its decision in the Board Statement’. INTA also suggests using the term ‘policy’ instead of ‘guidance’ in section 6-d, recognizing at the same time that the proposed language mirrors the Final Report of the Policy & Implementation Working Group. In its contribution, INTA also ‘commends the GNSO Policy & Implementation Working Group for its diligent and thorough work in developing its valuable improvements to the GNSO policy development and implementation process’.

In addition to expressing its support for the proposed recommendations, the ALAC points out two concerns, namely 1) ‘the ALAC has concerns that if an issue were to arise where the public interest and the needs of users is in conflict with the needs of contracted parties, the GNSO may not be able to arrive at an equitable solution’, and 2) ‘the ALAC is concerned that for complex implementations such as the new gTLD process and future directory services solutions, the number of such referrals [to the GNSO] may unreasonably elongate the overall implementation process’. As such the ALAC recommends that the ICANN Board ‘monitor both issues to ensure that user and public interests are appropriately considered and that the implementation of complex policy can be accomplished in reasonable time-frames’.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN Staff notes the support of both commenters for the proposed recommendations and related changes to the ICANN Bylaws. In relation to the comment from INTA that ‘the initiation of an EPDP should be council led and not staff led’, staff would like to clarify that the opinion of ICANN staff that is included in the EPDP Preliminary Issue Report, similar to the one included in a PDP Preliminary Issue Report, is in no way binding on the GNSO Council as it considers whether or not to initiate an EPDP. As such, the decision to initiate an EPDP is Council and not staff led. In relation to the suggestion to change the term in section 6-d, Staff would like to note out that the language as proposed was developed by the Working Group and approved as such by the GNSO Council, which was also recognized by the INTA in its comments.

In relation to the concerns expressed by the ALAC, staff notes that this formally ratified Advice is also submitted directly to the ICANN Board who will consider the provided Advice accordingly.