Policy Status Report: GNSO Policy & Implementation Working Group Recommendations

Submitted July 2, 2024

These comments are submitted by the Intellectual Property Constituency ("IPC"), whose membership includes and represents trade associations, large multinational corporations, as well as small businesses and individuals.

The IPC appreciates the opportunity to comment on the Policy Status Report (PSR) assessing the effectiveness of the policy development processes proposed by the Policy and Implementation Working Group (PIWG). We generally agree with the PSR and believe these mechanisms provide important support for and provide essential principles and guidelines for processes which support and expedite policy development and implementation of those policies. These mechanisms also establish important "guardrails" that allow GNSO Councilors to raise an issue at the Council level as to what is being decided within ICANN Org in regard to implementation of GNSO Policy.

The IPC believes the GIP, GGP, and EPDP procedures, and IRT Principles and Guidelines help streamline the policy development process where the issues have been scoped, providing input or insight into the implementation of policy by Org, and establish some essential tools and procedures for resolving issues that arise in relation to GNSO Policy during implementation, regardless of whether such issues are characterized as policy or implementation.[1]

We agree with the PSR that these mechanisms and principles have proven effective in supporting and enhancing GNSO policy and implementation efforts, and believe they should all be retained. We encourage the team reviewing the PSR, however, to consider possible improvements in these mechanisms.

The GNSO Expedited Policy Development Process (EPDP)

As noted in the PSR, the EPDP process was intended to expedite the policy development process where initial phases of a PDP had already been completed. However, the majority of EPDPs conducted to date have involved issues that are quite large in scope and required

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[1] The PIWG importantly acknowledged that, contrary to the discussions that led to the creation of the working group, "Policy and Implementation are not two separate phases entirely, but require continuous dialogue and communication between those that develop the policy (GNSO and its PDPs) . . . and those that are charged with operationalizing/implementing it." (either PDP members or GNSO staff).

multiple phases to complete. We believe some of the procedures that were adopted to deal with these complex issues should be incorporated in future EPDPs where possible. These include: requiring a representative membership model, making use of more frequent and longer calls, and utilization of face-to-face meetings and external facilitation or outside legal advice where appropriate.

Although the times to completion of the EPDPs do seem to be longer than anticipated by the PIWG, the process remains far more efficient and shorter in duration than equivalent PDPs would.

The IPC agrees with the PSR that the use of the representative team model in some EPDPs could obviate the need for the early input requirement from stakeholder groups and would further expedite the policy development process. However, care would have to be taken, and procedures put in place, to ensure that the voice and positions of all of the ICANN stakeholder groups are provided and considered in the process.

Finally, it would be useful to collect from the EPDP teams that have completed their work information and data regarding working practices they utilized that were effective. These could then be provided not as required processes, but as possible tools from which future EPDPs could gain.

The GNSO Guidance Process (GGP)

We believe the ability of the GNSO Council to provide guidance to the ICANN Board through GGPs in the form of advice or clarification regarding policy and other community concerns is an important tool. While not binding as policy, the Board is required to consider the proferred advice. We therefore agree with the PSR that it would be useful to require GGP requestors to better define the scope of GGPs and provide supplemental information that would assist in chartering the process and in advising the Board.

In particular, the IPC notes that the results of the GGP on Applicant Support have been very useful to the Sub Pro IRT subteam charged with developing a draft Applicant Support handbook. Community wide participation in that GGP reflects consensus output on an important topic which the Sub Pro PDP working group anticipated would require further details in order to provide for effective implementation of the revised policy. With effective participation from the Council Liaison, the GGP Final Report on Applicant Support is considered by the IPC to be a highly successful first use of the GGP tool.

The GNSO Input Process (GIP)

Since there have been no instances in which the GNSO Input Process has been used to date, it is not possible to make any meaningful observations or suggestions at this time. However, we believe the tool is still theoretically valuable and has in effect been implemented in the form of "small team" working groups in connection with several matters. As such, we believe it would be

worth considering revising the GIP Manual with practices and learnings from the "small team" groups.

Implementation Review Team (IRT) Principles & Guidelines

Perhaps the most significant improvement provided by the PIWG processes has been the requirement that IRTs be formed following the adoption of any Policy recommendation by the GNSO to ensure that the implementation process accurately implements the policy developed and approved by the GNSO. In addition, we believe that flexibility is essential to the effective operation of any IRT and should be acknowledged.

IPC also agrees that further research should be conducted to determine if there are opportunities to improve the efficiency of the implementation process. Data should be gathered regarding how effective the guidelines and principles are in directing the planning and execution of IRTs and what additional guidelines would be useful. In addition, consideration should be given to how to better engage stakeholder groups to ensure participation.

Consensus Policy Implementation Framework (CPIF)

IPC agrees that further research should be conducted to determine if there are opportunities to improve the efficiency of the implementation process. This could be accomplished through regularly updated CPIFs. In particular, consideration should be given to amending the CPIF to provide guidance on resolving disagreements regarding non-policy implementation details. We believe a thorough review and updating of the process would be appropriate and agree with the scope of and subjects for review set out in the PSR, including conforming and incorporating IRT guidelines into the CPIF for consistency.

Sincerely,

Intellectual Property Constituency