

Tucows public comment: Proposed GNSO Process for ICANN Board to Reverse Adoption of GNSO Policy Recs

22 Jan 2026

Tucows welcomes the opportunity to comment on the [Proposed GNSO Process for ICANN Board to Reverse Adoption of GNSO Policy Recs](#) (“Reversal Process”) and appreciates the GNSO Council’s work in drafting this proposal.

Where an approved recommendation is no longer fit for purpose due to change in legal landscape or another change which occurred subsequent to the Board’s approval, it should be possible to reverse or adjust the recommendation.

This must, however, be done with sensitivity to the nature of negotiations within the PDP WG, as recommendations are often interdependent, or negotiations may have resulted in a set of recommendations in which reversing one or some of those recommendations may mean that commitments made by the Working Group are not adhered to.

The Reversal Process is generally fit for purpose and a useful update to the GNSO Operating Procedures. Tucows supports the [Registrar Stakeholder Group \(“RrSG”\)’s Public Comment](#) on this Reversal Process and has the following input to offer.

Circumstances of reversal

It is appropriate to limit this Reversal Process such that it is not available for policies that have been implemented. As mentioned in the Background provided on the public comment process for this proposed process, **this reversal action may need to be available in cases where circumstances have changed, which is not the same as where new information has become available.** As such, Tucows supports the RrSG input that “change in relevant circumstances” be added here.

Tucows supports the specific process laid out for engagement between the Board and GNSO Council, including communication of the issue, details of the concern, rationale for the proposal, and why reversal is the only or best option.

Board obligation to follow this process

Tucows notes that the Reversal Process says the Board “may” adhere to the process; this should instead be a “should” requirement.

Board purpose

The Board exists to formalize decisions made by the GNSO Council. The Board also exists as a *check* on the Council, as the Board has fiduciary duties that the Council does not have. Where a Working Group has agreed on, and the Council has approved, a proposed Policy that does not accord with reality, the Board’s duties not only allow but *require* that the Policy be rejected.

In circumstances where the Policy recommendations were approved and a material change has occurred, the Board’s responsibilities are the same—the Policy should not move forward. However, **if in this situation the IRT unanimously considers that the Policy is fit for purpose, the Board should be required to enter into consultation with the IRT.** This consultation should allow both sides to understand the varied perspectives and focus on the feasibility and appropriateness of implementation prior to making the decision—which still must lay solely with the Board—to move forward with the Reversal Process.

Review of reversals

Tucows **supports the Registrar Stakeholder Group’s proposal that reversal decisions be subject to specific review of the individual reversal as well as a broader regular review of all reversals and the Reversal Process.** This will help reveal patterns that may lead to refinements of the WG process reducing the need for a Reversal Process overall.

Conclusion

Tucows broadly supports the updates to the Policy Development Process (PDP) Manual and the GNSO Guidance Process (GGP) Manual, as it is useful and appropriate to provide a process for the Board to reverse or adjust a recommendation after approval but before implementation is completed. Tucows also supports the RrSG’s proposed modification to the requirement that new information be the reason for such a reversal by adding change in relevant circumstances as a possible reason. Further, while it is appropriate that the Board hold such power, the Board should also be expected to interact with the IRT in cases where an IRT unanimously agrees that the policy should be implemented as originally recommended. Finally, reversal decisions should be subject to review, both individually and more broadly to identify patterns and reasons for needing a Reversal Process.

Tucows again thanks the GNSO Council for their work on this important process update and looks forward to its implementation.

Thank you,

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