

Joint Proposal from the User Community for GNSO Council structural change

On behalf of:

The At-Large Advisory Committee

The Commercial and Business Users Constituency

The Intellectual Property Constituency

The Internet Service and Connection Providers Constituency

The Non-Commercial Users Constituency.

STATUS OF THIS DOCUMENT

This is the FINAL Version (4) of the Joint Proposal from the User Community for GNSO Council structural change

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Background

The Board received on 15 February 2008 a report from its own governance committee. The report is out for comment ending 25 April and the Board is aiming to take a decision at the June 27 Board meeting in Paris. The report includes a radical structural change of the GNSO Council.

The proposal has two key objectives:

- Effective policy development
- Maximizing stakeholders' participation.

The governance committee proposal eliminates weighted voting for registries and registrars, and equalizes the representation of commercial user interests with non-commercial user interests. The proposed Council representation is: Registrars 4, Registries 4, Commercial interests 4, Non-commercial interests 4, and Nominating committee positions 3 (subject to forthcoming review). The proposal foresees policy change starting within working groups. The report has minority reports and is open to alternative proposals.

Defects in the existing structural proposal

While we support the attempt to come up with a better representational balance the report's proposals have three defects, which contradict the goals of improving policy development and maximizing stakeholder participation. The defects are:

1. **Over-representation of contract parties.** Although it is proposed to eliminate weighted voting (which we fully endorse) the Board governance committee proposal means the contract parties would still constitute a disproportionate share (potentially 50%) of the Council. This results in an effective veto power over policy which is at odds with a consensus-oriented policy development process. There is little future need for two separate constituencies, because the distinction between registries and registrars is blurring as a growing number of businesses enter both markets and a new TLD process is set in motion. Contracted parties have a strong incentive to block policy changes because they typically bear the direct cost of any changes.
2. **Insufficient stakeholder participation.** The role of individuals and the At-Large is inappropriately curtailed in the governance committee proposal. Since ALAC is critical to ICANN's external perception this needs to be clarified. Moreover the governance committee proposal with its proposed reduction in the votes of the commercial groups from 33% to 21% effectively eliminates the incentive of commercial entities to participate.
3. **External credibility.** Unless there is a proper balance between users and suppliers (contract parties), ICANN's oversight and public interest responsibilities will be compromised, leading to accusations that ICANN is a trade association primarily designed to benefit the contract parties.

Vision and Objectives

“ICANN is an experiment in the balancing of multiple stakeholder interests in policy about the implementation, operation and use of the Domain Name System and the address spaces of the Internet” (Vint Cerf, Looking Towards the Future, Oct. 2007). These stakeholders can be grouped as follows:

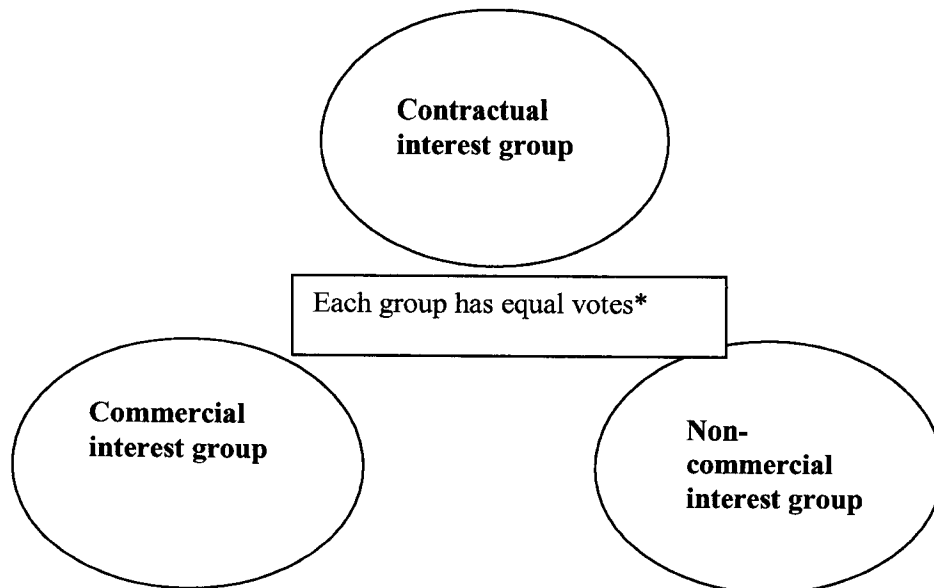
- a) registries and registrars ie the contractual interested parties
- b) commercial interests (including individuals)
- c) non-commercial interests (including individuals)

Users seek a domain name structure that ensures the Internet is a safe place to communicate and do business both for businesses and consumers. We therefore need to be able to work within ICANN to correct market changes that deviate from that objective. That correction means that the influence of users must exceed the influence of the ICANN contract parties. Only then, do the contract parties have an incentive to reach workable compromises in the policy-developing working groups.

Recommendation to the ICANN Board

We recommend the Board adopt the following new structure for the GNSO Council: a parity triangle of equal representation to represent all stakeholders.

- | | |
|---|-----------------------------|
| 1. Contractual interest
(registries and registrars) | 6 votes* |
| 2. Commercial interest
(BC, IPC, ISPCP, commercial individuals ++) | 6 votes* |
| 3. Non-commercial interest
(NCUC, eligible At-large structures, non-commercial individuals ++) | <u>6 votes*</u>
18 votes |
| Nominating committee appointees | see note B below |



Such a tri-partite structure has four key advantages:

1. **Working Groups.** It ensures co-operation and negotiation in good-faith in the working groups.
2. **Oversight.** It restores ICANN's oversight role.
3. **Individuals.** It brings the interests of individuals and organisations who come into ICANN through the At-Large into the policy process.
4. **JPA.** It helps position ICANN for eventual independence from the US government.

About the three groups

Each of the groups would self-organize as it sees fit, within broad parameters. Each group would be left open to expansion from other parties who fit the profile.

Commercial interest group The constituencies that expect to participate in the Commercial Interest Group are preparing an administrative profile for the functioning of that group. See annex for an outline.

Non-commercial interest group The Board governance committee recognized that it "must go far beyond the membership of the current Non-Commercial Users Constituency." ICANN has invested substantially in developing an At-large structure to represent users. That investment should be leveraged. See annex for an outline administrative profile.

Contractual interest group See the annex for further proposals on the make up of this group.

Notes

*A) **Alternative voting numbers.** The proposed voting structure of 6 votes per group, making up an 18-member Council (prior to any Nom Com appointees), is **one** option that compares favourably with the Board governance committee's current proposal for a 19-member Council. There are various alternatives so long as the principle of equal votes per group is maintained. An even number would make transition easier.

B) **Nominating committee.** In the structure proposed above there is no longer a vote-related "balancing" role for three nominating committee appointees. The new role of a nominating committee appointee becomes more one of providing expert advice. The forthcoming Nominating Committee Review should consider this question and assess two options: **either** to continue with appointments of general experts to Council, **or** direct appointments of specific experts to the working groups. The Review should decide on the appropriate number of such appointments.

C) **Correcting an imbalance.** The re-balancing of user and contract parties is not new. It reflects the original situation at ICANN's inception when policy development was quicker and corrects the change made in the last ICANN reform process and embodied in weighted voting. The proposal above however goes much further in streamlining commercial interests and bringing individuals and users at-large into the policy development process. It is a structure fit for the future.

Annex

Outline principles for a new tri-partite structure

All three interest groups

Principles

- Voting rights distributed equally between the three Interest Groups
- Each group open to expansion from parties who fit the profile.
- All three groups must strive to fulfill pre-established objective criteria regarding broadening outreach and deepening participation from a diverse range of participants. Implementation of the tripartite arrangement should be contingent on this.

1. Commercial Interest group

Principles

- The group should be unified entity representative broadly of commercial interests and open to commercially-oriented organisations and individuals such as consultants.
- During transition it will be an umbrella organization with three distinct and equal components (the BC, IPC and ISPCP) with an updated program and membership scope.
- A unified charter should reflect best practices from the existing three constituencies supported by individual mission statements for the three transitional components.
- Council representatives typically separate from the executive committee.
- An executive committee.
- A part-time professional secretariat.
- One web site with both common elements and distinct components to represent the breadth and diversity of interests.

2. Non-Commercial Interest group

Principles

- The group should be an umbrella organization based on the non-commercial constituency and incorporating At Large Structures, public-interest oriented individuals and individuals drawn from the Regional At-Large Organisations with an updated program and membership scope. The exact details of this can be determined after the Board's agreement to the concept in principle.
- At-Large has interests beyond GNSO policy so it is NOT intended to formally merge the At Large Advisory Committee, ALAC, with this group. Indeed no decision regarding GNSO Council restructuring should prejudice the role of any ICANN-wide users' entity.

3. Contractual Interest group

Principles

- The group should be an umbrella organization, initially with two distinct components (Registrars Constituency and Registries Constituency) with an updated program and membership scope.
- If desired or if legally required, include a firewall with respect to issues that are not appropriate for joint action by registrars and registries.
- The current definition of 'contracted parties' is overly narrow. There are thousands of other organisations which are directly related to those parties. These organisations include subsidiaries of registrars and registries who own domain portfolios and domain name resellers. This group's membership should be extended to include those organisations.