



**Comment on
GNSO Operating Procedures
and ICANN Bylaws, on GNSO
role in the Empowered
Community**

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Business Constituency Submission

GNSO//CSG//BC

About the ICANN Business Constituency (BC)

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment on GNSO Operating Procedures and ICANN Bylaws, regarding the GNSO role in the Empowered Community¹

The Business Constituency (BC) was deeply involved in the development of the Empowered Community and in the drafting of these GNSO Procedures and ICANN Bylaws, and appreciates this opportunity to comment.

In Jun-2016 GNSO Council resolved to create a Drafting Team (DT) to recommend procedures by which GNSO could exercise its powers under the revised ICANN bylaws.² BC officer Steve DeIBianco chaired the DT, given his role in the CCWG-Accountability in helping to design the accountability mechanisms for the Empowered Community.

Given that perspective, the BC entered the drafting team process with the view that GNSO Stakeholder Groups and Constituencies should directly determine how GNSO exercises its rights and responsibilities within the Empowered Community.

As discussed in the drafting Team's report, the first question considered was³:

1. Who should speak for the GNSO, as a Decisional Participant of the Empowered Community – should it be GNSO Council or the GNSO Stakeholder Groups and Constituencies?

Three DT members (IPC, ISPCP, and BC) did not support having GNSO Council exercise the new powers within its present split-house structure. They believe that GNSO Council is rightly focused on “managing the policy development process,” which is why Council was created by the ICANN Bylaws (Article 11):

The GNSO shall consist of:

- (a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;
- (b) Four Stakeholder Groups organized within Houses as described in Section 11.5;
- (c) Two Houses within the GNSO Council as described in Section 11.3(h);
- (d) A GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 11.3

¹ See ICANN public comment page at <https://www.icann.org/public-comments/gnsop-procedures-2017-06-19-en>

² GNSO Council Resolution, at <https://gnso.icann.org/en/council/resolutions#20160630-2>. Also see Drafting Team Wiki, at <https://community.icann.org/pages/viewpage.action?pageId=61608138>

³ Final Report of GNSO Bylaws Drafting Team, 12-Oct-2016, at <https://gnso.icann.org/en/drafts/bylaws-drafting-team-final-report-12oct16-en.pdf>

The BC noted that the Empowered Community was created to hold the ICANN corporation and board accountable to the broader community, which is not about managing “the policy development process.” As such, the BC, ISPCP, and IPC voted No on the question of whether GNSO Council should speak for the GNSO in the Empowered Community.

The rationale for this No vote is published in the Minority Report of GNSO Bylaws Drafting Team, including this explanation⁴:

The current structure of the GNSO council, including the House structure and allocation of votes among constituencies, was designed solely to address perceived issues in the policy development process. The current and all previous GNSO councilors were elected by their respective stakeholder groups or constituencies, or appointed by the Nominating Committee, to play the roles allocated to council members in the policy development process. There is no basis for presuming that this is the right group to exercise the significant new powers accorded to GNSO

However, the other six Drafting Team members supported letting GNSO Council exercise these new powers. Therefore, the recommendation that Council would speak for GNSO had “Strong support but significant opposition”, and the team moved on to the second major question from the Council resolution:

2. How should the GNSO Council or Stakeholder Groups & Constituencies arrive at their decisions – voting thresholds with or without requiring majorities in each house?

Three DT members (IPC, ISPCP, and BC) did not support having majority or supermajority votes *of each house* for all Empowered Community powers. These DT members presented alternate voting methods where each Stakeholder Group and Constituency voted directly, and with double-weighted votes in the Contract Party House to maintain balance.

We presented a table demonstrating that a majority of Council votes would be achieved, but would not reach a majority *of each house*. We also showed that a supermajority (2/3) of Council votes could be cast, again without reaching a majority *of each house*.

This exercise showed that requiring a majority of each house could actually block what is a majority and even a supermajority vote of GNSO Councilors. This creates the unacceptable outcome where one Councilor could block a decision that had the consensus of the GNSO.

The IPC, ISPCP, and BC then proposed majority and supermajority voting thresholds across GNSO Council, without requiring a majority of each house. That alternative was not supported by a majority of DT members, so we were left with the split-house structure in Council to determine GNSO decisions in the Empowered Community.

Nonetheless, all DT members contributed to “Consensus” recommendations for voting thresholds on the assumption that GNSO Council would approve nominations and actions created under the new ICANN Bylaws. In Dec-2016 Council considered recommendations from the DT where Council speaks for GNSO on new accountability matters, using various voting thresholds that were developed through consensus on the DT.

When Council considered the DT Final Report at its Hyderabad meeting, the IPC, ISPCP, and BC proposed an amended motion that surfaced our concerns about the appropriate role for Council versus GNSO

⁴ Minority Report of GNSO Bylaws Drafting Team, Oct-2016, at <https://gns0.icann.org/en/drafts/bylaws-drafting-team-minority-report-10oct16-en.pdf>

Stakeholder Groups and Constituencies. Predictably, our amendment was not accepted, and Council voted to give itself the decision-making powers created for the GNSO in the Empowered Community⁵.

Conclusion

The BC restates its position that GNSO Council is not the appropriate vehicle for GNSO to exercise Empowered Community rights and responsibilities. Those powers should be exercised through direct voting of GNSO Stakeholder Groups and Constituencies, without requiring a majority of each house.

With that important qualification, the BC supports the recommended voting thresholds and changes to Bylaws and Procedures that are the subject of this public comment period. We believe the voting thresholds are appropriately matched to the decisions and roles available to the GNSO.

We will remain vigilant as GNSO Council exercises its rights and responsibilities in the Empowered Community, and will not hesitate to raise the alarm if and when a supermajority of GNSO Stakeholder Groups and Constituencies are blocked from reaching consensus because of the Council's split-house voting structure.

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This comment was drafted by Steve DelBianco.

It was approved in accordance with the BC charter.

⁵ GNSO Council Resolution 20161201-1, at <https://gns0.icann.org/en/council/resolutions#201612>