



Comment on Proposed Revisions to Bylaws Section 11 – Additional Voting Thresholds

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Business Constituency Submission

GNSO//CSG//BC

Background

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.

BC comment on Proposed Revisions to Bylaws Section 11 – Additional Voting Thresholds

The Business Constituency (BC) offers this comment on proposed revisions to Bylaws for additional GNSO voting thresholds to implement to GNSO's role in the Empowered Community (EC) structure and the processes that were created as a result of the IANA transition¹.

We note the unanimous resolution by the GNSO Council on 30-Jan-2018 to recommend that the ICANN Board adopt the proposed Bylaw changes to reflect additional voting thresholds for the GNSO. These appear as red-line textual edits Section 11.3.j to the ICANN Bylaws.

The BC acknowledges that Council's resolution captures the voting thresholds outlined in the Final Report of the GNSO Bylaws Drafting Team. However, we want to remind the Board that the Drafting Team report was not adopted with "full consensus", and to explain why.

As we noted in our Aug-2017 comments to Council, there was not full consensus of the Drafting Team on two important questions²:

- (1) Whether the Council should speak for the GNSO as a Decisional Participant of the EC; and
- (2) How the GNSO Council or Stakeholder Groups & Constituencies should arrive at their decisions – voting thresholds with or without requiring majorities in each house.

The BC was deeply involved in the CCWG-Accountability, and BC officer Steve DeBianco chaired the Drafting Team since he played a major role in designing 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.

¹ See ICANN public comment page at <https://www.icann.org/public-comments/bylaws-section11-voting-2018-03-26-en>

² 17-Aug-2017 BC comment on GNSO role in the Empowered Community, at http://www.bizconst.org/assets/docs/positions-statements/2017/2017_08august_10%20bc%20comment%20on%20gns0%20procedures%20for%20the%20empowered%20community.pdf

Three Drafting Team 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

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.” That is why 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 explanation³:

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.”

With respect to the second question, the BC supported an alternative voting method which would not have required majorities in each house, and would not count votes by NomCom Council appointees, who do not represent any GNSO constituency or stakeholder groups. That alternative was not supported by a majority of Drafting Team members, so we were left with the split-house structure in Council to determine GNSO decisions in the Empowered Community.

Nonetheless, all Drafting Team members contributed to “Consensus” recommendations for voting thresholds on the assumption that GNSO Council would approve nominations and actions created under

³ Minority Report of GNSO Bylaws Drafting Team, Oct-2016, at <https://gns0.icann.org/en/drafts/bylaws-drafting-team-minority-report-10oct16-en.pdf>

the new ICANN Bylaws. In Dec-2016 Council considered recommendations from the Drafting Team where Council speaks for GNSO on new accountability matters, using various voting thresholds that were developed through consensus on the Drafting Team.

When Council considered the Drafting Team 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 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 Community⁴.

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.

The concerns restated here might appropriately be revisited, perhaps within the context of the GNSO Review, and we look forward to contributing at that time.

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This comment was drafted by Barbara Wanner and Steve DelBianco.

It was approved in accord with our charter.

⁴ GNSO Council Resolution 20161201-1, at <https://gns0.icann.org/en/council/resolutions#201612>