

# ICANN | GNSO

Generic Names Supporting Organization

**WG Name:** EPDP on Specific Curative Rights Protections for Intergovernmental Organizations (IGOs)

## Section I: Working Group Identification

<b>Chartering Organization(s):</b>	Generic Names Supporting Organization (GNSO) Council	
<b>Charter Approval Date:</b>	<Enter Approval Date>	
<b>Name of WG Leadership:</b>	Chris Disspain	
<b>Name(s) of Appointed Liaison(s):</b>	John McElwaine	
<b>WG Workspace URL:</b>	<a href="https://community.icann.org/x/RIYmCQ">https://community.icann.org/x/RIYmCQ</a>	
<b>WG Mailing List:</b>	<a href="https://mm.icann.org/pipermail/gns0-igo-wt/">https://mm.icann.org/pipermail/gns0-igo-wt/</a> (IGO Work Track) and TBD for the EPDP	
<b>GNSO Council Resolution:</b>	<b>Title:</b>	Initiation of the Expedited Policy Development Process (EPDP) on Specific Curative Rights Protections for Intergovernmental Organizations (IGOs)
	<b>Ref # &amp; Link:</b>	<Enter Resolution link>
<b>Important Document Links:</b>	<p><b>Procedural Documents:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Annex A-1: GNSO Expedited Policy Development Process</a></li> <li>• <a href="#">Expedited GNSO Policy Development Process Manual</a></li> <li>• <a href="#">GNSO Working Group Guidelines</a></li> </ul> <p><b>Non Exhaustive List of Substantive Documents:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Addendum for the IGO Work Track</a></li> <li>• <a href="#">Final Report of the IGO-INGO Access to Curative Rights PDP Working Group</a></li> <li>• <a href="#">Report from Professor Edward Swaine</a></li> </ul>	

## Section II: Mission, Purpose, and Deliverables

### Mission & Scope:

#### Background

#### Problem Statement:

One of the final recommendations from the GNSO IGO-INGO Access to Curative Rights Protection Mechanisms PDP Working Group which completed its work in July 2018 was that, in the admittedly rare case where:

- (i) an IGO has prevailed in a Uniform Domain Name Dispute Resolution Policy (UDRP) or Uniform Rapid Suspension (URS) proceeding; and
- (ii) the losing registrant files suit in a court of competent jurisdiction; and
- (iii) the IGO successfully claims immunity from the jurisdiction of that court; then
- (iv) the original UDRP or URS panel decision is to be set aside.

Assuming an IGO were able to avail itself of the UDRP or URS process, the effect of this recommendation is that the parties to the dispute will be placed in the original situation as if the UDRP or URS proceeding had never been commenced.

During the GNSO Council's deliberations over the final PDP recommendations, concerns were expressed as to whether this particular recommendation will:

- (i) require a substantive modification to the UDRP and URS (notwithstanding that these two dispute resolution procedures are currently under consideration in the RPM PDP); and
- (ii) result in a potential reduction of the existing level of curative protections currently available to IGOs (notwithstanding the fact that the PDP had been chartered to determine "whether to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs ...or whether a separate, narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGOs and INGOs should be developed").

Consequently, the GNSO Council did not approve this particular recommendation and in April 2019 tasked the Review of All Rights Protection Mechanisms in All gTLDs (RPM) PDP Working Group to "consider, as part of its Phase 2 work, whether an appropriate policy solution can be developed, to the extent possible, that is generally consistent with Recommendations 1, 2, 3 & 4 of the IGO-INGO Access to Curative Rights PDP Final Report and:

1. accounts for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances;
2. does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction whether following a UDRP/URS case or otherwise; and
3. recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction" (see <https://gns0.icann.org/en/council/resolutions#20190418-03>).

Accordingly, the GNSO Council approved an Addendum to the RPM PDP Charter in January 2020 that would create an IGO Work Track. Due in part to community workload and capacity concerns, the Council did not immediately initiate the work. The Council launched the IGO Work Track in September 2020 and the Work Track began meeting in February 2021. As of 2 August 2021, the Work

Track has held twenty-nine (29) weekly calls and has reached a point in its deliberations where it is preparing to draft preliminary recommendations to be published for Public Comment.

Although the Council approved the RPMs Phase 1 Final Report in January 2021, to date Phase 2 of the RPM PDP has not yet been launched, pending a review of the PDP Charter to address concerns raised by the Phase 1 Working Group. As a result, while the IGO Work Track has been making steady progress, procedurally it is not attached to a PDP Working Group. Following consideration of the available procedural options and based on the fact that the GNSO Council believes that the fundamental requirement for an EPDP has been fulfilled in this case, the GNSO Council initiated this EPDP in order to ensure that the former Work Track is able to make Consensus Policy recommendations in accordance with the ICANN Bylaws and GNSO Operating Procedures.

### **Scope & Charter Questions**

This EPDP will focus exclusively on the specific issue described in the Problem Statement above.

This EPDP is structured to encourage balanced participation from interested groups within the ICANN community; in particular, from affected IGOs.

The EPDP team will work in accordance with the timeline, work plan, deliverables and methodologies outlined in this Charter.

The EPDP team is expected to take into account the review of the relevant historical documentation and prior community work conducted by the IGO-INGO Access to Curative Rights Protection Mechanisms PDP Working Group (see Sections 3.1 and 3.2 of the [PDP Final Report](#)), relevant GAC Advice, the 31-October-2016 letter from IGO Legal Counsels to Council Leadership, the external legal expert opinion commissioned by the PDP Working Group (Annex F), and the IGO Small Group Proposal (Annex D). In order to avoid, to the extent possible, re-opening or re-visiting the policy recommendations, the GNSO Council instructs the EPDP team to base its recommendations on its analysis of the materials cited in this paragraph, and its deliberations as to whether there is a need to develop appropriate policy recommendations to address identified IGO needs in respect of the specific issue that was originally referred to the RPM PDP by the GNSO Council for consideration by the IGO Work Track.

The GNSO Council further instructs the EPDP team to take into account and continue the deliberations of the IGO Work Track to date, and the GNSO Council confirms that the establishment of this EPDP is a procedural matter that should not be used to re-open or re-visit conclusions and agreements that may have been reached by the IGO Work Track. .

### **Deliverables:**

The EPDP team shall respect the timelines and deliverables as outlined in [Annex A](#) and Annex A-1 of the ICANN Bylaws, the [EPDP Manual](#), and the [PDP Manual](#).

For the avoidance of doubt, the following sections of the PDP Manual shall not apply to an EPDP:

- Section 2 (Requesting an Issue Report);
- Section 4 (Recommended Format of Issue Report Requests);
- Section 5 (Creation of the Preliminary Issue Report);
- Section 6 (Public Comment on the Preliminary Issue Report); and
- Section 7 (Initiation of the PDP)

Except as otherwise expressly modified or excluded herein, all other provisions of the PDP Manual shall apply in full to an EPDP, including without limitation the publication of an Initial Report for public comments. In the event of a conflict in relation to an EPDP between the provisions of the PDP Manual and the specific provisions in the EPDP Manual, the provisions herein shall prevail.

As its first deliverable, the EPDP team is expected to deliver to the GNSO Council a **work plan**, in addition to other project management products that help plan, guide, track, and report the progress of the EPDP team from start to finish, and include the necessary data and information to help the GNSO Council assess the progress of the WG. See more details in Section III. of this charter.

At the minimum, the EPDP team shall complete the following deliverables:

- An **Initial Report** which includes preliminary recommendations that stem from the Problem Statement as noted in the “Mission and Scope” section of this Charter, as well as any other related items within its scope that were considered and deliberated upon by the EPDP team. To the extent possible, the EPDP shall consult with ICANN org and Contracted Parties to ensure that its draft final recommendations are operationally and technically feasible.
- A **Final Report** following review of Public Comments submitted for the Initial Report.

The EPDP team has the discretion to produce additional outputs or deliverables for Public Comment opportunities as it deems appropriate.

Furthermore, the EPDP team should identify a **set of metrics** to measure the effectiveness of the policy recommendations. The identification, attainment, and analysis of metrics/data should be based on how they address the needs and challenges identified by the EPDP team in developing policy recommendations under this Charter. Current state baselines of the policy and initial benchmarks shall also be identified. Metrics may include but not limited to:

- ICANN Compliance data;
- UDRP and URS provider reports and other industry metric sources;
- Community input via Public Comment;
- Surveys or studies.

If the EPDP team concludes with **any recommendations**, the EPDP team should also provide a high-level framework or **implementation guidance** to the subsequent policy Implementation Review Team for their consideration when implementing the recommendations after the ICANN Board adoption.

#### **Data and Metric Requirements:**

Define the policy goals for the proposed policy change and the metrics that will measure the goals

1. Determine the policy goals for this exercise, within the parameters set by the Problem Statement.
2. If appropriate, determine a set of questions which, when answered, provide the insight necessary to achieve the policy goals.
3. If appropriate, determine the types of data that may assist the EPDP team in better scoping the issues, identify whether the data can be collected within the EPDP timeframe, and assemble or substitute information that can be analyzed to help answer each question.
4. Determine a set of metrics which can be applied to the data, analysis, and achievement of policy objectives. Collect this data to the extent feasible, and determine a process for ongoing metric analysis and program evaluation to measure success of this policy process.

(The [Hints and Tips](#) page on the GNSO website contains more details on use of data and metrics.)

## Section III: Project Management

### Work Product Requirement:

The EPDP leadership, in collaboration with support staff and the GNSO Council liaison, shall use a standard set of project management work products that help plan, guide, track, and report the progress of the EPDP team from start to finish. These reports should include the necessary data and information to assess the progress of the EPDP team. These work products include but are not limited to:

- Work Plan
- Summary Timeline
- Project Situation Report
- Project Plan
- Action Items

See the full suite of work products in the [GNSO Project Work Product Catalog](#).

Typically, an EPDP team is expected to deliver its work plan to the GNSO Council as its first deliverable. In this specific case, the EPDP team should adopt the existing work plan being used by the IGO Work Track, and as amended by the Project Change Request submitted to the GNSO Council in July of 2021.

### Project Status & Condition Assessment:

The EPDP leadership, in collaboration with support staff and the GNSO Council liaison, shall assess the Status and Condition of the project at least once a month. Such frequency is required in preparation for the GNSO Council monthly meeting, where At-Risk or In-Trouble projects are subject to review by GNSO Council leadership, and in some instances may be deliberated by the full GNSO Council.

The EPDP leadership, in collaboration with support staff and the GNSO Council Liaison, shall use an [escalation procedure](#), which defines specific conditions that trigger the execution of a repeatable mitigation plan. The objective of this exercise is to return the project to an acceptable state ultimately achieving its planned outcomes.

**Additional Reporting Instructions:**

The EPDP chair must provide a written (at least quarterly) update to the GNSO Council.

All appointed Members are expected to provide regular progress reports to their appointing organizations, to ensure that any positional or voting directions are developed and received in a timely fashion.

In view of the Governmental Advisory Committee's (GAC) requests to engage with the GNSO Council on the topic of IGO protections, the GNSO liaison to the GAC is expected to provide regular progress reports to the GAC, to allow for any appropriate opportunities for the GAC and GNSO Council to engage in open and constructive discussion that may assist with the work (but does not supersede the role) of the EPDP or the GNSO Council as manager of the GNSO policy development process.

**Project Change Request:**

The EPDP team shall submit a [Project Change Request \(PCR\) Form](#) to the GNSO Council when its deliverable and baseline delivery date are revised. The PCR shall include a rationale for why these changes were made, their impacts on the overall timeframe of the EPDP or any other interdependencies, and a proposed remediation plan.

The use of the PCR mostly occurs when primary deliverable dates are changed due to unforeseen or extreme circumstances. However, it can also be used to document changes in the deliverable requirements that may not have been identified in the chartering process.

When the PCR is required, it should be completed by the EPDP Chair and presented to the GNSO Council for approval.

**Resources Tracking:**

The purpose of resource tracking is to allow a working group to deliver its work according to the work plan and be responsible for managing these resources.

For projects where dedicated funds are provided outside of budgeted policy activities, the EPDP team shall provide regular reports as to budget versus actual expenses using a GNSO-approved tool to allow for a better tracking of the use of resources and budget.

**Section IV: Formation, Staffing, and Organization**

**Working Group Model:**

**Working Group Model:** Representative + Observers

**Rationale:** The “Representative + Observers” model is chosen to enable the EPDP to conduct and conclude its work in an efficient/effective manner while allowing for inclusive community participation. As this EPDP builds on existing work and is intended to conclude in an expeditious manner, Members must possess a level of expertise as detailed in the “Membership Criteria” section in this charter.

**Membership Structure:**

**Role Descriptions:**

- **EPDP Members:** Members are expected to commit to the Statement of Participation as well as participate in any EPDP Team consensus calls, as applicable. Members are required to represent the formal position of their appointing organization, not individual views or positions.

**EPDP Team Alternates:** Alternates are also expected to adhere to the Statement of Participation. An alternate will only participate if a Member is not available. Members and/or appointing organizations are expected to communicate in a timely manner to the EPDP Chair and/or the GNSO Secretariat the time period during which the alternate will replace a member. Alternates will be responsible for keeping up with all relevant EPDP WG deliberations to ensure they remain informed and can contribute when needed (when the Member is not available). As such, alternates will be subscribed to the mailing list as observers (apart from any time periods during which the alternate will be replacing a member. During that period, the alternate will also have mailing list posting rights). As noted, the ability to listen in real-time is expected to be made available to facilitate this process.

- **EPDP Team Observers:** Anyone interested in this effort may join as an observer – observers are subscribed to the mailing list on a read-only basis but are NOT able to post. Similarly, observers are NOT invited to participate in EPDP Team meetings. The ability to listen in real-time as well as recordings / transcripts of meetings will be available to observers.
- **GNSO Council Liaison:** The GNSO Council shall appoint one (1) Liaison who is accountable to the GNSO. The GNSO Council Liaison must be a member of the Council, and the Council recommends that the Liaison should be a Council member and be able to serve during the life of this WG. Generally speaking, the liaison is expected to fulfill the liaison role in a neutral manner, monitor the discussions of the Working Group and assist/ inform the Chair and the EPDP Team as required.
- **GNSO Council Liaison to the GAC:** In order to facilitate communications between the GNSO and the GAC on this topic, the currently appointed GNSO Council liaison to the GAC must be knowledgeable of the EPDP’s status to be able to provide regular progress reports to the GAC.

**Membership Structure:**

The table below indicates the maximum number of Members and Alternates that groups may appoint.

Group	Member (up to)	Alternates (up to)
RySG	2	2
RrSG	2	2
CSG	3	3

NCSG	3	3
ASO	2	2
ccNSO	2	2
ALAC	2	2
GAC	2	2
IGOs	2	2
SSAC	3	3
RSSAC	3	3

For the avoidance of doubt, it will be up to each SO, AC or GNSO Stakeholder Group to decide if it wishes to appoint any Members and Alternates.

Interested individuals may sign up as Observers to the EPDP. In accordance with GNSO custom and practice, Observers will not be able to participate in EPDP discussions, whether at meetings or on the mailing list. Observers will only be subscribed to the EPDP mailing list on a read-only basis (i.e., they cannot post to the list).

For the specific purposes of this EPDP, the GNSO Council will confirm with appointing groups that existing Members and Alternates for the IGO Work Track will continue in those same roles in this EPDP.

### **Membership Criteria:**

All Members (and Alternates when serving in place of the respective Member) of the EPDP must:

- Be responsible to their appointing organization, seeking input as necessary and keeping the appointing organization informed of progress;
- Agree to respect the GNSO EPDP and other applicable GNSO rules of procedure;
- Be willing to work, in good faith, toward consensus;
- Commit to Terms of Participation, to be set by the GNSO Council prior to the first meeting of the EPDP;
- Provide an updated Statement of Interest in accordance with Section 5 of the GNSO Operating Procedures; and
- Be available to actively contribute to the discussion and activities of the EPDP on an ongoing basis.

All Members of the EPDP should:

- Possess a working understanding of international intellectual property law, public international law, international arbitration or alternative dispute resolution.

(1) groups should endeavor to appoint representatives with the relevant knowledge/expertise as detailed; and

(2) where a group is not able to appoint representatives with the relevant knowledge/expertise, it should seek to contribute towards the balanced participation that is being sought, by appointing representatives with specific skillsets that otherwise facilitates an effective policy outcome (e.g.



professional experience in an IGO/international NGO environment, relevant practical experience with complex policy issues, expertise in consensus-building and/or facilitation, etc.)

### **Leadership Structure:**

For the specific purposes of this EPDP, the GNSO Council will confirm with the Chair of the IGO Work Track that they will continue as the single, qualified EPDP Chair.

The IGO Work Track Chair selection was subject to the following process and requirements and will apply equally to this EPDP: “The Expressions of Interest will be widely solicited for a neutral and independent Chair. The call for Expressions of Interest must include: (i) clear criteria relating to knowledge, expertise, skills and experience that the GNSO Council believes is necessary for the Chair; and (ii) a list of expected responsibilities (including the anticipated time commitment) of the Chair. Past and current members of SOACs, GNSO Stakeholder Groups and Constituencies will be eligible to apply, but if appointed he/she must expressly acknowledge his/her willingness and ability to act as an impartial Chair.

The Chair does not count as a Member of the Work Track and does not vote or participate in consensus calls other than to preside over the discussions and outcomes.

The GNSO Council may appoint a Vice-Chair to assist the Chair with managing the work of the group. The Vice-Chair may be appointed from amongst the then-current Work Track Membership, although this is not necessary. Alternatively, the Work Track Chair and Membership may elect to appoint a Vice Chair or Co-Vice Chairs to assist the Chair in managing the work of the group.

The GNSO Council may, in addition to the provisions in the GNSO Working Group Guidelines describing the role and expectations of a Working Group Chair, specify other responsibilities and obligations for the Chair, Vice-Chair (if any) and GNSO Council Liaison.”

The Expressions of Interest for the IGO Work Track is available here:

<https://www.icann.org/en/system/files/files/eoi-igo-work-track-chair-26oct20-en.pdf>

### **Support Staff:**

The ICANN Staff assigned to the WG will fully support the work of the EPDP as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.

Staff assignments to the Working Group:

- ICANN policy staff members
- GNSO Secretariat

In addition, regular participation of and consultation with other ICANN Org departments may be needed to ensure timely input on issues that may require ICANN org input such as implementation-related queries.

The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.

## Section V: Rules of Engagement

### Statements of Interest (SOI) Guidelines:

Each member of the EPDP is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

### Statement of Participation:

Each Member or Alternate of the EPDP on Specific Curative Rights Protections for Intergovernmental Organizations must acknowledge and accept the Statement of Participation (as provided below), including ICANN's Expected Standards of Behavior, before he/she can participate in the EPDP.

#### Statement of Participation

As a Member or Alternate of the Curative Rights Protections for Intergovernmental Organizations Expedited Policy Development Process Working Group:

- I agree to genuinely cooperate with fellow Members of the EPDP to deliberate the issues outlined in the Problem Statement. Where there are areas of disagreement, I will commit to work with others to reach a compromise position to the extent that I am able to do so;
- I acknowledge the remit of the GNSO to develop consensus policies for generic top level domains. As such, I will abide by the recommended working methods and rules of engagement as outlined in the Charter, particularly as it relates to rules in [GNSO Working Group Guidelines](#);
- I will treat all Members of the EPDP with civility both face-to-face and online, and I will be respectful of their time and commitment to this effort. I will act in a reasonable, objective, and informed manner during my participation in this EPDP and will not disrupt the work of the EPDP in bad faith;
- I will make best efforts to regularly attend all scheduled meetings and send apologies in advance when I am unable to attend. I will take assignments allocated to me during the course of the EPDP seriously and complete these within the requested timeframe.
- I agree to act in accordance with [ICANN Expected Standards of Behavior](#), particularly as they relate to:
  - Acting in accordance with, and in the spirit of, ICANN's mission and core values as provided in [ICANN's Bylaws](#);
  - Listening to the views of all stakeholders and working to build consensus; and
  - Promoting ethical and responsible behavior;
- I agree to adhere to any applicable conflict of interest policies and the Statement of Interest (SOI) Policy within the [GNSO Operating Procedures](#), especially as it relates to the completeness, accuracy, and timeliness of the initial completion and maintenance of my SOI; and
- I agree to adhere to the [ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedures](#).

As a Member of the EPDP on Specific Curative Rights Protections for Intergovernmental Organizations:

- I understand reaching consensus does not mean that I am unable to fully represent the views of myself or the organization I represent. I will abide by the recommended working

methods and rules of engagement as outlined in the Charter, particularly as it relates to designating consensus in [GNSO Working Group Guidelines](#).

I acknowledge and accept that this Statement of Participation, including ICANN's Expected Standards of Behavior, is enforceable and any individual serving in a Chair role (such as Chair, Co-Chair, or Acting Chair or Acting Co-Chair) of the EPDP and GNSO Council Leadership Team have the authority to restrict my participation in the Working Group in the event of non-compliance with any of the above.

#### Problem/Issue Escalation & Resolution Process:

The problem/issue escalation & resolution process within the WG is provided in Sections 3.4 and 3.5 of the Working Group Guidelines. WG members should also reference the [Guidelines Concerning ICANN Org Resources for Conflict Resolution and Mediation](#).

#### Formal Complaint Process:

The formal complaint process within the WG is provided in Section 3.7 of the Working Group Guidelines. Further details regarding the formal complaint process are included in the [Clarification to Complaint Process in GNSO Working Group Guidelines](#) document.

The formal complaint process may be modified by the GNSO Council at its discretion.

## Section VI: Decision Making Methodologies

#### Consensus Designation Process:

Section 3.6 of the GNSO Working Group Guidelines, as included below, provides the standard consensus-based methodology for decision making in GNSO WGs.

For consensus building purposes, the WG Leadership, WG Members, and GNSO Council Liaison are expected to review the [Consensus Playbook](#) which provides practical tools and best practices to bridge differences, break deadlocks, and find common ground within ICANN processes; potential training related to the Consensus Playbook may be provided for WG Leadership, Members, and GNSO Council Liaison.

#### 3.6 Standard Methodology for Making Decisions

The Chair will be responsible for designating each position as having one of the following designations:

- **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus**.
- **Consensus** - a position where only a small minority disagrees, but most agree. *[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]*

- **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.
- **Divergence** (also referred to as **No Consensus**) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
  - o A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - o It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working

Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants<sup>1</sup> in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO<sup>2</sup>.

### **Who Can Participate in Consensus Designation:**

Consensus calls or decisions are limited to Members who may consult as appropriate with their respective appointing organizations. However, for the purpose of assessing consensus, groups that do not fulfil their maximum membership allowance should not be disadvantaged.

The WG Chair shall ensure that all perspectives are appropriately taken into account in assessing Consensus designations on the final recommendations.

Unless otherwise specified in this Charter, the GNSO Working Group Guidelines apply in full and Consensus designations are therefore the responsibility of the Work Group Chair and are to be made in accordance with the consensus levels described in Section 3.6 of the Working Group Guidelines.

### **Termination or Closure of Working Group:**

Typically, the WG will close upon the delivery of its last Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

The GNSO Council may terminate or suspend the WG prior to the publication of its last Final Report for significant cause such as changing or lack of community volunteers, the planned outcome for the project can no longer be realized, or when it is clear that no consensus can be achieved.

<sup>1</sup> Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or liaison of their issue and the Chair and/or liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

<sup>2</sup> It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

The WG Chair, in collaboration with the WG support staff and the GNSO Council Liaison, shall use an [escalation procedure](#), which helps define the health of the WG and informs the GNSO Council's decision on whether the WG should be terminated or suspended.

**Section VII: Change History**

**Section VIII: Charter Document History**

Version	Date	Description
1.0	9 August 2021	

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**Translations: If translations will be provided please indicate the languages below:**

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