Working Group (WG) Charter

WG Name:	Policy & Implementation Working Group

Section I: Working Group Identification

Chartering Organization(s):	GNSO Council
Charter Approval Date:	
Name of WG Chair:	
Name(s) of Appointed Liaison(s):	
WG Workspace URL:	
WG Mailing List:	

GNSO Council Resolution:	**Title:**	
	Ref # & Link:	

Important Document Links:	• GNSO Policy Development Process Manual - http://gnso.icann.org/council/annex-2-pdp-manual-16may13-en.pdf • Annex A of the ICANN Bylaws - http://www.icann.org/en/about/governance/bylaws#AnnexA • Staff Discussion Paper - http://gnso.icann.org/en/correspondence/policy-implementation-framework-08jan13-en.pdf • Public comments received on staff discussion paper - http://forum.icann.org/lists/comments-policy-implementation-31jan13/ • Session at ICANN Meeting in Beijing - http://beijing46.icann.org/node/37133

Section II: Mission, Purpose, and Deliverables

Mission & Scope:

Key assumptions:
- Processes are fairly well defined as far as policy development is concerned, understanding that there is plenty of room for improvement.
- Implementation processes are less well defined and hence will likely need to be a larger focus of the WG.
- While the exact delineation between policy and implementation may be difficult to define, there is a need to establish a framework that takes the relationship between the two into account.
- All processes, policy, implementation and the framework for interaction between the two, should incorporate the appropriate level of multi-stakeholder participation.

The Policy & Implementation Working Group is tasked to provide the GNSO Council with a set of recommendations on:

1. A set of principles that would underpin any GNSO policy and implementation related discussions, taking into account existing GNSO Operating Procedures.
2. A process for developing gTLD policy, perhaps in the form of "Policy Guidance", including criteria for when it would be appropriate to use such a process (for developing policy other than "Consensus Policy") instead of a GNSO Policy Development Process;
3. A framework for implementation related discussions associated with GNSO Policy Recommendations;
4. Criteria to be used to determine when an action should be addressed by a policy process and when it should be considered implementation, and;
5. Further guidance on how GNSO Implementation Review Teams, as defined in the PDP Manual, are expected to function and operate.

Objectives & Goals:

To develop, at a minimum, an Initial Recommendations Report and a Final Recommendations Report addressing the recommendations outlined above, following the processes described in the GNSO Working Group Guidelines. These recommendations may include proposed changes to the GNSO Operating Procedures and/or relevant sections of the ICANN Bylaws.

The Recommendations are expected to:
1. Provide a clearer understanding of the potential goals and end states of the PDP and any alternatives to the PDP[1]
2. Improve the collection/documentation of gTLD-related policies and best practices created by the GNSO
3. Provide a better understanding of the transition between policy and implementation stages, with expected outcomes from each
4. Provide a framework for implementation work that is predictable, consistent, efficient and timely and that includes appropriate multi-stakeholder feedback
5. Include guidance on how feedback from the policy apparatus is needed in the implementation process
6. Include mechanisms to adjust policy in response to learning from implementation

Recommended WG Tasks

1. Develop a projected work schedule that contains:
   a. Frequency and scheduling of meetings
   b. Estimated time targets for each deliverable
2. Review a sampling of previous implementation efforts and create a list of lessons learned
3. Identify applicable ICANN core values and
   a. Describe how they directly or indirectly apply to policy development and/or

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[1] In particular, for situations in which the output of the policy development effort is not a "Consensus Policy", it may be desirable to have a more streamlined process than the current PDP. Alternately, it may be that the PDP is initiated in a different manner or its work is concluded differently if the output is not intended to be a "Consensus Policy".

implementation of policy
     b. If possible, make a determination as to whether the identified core values apply differently to policy development work than to implementation of policy; e.g., do any of the core values apply only to policy development and not to implementation?
4. Review previous policy development efforts and follow-on implementation work to determine whether particular approaches have resulted in better or worse outcomes historically.
5. Analyze the 'Proposed Principles' contained in the Policy versus Implementation Draft Framework prepared by ICANN staff and
     a. Prepare WG recommendations regarding the principles, i.e., revised principles
     b. Incorporate revised principles as applicable into WG recommendations regarding policy and implementation
6. Review the ICANN Bylaws, with a particular focus on the GNSO PDP, and the associated GNSO PDP Manual, to determine:
     a. What elements of the process provide guidance regarding implementation of policies
     b. Whether there are any gaps in the Bylaws or process that leave ambiguity regarding implementation

The WG may find the following questions helpful for completing the work:

1. What guidance do ICANN core values (Bylaws Article 1, Section 2) directly provide with regard to policy development work and policy implementation efforts? (e.g., multi-stakeholder participation)
2. What guidance do other ICANN Core values provide that relate *indirectly to* policy development and policy implementation? (e.g., effective & timely processes)
3. 'Questions for discussion' contained in the Policy versus Implementation Draft Framework prepared by ICANN staff (http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm)
4. What lessons can be learned from past experience?
     a. What are the consequences of an action being considered "policy" vs. "implementation?
     b. Why does it matter if something is "policy" or "implementation"?
     c. Under what circumstances, if any, may the GNSO Council make recommendations or state positions to the Board on matters of policy and implementation as a representative of the GNSO as a whole?
     d. How do we avoid the current morass of outcome-derived labeling (i.e., I will call this policy because I want certain consequences/"handling instructions" to be attached to it)?
     e. Can we answer these questions so the definitions of "policy" and "implementation" matter less, if at all?
5. What options are available for policy ("Consensus Policy"[2] or other) and implementation efforts and what are the criteria for determining which should be used?
     a. Are policy and implementation on a spectrum rather than binary?
     b. What are the flavors of "policy" and what consequences should attach to each flavor?
     c. What happens if you change those consequences?

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[2] As defined in the ICANN Bylaws and contracted party agreements.

6. Who determines the choice between whether something is policy or implementation?
   a. How is policy set/recommended/adopted and do different paths lead to different "flavors"?
   b. Who makes these determinations and how?
   c. How are the policy vs implementation decisions reviewed and approved?
   d. What happens if the reviewing bodies come to a deadlock?
7. What is the process by which this identification, analysis, review and approval work is done?
   a. How are "policy and implementation" issues first identified (before, during and after implementation)?
   b. What is the role of the GNSO in implementation?
   c. In order to maintain multi-stakeholder processes, once policy moves to implementation how should the community be involved in a way that is meaningful and effective?
   d. Should policy staff be involved through the implementation process to facilitate continuity of the MSM process that already occurred?

Deliverables & Timeframes:

At a minimum, the Working Group is expected to:
   I. Develop a work plan per the GNSO Working Group Guidelines that outlines the necessary steps and expected timing in order to achieve these milestones and submit this to the GNSO Council.
   II. Reach out at the beginning of the process to the different GNSO Stakeholder Groups and Constituencies as well as other ICANN Supporting Organizations and Advisory Committees to obtain input on:

   a) The charter questions outlined above;
   b) Lessons learned from previous implementation efforts;
   c) How ICANN Core Values relate to policy and implementation efforts and whether the identified core values apply differently to policy development work than to implementation of policy;
   d) Strengths and weaknesses of previous approaches to implementation of GNSO policy development;
   e) Recommended principles about policy & implementation.
   III. Produce an Initial Recommendations Report for community review and comment;
   IV. Produce a Final Recommendations Report, addressing the comments received on the Initial Recommendations Report, for submission to the GNSO Council.

Deliverables

1. Projected work schedule

2. Request for input from GNSO Stakeholder Groups and Constituencies as well as other ICANN Supporting Organizations and Advisory Committees

3. List of lessons learned from previous implementation efforts

4. WG conclusions with regard to how ICANN Core Values relate to policy and implementation efforts and whether the identified core values apply differently to policy development work than to implementation of policy

5. WG responses to key questions

6. WG analysis of results of previous approaches to implementation of GNSO policy development

7. WG recommendations regarding

   a. Principles about policy & implementation

   b. Policies with regard to implementation

8. Recommended changes to ICANN Bylaws and/or GNSO policy procedures

9. Initial Recommendation Report for public comment

10. Final Recommendation Report for the GNSO Council

Section III: Formation, Staffing, and Organization

Membership Criteria:

The Working Group will be open to all interested in participating. New members who join after certain parts of work has been completed are expected to review previous documents and meeting transcripts.

Group Formation, Dependencies, & Dissolution:

This WG shall be a standard GNSO Working Group. The GNSO Secretariat should circulate a 'Call For Volunteers' as widely as possible in order to ensure broad representation and participation in the Working Group, including:
- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other ICANN Supporting Organizations and Advisory Committees

Working Group Roles, Functions, & Duties:

The ICANN Staff assigned to the WG will fully support the work of the Working Group 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:
- GNSO Secretariat
- 1 ICANN policy staff member

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

Statements of Interest (SOI) Guidelines:
Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

Section IV: Rules of Engagement

Decision-Making Methodologies:

{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.

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:

- 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.
- 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 where 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 (see Note 1 below) 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 (see Note 2 below).

<u>Note 1</u>: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will

require that 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.

Note 2: 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.

Status Reporting:

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

Problem/Issue Escalation & Resolution Processes:

{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}

The WG will adhere to ICANN's Expected Standards of Behavior as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN's Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

Closure & Working Group Self-Assessment:

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

Section V: Charter Document History

Version	Date	Description
1.0	4 July 2013	Charter submitted to the GNSO Council for approval

Staff Contact:	Marika Konings	**Email:**	Policy-staff@icann.org