

CS@ICANN

How to do it right

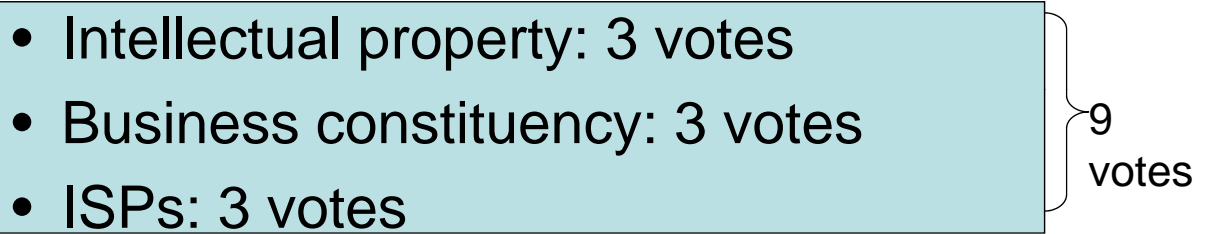
Dr. Milton Mueller, Professor, Syracuse University
XS4All Professor, Delft University of Technology

I assume you know this

- The influence of the general public in ICANN's policy making process is vital to its accountability and to ensuring that its policies serve the public interest
- As a new global governance institution, ICANN has to invent its own representational structures

The GNSO reforms!

Prior regime: Generic Names Council

- Registrars: 6 votes
 - Registries: 6 votes
 - Intellectual property: 3 votes
 - Business constituency: 3 votes
 - ISPs: 3 votes
 - Noncommercial Users (NCUC): 3 votes
- 

New regime

- LSE Report
- Stakeholder Groups (SGs)
 - Registries
 - Registrars
 - Commercial Users (6 seats)
 - Noncommercial Users (6 seats)
- Equal voting power across all SGs

**The GNSO reforms:
counter-revolution**

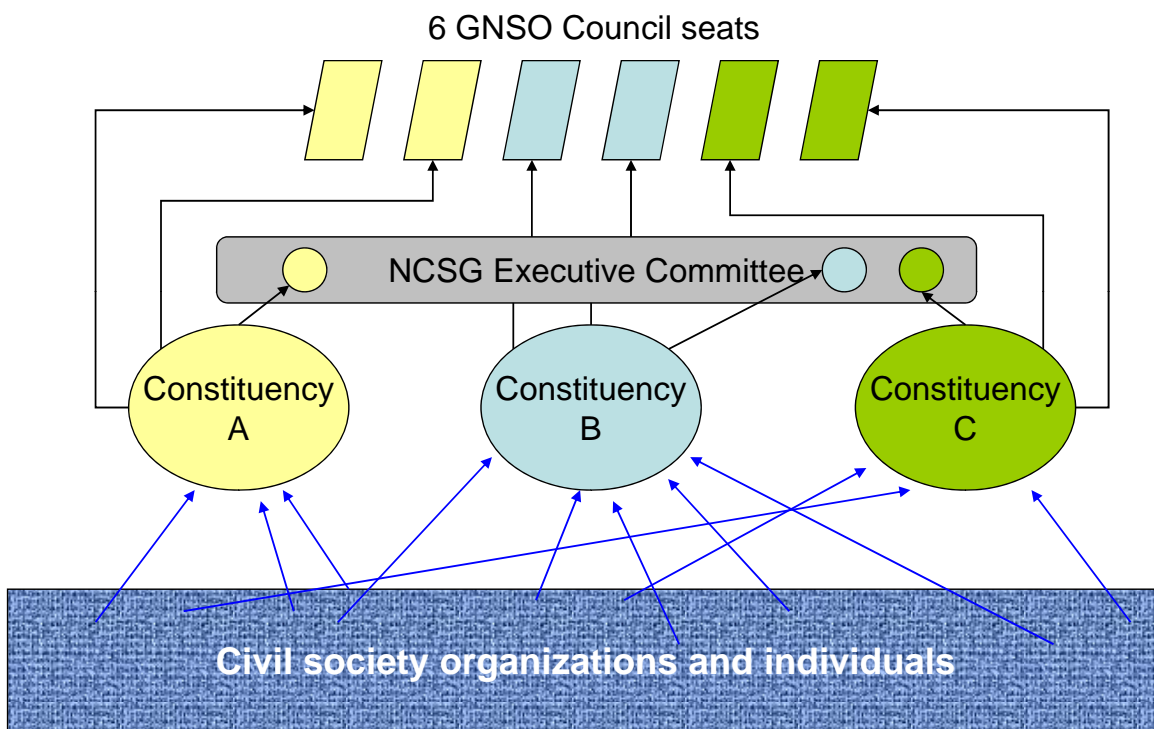
Critique of the SIC charter

- Multiple layers of organization
 - Too much organizational overhead
 - Too much time wasted coordinating across entities
 - More difficult to achieve consensus (division of civil society into silos and cliques)
- NCUC notified ICANN Board Governance Committee w/g of this problem as early as June 2007 (in response to first BGC call for comments)

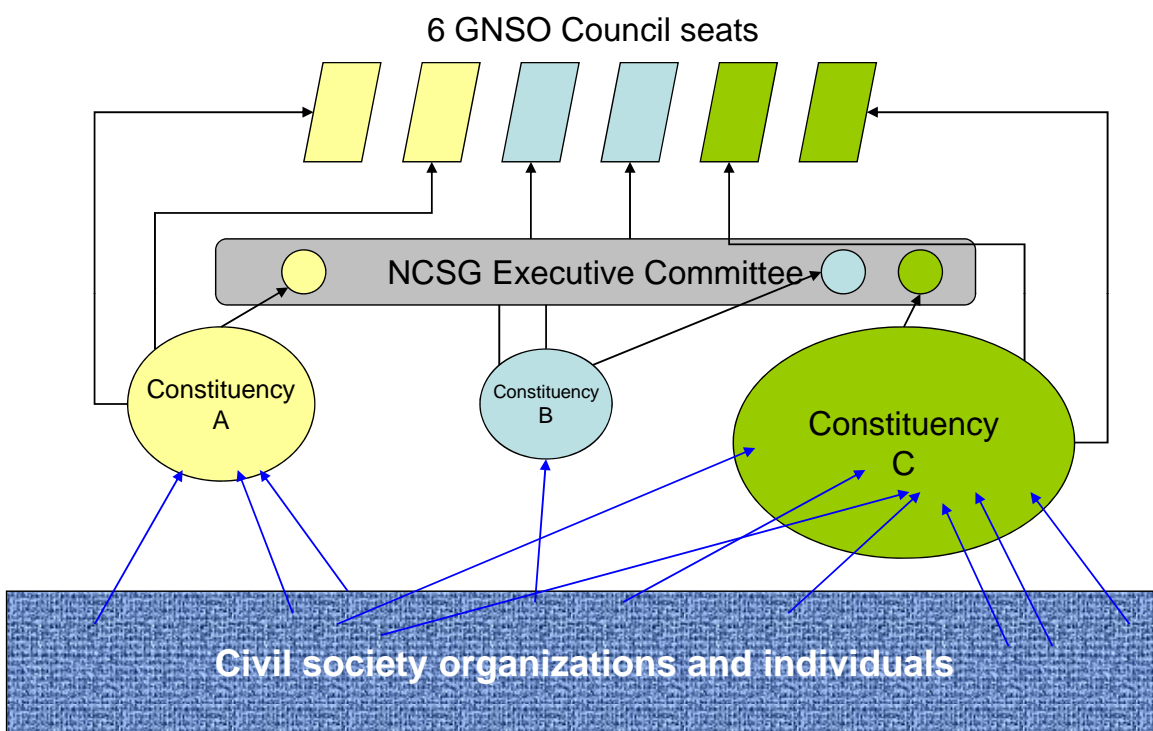
It Gets Worse...

- Fixed number of Council seats; variable number of Constituencies
- New constituencies mean taking away representation and influence from existing ones
- Bad incentives
 - Zero sum game
 - Constant political infighting
 - Form a constituency to lock in a power base
 - Council seats mean **funding, voice, and votes**
- What happens when there are more than 6 constituencies?
- Constituencies divide us into rigid, arbitrary categories
 - Consumer, privacy, educational, library, free expression, security, regional interests ALL OVERLAP and are not mutually exclusive
 - Recognition of constituencies based on Staff/Board discretion

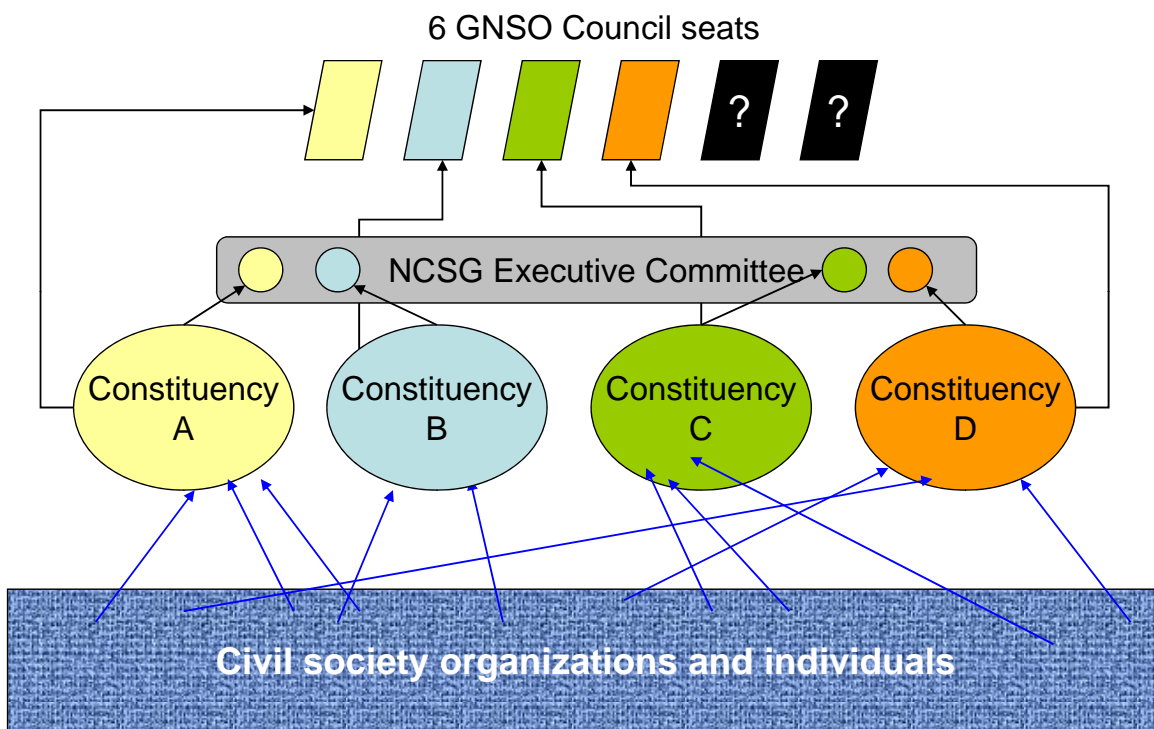
SIC/staff model



SIC/staff model of NCSG



SIC/staff model



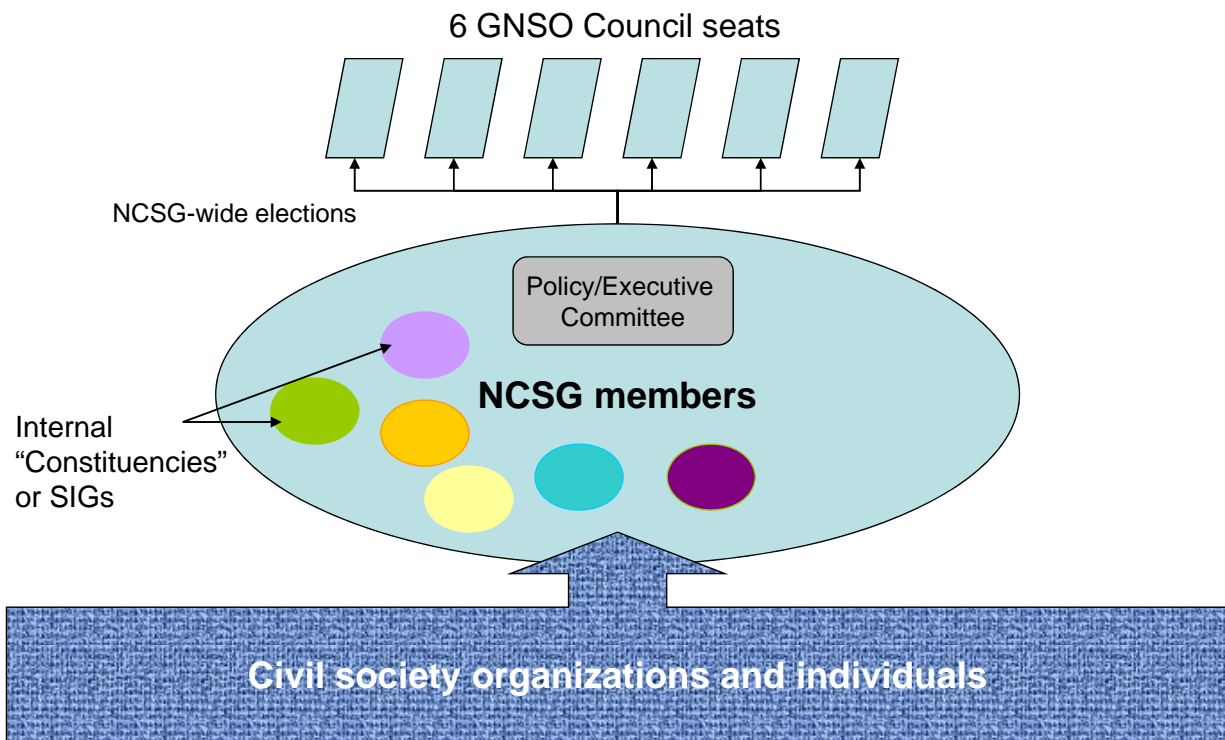
Proof that our critique is true

- Cybersafety constituency
 - Group that cannot obtain consensus support for its positions among civil society proposes a new constituency
 - Wants a “Constituency” to gain permanent votes and representation for its minority view
- Proposed Consumer constituency
 - Based on false premise that existence of a constituency named “Consumer” will bring more consumer organizations into ICANN
 - Supported by fewer consumer groups than are currently in NCUC
 - A way to avoid reaching consensus on privacy/Whois
 - It is really an “ALAC Constituency”
- New constituency proposals already lead to:
 - ALAC-NCUC hostilities
 - mutual badmouthing and useless forms of organizational competition rather than consensus-based policy development

NCUC develops an alternate

- Work begins in Fall 2008
- ALAC actively consulted, initial proposal sent to them in November 2008
- ICANN policy staff actively consulted, provides detailed feedback on two iterations
- Put up for public comment, wins overwhelming support from civil society

The NCUC model for NCSG



June 2007

- **NCUC Response to** first draft report of Board Governance Committee Working Group on GNSO Reform
 - “We are...concerned about the distinction between “stakeholder groups” and “constituencies.” We oppose adding yet another layer to an already complex representational and organizational scheme. We would prefer to see the “Stakeholder Groups” and “Constituency” categories collapsed into one.

October 16, 2008

- Email from Milton Mueller, then NCUC chair, to Denise Michel explaining:
 - “Virtually everyone involved in the discussions of new stakeholder groups has figured out that it is not viable for the formation of constituency groups to be tied to GNSO Council seats.”

- Michel replies:
 - “Thanks for your note. I think we share the clear expectation that in the new bicameral voting model Council structure adopted by the Board, the new Stakeholder Groups will play a fundamental role in seating Council representatives. The Stakeholder Groups and their respective relationships with the existing (and any new) GNSO constituencies will be developed and I understand many details need to be worked out.”

November 24, 2008

- Proposed charter sent to ICANN Policy staff:
 - Mueller: “At the Cairo meeting the NCUC indicated that we expected to have a draft of a NCSG charter before the end of November. We have succeeded in that and I attach a draft of a proposed charter. I am also copying Cheryl of ALAC. Cheryl and Alan were copied on an earlier draft but we did not receive any responses from ALAC at this stage...”
- D. Michel replies 20 December:
 - “We appreciate the group's efforts to develop a document early in the process so that there is ample time for everyone involved to consider these proposed structures as well as short- and long-term implications.” Staff feedback on the draft provided.

Jan 31, 2009

- Staff provides detailed feedback on second iteration of NCUC's proposed NCSG charter
- Robert Hoggarth:
 - As we discussed, this proposed model is being perceived as a fundamental shift from the current ICANN By-Laws structure and the recommendations from the BGC Report as endorsed by the Board. ...As a result, Ken and I believe that to help Board members understand the rationale behind the proposed charter, you should strongly consider submitting the final version with a transmittal letter that provides answers to questions like:
 - Why is this proposed organizational model preferable to the historical approach based upon constituency membership?
 - What special problems or dilemmas does this approach to SG membership address that are not resolvable in other ways?
 - What advantages does it afford to the SG and the GNSO? Are there any disadvantages or transitional issues, and how could they be resolved?
 - Do you propose this structure for all SG's? If not, what characteristics make the non-commercial stakeholder community uniquely appropriate for this structure?
 - How will this design foster the inclusion and expansion of new actors/participants within this community?
 - What implications, both short and long term, are envisioned for policy development and other critical functions?
- Implication: this model is viable if these questions can be answered to the Board's satisfaction