ICANN APAC – TWNIC ENGAGEMENT FORUM

WHOIS: PRIVACY, TRUST, AND PUBLIC INTEREST

JUDGE DR. HENRY TSAI,

TAIWAN INTELLECTUAL PROPERTY COURT

Apr. 16, 2019 ALL RIGHT RESERVED

PUBLIC INTEREST

- What is the public interest ?
- How do we balance the Public Interest pursuing and protection of Civil Right?

IN THE ICANN'S WHOIS CONTEXT

- Final Report of EPDP-TEAM on the Temporary Specification for gTLD Registration Data (Feb 20, 2019)
- EPDP TEAM Group Statement
- Totally Different Standing Exists There

NCSG: Disclosure registrants' data to third parties is not a valid ICANN purpose



GAC: the draft final report does not sufficiently recognize or incorporate recommendations in the public interest.

- Who has the power to define the “Public Interest”? Especially the “Public Interest” in the Internet and in the Whois Policy?

IN THE PAST : STATES GOV'T IS THE MONOPOLIST OF PUBLIC INTEREST

- World Summit on the Information Society (WSIS) ：Declaration of Principles # 49(a) (2003, Geneva) / TUNIS AGENDA FOR THE INFORMATION SOCIETY # 35(a) (2005, Tunis)
- Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues;

NEW DEVELOPMENT OF INTERNATIONAL RELATION

- Many International Private Actors also pursue different kinds of public interest:

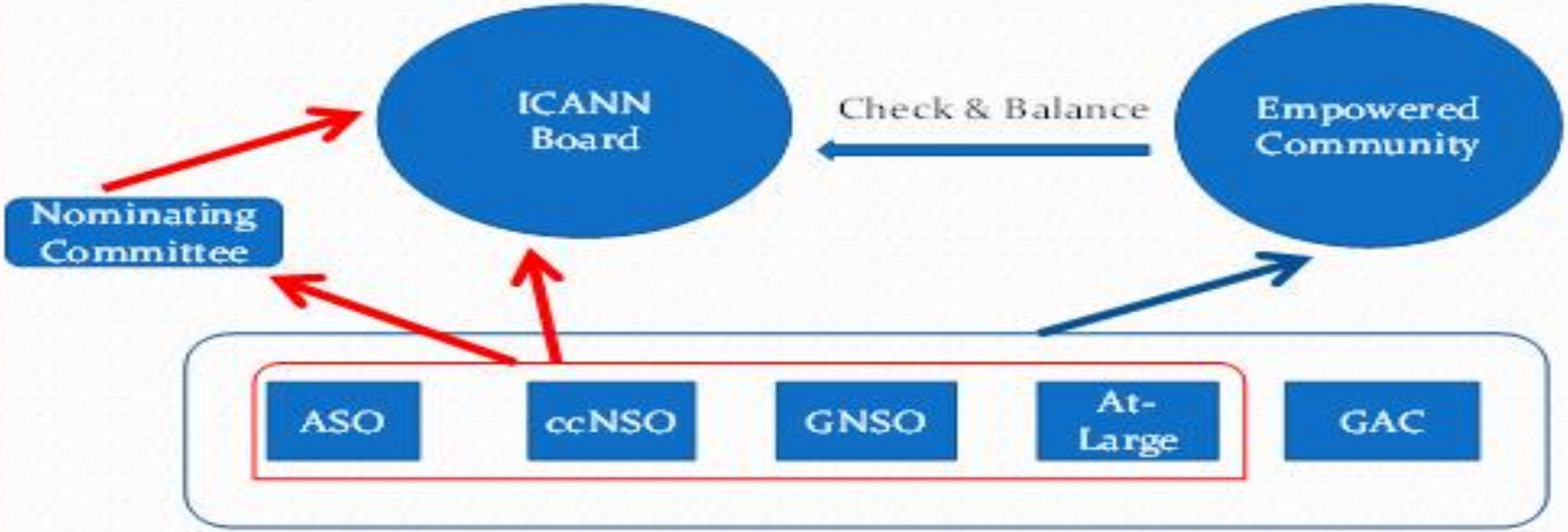
- ～ “Governance without Government : Order and Change in the World Politics” by James N. Rosenau

THE CORE VALUE OF ICANN

Diversity Participation
Bottom-up, PDP

- ICANN Bylaw Sec. 1.2(b)(ii)
- Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

ICANN's Pluralistic Democratic Organization Structure



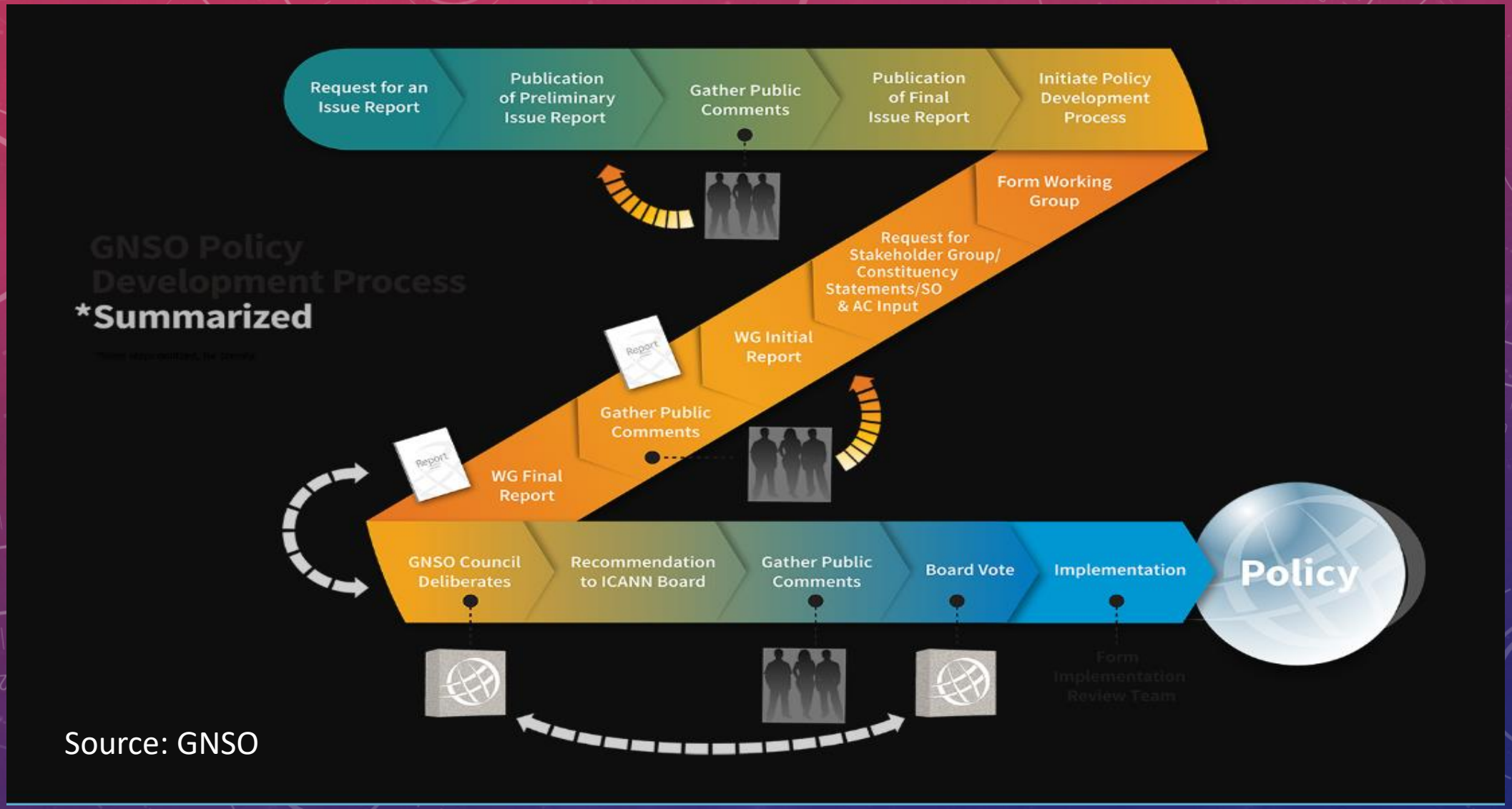
Created by Henry Tsai, 2018

THE PUBLIC INTEREST IN THE INTERNET

MultiStakeholder Participation

Due Process of Policy Formation

Check & Balance Among SO, Board and EC



Due Process of Policy Formation

EPDP TEAM MULTI-STAKEHOLDER STRUCTURE

- GNSO Members are appointed by GNSO Stakeholder Groups (SG).
  - Registries & Registrar SG / 3 Members + 3 Alternates,
  - BC, IPC, ISPC / 2 Members + 1 Alternates
  - NCSG / 6 Member + 3 Alternates
  - ALAC, SSAC, RSSAC and ccNSO / 2 members + 2 Alternates
  - GAC / 3 members + 3 Alternates

- For the purpose of assessing level of consensus, Members are required to represent the formal position of their SG/C or SO/AC, not individual views or positions.

MY ADVOCACY

- Since ICANN community put a lot of efforts (including the participation structure and process) to adjust Whois Policy to compliance of GDPR, all the Sovereign States are expected to give their Comity or Deference to the final product.
- Or the Internet could break into fragments.

POTENTIAL CONFLICT OF GLOBAL REGULATION

- The letter from the Assistant Secretary for Communication and Information of U.S DoC , David J. Redl to the ICANN Board Chair : Without clear and meaningful progress, alternatives solutions such as call for domestic legislation will only intensify and be considered.
- Art 31 of The Internet Domain Name Management Rule in China: The registrar shall provide the public access to domain name registration data.

CONCLUSION

- One Internet for one world brings the tremendous benefits for the human society, it deserves our commitment to preserve it.

THANKS FOR YOUR ATTENTION!!