

# The ICANN GNSO “Business Constituency”



## ICANN Business Constituency (BC) Comment

on

### Bylaws Amendments and Documents to Implement the NomCom2 Review

12-Jun-2023

#### 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 DRAFT BYLAWS AMENDMENTS AND DOCUMENTS TO IMPLEMENT THE NOMCOM2 REVIEW

The NomCom is an independent committee tasked with selecting members of the Board of Directors as well as other key positions within ICANN's structure. It is designed to function independently from the ICANN Board, Supporting Organizations, and Advisory Committees. NomCom members act only on behalf of the interests of the global Internet community and within the scope of the ICANN mission and responsibilities assigned to it by the ICANN Bylaws. NomCom members contribute an understanding of the broad interests of the Internet community as a whole, and knowledge and experience of specific Internet constituencies who have appointed them.

The NomCom has a maximum of 15 voting and 6 non-voting members, NomCom selects 8 voting members of the ICANN Board, 3 members of the GNSO Council (2 voting and 1 non-voting), 3 voting councillors of the Council of the ccNSO, and 5 members of the ALAC. In addition, NomCom now has the added role of selecting 2 directors for the PTI board.

The BC welcomes the opportunity to comment on related documents that are part of the implementation of recommendations from the NomCom2 Review. The BC supports that the ICANN Board initiate Bylaws amendment processes to effect the following changes:

- Change NomCom delegates' terms to serve two-year terms, instead of one year. “NomCom members, except for leadership positions, should serve two-year terms, and be limited to a maximum of two terms.”
- Transform all NomCom delegates into voting delegates, except for leadership. Hence “All NomCom members should be fully participating and voting members, except for NomCom leadership.”
- Create a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom, since the NomCom itself operates on

a tight timeline and needs to focus on its recruiting and evaluation activities. “An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to recommend and assist in implementing improvements to NomCom operations.”

- Define how these new requirements will be transitioned into practice (Article 27).

## INDEPENDENT DIRECTORS

The BC does not support the recommendation that three of the NomCom’s eight selections to the ICANN Board of Directors meet a new qualification requirement of being “Unaffiliated”. This is proposed to help ensure that the ICANN Board of Directors remains predominated by persons that meet the U.S. Internal Revenue Service definition of independence, which focuses on specific financial transactions and relationships. Also to favor board candidates who bring a wide range of viewpoints and experience from outside of the ICANN Community.

The NomCom is expected to bring a certain level of separation or independence from those already participating within ICANN’s multistakeholder model, but being a very unique organization getting individuals who are in no way familiar with how ICANN operates or her remit may be detrimental to board collegiality as they may end up spending time learning the ropes before settling in to add the value demanded by their role.

While diversity requirements along regional lines are clearly defined, the definition of an unaffiliated director is too vague and subject to multiple interpretations. Furthermore, there is enough guidance provided to NOMCOM in selecting board members for a balanced decision to be made in determining good fits for the board in every round.

Moreover, the submission of the Nomcom Review Working Group is that “The highest priority for the NomCom shall always be to fill the ICANN Board with competent Directors. The concept of an Unaffiliated Director brings with it a preference that a certain amount of seats on the ICANN Board should be reserved for those with no prior experience or affiliation with ICANN. This preference might not always be possible to meet.”

Where it is foreseen that the task of having independent directors may be hard to fulfil, this idea should be jettisoned completely or at most seek to place at least one (1) of such directors on the board.

## THE BC AND ICANN BOARD SEAT RE-BALANCING FOR THE GNSO

On the subject of re-allocating board seats, the BC proposes that *NomCom should cede two Board seats to the Contracted Party and Non-Contracted Party Houses of the GNSO, so that the CSG and NCSG to have One Board Seat each for the Non-Contracted Party house, and one each for the Registry and Registrar Stakeholders Group in the Contracted Party house.*

This re-balance more fairly reflects the relative importance of the GNSO in ICANN revenues and workload. Moreover, this re-balance would remove the conflicts often occasioned by the selection of a single board representative for each house.

Noting this issue continues to influence how we regard the Pilot Holistic Review, *In May 2020 in our [Comment on Enhancing the Effectiveness of ICANN’s Multistakeholder Model](#) and again re-emphasized in our July 2020 [Comments on the ATRT3](#), the BC highlights, how structural problems in the GNSO continue to undermine its effectiveness and fairness as a policymaking body, with related accountability shortcomings of certain GNSO constituencies. In brief, we have stated:*

“ ... Structure continues to be the most significant gap in community efforts to enhance the effectiveness of the multistakeholder model ... Currently, the balance of stakeholders is set up in a way that does not properly consider the underlying incentives of each group, forcing very difficult or sometimes impossible compromises to achieve even simple goals. Thus, the problems identified by the community with regard to “Consensus, Representation, and Inclusivity” are merely symptoms of an underlying structural imbalance which remains unaddressed.”

A case in point concerns the dynamics within the NCPH stemming from the fact that the two main groups – the Commercial Stakeholders Group and the Non-Commercial Stakeholder Groups – are philosophically poles apart making the negotiation of a middle ground on a broad range of DNS policy issues virtually impossible. This commonly makes the voting default in the GNSO Council to a supermajority for the CPH, which not only throws decision-making off balance, but leaves the CSG, in particular, feeling completely disenfranchised.

It is important to understand that a factor that fuels in-GNSO disputes is the limited number of GNSO seats on the Board, which are only 2 of the 15 seats. Considering that gTLDs are responsible for 98% of ICANN’s revenue and for most of ICANN’s policy work, 2 seats is insufficient representation for the GNSO.

One way to get around this would be to give 2 of the 8 NomCom seats to the GNSO. This would still allow the NomCom to name 6 of the 15 board members, while giving more room to accommodate the many stakeholders of the GNSO. A potential working model would be that each of these GNSO stakeholder groups would get one board seat: Registrars, Registries, Commercials, Non-Commercial.

### **SMALL BUSINESS REPRESENTATION ON NOMCOM**

Historically, the Business Constituency has been the only community group in ICANN with a representation of both large businesses and small-to-medium enterprises (SMEs). This informed the allocation of two seats with one clearly demarcated for small business on the Nominating committee to ensure inclusivity for this important demographic in the ICANN community majorly represented by the BC. The scope of representation for this group within our community not only spans millions of entities across developing and developed countries but has been widened by incubators nursing a business idea and start-up seeking to turn an innovative idea to a profitable business.

The BC is the only constituency with both big business and small business as both direct members, including through association members.

It is important that whilst a small seat representative for business is maintained on the nominating committee, representatives of global brands and large businesses maintain their voice and continue to give NomCom the required stability and influence required for the ICANN Board.

### **RSSAC**

The BC supports the RSSAC’s requests that the ICANN Board’s role in appointment of RSSAC membership and leadership be removed, to allow for a process of selection designed by the RSSAC Advisory Committee.

### **NomCom Standing Committee Draft Charter**

The BC supports the letters of the draft charter but notes the following:

1. There is no mechanism in the selection of members of the standing committee to ensure the four (4) member(s) seats rotate amongst different SO/AC's each election year.
2. There is no safeguard to ensure no more than two members from a particular SO/AC is selected by the ICANN Board to serve together on the standing committee at any point in time.
3. The single term tenure of three (3) years for which any member can serve two terms is too long a period and should be reduced to two years for a single term.

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This comment was drafted by Adetola Sogbesan and Lawrence Olawale-Roberts.  
It was approved in accord with our charter.