

**Business Constituency (BC) Response to public comments on proposed BC Charter
Updated version, 4-Mar-2017**

Dear ICANN Staff,

The ICANN Business Constituency (BC) welcomes the opportunity to recap and respond to comments filed during the public comment period regarding the proposed BC Charter, opened on 6-Jan-2017 at <https://www.icann.org/public-comments/bc-charter-amend-2017-01-06-en>. This Charter represents the culmination of extensive research and drafting work since the previous version was approved by the Board in November 2009 subsequent to the GNSO Improvements initiative and the GNSO restructure. Since then, three separate working groups have taken on the task of improving the Charter, with the latest group merging new language with a comprehensive “best-of-breed” document created by Staff.

We provide these responses in order to help facilitate Staff’s report to the Board during ICANN58 in Copenhagen. If Staff has further questions regarding the Charter or these responses, please do not hesitate to contact us.

Public comment by Philip Sheppard:

- Delightful to see a new BC charter of 33 pages.
- I am confident it will serve the BC much better and be a longer read than the 6 page v1 to which reference is provided in article 11.3.
- I would be terribly grateful for this amendment to article 11.3 in the interests of historical accuracy: DELETE Philip Shepard, ADD Philip Sheppard

BC response to Mr. Sheppard’s comment:

The BC will gladly correct the spelling of Mr. Sheppard’s name, with apologies for that mistake.

Public comment by Mathieu Weill:

- Afnic is the ccTLD manager in charge of .fr and several other ccTLDs. Afnic is also a registry service provider for 14 new gTLDs, and represents its clients in the RySG. Afnic is an open, multistakeholder not for profit designed to foster the development of the Internet in France.
- Afnic has no interest in joining the BC (and would not be eligible), but would like to see greater participation of its constituents (French businesses) within the BC. We are convinced that the main area for improvement in the BC is increasing diversity within its membership, and especially within its leadership.
- In June 2016, Afnic realized a study regarding diversity within ICANN’s leadership :
- <https://www.afnic.fr/en/about-afnic/news/general-news/9954/show/afnic-reveals-figures-on-diversity-within-icann.html>
- Applying this standard to the Business constituency reveals that the current Excom is composed of 5 representatives from the United States of America and 1 from Nigeria. Both countries have English as an official language. This can hardly be acknowledged as

representative of today's businesses relying on the Internet unique identifiers to establish and grow their ventures.

- As a consequence, we are strongly concerned that the new Charter does not demonstrate any stronger commitment towards diversity. The only references to diversity within the Charter call for extending application deadlines when all applicants are from the same region, or a vague endeavor to achieve geographic diversity.
- This obvious imbalance also raises concerns regarding potential capture by companies from a single country or Region.
- We urge the Board and the BC to include firmer commitments to diversity within the BC's membership and leadership before approving any change of its Charter.
- Considering the ongoing work of the CCWG-Accountability to enhance ICANN's diversity, as one of the Work Stream 2 items, we encourage the BC to reach out to the relevant group in order to find out how a stronger commitment to diversity could materialize.

BC response to Mr. Weill's comment:

During the public comment period, the BC posted this initial response to Mr. Weill:

The Business Constituency (BC) prides itself on its continued commitment to increase diversity, especially geographic diversity. Among our general membership and within the BC leadership we have made significant efforts to expand representation from regions around the world, including outreach to SMEs and businesses from regions historically under-represented in ICANN. We have made much progress, and we embrace outreach as an ongoing priority of our constituency.

Within the BC, many regions and languages are represented. And many BC businesses work around the world in multiple geographies and languages. In direct response to the comment from Afnic expressing concern about French language representation in the BC, the BC counts among its members many representatives from many language groups – including a number of French and French-speaking businesses, as well as associations with geographically and linguistically diverse memberships.

Our goal is to represent businesses large and small, and reflect the depth and regional diversity of the global business community. The BC actively welcomes Business representatives from all regions, and will continue to encourage BC members from diverse regions and backgrounds to run for leadership positions.

As explained in our response above, the BC does not specifically target linguistic groups in our considerable efforts at outreach. Our Charter requires us to represent interests of global business registrants and users; accordingly, our outreach is focused on achieving diverse geographic coverage for businesses both large and small. BC outreach efforts have been wide and varied, including group, individual and conference activities. Our efforts over just the last 18 months include:

- Outreach events, lunches and breakfasts for new potential BC members as part of ICANN meetings in Marrakech and Hyderabad

- Production and translation of BC newsletters and wide dissemination both online and in hard copy at various events around the world with a special focus on regionally diverse audiences
- BC representation at newcomer events/booths at ICANN and IGF Mexico 2016 and other related events such as the WSIS Forum
- BC members speaking to and mentoring ICANN fellows at ICANN and other events
- BC Outreach support for and speaking at the AfICTA Summits in Africa and the Asia - Oceania Computing Industry Organisation (ASOCIO) events in Asia

The BC is very proud of these outreach efforts, and will continue to maintain its commitment to diversity, as reflected in our revised Charter. For these reasons, we respectfully disagree with Mr. Weill's request that the BC charter be further amended to explicitly target linguistic diversity.

Public comment by John Berard:

- I am a member in good-standing of the Commercial and Business Users Constituency (and will be even if the new charter is approved), but I oppose one specific section of the proposed new charter that will make participation harder for all small business in every global region.
- I refer to section "5.1.2 Ineligible Organizations" and its sub-section (b) which sets new limits on who can and cannot participate. It will deny membership to "Entities which derive more than 30 percent of annual revenue as a registry operator, registrar, or domain name reseller (collectively, 'Contracted Parties')."
 - The current Charter has a limit of 50 percent of such revenue. It is understood, though not clear, that the limit is not just on revenue derived as a "registry operator, registrar or domain name reseller" but in support of such contracted parties.
 - The proposed charter change creates three problems that serve to disadvantage small business and will likely slow the growth of membership diversity, a key ICANN and community goal.
 - First, it ignores the nature of the work. A consultant may have subject matter expertise (e.g., I have long worked on matters of privacy) which can be valuable to a contracted party without being related to the sale and management of domain names. The proposed charter draws no such distinction. It should.
 - Second, it ignores the fact that economic self-interest (which is harder to measure but a more meaningful metric of intent) often has less to do with annual revenue than with potential financial benefit derived from warrants or shares held in client companies.
 - For larger companies, this may not much of a consideration, but for small consultancies, these are the bets we make on ourselves. They are not reflected in annual revenue until they are paid. But they certainly are motivation and a measure of economic self-interest. The proposed charter draws no such distinction. It should.
 - Third, a small business consultancy is, by definition, more susceptible to shifts in opportunity. The normal mix of project and on-going work makes it difficult, year-over-

year, exactly to predict its revenue totals or know its client mix. Because of this, almost any revenue limit runs the risk of being too high, whipsawing eligibility. That is not a recipe for growth or stability.

- The proposed charter draws no such distinction. It should.
- The legacy revenue limit of 50 percent offered, at least, a degree of assurance against this instability. A limit of 30 percent more likely guarantees that instability.
- It is my request that the Board of ICANN reject the proposed charter until the charter eliminates any revenue limit on participation or, at the least, retains the previous revenue limit of 50 percent.

BC response to Mr. Berard's comment:

The BC wishes to thank Mr. Berard for his participation in the BC Charter drafting team, where he shared the same views expressed in his public comment.

Following the launch of the new gTLD program, which created a situation in which many entities would potentially have interests in multiple stakeholder groups and constituencies, a determination was made by an earlier iteration of the Charter drafting team to reexamine the previous revenue threshold for membership eligibility. A majority of the team settled upon a 10% threshold; however, given the sensitivity of the issue and the lack of unanimity, the provision was flagged for further consideration by the entire BC membership. Upon presentation of the revised Charter by the drafting team to the membership, the BC held two calls devoted solely to discussion of the Charter. During these calls as well as on a membership-wide email chain, Mr. Berard made the points set forth in his public comment. His views were supported by several other members of the BC and opposed by others.

The BC Executive Committee determined that further data was needed on this issue, and worked with the drafting team to send out an anonymous survey to the full membership asking: (1) What do you prefer as the new revenue threshold? and (2) What percentage of your revenue is made from registry and registrar-related services? The results were as follows:

- 6 BC members preferred to keep the revenue threshold at 50%.
- 10 BC members preferred to lower the revenue threshold to 40%, 30%, 25%, or 10% (the new proposed threshold).
- 14 BC members reported revenues from registry and registrar-related services at 10% or less.
- 2 BC members reported revenues from registry and registrar-related services at between 10% to 30%.
- 0 BC members reported revenues from registry and registrar-related services at greater than 30%

Based on this data demonstrating that (a) a majority of BC members supported lowering the revenue threshold and (b) no current members would be adversely affected by lowering the threshold to 30%, the Executive Committee decided to select a new threshold of 30% as a compromise between the previous 50% figure and the proposed 10% figure.

Public Comment by the Registries Stakeholder Group:

- The Registries Stakeholder Group (RySG) would like to compliment the Business Constituency (BC) and its Charter drafting team with a well written, thorough and nicely structured proposed new version of the BC Charter.
- 5.1.2 Ineligible Organizations: The membership eligibility criteria state that ‘Entities which derive more than 30 percent of annual revenue as a registry operator, registrar, or domain name reseller (collectively, “Contracted Parties”)’ are ineligible for BC membership.

A domain name reseller does not have a contract with ICANN, is not a registry and not a registrar and as such cannot be a member of the Registries Stakeholder Group or the Registrars Stakeholder Group. Resellers are not eligible for membership of any other stakeholder group of the Non-Contracted Party House. By excluding domain name resellers from BC membership they are denied participation in ICANN policy development.

- 5.1.3 Non-Voting Members: The proposed Charter clarifies that otherwise eligible Members that are owned, controlled by, or under common ownership with any entity that votes in the Business Constituency or another Stakeholder Group or Constituency in either house of the GNSO is ineligible for Voting status within the Business Constituency.

While the proposed Charter gives clear guidance in the case of ownership or control, there is no such guidance to clarify membership status and voting rights for trade associations which represent the interest of Business Users or a consultant advising Business Users in case their respective members or client(s) is (are) a(n) entity(ies) that vote(s) in the BC or another SG.

BC response to Registries Stakeholder Group (RySG) comment:

The BC wishes to thank the RySG for its thoughtful comment.

The RySG’s point regarding reseller eligibility for ICANN policy development participation is well taken, and we certainly encourage resellers to actively participate in ICANN. Entities that earn less than 30% of their revenues from the reseller business are eligible for BC membership, and we welcome their participation in the BC. The BC sympathizes with resellers who earn a greater percentage of their revenues from this business, as they may presently have no formal eligibility within ICANN stakeholder groups. However, we respectfully believe that a reseller’s relationship to the DNS is substantially the same as a registrar’s, and notably distinct from the position occupied by business users and registrants. The BC is tasked with representing the interests of businesses who *use* the DNS to conduct electronic commerce, as opposed to entities that earn revenues from the business of *selling* domain names. For this reason, we believe it may be more appropriate for resellers to seek amendment of the Registrar Stakeholder Group Charter in order to obtain eligibility for membership in the RrSG.

The RySG’s point regarding clarification of membership status and voting rights for trade associations is also well taken. It is the BC’s intent that a trade association be treated consistently with other BC member businesses. Thus, a trade association that is eligible for

membership in the BC as well as in another constituency must expressly declare its choice to vote in a single constituency. To clarify this position, the BC proposes an amendment to Section 5.1.3 of its new Charter, so that it reads as follows:

- 5.1.3 **Non-Voting Members:** Any ~~an~~ otherwise eligible Member according to §5.1.1 that votes in another Stakeholder Group or Constituency in either house of the GNSO, or is owned, controlled by, or under common ownership with any entity that votes in the Business Constituency or another Stakeholder Group or Constituency ~~in either house of the GNSO~~, is ineligible for Voting status within the Business Constituency; however, such Member may be accorded Non-Voting status subject to the following:
- a. A representative of a Non-Voting Member may not hold an elected position, including Officer or GNSO Council Representative, within the Business Constituency; and
 - b. With the exception of restrictions specified in §5.1.3, all other rights and privileges of membership apply to Non-Voting Members.

Additional internal Charter Improvement on Section 2.5.5

Having concluded some non-recurring one-off events, Section 2.5.5 below is hereby amended:

2.5.5 The General Counsel is empowered to:

- a. Incorporate the BC as a non-profit entity in the District of Columbia;
- b. Process and forward the BC's postal mail;
- c. Register and secure an Employer Identification Number (EIN) for the BC;
- d. File and sign the BC's applicable tax returns; and
- e. Utilize his/her registered address to facilitate his/her duties herein

Amended version:

2.5.5 The General Counsel is empowered to:

- a. Maintain a continuous incorporation of "The ICANN GNSO Business Constituency LLC" in the District of Columbia;
- b. Process and forward the BC's postal mail;
- c. Maintain an Employer Identification Number (EIN) for the BC;
- d. File and sign the BC's applicable tax returns; and
- e. Utilize his/her registered address to facilitate his/her duties herein

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This comment was drafted by Andy Abrams, Andrew Mack, Jimson Olufuye, Marilyn Cade, Lawrence OlaWale-Roberts, and Steve DelBianco.

It was approved in accord with our charter.