The ICANN GNSO "Business Constituency"

Comment on Draft Final Report of the NomCom2 Review

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Business Constituency Submission

GNSO//CSG//BC

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 Final Report of the NomCom2 Review[1]

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 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, each serving a one-year term. The NomCom Chair and Chair-Elect (selected by the ICANN Board) and the Associate Chair (selected by the NomCom Chair) lead the committee and are non-voting members. The other NomCom members are appointed by Constituencies within the SO/ACs. Although the Government Advisory Committee (GAC) can appoint one member, it has historically not done so.

NomCom selects 8 voting members of the ICANN Board, 3 members of the GNSO Council (2 voting and 1 non-voting), 3 voting councilors 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.

Per the ICANN bylaws, the purpose of this NomCom Review is to determine:

(i) whether the NomCom has a continuing purpose in the ICANN structure,

(ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and

(iii) whether the NomCom is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.

The BC supports the conclusion by the Independent reviewer that there is a continuing purpose for the NomCom in the ICANN structure.

The Independent reviewers contend that NomCom policies and processes limit the extent to which the NomCom is able to identify competencies needed in ICANN leadership positions, recruit candidates based on those needed competencies, and identify candidates that best fulfill those needed competencies.

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[1] ICANN Public comment page at https://www.icann.org/public-comments/nomcom2-review-2018-03-27-en

The BC disagrees with this contention. We believe that NomCom has adequate processes and access to sufficient ICANN Org resources to achieve its mandated task.

On the assessment of how effectively the NomCom fulfills its purpose and whether any change in structure or operations is needed to improve effectiveness, the BC observations are as follows:

Recommendations 5 & 6: The Independent reviewers say there is a lack of understanding around the role of, and consensus regarding, the effectiveness of the professional recruitment firm OB Brussels. In recommendation 6 they recommend that a professional evaluation consultant should continue to be involved in the evaluation process for Board candidates.

The BC agrees that consultants should continue to identify and assess board candidates.

But we believe that consultants should submit their assessments on <u>all</u> candidates to the NomCom, who then decides on candidates meriting a deep-dive.

The BC agrees with the Independent Reviewer that what the consultant does, how it does it, and where in the process the handoff to the NomCom occurs are all important information for the NomCom to be clear about.

Recommendation 9: The independent reviewer recommends that all NomCom members should be voting members.

The BC does not support this position. We recommend that the current practice be maintained such that the SSAC, RSSAC and GAC and NomCom leadership remain non-voting members of NomCom.

This is consistent with ICANN bylaws, which confer advisory roles to the SSAC, RSSAC and GAC.

Moreover, since the NomCom does not fill council seats on SSAC, RSSAC and GAC, the NomCom representatives from these Advisory Committees should not have voting rights.

The NomCom leadership are appointees of the ICANN board and should be seen as neutral by not being allowed to vote.

Recommendation 12: NomCom leadership should have input on the NomCom budget and staffing resources.

The BC supports the recommendation that the NomCom leadership should be involved in determining its budget and should have input on allocating resources, while management/staff should retain overall responsibility for the budget.

Recommendation 25: ICANN should investigate advancing its nominations process into a Leadership Development function.

The BC supports this initiative to evolve the current Fellowship program to develop emerging leaders. The current ICANN board has some directors who are products of the fellowship program.

A leadership development program is an important element of filling NomCom's objective to appoint high-caliber people. However, such a program should be designed through across-community working group and be subject to public comment.

Recommendation 26: Provide clarity on desire for independent directors and designate three specific seats for "Independent Directors."

The Independent reviewer suggests that "Independent Directors are those with limited prior ICANN experience". They recommend that 3 ICANN board seats be designated for candidates "with limited prior ICANN experience."

> *The BC does not support the recommendation to designate 3 ICANN board seats for candidates "with limited prior ICANN experience."*
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> *In our view, board members without prior ICANN experience must typically devote the first half of their term just to build an understanding of what ICANN does and how it does its work.*

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This comment was drafted by Lawrence Olawale-Roberts, with edits from Marilyn Cade and Steve DelBianco.

It was approved in accord with the BC charter.