

## Comment of Intellectual Property Constituency (IPC)

March 6, 2010

The Intellectual Property Constituency of the GNSO offers the following comments on the proposed process for selection of a voting member of the ICANN Board “appointed from the At Large community.” See <http://www.icann.org/en/public-comment/#at-large-director>.

The proposal to expand the Board in this way, which has already been adopted “in principle” by the Board, marks a significant change in the status of the At Large Advisory Committee (ALAC). The new voting Board member would replace the non-voting liaison from the ALAC that now serves on the Board. Under the proposal that is the subject of this public comment, the new Board member would in fact be selected predominantly by the ALAC, whose members would constitute 75% (15/20) of the “electorate” for this post.

These facts should focus attention on the issue identified in the Board’s discussion leading up to the vote to approve the new Board slot “in principle.” As reflected in the minutes of the Board meeting of August 27, 2009, the following exchange took place:

Raymond Plzak raised the question of whether the ALAC will stop being an advisory committee if it may select a voting director? Will it be treated differently?

The Chair responded that a change to something like a supporting organization may be the next logical step in ALAC’s evolution, and that questions such as that are a reminder of Harald’s point, that the Board should start with the principle and then allow the remaining consequential issues to be dealt with.

IPC does not express a view on whether this new Board seat should be created, since that decision has already been taken. Nor do we have any objection to the procedure that the ALAC and At-Large Community have proposed in their January 2010 White Paper for how the new seat should be filled.

However, we do think that implementation of the Board’s “in principle” decision should be accompanied by charting a path for addressing the “remaining consequential issues,” to use the Board chair’s phrase, that flow from the significant change to the status of the ALAC that this decision reflects. These “consequential issues” include, but are by no means limited to, the following:

- As Ray Plzak has already asked, should ALAC’s status as an advisory committee change? This is the first time that any ICANN advisory committee has been empowered to choose (or to have a predominant role in choosing) a voting member of the ICANN

Board. Should this set a precedent for other advisory committees in existence, or those that may be created in the future?

- How should the new Board seat affect the composition of the Nominating Committee and its role in selecting Board members? Up to now, that role has overlapped to a considerable degree with the stated purpose of the new Board seat, which is to reflect the views and perspectives of the At-Large community. This, we must assume, is the justification for giving the ALAC such a disproportionate role in the composition of the Nominating Committee. Under Article VII, section 2 of the ICANN By-laws, ALAC selects five voting delegates to the Nominating Committee, far more than any other entity within the ICANN structure. No other Advisory Committee selects any voting members of the Nominating Committee. Now that the decision has been made (“in principle”) to allow ALAC to have the predominant role in selecting a voting member of the ICANN Board on its own, ALAC’s role in the Nominating Committee should be re-examined, along with that committee’s power to select a majority of the ICANN Board.
- ALAC plays a role in many other ICANN structures. To give just one example, its liaison to the GNSO council participates actively in the work of that council and enjoys all the privileges of council membership other than a vote. The integration of ALAC into the activities of this and other ICANN structures is predicated on the recognition that the perspective of the At-Large community is valuable and important, and that this perspective risked being omitted from the ultimate decision-making role of the ICANN Board, since voting representation of the At-Large community on the Board was eliminated several years ago in the so-called “ICANN 2.0” restructuring. That predicate will now change. What impact should this have on the integration of ALAC into other ICANN structures?

Adoption of any process for selecting the new ICANN At-Large board member must be preceded – or at the least must be accompanied – by the creation of a process for considering these and other “consequential issues” that flow from the decision taken by the Board “in principle” last August with regard to this new Board seat.