



**Comments on the  
Board Working Group  
Nominating Committee  
Report (7-Jul-2014)**

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**Business Constituency Submission**

**GNSO//CSG//BC**

## I. Preamble

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.

## II. Executive Summary

The BC is surprised by many of the recommendations of the BWG report and is unable to support most of them as stated.

Whilst we support all attempts at improving any ICANN body, we also wish to ensure that such proposals do not have the reverse effect. In the case of the NomCom, there has been significant work by the committee itself over the last 3 years to improve its processes and increase its levels of transparency and accountability to the community.

The BWG recommendations do not appear to take full account of these efforts and as such, the BC would like to see them refined.

As stated, the BC does not support recommendations 1, 2, 3, 5, 6, 8, 10, 12, 13, 14.

The BC supports recommendations 4, 7, 9, 11, 15.

## III. Background

From the transcript [link] of Board Working Group – NomCom (BWG) member, George Sadowsky's presentation to the GNSO Council on 04 September 2014, the BC understands that the impetus behind the formation of the BWG and the motivation for its mandate to undertake a review of the Nominating Committee was driven by:

- the current Nominating Committee proposition was instituted in the Bylaws in December 2002 and it represented ICANN in 2002;
- in 2007 the first and the only review of the NomCom was initiated with the Final Report published in 2010 (Independent Review of the ICANN Nominating Committee, Interisle Consulting Group, former Board member, Lyman Chapin);
- the 2010 NomCom review noted that the composition of the Nominating Committee should be reviewed in three years ("*because it looks like it's getting skewed with respect to the way ICANN is developing*"); and
- Ray Plzak, Board Chair of the Structural Improvements Committee, tasked the BWG with its mandate.

## **Composition**

We understand that the BWG-NomCom is comprised of:

- George Sadowsky, Board member, NomCom appointee, and NomCom member 2005, 2006, 2007 and 2008;
- Ray Plzak, Board member, Chair of Structural Improvements Committee, appointed by ASO;
- Ram Mohan, Board member, appointed by SSAC as Technical Liaison to the Board, and Nom Com member 203, 2004, 2005 and 2008; and
- Mike Silber, Board member, appointed by ccNSO, Nom Com member 2005 and 2006;

Notably, while three of the four BWG members have served on the Nominating Committee, their service took place long before the significant improvements that have come about through successive Nom Com improvement iterations over this last decade; thus the BWG is devoid of experience with today's Nom Com.

## **Responsibilities**

*In preparing for the needed Board decisions, the BWG-NomCom shall:*

- a. Undertake a factual analysis to determine whether the ICANN NomCom's current composition as well as the recruiting and selection meet the requirements;*
- b. Analyze and assess data gathered based on a set of appropriate benchmarks and metrics;*
- c. Perform outreach to assess feasibility of the alternative measures identified;*
- d. Consider and factor in, as appropriate, parallel projects (for example, ATRT2 and Strategic Planning);*
- e. Summarize the findings from steps above and recommend actions to be taken in a draft report for public comment; and*
- f. Evaluate public comments received, adapt the draft report findings as appropriate in preparing a final report, for consideration and decision by the ICANN Board.*

## **IV. BC Views on the Proposed Recommendations**

The BC has the following comments and recommendations on the BWG-NomCom Report:

### **Recommendation 1 -- Enhancing Regional Representation and Diversity – ASO, ccNSO and ALAC**

The BC cannot support Recommendation 1. Rather, the current ASO and ccNSO seats remain as they are at one each per organization.

While we support the goal of ensuring the Nominating Committee reflects the broad diversity currently found in the ICANN community, we do not understand how reducing the participation of globally diverse commercial interests is in keeping with that goal. The NomCom is increasingly asked to select new Board candidates with specific business skill sets to meet the needs of a growing, global multi-million dollar organization, yet the BWG is proposing eliminating the very CSG members who possess actual business experience. In the name of diversity, it would appear that ICANN is cutting out diversity of interests.

Moreover, it should be noted that regional diversity must be cultivated in all constituencies within ICANN – not just those that have obvious or built-in international, regional and local structures. In that

regard, the institution of ICANN has the benefit of time for its constituencies to mature into truly global entities.

Indeed, using the logic adopted by the BWG, coupled with the annual requests from the Board to provide business-minded leadership, one could very well argue the CSG also be assigned 5 seats so business can be equally represented.

However, even in today's NomCom, it is often challenging, with 21 people around a table, for the Chair to facilitate robust discussions. The Chair has a hard enough role to keep everyone on topic and on track time-wise; it takes significant time and commitment to ensure that all members are given ample time to speak on every topic. Increasing the size of the NomCom turns an already burdensome process into an unworkable one. With 25-27 people around the table, the BC does not see how the real work of the NomCom can get done.<sup>1</sup>

The BC cannot support the assumption by the BWG-NomCom that the current representation model for the NomCom is "disproportionate." In contrast, the BC believes that the current representation model strikes the appropriate balance between the various stakeholders and provides a diversity of viewpoints to the NomCom process.

### **Recommendation 2 – Aligning with Organizational Structure – GNSO**

The BC cannot support Recommendation 2, which proposes to shrink representation from commercial stakeholders on the NomCom and increase representation from the GAC. The BWG apportionment recommendations shrink the total GNSO votes from 7 to 3; increases ccNSO votes from 1 to 3; and increases GAC membership from 1 to 3 while according that larger GAC delegation a vote (at present the lone GAC seat is non-voting). Because the ccNSO consists of country code registries controlled by governments, the apparent end result of the proposed change is to shrink the stakeholders comprising the GNSO, as well as total GNSO influence, while expanding the influence of governments in selecting members of the ICANN Board – if the ccNSO and GAC are both viewed as representing governments, then the combined number of government-influenced votes would be 4, 1 more than accorded to the GNSO.

The business community is very diverse, and it is not overrepresented through the various constituencies. Rather, the GNSO division of the Commercial Stakeholder group remains a good guide to the diversity of business interests as each constituency within the group has differing goals and concerns. The BC represents both large and small companies with a primary concern of ensuring the security and stability of the Internet. The IPC's primary focus is maintaining the integrity of the products that businesses offer for sale on the Internet. The Internet Service/Connectivity Providers Constituency's goals are key to the continuing growth of the Internet, especially in developing countries. While it is true that some companies and associations are members of more than one of these constituencies, this should not detract from the fact that for all of our commonalities each constituency brings differing perspectives and voices to the table. The BWG's recommendation does not capture the diversity of

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<sup>1</sup> We also note with concern that the Board's characterization of the issue – "whether the current disproportionate representational model is appropriate for NomCom in the future" – appears to pre-judge the outcome. The BC cannot support the assumption by the BWG-NomCom that the current representation model for the NomCom is "disproportionate." In contrast, the BC believes that the current representation model strikes the appropriate balance between the various stakeholders and provides a diversity of viewpoints to the NomCom process.

opinions reflected in the Commercial Stakeholder group and thereby does a disservice to the community at large.

Scalability – to allow for new constituencies such as NPOC – is of lesser concern. Adding a new NomCom representative seat for new constituencies is still feasible at this stage in ICANN’s history, and the BC supports adding a seat to the NomCom for the NPOC. (It also bears noting that only one new constituency has emerged since the GNSO was established.)

Also notable is the fact that BWG recommendations come at a time when the GNSO itself is undergoing a 360 Review and Independent Examiner’s Review, either or both of which may very well lead to substantive changes from the current house structure.

### **Recommendation 3 – GAC Representation Capable of Increase at GAC Discretion**

The BC is perplexed by the recommendation to increase GAC representation on the NomCom. The BC understands that the current, single GAC NomCom seat is vacant because one government cannot speak for any other sovereign nation. In addition, due to the sensitive/secret nature of the NomCom discussions, information cannot be shared with an advisory committee the size of the GAC with any expectation that the confidential information would be sufficiently protected.

Recognizing these facts, the BC cannot support Recommendation 3. A better option is to eliminate the GAC seat altogether and seek some other input into the process from the GAC that is more consistent with the GAC principles.

### **Recommendation 4 – Technical Entity Inputs Remain Unchanged**

The BC agrees with the BWG and supports the recommendation that the number of representatives from the technical community (3) remain unchanged.

### **Recommendation 5 – Organization of NomCom by Delegation**

The idea of “voting blocks” runs contrary to the fundamental ICANN principles of openness and transparency. For example: delegations casting their three votes for a single candidate (“*Each delegation may cast all of their votes for a single candidate, or may split their votes for multiple candidates, where feasible*”). How does this work in practice? Will NomCom members speak on their own behalf (there are benefits today from that freedom) or be required to speak as a delegation on behalf of the delegations’ particular candidate/candidates? The whole concept of delegations and voting blocks invites the NomCom to revert to its dysfunctional years, eliminating years of progress toward today’s collegial, cooperative, and respectful environment. The notion of delegations invites politicking and gamesmanship and will chill full and robust speech.

Recent NomCom members fully accept – and respect – their primary responsibility is to serve the good of the institution of ICANN over all others.

Recognizing the exceedingly functional nature of current NomComs, the BC cannot support with Recommendation 5.

### **Recommendation 6 – NomCom Leadership Positions**

The BC cannot support Recommendation 6 and underscores its support for keeping the leadership team of Chair-Elect, Chair and Associate Chair, as it is today.

The NomCom's current system of having a 'Chair in training' for one year is one of the most mature leadership systems within the entire ICANN organization. The BC wants mechanisms that allow one NomCom to feed its knowledge and experience into the next more effectively. The BWG report does not even address how this could be done better; rather it recommends dispensing with a key element in maintaining continuity and 'institutional memory' of effective elements from past NomComs.

It should also be noted that the Bylaws state that the Chair-Elect is the only member of the leadership team who can chair meetings in the Chair's absence.

### **Recommendation 7 – Removal of Non-Voting Member Roles**

The BC appreciates the BWG's recognition that all delegations to the NomCom should be on an equal footing and therefore supports abolishing the concept of non-voting members, thus allowing all representatives to vote.

The BC also supports maintaining the current non-voting status for the three-person NomCom leadership.

### **Recommendation 8 – Candidate Selection Voting by Delegation**

As noted in our comment on Recommendation 5 (above), the BC sees no virtue in turning the clock back to a time of politicking and horse-trading. The BWG recommendation to vote by delegation is a bad example of over-engineering a solution to a voting problem that does not currently exist with the NomCom. In fact, the BC sees the result the BWG appears to be trying to achieve as already coming about through existing practices.

'Voting', it should also be noted, only happens during the final deliberations of the yearlong work. During the year, the Committee undertakes multiple rounds of 'polling' as many as 50-60 candidates to arrive at shortlists, which is a critically different activity from voting in the final days of deliberations. As such, moving to delegation voting does not make sense in practice.

The BC does not see any redeeming qualities in this BWG recommendation as it does the opposite of enhancing the smooth functioning of the NomCom; therefore the BC cannot support Recommendation 8.

### **Recommendation 9 – Implement Two Year Terms for Voting Members**

The BC supports the recommendation to implement two-year terms for NomCom members because the longer term will engender deeper understanding of the processes and more effective resolution of the work at hand for all members.

The BC also notes that this recommendation was a submission from the 2014 NomCom and appreciates the BWG recognizing its validity.

The BC supports the BWG recommendation for resignations or removals, as noted.

### **Recommendation 10 – Leadership of the NomCom**

As noted in our response to Recommendation 6, the BC feels strongly about the Chair-Elect, Chair, Associate Chair triumvirate being maintained in opposition to the recommendation. In-keeping with our views on leadership, the BC also does not accept the notion of the Board selecting a Chair from outside of the ICANN Community. ICANN is a mysterious institution to most because there is no example of any other such organization in the world to compare it to. The NomCom, as a body, is a direct reflection of the community and thus, to be effective, must have a Chair that is intimately aware of the assorted nuances within the community and that come with the NomCom mandate.

ICANN can be extremely proud of the exceptional volunteer leadership it has that lends the institution its credibility. Therefore, the BC cannot support Recommendation 10 that the Chair could be selected outside of the community and recommends that the Board continue to look inside the community for the Nom Com Chair. In this regard, the BC also accepts the BWG recommendation that the Board look to the Appointing Entities to put forward candidates for Chair-Elect from which the Board will make its final selection.

### **Recommendation 11 – Implement Two Year Term for Chair**

The BC supports the BWG recommendation for the Chair to serve two-year terms for two consecutive terms.

### **Recommendation 12 – Succession Planning for Chair**

Pursuant to our Recommendation 6 comments, the BC supports the Chair-Elect position being maintained.

We do not, however, understand the logic of reaffirming a Chair-Elect as that individual is completely in learning mode (as opposed to debating/discussion mode) for the entire year. For this reason, the BC feels that even doing a 360 Review on the Chair-Elect is a misuse of funds and redundant.

Providing for a Chair-Elect does the exact opposite of what the BWG describes as “uncertainty”; it creates a clear plan of succession that provides surety and meets other needs of today’s NomCom.

In the event of an unforeseen vacancy of the Chair, the Chair-Elect could step up to meet the Chair obligations supported by the Associate Chair, removing any need for the Board to make an interim appointment of someone who is without the benefit of insight into the work of that NomCom up to that point. Again, the Chair-Elect, like the Associate Chair, maintains the institutional memory.

### **Recommendation 13 – Regular Review of NomCom Chair Performance**

The NomCom Chair and the Nominating Committee take on an enormous amount of work to fulfill their mandates, which is on top of their ‘day jobs’ and any other constituency or stakeholder work that they may be involved in. To ask that two performance reviews be done during the course of the year (as opposed to one) is simply adding more to the load with little actual benefit to the NomCom. That said, the BC does support the current 360 Review of the Chair (as noted in Recommendation 12, the Chair-Elect is effectively silent in the full group setting, so such reviews are unnecessary and provide no value).

The BC believes that— just having the knowledge that such an in-depth review is going to be done — serves to keep the Chair focused on his/her responsibilities.

Therefore, the BC cannot support Recommendation 13; while fully supporting the continuation of NomCom member Peer Reviews to constantly raise the bar on the quality of the representatives, as was established by the 2014 NomCom.

#### **Recommendation 14 – Succession Planning**

The BC accepts the recommendation that a Chair may be removed at any time by a vote of two-thirds of the members.

The BC does not agree with the notion of ‘delegations’ as noted herein.

As the BC advocates in our response to Recommendation 12, should a Chair be removed by 2/3 vote, the Chair-Elect could step up to meet the Chair obligations supported by the Associate Chair, removing any need for the Board to make an interim appointment of someone who is without the benefit of insight into the work of that NomCom up to that point. This is the most effective leadership succession planning at this time, in the BC’s view.

#### **Recommendation 15 – Maintain NomCom Appointments to Entities Other Than the Board**

The BC acknowledges the GNSO, ccNSO and ALAC’s satisfaction with the appointees the NomCom consistently delivers to their organizations and thus supports BWG Recommendation 15.

### **V. Procedural Concerns**

In addition to its substantive concerns regarding the Board Working Group’s recommendations, the BC notes a number of flaws in the process for developing and considering these recommendations.

- Like the Chair of the GNSO Council, Jonathan Robinson, the BC “...finds it surprising that the Structural Improvements Committee referred this [review] to a Board working group rather than [establish] a review process as they've done, for example, with the GNSO review.” Mr. Sadowsky’s response to this inquiry was that the 2007 NomCom Review took three years to go from initiation to completion (finally published in 2010), which led Mr. Plzak to establish a Board working group because of an opinion *that reviews in the ICANN context are seen as long and laborious and thus lack efficiency*. This response has all of the hallmarks of a top-down approach. Apart from the actual BWG NomCom Review recommendations, the BC is very concerned about an emerging pattern, where the Board chooses expediency over the community’s expectation that bottom-up processes will be employed in all matters affecting ICANN.
- The BC is equally concerned that the BWG-NomCom Review did not include earlier formal or informal consultation with the leadership of the GNSO, ccNSO, GAC, or other participating stakeholders before recommending drastic structural changes to the composition of the NomCom. Furthermore, we are unaware that the BWG consulted with any members of recent past NomComs to understand which processes and procedures are working, which are not, and if there is any semblance of collusion in existence within the NomCom. In fact, many improvements (see Appendix A) that correspond to recommendations detailed in the



independent Interisle Report from 2007 have already been installed in recent NomComs and it has been well-noted that the 2013 and 2014 Nominating Committees worked as teams with remarkably efficiently through collegial collaboration. Recognition of these improvements do not appear to be reflected anywhere in the BWG Report and recommendations; while very few of the 2014 NomCom's recommended Bylaw amendments are found in the BWG report.

- Because the Revised BWG Charter and 2010 Final Report call for a reduction in the size of the NomCom, the BC is concerned by the expansion of some stakeholder seats, while at the same time reducing others – yet ending up with an overall increase in the size of the NomCom. The Final Report was very clear:

*We observe that the Nominating Committee's current composition fulfills the following set of principles:*

*Broad representation of diverse interests*

*Representation of stakeholder and regional diversity*

*(Relative) directness of representation: major groups of stakeholders have a direct say in the composition of the Nominating Committee*

The BC understands that all SOs and ACs must have a voice in the NomCom's deliberations, but we cannot understand the BWG's summarily adding seats for the GAC when the single seat available from the outset has not been filled<sup>2</sup>; neither do we understand why the GNSO should lose 3 seats (effectively removing those important voices at the exact same time when ICANN is expanding the domain name space exponentially) while the number of seats for the Country Code supporting organization increases. This adding and gerrymandering of seats is particularly frustrating when one recognizes a core working element of the NomCom's deliberations involves the so-called 'tour de table' (or tour around the table) to allow every committee member to express his/her views on a candidate. Adding so many more seats dramatically expands the discussion time for every candidate, thereby significantly increasing the length of every call and meeting.

- In summary, the BC view is that the BWG-NomCom failed in meeting its Responsibilities "a-c", as detailed above. Our overarching concern is that there has been no direct observation of the NomCom, neither a focus on the essential data for a NomCom analysis ("facts on the ground" – what is actually happening today) because no factual analysis was undertaken. As a result, the output of the BWG and many of its recommendations are in fact several steps backwards from where the NomCom currently stands and will undoubtedly make future Nominating Committees LESS functional, LESS transparent, MORE adversarial and MORE political.

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<sup>2</sup> George Sadowsky: The reason no GAC member has taken a seat on the NomCom is because he/she "...can't report back to the GAC what happens in secret [NomCom] sessions."

In conclusion, it should be understood that the 2010 Final Report well-notes the following key points in its conclusions on Recommendation #10. The BC believes that all of the conclusions noted below hold true today:

*The comments that have been received almost unanimously discourage the suggestion to reduce the size of the NomCom and differently represent communities in its composition. The main reasons given for this conservative approach include:*

- The large size of the NomCom enables its outreach efforts and gives comfort to the communities, who feel adequately represented;*
- The existing NomCom size and composition help to ensure a wide representation of different community interests and enable a range of viewpoints and backgrounds;*
- Over the years, the NomCom has proven to be able to reach its objectives. Hence, there is no sufficient evidence suggesting that a different composition of the committee would enhance its effectiveness. On balance of all these views, the NomCom Review Finalization Working Group does not recommend the change of the Nominating Committee's structure and composition for the time being.*

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These comments were prepared by J. Scott Evans, Ron Andruff, and Aparna Sridhar, with input from several BC members with direct experience in NomCom matters. It was approved in accord with our charter.

## APPENDIX A

### **2013 and 2014 NomCom Self-generated Improvements**

From the outset, the 2013 NomCom determined two main lines of activity. The first was to open the 'black box effect' around the nature of secrecy to become as transparent to the ICANN community as possible. The second was to establish a 'longer view', i.e. to work toward aspirational objectives, e.g. a 50/50 gender balance in the candidate pool as the basis for its 2013 mandate; the Committee's intention being to establish a path toward a stronger foundation to support 'ICANN of the future'. To these ends, the NomCom established the following operational elements:

1. unanimously voted to record its meetings to capture the important discussions amongst the NomCom members over the course of its tenure - for internal reference should that be necessary in its deliberations;
2. created a monthly 'Report Card' to update the greater ICANN community every month about the Committee's work in progress during its tenure;
4. established a Committee Attendance Record for publication in each monthly report;
5. established clear distinctions between 'transparency' and 'confidentiality' in the Nom Com process; the 2013 NomCom policy is "public process; private data";
6. created a Conflict of Interest Sub-committee;
7. created a Sub-committee for Outreach & Recruitment with representatives from all five ICANN regions, and a Sub-committee for External Recruitment Assistance (to examine feasibility of engaging a search firm); brainstormed a significant number of unique tracks to identify the largest possible worldwide candidate pool;
8. did an in-depth review of the Statement of Interest form (SOI) to improve clarity for candidates, and to enhance and enable the output of the Committee;
9. established detailed Timetables of Committee and Sub-committees Work over the coming year;
10. established meetings open to the community at all ICANN meetings to exhibit transparency and to provide as much public information on the 2013 NomCom process as possible.

Other important structural activities included reviews of the 2013 NomCom Rules and Procedures; confidentiality requirements; Code of Conduct and Conflict of Interest parameters; candidate information management; methodology of candidate evaluations; due diligence process; and the selection process.

In 2014, the NomCom went further in the use of Sub-committees to:

1. harmonize/restructure the NomCom procedures and guidelines (which successive NomComs had edited and bequeathed to their successors with some loss of consistency as a result);
2. prepare suggestions for changes to ICANN Bylaws<sup>3</sup> as far as Nominating Committee membership and other modalities of the NomCom are concerned;

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<sup>3</sup> The 2014 NomCom recommended By Law changes were delivered by its leadership team to the BGC on

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3. revise the candidate Statement of Interest application from a static to online (Wiki) form that vastly improves the applicants' experience, provides a broad set of tools for the NomCom members' use during the review process, and serves staff in terms of polling and other relevant information coordination activities; and
4. review the NomCom information management procedures to enhance and ensure the security of confidential information.

Additionally, the 2014 NomCom initiated peer reviews to provide each Appointing Entity (or sending organization) with a full report as to how effective their representative(s) was in fulfilling the mandate, as determined by his/her Committee colleagues. This peer review provides sending organizations with clear benchmarks that are intended to ensure the best-qualified individuals are selected to serve on the Nominating Committee.

<https://www.icann.org/search/#!/?searchText=Nominating%20Committee%20|%20Monthly%20Report%20Cards%202013>

<https://www.icann.org/en/system/files/files/report-card-23nov13-en.pdf>