

*April 17, 2009*  
*COA comments on Board Review interim report*

The Coalition for Online Accountability (COA) offers the following comments on some aspects of the “ICANN Board Review Working Group Report for discussion with the ICANN community,” sometimes referred to as the “interim report.” See <http://www.icann.org/en/public-comment/#board-review> and links therein. See the end of this submission for information about COA.

### Introductory Remarks

ICANN has enshrined in its bylaws a culture of reiterative review of its structures and component entities. According to the ICANN web site, five of these reviews (including the Board review) were in process on March 20 (the most recent date for which data is available). See <http://www.icann.org/en/reviews/>. In fact this understates the impact on the organization of this culture of constant – some might say obsessive – review.

COA is most familiar with the review of the Generic Names Supporting Organization. That review has evidently been “completed,” from ICANN’s perspective. But all GNSO participants (including the Intellectual Property Constituency, to which COA belongs) remain deluged by a flood of demands to expend limited time, resources, and mental bandwidth on implementation of the results of the review. From COA’s perspective, the thousands of person-hours that have been devoted to the GNSO review have produced very little of concrete benefit, and have diverted scarce time and attention from real issues that should be addressed. Perhaps that cost-benefit balance will change over time, but this is very unlikely to happen before it is time for the next GNSO review mandated by the ICANN by-laws.

In this environment, it is almost impossible for COA or its members – or any other person or entity with business, professional or personal responsibilities outside of ICANN -- to participate meaningfully in the multitudinous ICANN review processes. We know that our views are shared by many other active participants in the IPC and other constituencies. Perhaps this helps explain why the four reviews currently open for public comment at one stage or another have, as of April 16, attracted a grand total of 19 public comments, perhaps a third of which appear to be spam. See <http://forum.icann.org/lists/board-review-interim/>; <http://forum.icann.org/lists/alac-review/>; <http://forum.icann.org/lists/rssac-report/>; <http://forum.icann.org/lists/ssac-review-jas/>.

Nonetheless, we are motivated to submit these comments on the Board review, because it is clearly needed. ICANN, whether viewed as a non-profit corporation, a forum for competing and collaborating interests, or a “community,” is not as well served as it should be by the way its Board of Directors is currently chosen, how it now operates, and how it communicates with the rest of the organization.

### Comments on Interim Report

Recommendation #1: Reduce the size of the Board.

COA is not necessarily opposed to some reduction in the size of the Board. But the more important question is how the Board should be constituted.

We support a reduction in the number of Board members chosen through the Nominating Committee process. For an organization that is supposedly striving to increase its accountability and transparency, it is hard to defend the current practice of choosing the majority of its leadership through a Nominating Committee process that is designed to be entirely unaccountable and opaque.

We oppose giving the At Large Advisory Committee the right to appoint voting Board members, particularly if the overall size of the Board is to be decreased.

COA strongly opposes a reduction in the number of Board members chosen by the Supporting Organizations, particularly the GNSO. The Board may need more, not fewer, members who are chosen (even if indirectly) by organizations and individuals with vital and direct stakes in the policy decisions recommended by GNSO and brought to the Board. In this regard, we are constrained to note that, as one piece of unfinished business in the “completed” GNSO review, the Board has yet to decide the process for filling of Board slots allocated to the “restructured” GNSO, although a concrete proposal supported by all the GNSO constituencies has been before it for almost nine months. See <http://gns0.icann.org/mailing-lists/archives/council/msg05245.html>.

Recommendation #5: Make board membership more sustainable.

COA opposes the recommendation to “abandon extensive minutes for Board meetings.” It is interesting that the main justification for this recommendation seems to be the complaint of Board members that it takes them too much time to review drafts of such detailed minutes. The focus should not be on the convenience of Board members, but on transparency as to the decisions taken (or not taken) by the Board, and the reasons pro and con for doing so.

Currently, when the Board meets in public (in conjunction with ICANN meetings), the decisions and reasons (at least those stated in the meeting by Board members) are available instantly. For all its other meetings, this information is only released long after the event. Indeed, as of April 16, 2009, the most recent Board meeting for which formal “minutes” have been posted on the ICANN website took place on October 1, 2008. For subsequent non-public meetings, a “preliminary report” has been posted, some of which are very detailed (see, e.g., December 11, 2008), others of which consist only of the text of resolutions adopted (see, e.g., February 3, 2009). See generally <http://www.icann.org/en/minutes/>. Whether through the prompt release of detailed minutes or otherwise, a better and more consistent solution is needed.

COA supports in principle the payment of reasonable remuneration to Board members, particularly to the Chair of the Board. To be effective in this role, the Chair must devote an extraordinary amount of time and other resources to the post. The failure

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to pay any remuneration for these efforts can only have, in the long run, a degrading effect on the quality of the Board members in general, and of the chair in particular. One result to be avoided is that the President, as the only Board member who is compensated by ICANN, assumes a disproportionate role on the Board. Whether or not there are, as the Interim Report puts it, any “post-JPA waters” through which ICANN must be “navigated,” it seems quite likely that the complete lack of remuneration for Board members is a negative factor in recruitment of the highest quality leadership.

The Interim Report refers to “a separate exercise to determine appropriate parameters for Board compensation in an organization such as ICANN.” This reference should be explained, as we are unaware of any such exercise. COA has no comment to offer at this point about the appropriate level of remuneration for Board members.

We also note the reference to “consideration [to be] given to compensation for others who make a significant contribution and commitment to ICANN, such as chairs and perhaps councils of Supporting Organizations and Advisory Committees.” This proposal raises issues that are distinct from those regarding compensation of Board members and should be considered separately.

Recommendation #8: Clarify the board’s accountabilities.

Item 8(d) mentions “possible conflict issues in the board’s role overseeing the ICANN community whether its members are appointed by those who are doing the work.” This is far from the only source of concern about whether the Board adequately discloses conflicts of interests, and whether its existing conflicts policy, now a decade old, adequately protects against the appearance or reality of impropriety in this regard. COA has stressed the need for an updated and more rigorous conflicts policy in several previous public submissions. See <http://forum.icann.org/lists/recon-bylaws-revision/msg00000.html> (joint comments with INTA Internet Committee); <http://forum.icann.org/lists/bcoc/msg00002.html>. We understand from the most recent posted minutes of the Board Governance Committee that, as of February 28, 2009, the BGC directed its members “to provide Staff with final edits to the revised Conflicts of Interest Policy.” <http://www.icann.org/en/minutes/minutes-bgc-28feb09.htm>. COA hopes that the revised policy will be released for public review in the very near future.

We agree that “the future work division between paid staff and volunteers” (see item 8(e)) is a critical issue for ICANN. With the explosive growth in the organization’s budget and its staffing levels, business participants in ICANN (other than those with contractual relationships with the organization, i.e., registries and registrars) have yet to experience the increase in staff support that they require, although there have been some steps in the right direction.

If there are questions concerning these comments, please do not hesitate to contact the undersigned.

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Respectfully submitted,

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COA consists of nine leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); the Business Software Alliance (BSA); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. COA is a member of the Intellectual Property Constituency of ICANN's Generic Names Supporting Organization (GNSO). COA and its participants have engaged actively in many aspects of ICANN's work since the inception of the organization