

Summary of comments to the report of the external consultant on the review of ICANN Board.

An online public comment period on the report of the external consultants on the review of the ICANN Board was opened from the 2nd November to the 12th December 2008. Nine comments were received¹, and are below summarized.

In preparing the summary of the comments received, any care has been used as to reflect as accurately and objectively as possible the different and sometimes diverging opinions that have been expressed; however this summary does not substitute in any way the original contributions that were received, which are publicly available for full reading at <http://forum.icann.org/lists/board-review-report/>

The opinions below summarized are solely those of their authors, expressed during their participation to the public comment phase, and do not necessarily coincide with official positions of ICANN or with individual views of the author of the summary.

We would like to thank each and all of these authors for their precious contribution to this crucial phase of the Organizational Review process of the Board of Directors.

A first contributor (Don Hollander) discusses the following recommendations contained in the report:

- 1) Board members' compensation. This recommendation is strongly supported, in consideration of the extensive work requested to Board members; the author considers furthermore that this measure can limit the risks of participation only of individuals of independent means or being supported by their employers, solving a cause of possible conflict of interest.
- 2) Reduction of Board size. The contributor considers that a smaller Board would be more efficient, while he is not convinced of a positive impact of this measure on effectiveness at the present stage of ICANN's life, in consideration of *'the extensive challenges the organization and the community (ICANN) services face.'*
- 3) Board skills, and in particular the recommendations on the need for the Board to provide NomCom with indications of skills of 'existing members and the optimal skills balance.' The contributor proposes also to extend the same approach to elements such as gender, geographical balance, age, native tongue etc.
- 4) Delegation to staff. The contributor agrees on the proposal to delegate to staff far more activities, setting parameters for management activity.
- 5) Conflict of interest. The adoption of a strong policy to prevent conflicts of interest is supported, by asking Directors, Officers and Staff to declare their extra-ICANN interests for public scrutiny.

¹ A further contribution is still present in the public comment area, but it refers in reality to the ALAC consultation. It has been forwarded to that public comment area.

Vittorio Bertola agrees with many recommendations, in particular with the advice for the Board to focus on strategic issues, the reorganization of its schedule with longer in-person meetings, and the need to better define accountability both in theory and in practice.

He comments however that reviewers missed most of differences between ICANN and a for-profit business (and therefore its 'raison d'être'). In particular, he considers that while effectiveness is important, honesty, transparency, fairness, openness, diversity, capacity of being forward-looking and representativeness are key values for ICANN, and that the Board shall reflect these values. In the contributor's view this problem affected mainly three recommendations:

- 1) Board members' compensation. Although understandable in its nature, this recommendation risks having the negative side effect to bring into ICANN Board the 'wrong kind of people', i.e. individuals serving on Boards as their profession and not understanding the specific nature of ICANN and of its Board. Compensation of Board's members might also risk generating a domino effect, where also SO/AC's chairs should be considered for compensation, transforming the whole ICANN into a business. *'If compensation is introduced, then it should be limited in quantity (...) and there should be stronger checks to ensure that money is not the main motivation (...) to serve on the Board.'*
- 2) Board skills. The request to NomCom to integrate specific skills within the Board could have the negative side effect for the Board to 'perpetuate its specific culture and viewpoint.' Need for diversity should be protected by ICANN Bylaws.
- 3) Reduction of Board size. The author totally disagrees with this recommendation, considering that the relative impact of a large Board in terms of time needed to adopt decisions is largely compensated by the advantages of its actual (or even larger) size in terms of representativeness of ICANN communities. With a smaller Board 'an even minimal degree of geographical and professional diversity, so that all parts of the community can feel represented in the Board, would be almost impossible.' A smaller Board is moreover considered being inconsistent with the 'huge amount of information and activities that ICANN needs'.

The contributor concludes that a larger Board shares the workload better, can be *'less overwhelmed, make participation more sustainable even without compensation, and provide the kind of leadership - not really in good organizational practices, but rather in designing collectively the future of the Internet - that this specific corporation needs.'*

A third contributor (Robert Hall) intervenes on the issue of compensating the Members of the Board, strongly endorsing the need for allocating funds for this purpose, and this since the 2009-2010 budget. This position is motivated by the 'immense responsibility of the Board, and the higher than average time required [to Members of the Board] to understand the issues.' As members of the NomCom, the contributor considers that the adoption of this new approach would be beneficial to ICANN in terms of possibility to access to 'an entirely new category of Candidates.'

James Bladel and Tim Ruiz sent comments on behalf of the Go Daddy Group, which are:

On size and composition of the Board:

1. Disagreement with the reduction of size of Board, as this would affect its representativeness of different stakeholder groups;
2. Disagreement with the proposal to reduce the Board members selected by SOs or ACs. As an example, he quotes the ongoing restructuring work of GNSO, which is reflected in the proposal to select two GNSO Members to the Board, in representation of contracted and non contracted parties. This equilibrium will be compromised should the proposal to reduce SOs selected members to the Board be accepted.
3. Agreement with the proposal to allow ALAC to select one voting Board member (instead of a liaison) subject to check of eligibility criteria to be performed by NomCom.
4. Disagreement with the reduction of number of Board members to be selected by NomCom, and recommendation to explore 'the possible involvement of SO/AC stakeholders in the selection of a NomCom chair, with minimal involvement on the part of the Board', and this to enhance the independence of the NomCom.

On broadening the skills of the Board:

1. Support of the need for the Board to provide 'NomCom with broad criteria defining qualifications, skills, and experience' of future Board members; the involvement of the Board in the process should be limited to this in order to strengthen the independence of the NomCom. As a consequence, there is disagreement with the proposal to involve the Chairs of the Board and the Governance committee in the NomCom process to select Board Members.
2. Agreement with the involvement of SOs and ACs into the 'definition of skills and expertise required on the Board', by (ex.) expand their influence in NomCom such as by involving them in the selection of the NomCom chair.
3. Disagreement with the proposal for the Board to meet as guests speakers or prominent company directors, to avoid risks for Board members to be influenced by the interests of specific stakeholders. Provide for documentation or even transcription of such events if any in order to maintain ICANN transparency.

On membership sustainability:

1. Agreement with the extension of the Board members term from two 3-year to two 4-year periods, subject to the adoption of a provision for removal of individual members.
2. Agreement with provision of further administrative / secretarial support; expenditures in this sense should be used to offset or to replace proposed compensation mechanisms to individual members.
3. Agreement with reduction of extensive minute meetings, provided that detail and transparency will reflect appropriately the decision making and that this will not affect the need for translations.
4. Disagreement with compensation for Board members and other individuals participating to ICANN life on voluntary basis. This for two reasons: a) efforts to improve accountability shall be resolved before deciding in this sense, and; b) the collection by contracted parties of more than the 90% of ICANN revenues could create potentially delicate situations in terms of conflict of interest of members of the Board.

On clarifying Board accountability:

1. There is agreement on the need to further study the issue of Board accountability. In this respect, ICANN as legal entity shall be considered as indivisible from the community.
2. Members of the Board have a duty of loyalty to the Board and not to their constituencies.
3. Full accountability would require a process to dismiss the entire Board, but priority shall be given to the setting of a provision for the dismissal of individual members.
4. Disagreement with the recommendation for a joint SO/AC appointment of the Board, and preference for the selection of individual members by stakeholders.

Jonathan Cohen intervened to support the proposal to compensate members of the Board for the following reasons:

1. Equity – this would reduce the disparity between those members whose working time devoted to ICANN is ‘donated’ by their employers; and self-employed Board members, who self-finance their involvement with ICANN in terms of missed revenues.
2. Performance of duties – once compensated for their commitment, reasons for non performances of duties will be reduced: ‘No longer will a Board member be able to say they are too busy and unpaid volunteers and therefore with regret can't/have been unable to, do the work or do it thoroughly etc. ,or miss meetings etc.’
3. Attracting candidates – compensation will be extremely important in order to attract individuals possessing all requisites to be excellent Board members but cannot afford to accept at the present conditions.

However, it is underlined that compensation shall not become the main reason for motivating individuals to join up ICANN; the transformation of the Board into a Corporate style one would constitute an end to what ICANN shall represent, namely ‘an organization truly governed by the people 'using ' the resource. It would quickly evolve into a Trade Association of those in a contractual relation with ICANN.’

Wolf-Ulrich Knoblen sent the comments below summarized on behalf of the ISPCP Constituency:

1. Recommendations for the Board shall be drawn in coordination with measures recommended as an outcome of the further ongoing review processes.
2. Reduction of size of Board – agreement in line of principle; any option shall be considered in the context of the further ongoing reviews.
3. ALAC voting member(s) to the Board (options 1 and 2) – opposition, in light of the proposed participation of ALAC to the ‘users’ house’ within GNSO; this would unbalance ALAC Board representation.
4. Halve the Board size (option 2) – this is seen as a non-option (no motivation is provided).
5. Establishing of communication processes between Board and Technical community – supported, but ‘Technical community’ needs to be accurately identified.
6. Fewer, longer Board meetings – to be left to the appreciation of the Chair.

7. Consolidation of Board Committees – maybe necessary.
8. Broaden skills of the Board – if management skills are missing, it is advisable to select individuals owning already this expertise rather than training them once nominated.
9. Invite Directors of other organizations to meet with ICANN Board members – it makes no sense over a dinner.
10. Enhance sustainability of membership – supported, but 2-three year terms are preferred.
11. Compensation – justified in the context of the assessment of a similar provision for Committee chairs, but only if targets are set in advance.
12. Build 'high performance' culture at the board level – supported
13. Introduce assessment of individual performances – supported; this should be linked with the introduction of compensation mechanisms
14. Strengthen the 'strategic' focus of Board – supported

Antony Van Couvering sent the comments below summarized in his individual capacity:

1. The consultants treat ICANN's Board as the Board of any corporate business; this is not 'appropriate for ICANN, which has assumed the heavy burden of a global public trust.' Values for ICANN shall be proper check and balances, and not efficiency; right action and not streamlining; finding individuals available to accept the important challenges of being members of ICANN Board, and not alleviating their boredom. The report shall be read keeping in mind this viewpoint of reviewers, which is considered wrong by the contributor as it reveals 'lack of sympathy or understanding of ICANN's mission.'
2. The report contains very few evidence-based recommendations, relying largely on opinions of its authors and common knowledge. It is particularly the case for the recommendation on reduction of the size of the Board, which is not adequately supported by theory or case studies.
3. Reduction of the size of the Board – this contrasts with the guiding principles of ICANN, as it would represent a loss of diversity with negative impacts on outreach. A negative impact on transparency is also predicted: 'each member of a smaller Board would be subject to much greater scrutiny and criticism, the natural response to which is defensiveness and evasion. The early ICANN Boards, which were smaller, exhibited exactly this behavior, whereas members of the later, larger Boards have been much more approachable and willing to express diverse opinions.' The recommendation shall be rejected.
4. Adding to the Board an observer from GAC – this is considered as contrasting with the previous recommendation; and wrong because it would give to Governments a privileged role that ICANN's history has always tried to prevent.
5. The author contrasts the proposal to exclude the Public Policy and Ethics Committee from within the group of 'core Committees' that need to be consolidated.
6. The proposal to involve the Board in the selection of its own successors is strongly contrasted: 'There are very good reasons for avoiding self-perpetuation of ruling powers, and they are the basis for all democratic institutions. Either ICANN has a community or it does not. If it does, the members must be treated with respect, not as if they are an impediment to efficient work.'

7. The table in Exhibit 9 on page 41 –which aims to represent the professional skills of Board members- fails to represent the multitude of precious experiences brought by members in terms of ‘experience with the Internet, of management of not-for- profits, of experience with global organizations, multi-stakeholder organizations, or indeed of anything relevant to ICANN.’ The categories proposed reflect standard corporatist job description which does not reflect the reality of ICANN.
8. Compensation of Board members; the discussion should also take into account the issue of expenses reimbursement, which in the views of the contributor reveals disparities of treatment. In a further contribution, the author anyhow supports the proposal to compensate ‘fairly’ the Chair of the Board for the time and energies he devotes to ICANN.

In conclusion, the contributor recommends not to follow the recommendations contained in the report, as they are based on ‘authors’ evident ignorance of ICANN’s history or its values.’

Ron Andruff intervened on behalf of RNA Partners on the issue of compensation of Board members. The proposal is strongly supported in order to enhance the possibility for ICANN ‘to attract the best and brightest to serve at the highest level of the Internet community.’ It is remarked that not all Board members would be in the position to accept the compensation; they shall be however offered this compensation.

RNA further supports then the proposal to compensate the Chair of the Board with a fee two-three times higher of that of the other members in consideration of ‘his/her commitment of time, oversight and provision of governance.’

Marilyn Cade offers –in her individual capacity, a contribution focusing on the following issues:

1. The author observes the diminishing of public comments to ICANN consultations, and regrets the little time devoted during the Cairo meeting to public comments. The importance of a meaningful interaction ‘cannot be underestimated in an organization such as ICANN, which draws its legitimacy from the participation of its stakeholders.’ She regrets that the occasions to interact with reviewers in Cairo were not optimal, and not reflecting a serious intention to interact with the community on this. She underlines that this message of a scarce attention to interaction with the community – whether intentional or unintentional, is increasingly received by the community, based also on scarce feedbacks and evidence of keeping into account the feedbacks received.
2. The contributor disagrees with the majority of conclusions and recommendations of the consultants as they are not suitable for the non-commercial nature of the organization; some of them are based on a wrong knowledge of the history of ICANN. In this sense, she calls to put on hold all the recommendations with the only exception of the compensation to members of the Board. She underlines that the points contained in her paper do not cover all the doubts she has on the validity of the report.

3. ICANN shall not implement recommendations on changes in the Board structure because not supported by community.
4. The contributor laments that the review process seems designed to ignore the voices of those who are going to be affected by the changes that are to be implemented. 'When proposed changes are rejected by a wide number of members of the affected community, the concerns were largely ignored.' In this respect, the review process seems more a problem than an asset for the organization, and Board and senior staff are considered either not to perceive; or to ignore the fact that the community is uncomfortable with the whole process.
5. The process of selection of consultants is contested, as ultimately reviewers that are more suitable and skilled to evaluate commercial businesses were contracted; this focus is inappropriate and troublesome in consideration of the nature of ICANN.
6. The author comments that the selection of individuals to be interviewed is a non transparent and non documented process; this is relevant as the outputs of the process are influenced by this aspect.
7. The recurrent nature of the review process shall be reconsidered, as the organization needs a steady state after changes.
8. ICANN is undertaking a significant transition process under the leadership of the President's Strategy Committee; in this sense, it is strange that the Board did not put on hold other review processes until consolidation and approval of outcomes from the PSC's work. Likewise, interrelations and inconsistencies among recommendations of different reviews should be assessed before their (selection and) implementation.
9. Compensation of the Board members – the proposal is supported. Those who are not in the position to accept compensation might decline it. The contributor recommends the adoption of a 'Board compensation plan, with the Board chair receiving from 2 to 3 times the compensation to a Board member. The Board may also suggest that Committee chairs receive an additional factor of payment, depending upon the work demands of said committee.' This plan –suggested to be adopted at the Mexico meeting, should be transparent and reported to the community.
10. Reduction of Board size – the recommendation is not supported, as the imperatives for ICANN to maintain geographic, gender, and skills diversity to fill its mission and maintain legitimacy were ignored / misunderstood by consultants.
11. Board micromanagement – the opinion that Board is involved in micromanagement is not supported, as oversight and governance delegated by the community to the Board are confused with micro-management.
12. New forms of support to Board – the author suggest further forms to support the Board in view of enhancing its effectiveness, such as the provision for supporting staff (not reporting to the CEO) including a legal counsel not reporting to ICANN general counsel. This should be implemented over the next 3 to 4 months in view of the many challenges that ICANN has to face.
13. A contradiction is pointed out between the objective to support the independence of the President and CEO; and what is perceived as top-down interference in the working processes of the organization. In this sense, it is remarked that CEO and Board Chair shall be involved in the NomComm only by providing information about the needs of the Board in terms of skills.
14. Extension of terms – while an overall maximum period of eight years of service is regarded favorably, instead of the proposed solution (2 four-year terms) a solution extending the present 2

three-year terms with a further optional 2-year period is considered more suitable in order to involve the community in the process of validation.

15. Board and GAC – the present advisory status of the GAC chair on the Board is suitable and shall not be changed.
16. Board and ALAC – the present advisory role of ALAC within the Board is consistent with the advisory role of ALAC to ICANN. In case of a changing of this position its advisory role shall be reconsidered.
17. Board committees recommendations – the contributor contests the fact that consultants went to deep into the process of proposing micro-management changes without possessing a sound experience or expertise of ICANN. This is an element that has been observed in other reviews as well, where consultants should have limited themselves to the phase of analysis.
18. In conclusion, the contributor offers to the Board the following recommendations (quoted):
 - ‘Move ahead with the compensation of the Board and Board Chair as a priority.
 - STOP the review processes.
 - Once the Transition proposals are received, act on these and then , based on input from the community approve a streamlined and more suitable approach to 360 review and assessment for evolution and improvement across all SOs and ACs, as well as Board.
 - Establish separate mechanism to provide independent staffing and legal advice to the Board and Board chair. Implement this process as a framework by Mexico, and provide staffing support by mid year to Board and Board chair.
 - Require greater transparency at all levels of ‘interests’ both of all board members, but all members of the community.
 - Establish clear limits for any external activities of any member of staff, including the executive leadership.
 - Do not change the Board size – the size and scope is needed to ensure geographical diversity and community accountability
 - Do not change the role of staff. They should report to the Board and should be accountable to the community. The consultant report elevated staff to a decisional role not suited to ICANN’s purpose.
 - Pay attention to the implication of decisions by staff and consultants to change the nature of ICANN, including formal meetings, and ICANN processes, especially where the changes are not reflective of the bottom up consensus based nature of the organization.’

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