

## **Charter of the Commercial and Business Users Constituency 2009**

**(This is the document relevant to the vote)**

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### **1. Background**

This is the Charter for the Business Constituency of the Generic Names Supporting Organization (GNSO) of the Internet Corporation for Assigned Names and Numbers (ICANN), California, USA, hereafter the Business Constituency, the BC or the Constituency. The Business Constituency represents commercial users of the Internet. The Business Constituency is one of the Constituencies within the Commercial Stakeholder Group (CSG) referred to in Article X.5 of the ICANN bylaws. The Constituency's administrative structure is an elected Executive Committee supported by professional secretariat services and other standing or ad-hoc committees.

### **2. Mission Statement**

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

- promotes end-user confidence because it is a safe place to conduct business;
- is competitive in the supply of registry and registrar and related services;
- is technically stable, secure and reliable.

### **3. Membership**

3.1 Members of the Business Constituency use the Internet to conduct business related to electronic commerce in its broad sense. The Business Constituency is a constituency representing customers of other companies, who provide connectivity, domain name, Internet Protocol address and related services who are typically members of the Contracted Parties House.

#### **3.2. The following may become members of the Business Constituency:**

3.2.1 Subject to Articles 3.3 and 3.4, any legally recognised for-profit entity that has been delegated a domain and fulfils the description of article 3.1.

3.2.2 Subject to Articles 3.3 and 3.4, any organization such as a trade association representing entities described in 3.2.1.

3.2.3 Subject to Articles 3.3 and 3.4, any consultant in the broad sense representing entities described in Article 3.2.1. In the interest of transparency, such consultants are required to provide the Constituency, upon application and upon membership renewal and in the interim when there are any material changes to their status, with a list of both those clients whose interests the consultant wishes to represent by name within the Constituency, and any clients in business areas listed in Article 3.3.2. In the interest of fairness, any such client whose interests are being represented by name, is also required to be a paid-up member of the Constituency.

#### **3.3. Membership Criteria**

3.3.1 In keeping with the selective membership criteria of other GNSO constituencies, the Business Constituency represents the interests of a specific sector of Internet users. The

purpose of the Constituency is to represent the interests of businesses described in Article 3.1.

3.3.2 To avoid conflicts of interest this excludes: not for profit entities; entities whose prime business is a registry, registry operator, prospective registry, registrar, reseller, other domain name supplier interests, or similar; other groups whose interests may not be aligned with business users described in Article 3.1.

### **3.4. Credentials Committee**

#### **3.4.1 Applications**

All membership applications will be reviewed by a Credentials Committee which shall comprise up to three members of the Constituency, appointed by the Executive Committee for a term of up to two years, with re-appointments possible. The composition of the Credentials Committee should endeavour to ensure diversity. The Credentials Committee has discretion to assure itself of the bona fides of any applicant both at the time of application and at any time after.

#### **3.4.2 Review**

Membership may be reviewed by the Credentials Committee at any time, if there is a change in the circumstances of the member that may impact on its qualification for membership or if the member engages in inappropriate behaviour. A review may be done upon request by any member at the discretion of the Executive Committee. A review must include a thorough examination and may include a review of supporting documentation. A review is not limited to but may be indicated when:

- a member takes action, beyond mere internal communication of dissent, that contravenes an adopted position of the Constituency and thus would be pursuing interests that may not be aligned with the Constituency;
- a member by their action leads directly or indirectly to another member resigning from the Constituency;
- a member acts as a spokesperson for another organisation whose interests are not aligned with the Constituency;
- a member acts in conflict to this Charter, or in particular acts in conflict with Articles 8 - 10 of this Charter;
- a member engages in acts which appear to be inappropriate for the stability, functionality or bona fide reputation of the Constituency;
- a member is or threatens to be a vexatious litigant;
- a member's circumstances are such that would be grounds for a refusal of an initial application.

After such review the Credentials Committee by simple majority may apply the following depending on the circumstances:

- a formal written warning;
- a period of suspension of all Constituency privileges;
- termination of membership in the Constituency. Such termination must be endorsed by the Executive Committee. Except for instances where the member would no longer qualify for membership, termination must be preceded by at least one other disciplinary action.

Before any disciplinary action may take effect the member subject to the action will have:

- an opportunity to review the complaint
- an opportunity to provide a response to the Committee.

Credentials and Executive Committee members who are affected by the disputed behavior will recuse themselves from the discipline process.

#### **3.4.3 Guidelines**

The following guidelines should assist the Credentials Committee in its work:

**Revenue.** Applicants and members must be for-profit entities for which 50% or more of revenue is as "users or consumers". The phrase "users or consumers" is intended to be

distinct from companies listed in Article 3.3.2. Applicants and members are required to state: the number of years they have been in business; the main source of business revenue; and a description of their main customers, for example, registries, registrars, business active in other types of domain name services, or other business activities. For transparency, applicants and members are also asked to inform if they are directors of, employees of, consultants to, or with any ownership connection to, any company of the type listed in Article 3.3.2 or participating in other ICANN constituencies or are a part of a related company of any existing Constituency member.

**Participation.** Applicants and members are asked to declare whether the entity is a member of another GNSO constituency or will participate in ICANN policy formulation in ways other than their BC membership and its policy adoption process.

**Divisional separation.** Applicants and members which do participate elsewhere are required to demonstrate that their BC membership will be divisionally oriented meaning that separate individuals will represent those divisions in ICANN affairs, and that the entity will only represent user or consumer perspectives within the Business Constituency.

#### **3.4.4 Appeal**

In the event of any appeal the Credentials Committee will take all reasonable measures to establish the facts of the appeal, review these facts and the final decision will be certified by the Executive Committee. A rejected applicant, appellant or member will be informed in writing of the decision including the rationale relevant to this Charter.

#### **3.5 Settlement of Fees**

Once approved by the Credentials Committee an applicant must settle membership fees quickly in order to participate in the Constituency. A successful applicant who fails to settle fees within 60 days of the date of the first invoice will be asked to re-apply.

#### **3.6 Members' Representative**

A member shall designate one representative as the principal point of contact and for voting. That person is the only person ordinarily able to vote on behalf of the member. The designated representative must be either a director or employee of that member but not an affiliate or other such connected entity. An association member will ordinarily designate a staff member as its representative but may choose to designate a director or employee of one of its member companies, subject to annual notification.

A member may also appoint a voting proxy for a specific meeting of the Constituency. The proxy must fulfil the conditions above for the designated representative or be another member's designated representative to the Business Constituency. Notification of a proxy must be made in writing to the Secretariat 48 hours before the start of the meeting.

### **4. Structure**

#### **4.1. GNSO Council representatives**

As specified in the ICANN By-laws and the CSG Charter the Constituency together with the other Constituencies within the CSG will select six designated representatives of CSG members as GNSO Council representatives to serve a two-year term.

The representatives will act in the GNSO Council as representatives of and spokespersons for the CSG and will collaborate with other members of the Council in pursuit of the mission of the CSG.

Until otherwise decided, the Constituency will select two of those six representatives for staggered two-year terms under the rules for elections in Article 5. In any transitional phase the natural term of an elected representative shall be served in full.

#### **4.2. Officers and the Executive Committee**

The Constituency will have an Executive Committee comprised as follows:

- A Chair

- A Vice Chair for policy coordination
- A Vice Chair for finance and operations
- Any Constituency members selected as Council members.

The Chair and Vice Chairs will be the Officers of the Constituency and may not simultaneously be Council members.

The Executive Committee is tasked with fulfilling the Constituency mission via administrative supervision and co-ordination. The Executive Committee will inter alia:

- take all decisions by consensus or where required simple majority with a casting vote of the Chair;
- lead policy development in the Business Constituency;
- ensure notification of relevant ICANN or GNSO decisions to the Constituency;
- when present in whole or in part at a physical ICANN meeting issue statements on behalf of the Constituency, so long as they are compatible with existing BC Positions;
- confirm appointments of members to any committees, working groups or other such representative roles and make any changes as appropriate over time;
- confirm appointments or hold elections for the BC delegates to the Nominating Committee and ensure there is coherence between the representation of the BC member and the Nominating Committee position. A candidate for a Nominating Committee position may be either a paid-up member of the BC or someone who is demonstrably associated or affiliated to the BC;
- select, and oversee the work of, a Secretariat;
- delegate to the Secretariat, the administration of a policy for Constituency e-mail lists;
- declare any conflicts of interest in a timely fashion, and if necessary, recuse themselves from decisions where there is a conflict.

#### **4.3 Role of the Chair**

- chair Constituency meetings;
- coordinate the overall activities of the Constituency;
- be a spokesperson for the Constituency;
- be the alternate representative to the CSG Executive Committee.

#### **4.4 Role of the Vice Chair for policy coordination**

The Vice Chair will coordinate with the Secretariat to help with the following;

- the choice of policy areas in which the Constituency is active
- the prioritization given to each policy area
- the appointment of a lead rapporteur for each such activity
- the dissolution of redundant groups following such activities
- policy coordination with the Commercial Stakeholder Group
- policy coordination with the Users House
- policy coordination with the CSG's elected representatives.

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#### **4.5 Role of the Vice Chair for finance and operations**

The Vice Chair will be the Chair of the Finance Committee, the BC representative to the CSG Executive Committee and coordinate with the Secretariat to help with the following;

- operational aspects of the constituency
- coordination with outreach liaisons
- coordination with other ICANN bodies outside of the GNSO excepting coordination on policy development.

#### **4.6 Terms and eligibility**

The terms of office of the Chair and Vice Chairs shall be two years.

To be eligible to stand as Chair or a Vice Chair the candidate must have been a member of the Constituency for at least the immediately preceding 12 months.

The terms of the GNSO council representative shall be as specified in the ICANN by-laws.

#### **4.7 Finance Committee and Financial Oversight**

There shall be a Finance Committee which shall comprise of up to three members of the Constituency, appointed by the Executive Committee for a term of up to two years, with re-appointments possible. The composition of the Finance Committee should endeavour to ensure diversity.

Whereas the Secretariat is charged with the day to day management of the Constituency's finances the Finance Committee holds responsibility for financial oversight and specifically for:

- adopting the annual budget including the level of fees, as drafted by the Secretariat
- recommending the annual budget to members for a comment period
- establishing a reserve equivalent to one year's operating costs
- ensuring the budget represents a conservative approach to income
- ensuring the budget is balanced
- delegating to the Secretariat the day to day management of expenditure items within the budget
- authorising exceptional expenditures not foreseen in the budget
- recommending to the Executive Committee any action, and specifying the broader benefit to the Constituency, related to an application of hardship related to BC fees;
- declaring any conflicts of interest in a timely fashion, and if necessary, recusing themselves from decisions where there is a conflict.

The Finance Committee is also charged with assisting in member retention. The Secretariat shall notify the committee of members outstanding at the time of the first reminder invoice. The committee will make contact with those members as their peers to help ensure their retention.

#### **4.8. Secretariat services**

There shall be a professional Secretariat responsible for the day to day administration of the Constituency. Typically this will be a part-time position. The following services, which may be changed by the Executive Committee from time to time, will typically be provided by the Secretariat:

- web site administration and updating
- e-mail lists maintenance
- maintaining archives
- maintaining member database
- membership fee administration and the day to day management of budgeted expenditure
- financial reporting
- co-ordination of physical and telephone meetings and associated outreach activities
- coordination with the GNSO Secretariat
- liaison between ICANN staff and constituency participants in ICANN groups
- running elections
- responses to direct miscellaneous member and prospect enquiries
- supporting the Executive Committee.

The Secretariat is not expected to engage in BC list dialogue with members beyond the issuing of informational communications necessary to perform the role.

#### **5. Elections**

5.1. The election process for the Officers and GNSO representatives will be initiated by a nomination period of two weeks. The Chair and Vice Chairs will be elected at the same time. The timing of elections for GNSO representatives and Nominating Committee delegates will be determined by the ICANN by-laws. Any member of the Business Constituency may nominate one other member. This process (including receiving nominations, communicating nominations and publishing an overview of results) will be initiated and managed by the Secretariat. If at the close of nominations, it would result in all Officers, or all GNSO representatives, being from the same region, the nomination period may be extended to improve geographic diversity.

5.2. Immediately following the nomination period, and a one week discussion period to talk with the candidates if time allows, the Secretariat will open an election period of one week, during which it will receive votes from members of the Constituency electronically, typically via e-mail.

5.3. Depending on category BC members have 3, 2 or 1 vote(s). Votes are cast as a block and are not divisible. The Secretariat will allocate votes cast according to category.

5.4. Proxy votes are allowed subject to written notification to the Secretariat by the designated representative of the member after the nomination period and before the start of the voting period and subject to the proxy conditions of article 3.6.

5.5. The winner(s) will be candidates receiving the largest number of votes. To ensure geographical diversity the Executive Committee may impose elimination rules based on ICANN geographical regions. Such rules will be made known before the start of voting.

5.6. In case of a tie a new election will be held among the nominees in the tie.

## **6. Issue Management**

6.1. From time to time the Executive Committee on the advice of the Vice Chair for policy coordination shall appoint members as issue managers, hereafter referred to as Rapporteurs, to develop positions on relevant issues. This role involves drafting and consultation with the members and the Vice Chair for policy coordination. However, any member of the Constituency is entitled to propose a position paper and, if there is sufficient support, be asked by the Executive Committee to take on this role.

6.2. From time to time the Executive Committee shall set up committees or task forces to initiate positions on relevant issues.

6.3. Wherever possible the Constituency will produce written positions on relevant issues.

## **7. Policy development**

The following procedure shall be used for developing written policy.

### **7.1. Discussion draft**

The Rapporteur is responsible for preparing a draft of a Business Constituency position or other paper and thereafter co-ordinating comments.

### **7.2. Consultation and approval where there is no disagreement**

The draft position will be circulated for comment or posted on the web site. Members will be notified that there will be a 14 days' period for comment. If no substantively opposing comments are received the position will be deemed approved.

### **7.3. Approval where there is initial significant disagreement**

Members who seek changes to a draft should submit proposed language in writing. If there are at least 15% of members who oppose a position a mechanism to discuss the issue will be provided by the Rapporteur with the assistance of the Vice Chair for policy coordination. This may be an e-mail discussion, a conference call or discussion at a physical meeting. If the majority of discussion members support the draft position, the position will be deemed approved.

### **7.4. Approval where there is continued disagreement**

Where the discussion mechanism indicates a split in the Constituency of more than 25% of the number of members, there will then be a vote (typically by e-mail) on the position. Only the designated representatives of members will be eligible to vote. Proxy votes are allowed subject to written notification to the Secretariat by the designated representative of the member before the start of the voting period and subject to the proxy conditions of Article 3.5. Only members who have settled their fees will be eligible to vote.

A position paper which has the support of at least a simple majority of 51% of the eligible votes in favour will be deemed adopted by the Constituency so long as the total number of members voting represents not less than a quorum of 50% of paid-up members. Where a quorum is not reached the Executive Committee will decide whether a re-vote, re-thinking or publication of a minority position is required and the process will then repeat as appropriate.

### **7.5. Solidarity**

When a member declares themselves as a Constituency member, they shall remain faithful to approved positions. Members of the Executive Committee are required to support such positions en bloc. Both Members and Executive Committee Members may communicate dissent to a Constituency position providing they make it clear they are communicating in their personal capacity.

### **7.6. Updates**

From time to time updates may be needed to position papers. The Executive Committee at that time will appoint a Rapporteur to co-ordinate the revision and the procedure above will be followed.

### **7.7 Other votes**

Votes of the Constituency for purposes other than policy development or elections will follow similar procedures to those described for policy development adjusted on a case by case basis according to external criteria such as timeliness. A quorum of 33% of paid-up members will be required.

## **8. Communication guidelines**

### **8.1. Objective**

- The objective of a Business Constituency e-mail list is to enable members to engage in dialogue on issues within the competence of ICANN.
- The site is not a platform for personal, governmental or organisational opinions on political, religious or social matters.
- The term e-mail list refers to any list using e-mail or equivalent means such as a web-based forum for group communication.

### **8.2. Editorial and participatory policy**

8.2.1. The Executive Committee of the BC will appoint the BC Secretariat as list administrator for BC e-mail lists.

8.2.2. The responsibility for accuracy and copyright of any statement will be that of the author. A BC member's decision to post to a BC e-mail list is a de facto demonstration of their acceptance of the BC e-mail list policy.

8.2.3. Only the designated contacts of a paid-up member are entitled to post to a BC list.

8.2.4. The list administrator directly, or upon request from a member of the Executive Committee, may challenge, or temporarily suspend a member for a period not exceeding 14 days as the administrator sees fit. Specifically the following may be grounds for such action:

- content which infringes the BC charter and in particular Article 9
- content which is not related to ICANN issues, or is off-topic
- content which is internal but sent to the publically-archived open list intended for policy discussion
- content which makes personal allegations, or speculates on personal motives, or seeks to harass, abuse or threaten individuals or groups
- content about BC employees or contractors
- content which is harmful to minors, obscene or otherwise objectionable
- content which seems to be for commercial purposes
- content which infringes the intellectual property or privacy of third parties including members or past members or their representatives
- content which is repetitive or goes beyond relevant information or is overly lengthy

- content which interferes with a due process of the BC such as an election, vote, or the provision of dial-in numbers or passwords
- posting of more messages than is proportionate to the issue or the responses from other members thus overburdening others with one particular point of view: typically this may be more than three postings a day from a member or ten a month. This limit does not apply to the forwarding of ICANN informational e-mails or communications from the Executive Committee on BC business.

#### 8.2.5. Special rules for elections

During elections there is a need for special rules in line with Article 5 of the Charter to ensure the integrity of the process and fairness to all candidates. This means inter alia that the returning officer for the election will unless otherwise agreed instruct the list administrator as follows:

- to open a nomination period but only publish nominations to the list at the close of that period;
- to open a discussion period (where the external timetable allows) but to monitor air time to ensure fairness to all candidates, and if necessary delete or suspend postings;
- to open a voting period and suspend all election and candidate related list mail during that period.

### 9. Expected Standards of Behaviour

The ICANN Board has adopted a Mission, Core Values and Expected Standards of Behaviour (<http://www.icann.org/en/transparency>). The BC adopts the following Expected Standards of Behaviour and its Members undertake to:

9.1 Act within the mission of ICANN and in the spirit of the values contained in the Bylaws;

9.2 Adhere to the spirit of the conflict of interest policy laid out in the Bylaws by declaration of any potential or actual conflict of interest related to the Constituency;

9.3 Treat all members of the ICANN community equally, irrespective of nationality, gender, racial or ethnic origin, religion or beliefs, disability, age, or sexual orientation; members of the ICANN community should treat each other with civility both face to face and online;

9.4 Act in a reasonable and informed manner when participating in policy development and decision-making processes;

9.5 Listen to the views of all stakeholders when considering policy issues. ICANN is a unique multi-stakeholder environment. Those who take part in the ICANN process must acknowledge the importance of all stakeholders and seek to understand their points of view;

9.6 Work to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development. Those who take part in the ICANN process must take responsibility for ensuring the success of the model by trying to build consensus with other participants;

9.7 Act fairly and in good faith with other participants in the ICANN process;

9.8 Refrain from filing any legal actions against the Constituency.

### 10. Privacy of personal data

The Executive Committee, Secretariat, committees and members of the Constituency shall ensure compliance with prevailing privacy laws with respect to the care of personal data, and in particular shall not process such data beyond what is necessary for the purposes for which it was originally collected.

### 11. Interpretation



Interpretation of this Charter will be decided upon by the Executive Committee. This is without prejudice to the right of any member to file a complaint to the ICANN Ombudsman.

## **12. Membership Fees**

The Business Constituency has the right to require membership fees. These shall be set by the Finance Committee in accordance with sound financial management, and fall into three categories of declining price and voting eligibility.

**Category 1:** companies (which are not micro enterprises) - 3 votes  
associations spanning more than one ICANN region - 3 votes.

**Category 2:** an association spanning one ICANN region - 2 votes.

**Category 3:** micro enterprises defined as companies which can demonstrate both less than 10 employees and a turnover of less than Euro 0.5 million - 1 vote.

The Constituency's membership year is a calendar year. Members will be invoiced annually for fees. A member joining during the first six months of the year will be invoiced for that year at a monthly pro-rata. A member joining during the last six months of the year will be invoiced for the current year at a monthly pro-rata plus one full year for the following year.

A member not paying a renewal demand shall lose all rights and benefits of membership as specified in this Charter on the 14th day following the date on which the second reminder invoice is sent. Members who lapse membership due to a failure to pay fees may be reinstated if payment is made within 30 days after the lapse. Beyond 30 days they will typically be required to re-apply.

No refund of membership fees will be given to a member resigning of their own volition. A pro-rata refund will be provided to a member removed by disciplinary action subject to the member supplying the Secretariat with banking information within 30 days of their removal.

## **13. Outreach**

Business users' participation in ICANN is critical. The BC will, in tandem with other members of the CSG, make best efforts to broaden the participation of business users wherever possible according to available resources.

## **14. Amendments**

This Charter may be amended from time to time. Proposals for amendment that are not supported by the Executive Committee require a proposer and expressions of support from 25% of paid-up members.

## **15. Effect and transition**

All articles of this revised Charter shall take effect immediately following an affirmative vote of the Constituency. The previous Officers will continue as caretakers charged with the prompt execution of elections for the new executive committee.