

The Registry Stakeholder Group has examined the report of the ICANN Board Working Group on the Nominating Committee. We have concerns about a significant number of its recommendations.

Timing of the Recommendations

First of all, we question the timing of the report. Shouldn't significant changes to the Nomcom be considered after the ICANN Accountability work is finished? It is possible that new Board accountability mechanisms could be proposed that would change the way that directors are selected.

Composition of the Nominating Committee

Considering the level of ICANN's operational workload as well as the principal sources of revenues and expenditures for the organization, it is obvious that the overwhelming majority of the efforts are directed in managing GNSO-related operations and addressing issues of primary importance to the gTLD community. The CCNSO, ASO, and ALAC certainly are critical communities within ICANN. However, having fewer GNSO representatives to provide their views than the ccNSO, ASO, and ALAC does not make sense given ICANN's business and policy making realities. The RySG also questions the extent to which the new structure really provides broader geographical input to results if each member does not have a vote.

The RySG also objects to the proposed voting structure in the BWG report. For reasons already discussed, voting parity among the GNSO, CCNSO, and the ALAC does not comport with ICANN's financial and operational realities. Also, the diminution in the appropriate GNSO role will be aggravated if existing non-voting seats are given voting rights. Under the BWG plan, the GNSO would cast 3 of 15, or 20% of votes, down from 7 of 15 (46.7%). Even if some constituency realignment is in order, the resulting decrease of 26.7% in allotment certainly does not reflect the proper GNSO role within ICANN

Further, the proposed constituency-based Nomcom system adds complexity to the process by adding an additional structure and layer to the decision-making process. It also will add to an already heavy workload because of the meetings and decision-making that the groups will have to do themselves. The need to find cross constituency agreement on candidates has the potential to add layers and time to the voting process.

Finally, the delegation-based voting system will result in increased factionalism. While Nomcom members clearly have their appointing groups in mind during discussions and deliberations in the current model, the model is for voting to be done on the basis of what is best for ICANN. However, the BWG rationale itself spends a paragraph discussing the advantages of the new proposed structure in the context of specific constituencies. Its subsequent analysis that a choice of a given candidate by multiple constituencies will demonstrate broad community support falls short of justifying replacement of the current broad consensus Nomcom deliberation model with one focused on factions. Discussions can and should be qualification based. Delegation-based voting will create a level of partisanship. It will remove flexibility in the voting process.

As a final note on the delegation-based approach, clarification of the rules is necessary if it is adopted. The recommendation is that "[i]n order for a candidate to succeed, there must be support from across

at least three delegations . . .” Is one vote of three for three delegations enough to meet this criterion? The scenario may be fairly unlikely scenario but it is not impossible.

Another Nomcom composition proposal that raises concerns for us is the recommendation to allot three voting seats to the Government Advisory Committee (GAC). The RySG believes that the arrangement would contravene existing relationships between governments and ICANN. In addition, we question the basis for the BWG recommendation for increased GAC representation given that an existing non-voting slot has been unfilled since at least 2008.

Succession Planning

The RySG does not believe that the BWG report provides a clear rationale in its recommendation to do away with the Chair Elect position. We see no indication that the current recently-revised structure has not been effective in succession planning. The proposed setup in fact will remove a mature and commonly used organizational process that allows for a year of observation and experience for an individual who presumably will become the Chair. It will add uncertainty in the event of a vacancy in the Chair position by allowing the Board to choose a delegation chair who was not vetted for overall management capability in the first place.

The RySG also questions the suggestion that a Chair might be selected from outside existing ICANN constituencies. We do not believe that a person without experience in ICANN processes will have sufficient understanding of operational realities and needs that are essential when considering appointments. The potential problem would be compounded by elimination of the Chair Elect slot. A Chair from outside could assume the job with no internal ICANN experience. Any “clean slate” value will quickly be outweighed by lack of necessary insights.

The RySG does support the recommendation for two year terms. Nomcom service is a complex responsibility and the additional year will provide necessary experience and continuity. The RySG also agrees that no representative should serve two consecutive terms in order to avoid allowing members to be involved in selecting Board members over three consecutive cycles. However, the BWG recommendation that the Chair term also be two years adds a complication in that it will be impossible to select a chair who has had immediate past experience on the Nomcom. The RySG also notes that a transition period that creates staggered terms will have to be part of the process if the continuity advantage of two year terms is to exist.

The RySG also wishes to add a proposal. Current or former Nomcom members who have served on Nomcom with individuals under consideration for Chair roles should be consulted during deliberations concerning their candidacies. We realize that changes will be necessary to guidelines concerning the confidentiality of Nomcom deliberations in order to implement this recommendation. However, individuals who observed Chair candidates exercising Nomcom responsibilities will provide essential perspectives in the fitness of the candidates to assume leadership roles.

Non-Board Positions

The BWG recommended no change to the current system by which the Nomcom appoints members to the ALAC, GNSO, and CCNSO. It bases the recommendation on conversations with the groups and not on the efficacy of the process itself. The RySG believes that more attention needs to be directed toward the value of having Nomcom make these appointments within the broader context of the work demands on the committee. A review of the processes used by the Nomcom in handling these responsibilities also is appropriate in terms of judging whether the function should remain a part of Noncom's mandate.

Additional Thoughts

The ICANN Nominating Committee is critically important to the success of the organization and its multistakeholder model. Whatever value the BWG recommendations may have, the RySG must ask why major structural changes are thought to be necessary. Might the Nomcom operate with more success simply with consistent rules rather than annual revisions that require interpretation along the way?

We believe that the BWG methodology and resulting report, even with community input through the traditional comment process, are insufficient for the level of revisions contemplated by the report. The RySG suggests more thorough analysis, including the possibility of a cross constituency working group. The Nomcom truly is a cross constituency effort and a revision process could benefit from open contribution by all concerned groups rather than the filtering inherent in the BWG report approach.

We would be most happy to discuss any of these issues with you.