Public Comment Summary Report

Bylaws Amendments and Documents to Implement the NomCom2 Review

Open for Submissions Date:
Monday, 17 April 2023

Closed for Submissions Date:
Monday, 12 June 2023 (Extended from Monday, 29 May 2023)

Summary Report Due Date:
Wednesday, 26 July 2023 (Extended from Monday, 12 June 2023)

Category: Reviews

Requester: ICANN Board

ICANN org Contact(s): evin.erdogdu@icann.org

Open Proceeding Link: https://www.icann.org/en/public-comment/proceeding/bylaws-amendments-and-documents-to-implement-the-nomcom2-review-17-04-2023

Outcome:

This Public Comment proceeding was scheduled to remain open from 17 April through 29 May 2023. The Public Comment proceeding was extended to 12 June 2023 in response to multiple requests for additional time to submit input.

Thirteen (13) submissions addressing the Bylaws amendments and documents to implement the NomCom2 Review were received. ICANN org will review the input received and will in turn inform the ICANN Board on the conclusions of this Public Comment, and will address any necessary updates to the proposed Bylaws amendments and documents.

Section 1: What We Received Input On

ICANN sought Public Comment on a group of related documents that are all part of the implementation of recommendations from the NomCom2 Review. The ICANN Board initiated ICANN Bylaws Amendment processes over these proposed updates to the Bylaws that are necessary to complete the implementation.

The proposed amendments would:

- Require that three of the NomCom's eight selections to the ICANN Board of Directors meet a new qualification requirement of being "Unaffiliated" (Article 7 of the Bylaws).

- Change NomCom delegates' terms to serve two-year terms, instead of one year (Article 8).
- Transform all NomCom delegates into voting delegates, except for leadership (Article 8).
- Create a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom, as the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities. (Article 8).
- Define how these new requirements will be transitioned into practice (Article 27).

A proposed amendment to Article 12 of the ICANN Bylaws was also presented at the request of the Root Server System Advisory Committee (RSSAC). The RSSAC requested that if its appointed delegate becomes a voting member through this process, that the ICANN Board's role in appointment of RSSAC membership and leadership be removed.

There are additional proposed documents that were necessary to view in order to give context to the proposed Bylaws amendments:

- First, the proposed amendments to Article 7 reference a new standard for "Unaffiliated" Directors, and the NomCom2 Review Implementation Working Group's (NomComRIWG) proposed statement defining that standard is provided for Public Comment.
- Second, the NomComRIWG also produced a draft Charter for the NomCom Standing Committee referenced in the proposed Bylaws. That document is also available for Public Comment.

The ICANN Board will have to approve each of these documents in order for them to go into force, and future amendments of each will be subject to Public Comment and Board approval. Because of the dependency between these documents and the related Bylaws amendments, the documents will be considered by the Board alongside the proposed Bylaws amendments.

Four questions were posed as part of the Public Comment, to aid responders in formulating their views:

1. Do you have input on the Fundamental Bylaws amendment proposed for Article 7 of the ICANN Bylaws and the related proposed statement defining "Unaffiliated" Directors?
2. Do you have input on the proposed Standard Bylaws amendments proposed to Article 8 of the ICANN Bylaws as well as the Transition Clause proposed for Article 27? These would:
   a. Change NomCom delegates' terms to serve two-year terms, instead of one year.
   b. Transform all NomCom delegates into voting delegates to be able to vote, except for leadership.
   c. Create a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom.
3. Do you have input on the NomCom Standing Committee Charter?
4. Do you have input on the requested changes to Article 12 related to the RSSAC?

Commenters were not required to answer each question. In total, 13 comments were received, including four comments from individuals.

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Security and Stability Advisory Committee (SSAC)	**Rod Rasmussen**	**SSAC**
At-Large Advisory Committee (ALAC)	**ICANN Policy Staff**	**ALAC**
Country Code Names Supporting Organization Council (ccNSO Council)	**Alejandra Reynoso**	**ccNSO Council**
Registries Stakeholder Group (RySG)	**/**	**RySG**
Root Server System Advisory Committee (RSSAC)	**/**	**RSSAC**
Noncommercial Stakeholder Group (NCSG)	**Mesumbe Tomslin Samme-Nlar**	**NCSG**
Registrar Stakeholder Group (RrSG)	**Zoe Bonython**	**RrSG**
Business Constituency (BC)	**/**	**BC**
Cross-Community Working Party on ICANN and Human Rights (CCWP-HR)	**Ephraim Percy Kenyanito**	**CCWP-HR**

Individuals:

Name	Affiliation (if provided)	Initials
Gabriel Karsan	**ICANN Fellow**	**GK**
Glenn McKnight	**NARALO**	**GMcK**
Alvaro Aguilar-Alfu	**LACRALO**	**AAA**
Prince Andrew Livingstone Zutah	**AFRALO**	**PALZ**

Section 3: Summary of Submissions

The submissions revealed overall support of the suggested amendments to the ICANN Bylaws, with the exception of several concerns and suggested edits to the proposed "Unaffiliated" Directors statement and suggested edits to the NomCom Standing Committee charter.

Submission from the Security and Stability Advisory Committee (SSAC)
The SSAC noted that the "exception should no competent candidate be found" should be articulated in both the NomCom Operating Procedures and in the ICANN Bylaws. It also considered the objective measures specified for appointment as an "Unaffiliated" Director "seem overly restrictive and may result in a very small pool of applicants in this category", and suggested that "a time limit, such as 3 or 5 years, be introduced for the period in which those restrictions apply". In addition, the SSAC expressed support for the draft NomCom Standing Committee charter, while providing minor edits to clarify two sections (II. Purpose and IV. Composition). It strongly suggested that the section II. Purpose should explicitly state that the NomCom Operating Procedures must never be deemed confidential and should be made public.

[Submission from the At-Large Advisory Committee (ALAC)](#)
Overall, the At-Large Community and the ALAC are supportive of the "Unaffiliated" Directors definition. However, it is split in how this term "Unaffiliated" is defined: Some are of the opinion that the definition of "Unaffiliated" Director is too strict and excludes candidates even with previous ICANN experience, as a volunteer, from becoming one of these "Unaffiliated" Directors. The At-Large Community noted that "Unaffiliated" does not mean lacking knowledge about ICANN and the Internet ecosystem, but it does mean that they have not been actively involved in ICANN before. Others within the At-Large Community agreed with how the NomCom Review Implementation Working Group (NomComRIWG) defined "Unaffiliated" and that there will not be an issue with locating "Unaffiliated" Directors. The At-Large Community is also supportive of granting voting rights to the current non-voting delegates so that all delegates are treated equally, and supports the creation of a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom. Finally, it also supports the amendment to Article 12 in the ICANN Bylaws.

[Submission from the Country Code Names Supporting Organization Council (ccNSO Council)](#)
The ccNSO Council stated that the proposed changes to introduce "Unaffiliated" Directors might be "too onerous", and suggested instead that the proposed definition is only implemented for now in the NomCom Operating Procedures, and that a Bylaws amendment could be considered if this approach did not result in the appointment of more "Unaffiliated" Directors.

It expressed overall support for the change of NomCom delegates' terms to serve two-year terms, noting this proposed amendment "preempts" the outcome of the NomCom rebalancing discussion. It also encouraged the possibility for delegates to serve a maximum of two terms, but advised that the duration and sequence of terms should be up to the appointing bodies, and that transforming all NomCom delegates into voting delegates (except leadership) "should be introduced only if there is a clear support by the relevant Advisory Committee (GAC, SSAC, RSSAC)".

The ccNSO Council expressed support for the NomCom Standing Committee charter, but stated "a light-weight structure with a more focused mandate" would be in line with the Independent Examiner's related recommendation. The ccNSO Council further considered the proposed mechanisms under section VII intended to detail Accountability and Transparency do not measure up to the method the Independent Examiner recommended, adding that any suggestion to enhancing the NomCom's transparency and accountability to the overall ICANN community should be provided for Public Comment. It expressed that clarity should be provided with the Standing Committee and/or NomCom's limited role in areas of the budget, and should clarify that the mention of "Continuous Improvement" in the charter is not the same as the ATRT3 Recommendation 3.6 to evolve Organizational Reviews into a Continuous Improvement Program. The ccNSO Council stated its understanding that the definitions and goal for diversity considerations have not been defined nor have been agreed upon by the ICANN Community, and therefore questioned the need to include diversity criteria in the charter. It also suggested the NomCom Standing Committee be given a more explicit name.

The ccNSO Council expressed concern about the requested changes to Article 12 by the RSSAC, and pointed out related sections 12.2 (c)(ii) and 12.2 (b)(ii) are currently the same for both RSSAC and SSAC. Accordingly, it suggested an amendment be made to sections 12.2 (b) and 12.2 (c)(ii) "to include an alternative mechanism to appoint members to SSAC and RSSAC".

[Submission from the Registries Stakeholder Group (RySG)](#)

The RySG shared concerns with the proposed "Unaffiliated" Directors statement, noting it is overly restrictive, and encouraged "reasonable flexibility" when defining "Unaffiliated" Directors. It expressed support for the update to NomCom delegates' terms to serve two-year terms instead of one year. The RySG also expressed support for allowing all delegates, except leadership, to participate fully with voting rights. However, it questioned whether the GAC could vote "unless the NomCom breaks the confidentiality rules for that member so they can get instructions from the GAC". It expressed support for the creation of a NomCom Standing Committee and its draft charter, as well as the requested changes to Article 12.

[Submission from the Root Server System Advisory Committee (RSSAC)](#)
The RSSAC expressed support to the proposed Standard Bylaws amendments to Article 8.2 of the ICANN Bylaws, and reiterated support of its requested amendments to the Article 12.c.ii of the ICANN Bylaws.

[Submission from the Noncommercial Stakeholder Group (NCSG)](#)
Overall, the NCSG supported the proposed Bylaws Amendments, and noted that it understands that "Unaffiliated" Directors "is just a goal and sometimes there may not be appropriate candidates in the pool to make this happen." However, it expressed concern that "Unaffiliated" Directors could be influenced by one constituency, and asked that this be incorporated into the training for NomCom members, so "that they can filter for that risk as well". The NCSG agreed that "Board candidates nominated as 'Unaffiliated' Directors can be re-nominated to those roles" and would not lose their status of "Unaffiliated".

The NCSG expressed support for the change of term limits to NomCom delegates for two years, for the addition of term limits, and for terms not to be consecutive. It also supported changing all NomCom delegates into voting delegates.

It supported the creation of the NomCom Standing Committee, with the note that the committee should allow the NomCom "to remain in control over its own processes". Therefore, the NCSG suggested that "Standing Committee members only serve one full term of three (3) years at a time", while advising consecutive terms should not be implemented. In addition, the NCSG supported the amendment to Article 12.

[Submission from the Registrar Stakeholder Group (RrSG)](#)
The RrSG supported proposed draft Bylaws amendments, as well as the role of the "Unaffiliated" Directors. However, several members of the RrSG expressed concern that the proposed definition could potentially exclude "qualified candidates, who just so happen to be ICANN insiders". It therefore suggested revising the definition to "ensure that the most qualified candidates are prioritized and that candidates with ICANN community experience are not preemptively excluded". The RrSG expressed support of the amendments to the Article 8 of the ICANN Bylaws and Transition Article proposed for Article 27, noting "these changes will improve the NomCom".

The RrSG supported the proposed NomCom Standing Committee charter, and suggested the "*for reference*" box in the charter is updated with the correct number of voting delegates". It requested that "sufficient (ICANN org) staffing and resources are allocated towards successful establishment and operations" of the Standing Committee, including travel support. It also expressed support for the requested amendments to Article 12.

[Submission from the Business Constituency (BC)](#)

The BC expressed overall support for the proposed ICANN Bylaws amendments and documents to implement the NomCom2 Review, and also provided inputs on the composition of the Board and the NomCom that were not directly related to the issues posted for comment (i.e. NomCom rebalancing). However, the BC does not support the recommendation to designate three specific Board seats for "Unaffiliated Directors", finding they "may be detrimental to Board collegiality" as they would have to "spend time learning" about ICANN. The BC stated that the task of filling three seats for "Unaffiliated" Directors may be hard, so "this idea should be jettisoned completely or at most seek to place at least one (1) of such directors on the board".

While the BC expressed support to the NomCom Standing Committee charter, it shared three observations for improvement:
1) "a mechanism in the selection of members of the standing committee to ensure the four (4) member(s) seats rotate amongst different SO/AC's each election year";
2) A "safeguard to ensure no more than two members from a particular SO/AC is selected by the ICANN Board to serve together on the standing committee at any point in time";
3) "the single term tenure of three (3) years for which any member can serve two terms is too long a period and should be reduced to two years for a single term".

In addition, the BC made a suggestion related to the reallocation of board seats, a topic not directly related to the issues posted for comment, proposing that "the NomCom should cede two Board seats to the Contracted Party and Non-Contracted Party Houses of the GNSO, so that the CSG and NCSG to have One Board Seat each for the Non-Contracted Party house, and one each for the Registry and Registrar Stakeholders Group in the Contracted Party house".

Submission from the Cross Community Working Party on ICANN and Human Rights (CCWP-HR)
The CCWP-HR expressed full support for all proposed Bylaws amendments and documents to implement the NomCom2 Review.

Submission from individual, Gabriel Karsan, ICANN Fellow (GK)
GK provided comments on the potential for NextGen participation within the NomCom, a topic not directly related to the issues posted for comment.

Submission from individual, Glenn McKnight (GMcK)
GMcK expressed a lack of clarity about the meaning and role of the "Unaffiliated" Directors, without providing additional commentary. GMcK was in support of the change of NomCom delegates' terms to serve two-year terms, instead of one year, noting one year terms are not long enough to understand the NomCom process. In addition, GMcK is supportive of the recommendation to form a NomCom Standing Committee, to ensure greatest continuity across NomComs.

Submission from individual, Alvaro Aguilar-Alfu (AAA)
AAA expressed concerns about "Unaffiliated" Directors, noting they "further reduce the number of prospective directors with knowledge from past experience of the ICANN environment and activities", and "may lack sufficient information" about the organization they represent. AAA also expressed "the need for independent directors [...] is not as urgent in a public benefit non-profit entity like ICANN". AAA suggested that if the amendment is approved, "Unaffiliated" Directors should have some level of ICANN experience, including: "at least members of an ICANN SO, AC, Stakeholder Group, Constituency, or RALO not remunerated for said role", and "previous experience attending ICANN events outside of the categories of 'affiliated' directors". AAA also

stated that "directors who are affiliated but by the beginning of their term become 'unaffiliated' directors should be allowed to be nominated as such".

AAA supported the changes of NomCom delegate terms and transforming all delegates into voting delegates, except for leadership. AAA expressed concerns with the creation of the NomCom Standing Committee, noting this committee would be "redundant". AAA suggested instead to stagger 3-year terms for NomCom delegates meeting alongside all NomCom members. AAA supported the ccNSO Council comment on the amendments to Article 12.

[Submission from individual, Prince Andrew Livingstone Zutah (PALZ)](#)
PALZ expressed support to change NomCom delegates' terms to serve two-year terms. However, PALZ advised "continuous evaluation and performance assessments" are necessary to prevent "potential downsides such as complacency and lack of accountability".

Section 4: Analysis of Submissions

Out of the total of 13 submissions, nine were from organizations or groups and four were from individuals. Of the nine submissions from organizations, three were from Advisory Committees, one from a Supporting Organization, three from Stakeholder Groups of the GNSO, one from a GNSO Constituency and one from a cross-community working party. The submissions revealed overall support of the suggested amendments to the ICANN Bylaws, with the exception of several concerns and suggested edits to the proposed "Unaffiliated" Directors statement and suggested edits to the NomCom Standing Committee charter. ICANN org observes that there is an opportunity for clarifying context and history of the NomCom Review (including previous Public Comment proceedings on the Independent Examiner's Report and related Implementation Plan), to help address expressed concerns regarding implementation of certain recommendations. Please see the "Next Steps" section for further detail.

Do you have input on the Fundamental Bylaws amendment proposed for Article 7 of the ICANN Bylaws and the related proposed statement defining "Unaffiliated" Directors?

Eight organizations and groups and two individuals submitted comments on this section. One Supporting Organization (ccNSO Council) provided comments, and two out of the three Advisory Committees (ALAC and SSAC) provided comments. Of the 10 commenters, two commenters NCSG, CCWP-HR) agreed with the proposed statement and related amendment, without change, one commenter (ALAC) supported the change proposed by the NomCom2 Review but could not agree on the "Unaffiliated" definition, one commenter (RySG) supported the concept but described the definition as too wide and potentially disqualifying candidates with relevant experience, while two commenters (ccNSO Council, BC) did not support the proposal.

Overall, multiple commenters (SSAC, ALAC, ccNSO, RySG, RrSG, AAA) noted in their inputs that the "Unaffiliated" definition needs to be refined. Several commenters (RySG, ccNSO Council, RrSG) expressed concerns with the ability to fill three seats on the ICANN Board with "Unaffiliated" Directors, and emphasized the priority to fill the seats with qualified candidates.

Do you have input on the proposed Standard Bylaws amendments proposed to Article 8 of the ICANN Bylaws as well as the Transition Clause proposed for Article 27?

On changing NomCom delegates' terms to serve two-year terms, instead of one year:

Six organizations and groups and four individuals submitted comments on this section. Two out of three Advisory Committees (ALAC and RSSAC) submitted comments, and one Supporting Organization (ccNSO Council) provided comments. Of the 10 submissions, all agreed with this proposed change.

10 submissions stated support for changing NomCom delegates' terms to serve two-year terms, instead of one year. However, the ccNSO Council shared an observation that "it should be up to the appointing organizations, whether they allow the appointee to serve two consecutive terms or with a minimum of two years between the end of their first term and the beginning of the second term", and an individual commenter expressed "potential downsides such as complacency and lack of accountability should be considered. Continuous evaluation and performance assessments are necessary to prevent these issues".

On transforming all NomCom delegates into voting delegates to be able to vote, except for leadership:

Seven organizations and groups and one individual submitted comments on this section. Two out of three Advisory Committees (ALAC, RSSAC) submitted comments on this change, and one Supporting Organization (ccNSO Council) submitted comments. Seven submissions stated support for this change (ALAC, RySG, RSSAC, NCSG, RrSG, CCWP-HR, AAA) while two submissions (ccNSO Council, RySG) raised questions without indicating support or rejection of this proposed change: One questioned whether Advisory Committees support this amendment to become voting delegates, and one questioned the GAC delegate's ability to become a voting delegate without breaking NomCom confidentiality rules, while noting the GAC has never participated on NomCom and may need to discuss how it could participate.

On creating a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom:

Seven organizations and groups, and two individuals submitted comments. Two out of three Advisory Committees (ALAC, RSSAC) submitted comments on the creation of a NomCom Standing Committee, and one Supporting Organization (ccNSO Council) submitted comments. Eight submissions (GMcK, ALAC, ccNSO Council, RySG, RSSAC, NCSG, RrSG, CCWP-HR) stated support of the NomCom Standing Committee creation, and one submission (AAA) expressed concerns about the Standing Committee.

Eight submissions stated support for creating a NomCom Standing Committee. Overall, submissions described the creation of the NomCom Standing Committee as a positive improvement, helping to avoid reinventing the wheel each year and thus allowing a smoother transition between NomComs. One submission expressed concerns on the creation of the NomCom Standing Committee, suggesting instead to start first with a "light-weight structure with a more focused mandate". One submission considered this committee to be "redundant" to the way the NomCom currently works.

Do you have input on the NomCom Standing Committee Charter?

Seven organizations and groups, and one individual submitted comments. Two out of three Advisory Committees (ALAC, SSAC) submitted comments on the NomCom Standing Committee charter, and one Supporting Organization (ccNSO Council) submitted comments. Two submissions (ALAC, RySG), expressed full support for the charter, five (SSAC, ccNSO

Council, NCSG, RrSG, BC) expressed support with suggested edits, while one individual commenter (AAA) stated opposition to the charter.

Notably, the SSAC, ccNSO Council and RrSG suggested several edits to improve its terminology: making section II Purpose explicitly state that the NomCom Operating Procedures must never be deemed confidential and should be made public, and clarifying the NomCom and Standing Committee's limited role in areas of budget. The BC also suggested that a safeguard be in place to ensure no more than two members from a particular SO/AC are selected by the ICANN Board to serve together on the Standing Committee at one time. One submission stated opposition to the NomCom Standing Committee charter, and suggested that the Standing Committee be given a more explicit name to avoid any confusion with the NomCom itself.

Do you have input on the requested changes to Article 12 related to the RSSAC?

Seven organizations and groups, and one individual submitted comments. Two out of three Advisory Committees (ALAC, RSSAC) submitted comments on the changes to Article 12, and one Supporting Organization (ccNSO Council) submitted comments. Six submissions (ALAC, RySG, RSSAC, NCSG, RrSG, BC) expressed support for this Bylaws amendment, while two (ccNSO Council, AAA) expressed concerns regarding this change, encouraging articulation of how RSSAC members are selected. No opposition was submitted.

The ccNSO Council requested clarification for the change to section 12.2 (c)(ii) (related to RSSAC) and not to change 12.2 (b)(ii) (related to SSAC), while questioning who would be eligible to become part of RSSAC and how the RSSAC selection would be completed, considering there is no other mechanism in place. These questions were supported by AAA.

Section 5: Next Steps

ICANN org acknowledges the divergent views expressed on the "Unaffiliated Directors" definition and proposed amendment, and notes that this topic will require further work and consideration. ICANN org also observes that several commenters suggested clarifying the NomCom Standing Committee charter language, and notes that these suggestions will be considered by the Board. ICANN org will provide this Public Comment summary report of submissions to the Board for further consideration.