

**TO: Organizational Effectiveness Committee (OEC)
of the ICANN Board**

**TITLE: GNSO Registrar Stakeholder Group Charter
Cover Letter for OEC Review**

**Submitted by: Zoe Bonython, on behalf of the Registrar
Stakeholder Group**

First of all, we appreciate ICANN org’s thorough review of the new RrSG Charter and our sincere thanks for the opportunity to discuss ICANN org’s legal and fiduciary concerns with Sam Eisner, Deputy General Counsel of ICANN via a conference call on 8 October 2018.

Based on our conference call, ICANN org’s primary concern appears to be twofold: Firstly, Section 2.2.3 of the Charter has the ability to exclude on an unpredictable basis a group of registrars from voting in the RrSG; which in turn may impact ICANN’s ability to enforce its bylaws and contracts.

We address those two areas of concern as follows:

GNSO Operating Procedures

We understand one of ICANN’s main concerns is that Section 2.2.3 of the Charter “may not be aligned with the clarity required under GNSO Operating Procedures (“Procedures”) particularly where there is significant discretion provided to make such a determination as to who can vote, it may not determine such a non-exhaustive list”.

In terms of the clarity requirement under the Procedures, we submit a distinction should be drawn between admission and voting rights. While 6.1.2.e.i of the Procedures provides “Admission criteria should be predictable and objective and not arbitrary or discretionary”, the right to vote in a group is governed by each group’s charter (6.1.2.b, “...rights to vote as applicable as per Group membership rules”).

We would note that 6.1.2.j provides “No legal or natural person should be a voting member of more than one Group” but 6.1.2.b does not make any reference to 6.1.2.j. This indicates the Procedures indeed allow each group to develop its own rules around voting rights. Thus, we do not believe the criteria and rules around admission and voting rights in the Charter are inconsistent with the Procedures.

Enforceability of ICANN Bylaws and contracts

From a legal perspective, the enforceability of ICANN consensus policies is based on the contract between ICANN and accredited registrars and not on participation in the PDP or voting within the RrSG. When a registrar signs the RAA, it is bound by those policies. Section 4.1 of the RAA states:

4.1 Compliance with Consensus Policies and Temporary Policies. During the Term of this Agreement, Registrar shall comply with and implement all Consensus Policies and Temporary Policies in existence as of the Effective Date found at <http://www.icann.org/general/consensus-policies.htm> [icann.org], and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedures and relate to those topics and subject to those limitations set forth in the Consensus Policies and Temporary Policies Specification to this Agreement.

ICANN-accredited registrars are not obliged, and many choose not, to be members of the RrSG. Participation in GNSO Policy Development Process (PDP) is also voluntary. Therefore it seems inconceivable that a registrar could claim that an ICANN consensus policy is non-binding because they were a non-voting member of the RrSG or not part of a PDP.

The RrSG extensively discussed and reviewed its charter before membership overwhelmingly voted in favour of accepting it in its current form. We are confident that the Charter allows the RrSG to best represent the interests of ICANN accredited registrars and that any restrictions placed on members' voting rights are there to ensure registrar business interests will be upheld above the interests of other parties both now and in the future.

As such, unless we are given other reasons not to, the RrSG plans to move forward with presenting the Charter to the OEC without any amendment.

Kind regards,

Zoe Bonython

On behalf of the RrSG

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