

August 2014

Attached is the report prepared by the Board Working Group on Nominating Committee (BWG-NomCom), the group of Board members charged with carrying out work remaining from the first organizational review of the Nominating Committee (NomCom) relating to issues of NomCom size and composition.

The ICANN Board has not yet considered the recommendations in this report. The Board directed that this report be posted for public comment because the Board wants to hear your thoughts on the proposals set forth. Recognizing the central role of the NomCom within the ICANN community and ICANN's governance processes, there will be an open session at ICANN 51 in Los Angeles, California to allow for more direct community discussion on the recommendations in this report before the Board takes any action. If there is disagreement with the BWG-NomCom recommendations, community members are encouraged to include within their comments alternative ideas of how to reach the objectives set out in the report. The community inputs will be carefully weighed and considered by the Board once the public comment cycle and the session in Los Angeles are complete. Even if the recommendations were approved in full at that time, the earliest date of implementation would be for the 2015-2016 NomCom.

The Board looks forward to the community discussion of this report.

Report of the ICANN Board Working Group on the Nominating Committee

7 July 2014

Executive Summary

Formed in February 2014, the Board Working Group on Nominating Committee (BWG-NomCom) is charged with performing the review called for in Recommendation 10 of the Nominating Committee Review Finalization Working Group, addressing issues of the size and composition of the Nominating Committee, as well as the Related issues of NomCom's recruitment and selection functions. Some of the specific issues identified for consideration included:

- Whether the current disproportionate representational model is appropriate for the NomCom in the future;
- Determination of the appropriate length of term of service by NomCom members and whether term limits should be imposed;
- Whether the NomCom should continue to fill other key positions in addition to Board positions.

In performing its work, the BWG-NomCom considered the role of the NomCom in ICANN, as well as issues of representation and parity among the entities across ICANN that have members serving on the NomCom. The BWG-NomCom recommends that: (a) the NomCom membership be redefined to allow for a representation that provides greater diversity and parity; and (b) that two-year terms be established for NomCom members, with no ability for a member to serve two consecutive terms, with the possibility of the term being truncated after one year.

Background

The ICANN Nominating Committee (NomCom) is charged with the appointment of eight of the 16 voting directors of the ICANN Board, as well as appointing members to the councils of the Country Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO), as well as the At-Large Advisory Committee (ALAC).¹

As part of ICANN's organizational review process, a review was conducted over the NomCom, starting in 2007.² The Board received the Final Report of the NomCom

¹ <https://www.icann.org/resources/pages/bylaws-2012-02-25-en#/VII>

² See <https://www.icann.org/resources/pages/nomcom-2012-02-25-en> for a history of the NomCom review process.

Finalization Review Working Group on 12 March 2010 (the “Final Report”), which called for a review in three-years’ time of issues of the composition, size and recruitment function of the Nominating Committee (NomCom).³

The Structural Improvements Committee (SIC) recommended that the follow-up work identified in the Final Report be addressed through the establishment of a Board working group formed to execute Recommendation 10 with inclusion of consideration of Recommendation 4 of the Review Finalization Working Group. On 7 February 2014, the Board approved⁴ the creation of the BWG-NomCom and its Charter, amended on 27 March 2014.⁵ A copy of the Revised Charter is contained in Attachment 1 to this report. In fulfilling its work, the BWG-NomCom reached out to the leadership of ICANN’s SOs and ACs, and met with members of the current NomCom to discuss the issues presented in the Charter.

Size and Composition

The NomCom is currently composed of 15 voting members, 3 non-voting members, 1 non-voting Chair, 1 non-voting Chair-Elect, and 1 non-voting associate chair, for a total of 21 individuals.

Voting members are composed in the following manner:

- Five members appointed from the At-Large Advisory Committee, with one from each Regional At-Large Organization
- Seven members are appointed from the GNSO, with one from each constituency that existed at the time the NomCom membership was defined
- One member each is appointed from the ccNSO the ASO and the IAB (IETF).

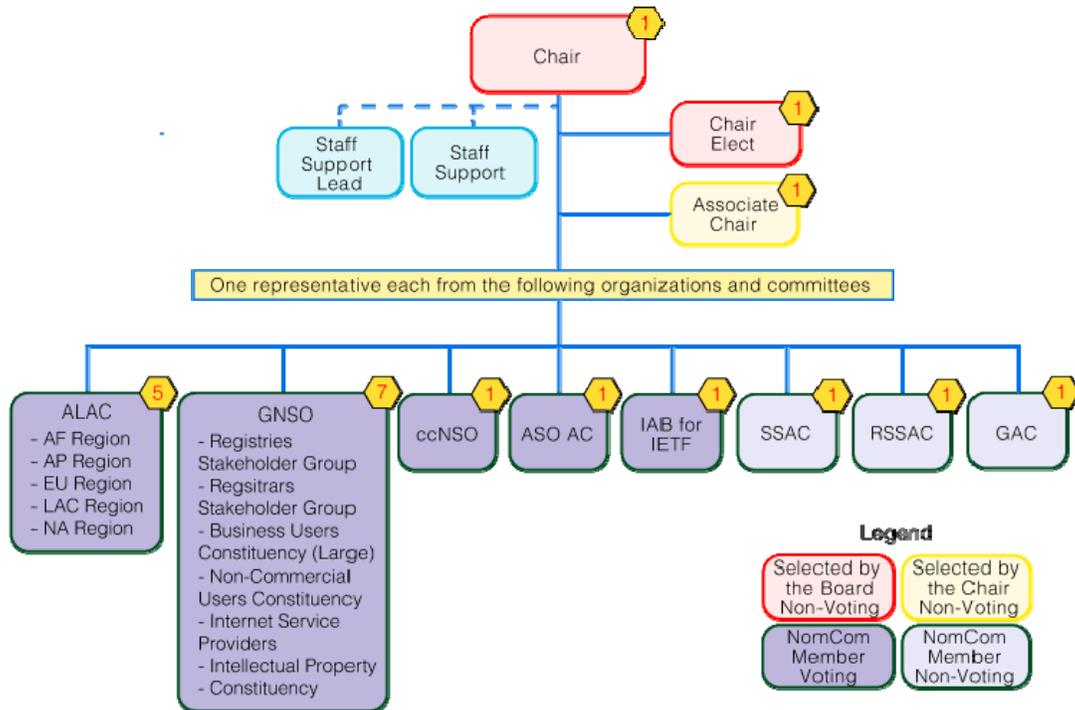
See *Figure 1* for a diagram of the current NomCom composition.

³ See <https://www.icann.org/en/groups/reviews/nomcom/nomcom-review-finalization-wg-final-report-29jan10-en.pdf>.

⁴ <https://www.icann.org/resources/board-material/resolutions-2014-02-07-en#/2.b>

⁵ <https://www.icann.org/resources/board-material/resolutions-2014-03-27-en#/2.a>

Figure
1

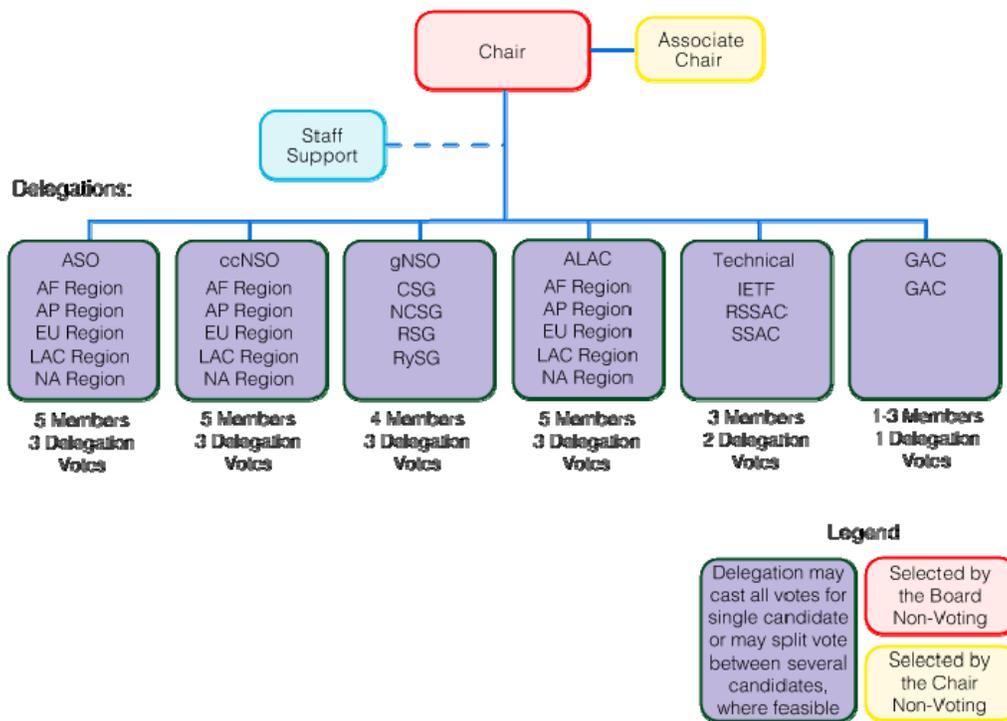


Proposed NomCom composition:

The BWG-NomCom recommends that the size of the NomCom be expanded to 23-25 members, along with a non-voting Chair and Associate Chair, for a total of 25-27 individuals. In the case of the ASO, ALAC, ccNSO, GNSO members are to be appointed based upon the 2nd level of their organizational structure. The members for the IAB (IETF), RSSAC, SSAC, and GAC would be appointed as indicated below.

- Five members appointed from the At-Large Advisory Committee, with one from each Regional At-Large Organization
- Five members appointed from the ccNSO, with one from each geographic region
- Five members appointed from the ASO, with one from each geographic region
- Four members appointed from the GNSO, with one from each Stakeholder Group
- Up to three members appointed from the GAC
- One member each from the IAB (IETF), SSAC and RSSAC

The BWG-NomCom took cognizance of the recommendation in the Final Report of the Review Working Group that the NomCom is too big for an effective selection process, but felt that the nomination process required input from multiple sectors of activity and regional balance, and that this diversity would only be possible if the NomCom did not diminish in size. See *Figure 2* for the recommended composition.



Aligning NomCom Structure to SO/AC Structures

The BWG-NomCom’s size and composition recommendations better align the structure of the NomCom to the structure of ICANN’s Supporting Organizations and Advisory Committees while still keeping in mind principles of equality in balance and scalability. For purposes of this document, the ICANN Supporting Organizations, Advisory Committees, and any outside organization that appoints members to the NomCom shall be referred to as Appointing Entities.

Recommendation 1 - Enhancing Regional Representation and Diversity – ASO, ccNSO and ALAC

The BWG-NomCom recognizes that regional representation and diversity is important to reflect within the NomCom, and further that the structures of the ASO, ccNSO and the ALAC support the use of appointees selected from across geographic

regions. As a result, the ASO and the ccNSO would each appoint five members as opposed to the one each currently appoints. Each organization would appoint one member from each of their five geographic regions. The ALAC's representation on the NomCom would remain the same, as each of the five Regional At-Large Organizations already appoints members to the NomCom.

Recommendation 2 - Aligning with Organizational Structure – GNSO

Because the gNSO does not use regional representation as their organizational structure, but rather special interests, the BWG-NomCom recommends that gNSO appoint four members to the NomCom to align with the Stakeholder Group structure as set out in the ICANN Bylaws. This represents a reduction in the GNSO's current number of appointees to the NomCom, as the Commercial Stakeholders Group currently selects four members to the NomCom. All other Stakeholder Groups currently select one.

The Commercial Stakeholders Group seats are currently apportioned to the individual constituencies that comprise the Stakeholder Group (Business Constituency (2); Internet Service Providers Constituency (1) and the Intellectual Property Constituency. This historical apportionment has contributed to a perception that as new constituencies are added within the Non-Contracted Parties House of the GNSO⁶, that each new constituency should be apportioned a seat on the NomCom. However, tying the NomCom size to the development of the GNSO – particularly in relation to one portion of the GNSO – raises both scalability and parity issues. Scalability is a concern, in that the size of the NomCom at 20 members⁷ was already cited as potentially too large for effective deliberations. Therefore, allowing for automatic additions to the NomCom size when a new Constituency is approved is not aligned with that concern. The parity issue arises in regards to the potential that the Non-Contracted Parties House of the GNSO would (1) have the largest representation on the NomCom above any other SO/AC; and (2) have the ability to increase their representation on the NomCom while no other grouping maintains that same ability. It is on this basis that the representational model for the GNSO is structured at the 2nd level, the Stakeholder Group level, as opposed to the 3rd level, the Constituency level.

⁶ The Contracted Parties House does not allow for new constituencies.

⁷ At the time of the NomCom Review, the Chair-Elect position did not exist.

Recommendation 3 – GAC Representation Capable of Increase at GAC Discretion

The BWG-NomCom recommends that due to the growing membership of the GAC, and the diversity of view among governments, it is appropriate for the GAC to appoint up to three members to the NomCom, instead of the one non-voting member that is currently afforded to the GAC. The number of appointees is at the discretion of the GAC.

Recommendation 4 - Technical Entity Inputs Remain Unchanged

The BWG-NomCom recommends that there be no change to the numbers of members to the NomCom representing the IETF, the SSAC and the RSSAC. Each of these groups will appoint one member on the NomCom.

Recommendation 5 – Organization of NomCom by Delegation

The BWG-NomCom recommends that the members of the NomCom be organized into delegations: ASO, ccNSO, GNSO, ALAC, Technical, and GAC. The ASO, ccNSO, GNSO and ALAC Delegations would have 5 members each, selected as described in Recommendations 1 and 2. The Technical Delegation would have 3 members as described in Recommendation 4, and the GAC Delegation would, as described in Recommendation 3, have up to 3 members. The manner in which the delegations would vote during the selection process is explained in Recommendation 8.

Recommendation 6 – NomCom Leadership Positions

The BWG-NomCom recommends the NomCom leadership positions be changed from 3 (Chair, Chair-Elect and Associate Chair) to 2 (Chair and Associate Chair). Specific aspects of this recommendation are presented in Recommendations 10 through 14.

Selection Processes

Recommendation 7 – Removal of Non-voting Member Roles

The BWG-NomCom recommends that all members (excluding the two leadership positions) should have the ability to vote for candidates.

This allows for greater parity in the selection process and the voting structure of the NomCom. Today, only the ASO, ccNSO, GNSO, ALAC and IETF members have the ability to vote, while the RSSAC, SSAC and GAC members serve in a non-voting capacity.

Allowing voting across all delegations better serves the purpose of the NomCom by placing all delegations on an equal footing, as compared to the current structure of voting and non-voting members.

The diversity of viewpoints combined with parity of voting makes it more likely that the broader ICANN community, acting through their members, would better support NomCom decisions.

Recommendation 8 – Candidate Selection Voting by Delegation

The BWG-NomCom proposes that voting selection be conducted by delegation. The ASO, ccNSO, GNSO and the ALAC delegations will each have 3 votes; the Technical delegation will have 2 votes; and the GAC delegation will have 1. Each delegation may cast all of their votes for a single candidate, or may split their votes for multiple candidates, where feasible.⁸

Rationale:

Voting by delegation demonstrates support for a candidate across the diversity and the variety of interests that make up the ICANN community. By their composition, each delegation represents the diversity of its Appointing Entity. The particular perspective of each Appointing Entity in the ICANN community adds another facet of diversity. The internal diversity of the ASO, ccNSO and the At-Large is geographical; the internal diversity of the GNSO is by special interest; the diversity of the technical delegation is reflected in the specific aspects of the various technical Appointing Entities. The presence of a GAC delegation brings a needed government perspective to the NomCom. Voting by delegation provides a degree of parity for the technical and GAC delegations vis-à-vis the other delegations. Delegations may split their vote between several candidates thus indication a differential of preference in a particular delegation. If voting were allowed on a 1:1 basis, granting voting status to the technical entities and the GAC would not do much to achieve parity as they would be few among many.

Organization by delegation allows persons of a similar general perspective to deliberate from their particular diverse views within that general perspective. The candidate that emerges from the delegation would then be acceptable to the general community of the Appointing Entity. The emergence of a single candidate from multiple delegations would then demonstrate acceptability to multiple segments of the ICANN community. In order for a candidate to succeed, there must be support from across at least three of the delegations in order for any candidate to be appointed, and thus is a mechanism through which it becomes less likely that any single grouping of votes can determine the outcome of the selection process. A

⁸ Entities may wish to create a procedure for the direction of voting for delegations and method of selection of delegation leader, but are not required to do so. However, any procedures for these or any other matter that are developed cannot permit reference back to the appointing entity, as that would impair the confidential nature of the NomCom's selection and deliberative process.

candidate who gains consensus support amongst these delegations is truly selected by diverse interests.

Terms of Service

Recommendation 9 – Implement Two Year Terms for Voting Members

The BWG-NomCom recommends that the terms for all voting members be for two years, with no member allowed to serve for two consecutive terms. Within each delegation that has 5 members, terms will be staggered so that not all terms conclude in the same year. The imposition of term limits assures that no single member of the NomCom (or group of reappointed members) can influence selections across three Board member selection cycles, which is protection against capture of the NomCom (and potentially, capture of the Board). Staggering of terms will allow for continuity in membership, so that no one NomCom would be comprised of a totally new membership.

Any member may resign at any time by giving written notice to the Chair of the Appointing Entity, with a notification copy to the NomCom Chair. Such a notice is effective at the time of receipt. Any member may be removed at any time by a vote of two-thirds (2/3) of the members. In the event of removal the Appointing Entity may opt to fill the vacancy or it may elect to not fill it. Not filling a vacancy will not affect the delegation vote count. It will remain the same even though the number of members has been reduced by the vacancy.

Recommendation 10 – Leadership of the NomCom

The BWG-NomCom notes that the selection of the Chair of the NomCom should be performed with due care and thus recommends that the BGC create clear qualifications and criteria for the attributes for the selection of the leadership role. The performance and outcome of the NomCom are strongly tied to the quality of the leadership of the Chair. In addition to the qualification criteria for members to the NomCom, the Board in its selection of a Chair must also take into account qualities of leadership. Such qualifications could include but not be limited to qualities such as decisiveness, confidence, focus, ability to delegate, and communication.

The BGC's recruitment process for the NomCom Chair should be performed in a professional manner, and without restriction to only the ICANN communities. The Chair can be selected from within or outside the ICANN community. In addition to a general call for candidates, the board could request that each Appointing Entity of members to the NomCom to also suggest a candidate for NomCom Chair. The board could also consider other recruitment techniques such as advertising or obtaining the services of a recruiting firm. Whatever technique or combination of techniques used to recruit candidates for the NomCom Chair, the result must be a pool of strong and viable candidates.

Recommendation 11 – Implement Two Year Term for Chair

The BWG-NomCom recommends that the term for the Chair be two years, with no Chair allowed to serve for two consecutive terms. The imposition of term limits assures that no Chair can influence selections across three Board member selection cycles, which is protection against capture of the NomCom (and potentially, capture of the Board).

Recommendation 12 – Succession Planning for Chair

The BWG-NomCom recommends that the Chair-Elect position be removed. The current structure selects a Chair-Elect, who must be reaffirmed at the conclusion of the Chair-Elect's term, with no surety of selection to the Chair position. This results in uncertainty about who the leadership of the NomCom will be in the succeeding year. To provide for succession in the event of an unforeseen vacancy in the Chair position, the BWG-NomCom recommends that the Board could make an interim appointment from one of the delegation heads on the current NomCom. The delegation from which the interim Chair was selected could then be back filled by the Appointing Entity. Alternatively, the Board could make an interim appointment of an individual who is not a member of the current NomCom.

Recommendation 13 – Regular Review of NomCom Chair Performance

The BWG-NomCom recommends that the BGC conduct an anonymized survey of the NomCom to assess the performance of the NomCom Chair. This survey should be conducted at least twice during the term of the NomCom with the results provided confidentially to the BGC. This allows the BGC a method to provide timely feedback to the Chair about the Chair's performance, and about changes that might be appropriate to enhance productivity and comity. The BGC would only reflect back to the Chair of the NomCom the information gained from the survey; it could not add its own comments or evaluation.

Recommendation 14 – Succession Planning

The Chair may be removed at any time by a vote of two-thirds (2/3) of the delegations. Each delegation must vote unanimously for removal of the Chair. The interim replacement would be made as provided for in Recommendation 12.

Appointment to Other Entities

Recommendation 15 – Maintain NomCom Appointments to Entities Other Than the Board

In fulfillment of its charter, the BWG-NomCom reached out to the leadership of groups other than the Board to which the NomCom makes appointments (GNSO, ccNSO and ALAC) on the issue of whether there was value in the NomCom

continuing to make appointments to entities other than the Board. The responses received generally noted the value of the NomCom appointees and encouraged the continuation of these selections. As a result, the BWG-NomCom recommends no change in the NomCom process for appointing members to the GNSO, ccNSO, and ALAC.

Recruitment

With regard to Recommendation 4 of the Nominating Committee Review Finalization Working Group, since the publication of the report, the NomCom has started working with an internationally recognized recruiting firm and conversations with the NomCom indicate that this process is working well. As a result, the BWG-NomCom is not issuing any recommendations on the recruitment aspect of the NomCom.