

Report of Public Comment

Title: Proposed Charter Amendments of the GNSO Business Constituency								
Publication Date:	8 March 2017							
Prepared By:	Robert Hoggarth							
<table border="1"> <tr> <td colspan="2">Comment Period:</td> <td rowspan="3" style="text-align: center; vertical-align: middle;"> Important Information Links Announcement Public Comment Box View Comments Submitted </td> </tr> <tr> <td>Comment Open Date:</td> <td>6-Jan-2017</td> </tr> <tr> <td>Comment Close Date:</td> <td>15-Feb-2017</td> </tr> </table>		Comment Period:		Important Information Links Announcement Public Comment Box View Comments Submitted	Comment Open Date:	6-Jan-2017	Comment Close Date:	15-Feb-2017
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Staff Contact:	Robert Hoggarth							
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Section I: General Overview and Next Steps								
<p>The GNSO Business Constituency (BC) completed Phase I of the formal ICANN Board Process for approval of community charter amendments and adopted its Business Constituency Charter (v3.0) by membership vote on 17 October 2016. This new Charter is the culmination of exhaustive work by a drafting team commissioned by the BC leadership, which held 34 hourly sessions since first involving ICANN Staff in the project back in October 2014. Since that time, the team produced 45 separate versions of the document – resulting in this final version being approved by the BC membership</p> <p>As part of its Phase II responsibilities, ICANN Staff completed a formal review and determined that there were no direct fiscal or liability concerns that would affect the ICANN organization.</p> <p>Phase III of the Board’s process requires that the new Charter be shared with the larger community via ICANN Public Comment.</p> <p>After review of this Summary of Public Comment and subsequent deliberations, the Organizational Effectiveness Committee (OEC) shall make a recommendation to the Board either to:</p> <ol style="list-style-type: none"> a. Recognize the proposed charter amendment by a simple majority vote; or b. Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns. <p>If neither above condition is met, the Board will ask for further explanation of the proposed amendments by the community.</p>								
Section II: Contributors								
<p><i>At the time this report was prepared, a total of five (5) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor’s initials.</i></p>								
Organizations and Groups:								
Name	Submitted by							
	Initials							

AFNIC	Mathieu WEILL	AFNIC
Business Constituency-Outreach Committee	Steve DelBianco	BC-OC
Registries Stakeholder Group	(Undisclosed)	RySG

Individuals:

Name	Affiliation (if provided)	Initials
Philip Sheppard	Business Constituency	PS
John Berard	Business Constituency	JB

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

There were three substantive issues and one spelling correction identified by contributors concerning the Business Constituency’s (BC) Charter. The substantive issues focused on membership eligibility, membership voting exclusions and diversity matters.

1) Membership Eligibility Exclusion: Section 5.1.2(b)-Ineligible Organizations

Provision language: “Entities which derive more than 30 percent of annual revenue as a registry operator, registrar, or domain name reseller (collectively, ‘Contracted Parties’).”

The RySG identifies a particular concern with the exclusion of domain name resellers noting that, because they do not execute contracts with ICANN, they cannot be members of either the Registries or Registrars Stakeholder Group; moreover, such resellers are generally ineligible for membership within the Non-Contracted Parties House of the GNSO. RySG concludes that, “By excluding domain name resellers from BC membership, they are denied participation in ICANN policy development.”

JB, a BC member, observes that, “The [previous] Charter [had] a limit of 50 percent of such revenue. It is understood, though not clear, that the [new 30%] limit is not just on revenue derived as a ‘registry operator, registrar or domain name reseller,’ but in support of such contracted parties.”

If the noted provision remains as proposed, JB underscores three concerns that will “serve to disadvantage small business and will likely slow the growth of membership diversity, a key ICANN and community goal.”

“First, it ignores the nature of the work. A consultant may have subject matter expertise ... which can be valuable to a contracted party without being related to the sale and management of domain names.

Second, it ignores the fact that economic self-interest ... often has less to do with annual revenue than with potential financial benefit derived from warrants or shares held in client companies. ... For small consultancies ... they are not reflected in annual revenue until they are paid.

Third, a small business consultancy is ... more susceptible to shifts in opportunity. The normal mix of project and on-going work makes it difficult ... to predict its revenue totals exactly or know its client mix; [therefore,] almost any revenue limit runs the risk of being too high, whipsawing eligibility ... a recipe for ... [in]stability.”

JB adds that, “The legacy revenue limit of 50 percent offered ... a degree of assurance against this instability; [whereas] a limit of 30 percent more likely guarantees [it].”

JB requests that the ICANN Board “reject the proposed charter [unless it] eliminates any revenue limit on participation or, at the least, retains the previous [threshold of] 50 percent.”

2) Diversity

AFNIC expresses its concern that “the new Charter does not demonstrate [a] stronger commitment towards diversity. The only references to diversity ... call for extending application deadlines when all applicants are from the same region or a vague endeavor to achieve geographic diversity.”

In particular, AFNIC advocates higher participation within the BC from among its French business constituents and expresses its conviction that, “the main area for improvement in the BC is increasing diversity within its membership and especially within its leadership.” AFNIC points out that the BC’s Executive Committee “is composed of 5 representatives from the United States of America and 1 from Nigeria. Both countries have English as an official language. This can hardly be acknowledged as representative of today’s businesses relying on the Internet unique identifiers to establish and grow their ventures.”

Concerned that this “obvious imbalance also raises concerns regarding potential capture by companies from a single country or Region,” AFNIC urges the ICANN Board and the BC to “include firmer commitments to diversity within [its] membership and leadership before approving [the proposed] Charter.” AFNIC encourages the BC “to reach out to the relevant [CCWG-Accountability] group in order to find out how a stronger commitment to diversity could materialize.”

The BC-OC, in response to AFNIC’s concerns, affirms “its continued commitment to increase diversity, especially geographic diversity.” BC-OC adds that the Business Constituency has made “significant efforts to expand representation from regions around the world, including outreach to SMEs and businesses from regions historically under-represented in ICANN.”

BC-OC notes that “many regions and languages are represented” within the BC ... and many [member] businesses “work around the world in multiple geographies and languages.” As it relates to AFNIC’s concern about French language representation, “the BC counts among its members ... many language groups – including a number of French and French-speaking businesses as well as associations with geographically and linguistically diverse memberships.”

BC reaffirms that its “goal is to represent businesses large and small and reflect the depth and regional diversity of the global business community. The BC ... will continue to encourage [its] members from diverse regions and backgrounds to run for leadership positions.”

3) Non-Voting Membership Exclusion: Section 5.1.3

Provision language: "An otherwise eligible Member according to §5.1.1 that is owned, controlled by, or under common ownership with any entity that votes in the Business Constituency or another Stakeholder Group or Constituency in either house of the GNSO is ineligible for Voting status within the Business Constituency."

RySG observes that although "the proposed Charter gives clear guidance in the case of ownership or control, there is no such guidance to clarify membership status and voting rights for trade associations which represent the interest of Business Users or a consultant advising Business Users in case their respective members or client(s) is (are) a(n) entity(ies) that vote(s) in the BC or another SG."

4) Spelling Correction: Section 11.3

PS requests that the spelling of his surname be corrected in Section 11.3.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The feedback summarized in Section III (above) does not require any special analysis by Staff other than to document the open questions/concerns in an "[Issues Tracking Checklist: BC Charter](#)" for further review and disposition as recommended by the OEC and/or ICANN Board.