

## Summary Report of Public Comment Proceeding

Uniform Board Member Integrity Screening Process																			
<b>Publication Date:</b>	1 May 2018																		
<b>Prepared By:</b>	Elizabeth Le																		
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<b>Staff Contact:</b>	Elizabeth Le	<b>Email:</b>	<a href="mailto:elizabeth.le@icann.org">elizabeth.le@icann.org</a>																
<b>Section I: General Overview and Next Steps</b>																			
<p>Under the Empowered Community processes, the ICANN Board and each of its members are held more accountable for their actions. Each of the nominating groups (the ASO, ccNSO, GNSO, At-Large Community and Nominating Committee for Board Directors, and the GAC, IETF, SSAC, and RSSAC for Board Liaisons) employ community-specific processes to select ICANN Board Directors and Board Liaisons (collectively, Board members) in accordance with the ICANN Bylaws.</p> <p>The Board and the community have discussed the need to ensure that prospective Board members are adequately vetted to ensure that each is willing and able to perform the fiduciary and general obligations of service, and capable of upholding the reputation and credibility of the Board. Each of the nominating groups (the ASO, ccNSO, GNSO, At-Large Community and Nominating Committee for Board Directors, and the GAC, IETF, SSAC, and RSSAC for Board Liaisons) employ community-specific processes to select ICANN Board Directors and Board Liaisons in accordance with the ICANN Bylaws. Currently, only the Nominating Committee, the At-Large Community, and the ASO have incorporated an external screening process, facilitated by ICANN organization, to review selectees prior to finalizing their selection process.</p> <p>On 2 November 2017, the ICANN Board passed Resolution <a href="#">2017.11.02.33</a> directing the President and CEO, or his designee(s), to develop a proposal paper for public comment calling on ICANN's Supporting Organizations and Advisory Committees that do not currently employ a due diligence integrity screening process to seriously consider utilizing an integrity screening process similar or identical to the Nominating Committee process to screen both voting Directors and non-voting Liaisons.</p> <p>On 2 March 2018, ICANN opened the public comment proceeding seeking to obtain community input on the recommendation that the Supporting Organizations (SOs) and Advisory Committees (ACs) that do not currently employ a due diligence integrity screening process adopt the <a href="#">proposed Uniform Board Member Integrity Screening Process</a> (Proposed Screening Process) to conduct due diligence on candidates selected to serve on the ICANN Board. The <a href="#">Proposed Screening Process</a> is not intended to modify the other selection criteria applied by any of the Board member-selecting groups to their process. Instead, it is intended</p>																			

create a uniform requirement that any individual selected to serve as a Board member (as a Director or Liaison) should: (1) pass through the relevant SO/AC selection process; and (2) also pass through a screening review regarding their fitness to meet the fiduciary duties required of Board members.

## Section II: Contributors

*At the time this report was prepared, a total of six community submissions had been received. 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.*

### Organizations and Groups:

Name	Submitted by	Initials
GDNS, LLC	Stephen Deerhake	GDNS
Noncommercial Stakeholders Group	Rafik Dammak	NCSG
Registrar Stakeholder Group	Zoe Bonython	RrSG
Registries Stakeholder Group	Paul Diaz	RySG

### Individuals:

Name	Affiliation (if provided)	Initials
Alfredo Calderon	eLearning Consultant	AC
Vanda Scartezini	Polo Consultores Asociados	VS

## Section III: Summary of Comments

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer 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).*

ICANN organization received six comments in response to the [Proposed Screening Process](#). Four of the six comments were received from the following organizations or groups: GDNS, LLC, Registries Stakeholder Group, Registrar Stakeholder Group, and the Noncommercial Stakeholders Group. The comment submitted by the NCSG was submitted after the closing of the public comment period, but has been included in the analysis below. Two comments were received from the following individuals: Vanda Scartezini and Alfredo Calderon.

In general, the commenters (RrSG, NCSG, AC, VS) were in support of a uniform screening process across all SOs and ACs regardless if certain SOs or ACs currently perform their own screening process.

Two commenters (NCSG and GDNS) expressed concerns in specific areas of the [Proposed Screening Process](#) that are discussed further in the Analysis section below. Specifically, the NCSG expressed concerns regarding the feasibility of access to documents required as part of the screening process in certain regions and its impact on the timelines in the [Proposed Screening Process](#).

GDNS expressed concerns about how the Proposed Screening Process might impact Board

member selections of the SOs and ACs that elect, rather than appoint Board members. GDNS also noted concerns that the proposed Screening Process contains no objective criteria that would govern the disqualification of a prospective Board member, and how the screening can be conducted without a risk to reputational harm.

One commenter, RySG, stated that it was unable to commit the time to a thorough review of the [Proposed Screening Process](#) due to a number of other pressing issues over the comment period and, therefore, the RySG was not able to offer comments at this time.

#### **Section IV: Analysis of Comments**

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

ICANN organization appreciates all the comments and suggestions added to the public forum for the [Proposed Screening Process](#). ICANN organization understands the importance of holding the ICANN Board and each of its members accountable for their actions and will refine the [Proposed Screening Process](#) if needed and appropriate to address the comments received.

#### **NCSG’s comment regarding timelines and access to documents**

The NCSG acknowledged that in order for the Proposed Screening Process to work, due diligence should be applied in a uniform manner. The NCSG expressed concerns that “[t]he timelines given under the Levels 1-4 of the integrity screening process may be difficult to maintain for candidates coming from countries where many of the documents referred to would not be available in public, or online databases.” The NCSG further noted that “government bureaucracies differ in their prioritisation of these kind of requests for information. This could lead to delays, or it could place ICANN in a position where candidates are insufficiently screened before being appointed to the Board. We would not want to see candidates disqualified due to barriers linked to the nature of their country’s public records system or online presence.” The NCSG sought clarification on “how this set of issues would be handled in order to ensure that the eventual composition of the Board reflects the diversity of the ICANN community.”

ICANN organization appreciates the importance of the issues raised by the NCSG. ICANN organization acknowledges that it serves a diverse community and that the rules and procedures, as well as timing, of access to records may vary with different regions. The five levels of screening and estimated timing for each level set forth in the [Proposed Screening Process](#) are intended guidelines of the screening processes commonly used in similar settings. As noted in the [Proposed Screening Process document](#), the specified timing for each level are approximations, and not meant to serve as a strict timeline of when a specific screening level should be completed.

#### **GDNS’ comments regarding potential impact on SOs and ACs that elect rather than appoint Board members**

GDNS raised a number of concerns. First, GDNS expressed concerns of how the [Proposed](#)

[Screening Process](#) might impact Board member selections of the SOs and ACs that elect, rather than appoint Board members. Second, GDNS commented that the [Proposed Screening Process](#) “contains no objective criteria that would govern the disqualification of a prospective Board member” such as prior offences related to financial irregularities. GDNS also commented that the Proposed Screening Process does not specify who decides what is disqualifying offense and at what point in the election process is the screening performed. Finally, GDNS wrote “most dangerous of all, under this proposal, given its ambiguity, it is entirely possible that procedures may be adopted that would set up the possibility that SO/AC elections for Board members could be nullified after the fact, by arbitrary action based on subjective criteria. And that, in my view, is extremely dangerous for the Empowered Community.”

ICANN acknowledges the importance of the issues raised by GDNS. With respect to GDNS’ first concern, the [Proposed Screening Process](#) document states that the process “is not intended to modify other community-specific selection criteria and processes applied by any of the Board member-selecting groups.” ([Proposed Screening Process](#), Pgs. 2, 4.)

With respect to GDNS’ concerns relating to objective criteria for disqualification of Board members, this is addressed in the [Proposed Screening Process](#) document and related information that can be found in the [ICANN Bylaws](#). As noted in the [Proposed Screening Process](#) document, Levels 3 through 5 include enhanced public record review (i.e., review of credit reports, closed public record databases, expanded litigation and criminal searches), validation of records and information provided or received through reviews, and investigative due diligence if there are indications of internal fraud, malfeasances, leaked security or confidential information or other serious matters regarding fitness to serve, violations of fiduciary obligations, compliance with law or legal requirements. Specifically, the [Proposed Screening Process](#) document specifies that

The Nominating Committee’s internal processes call for interviews and reference checks as well, which complete the reviews through Level 4. Moreover, the Nominating Committee, through its internal processes and through the external screening facilitated by ICANN org has all four levels of review conducted even when a seated Board member has been identified for re-selection. The fifth level – a formal investigation – is undertaken only in response to indications or allegations of malfeasance (such as fraud, breach of confidentiality, etc.) and is generally not otherwise indicated.

([Proposed Screening Process](#), Pg. 3.) Further, Article 7, Section 7.11(ii) of the ICANN Bylaws also provides some insight in this regard, which provides that

(ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of such removal, the Secretary shall promptly notify the EC Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with [Section 7.12\(a\)](#).

([ICANN Bylaws, Art. 7, Sec. 7.11\(ii\)](#).)

**Next Steps:** Following the completion of the public comment process, the Board Governance Committee will consider the comments provided and consult with community leaders as part of its assessment of the next steps in the [proposed Uniform Board Member Integrity Screening Process](#) including whether any changes or additions are appropriate.