

# Summary Report of Public Comment Proceeding

## Proposed Changes to the NCUC Charter

**Publication Date:** 17 October 2017

**Prepared By:** Benedetta Rossi

### Public Comment Proceeding

Open Date: 24 August 2017

Close Date: 3 October 2017

Staff Report Due Date: 17 October 2017

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## Section I: General Overview and Next Steps

The GNSO Non-Commercial Users Constituency (NCUC) completed Phase I of the formal ICANN Board Process for approval of community charter amendments and adopted its **Bylaws of the Noncommercial Users Constituency 2017** by membership vote in December 2016. Staff reviewed the proposed changes to the NCUC bylaws and provided preliminary feedback to the NCUC Executive Committee for their review. Following this review, the NCUC Executive Committee reviewed Staff comments and suggested edits and produced an updated version of the bylaws on 28 May 2017, incorporating some of the suggested edits produced by Staff. NCUC Executive Committee meeting recordings and transcripts relative to this effort can be found here: <https://www.ncuc.org/bylaws/bylaws-meeting/>

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.

Phase III of the Board's process requires that the new Charter be shared with the larger community via ICANN Public Comment.

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:

- 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.

If neither above condition is met, the Board will ask for further explanation of the proposed amendments by the community.

## Section II: Contributors

*At the time this report was prepared, a total of three (5) community submissions and one (1) staff comment 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.*

### Organizations and Groups:

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
ICANN	Benedetta Rossi	BR
NCSG	Rafik Dammak	NCSG
Business Constituency	Steve DelBianco	BC

### Individuals:

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
Mike O'Connor		MOC
Michael Oghia	NCUC	MO
Theo Geurts	RrSG	TG

## 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).*

There were five substantive comments submitted by individual contributors concerning the Non-Commercial Users Constituency (NCUC) Bylaws, including a comment flagging a typo referencing the mission and purpose of the NCUC and an endorsement of the submitted NCUC updated Bylaws by one of its members. The substantive issues focused on membership eligibility, Executive Committee appointments, references and miscellaneous matters.

Farzaneh Badii, Chair of the NCUC, responded to substantive comments received, and all responses are outlined in the NCUC Charter Issue Tracking Checklist Document.

### **1. Membership Eligibility:**

*Provision language: Section III Membership: "In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of 2 commercial organizations and has a commercial focus, it would be ineligible for membership)."*

The BC identifies a particular concern with potentially singling out a particular business

organization, and offers a suggested alternative phrasing: “while business and trade groups are often not for profit organizations [e.g. chambers of commerce, business alliances and trade associations], as their members are commercial, such entities would not be eligible.”

TG, in his individual capacity, flagged that when it comes to membership eligibility “there could be edge cases that could cause discussion; currently the Executive Committee has the right to review and to approve potential applicants” and his expressed concern is that some “decisions could be challenged and create friction between the Executive Committee and membership”. TG recommends for the NCUC to consider changing this section to reflect that “members may make the final decision if the Executive Committee is unable to reach consensus regarding eligibility matters”.

## **2. Executive Committee Appointment:**

The BC expresses their disagreement regarding the possibility of any members of the NCUC’s Executive Committee being appointed to their seats. The BC notes that the “BC respectfully disagrees that any members of the Executive Committee should be appointed” noting that “a democratic membership vote on all members of the Executive Committee gives it greater authority with all members, and externally with the broader community”.

## **3. References:**

Provision Language: Section IIB: *The membership shall consist of NCSG Member organizations and individuals that meet the membership criteria, complete the process set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG Members who decide to join the NCUC.*”

The BC flagged that for clarity purposes, given that “in order to join the NCU, first one must join the NCSG, it might be helpful to provide a link to the NCSG website in this document...[and] explicitly reference that the NCSG has two constituencies, so as to allow prospective members to align themselves properly.”

The BC also noted that within Section III Membership I – Financial Disclosures Statements of the Charter, the NCUC refers to “chapters”. This term is not familiar to the BC and might be specific to the NCUC. The BC therefore encourages the NCUC to define this term within the document.

The BC additionally suggests that the NCUC should include mentions of “important resources available to the NCUC”, therefore referenced within the Charter. This should include “the NCUC part-time secretariat that assists on matters of voting and elections, and [that] the ICANN Ombudsman is available to provide input on challenging decisions.”

## **4. Miscellaneous:**

The BC notes that Section I of the NCUC Charter “appears to represent an introduction and description of the basic principles of the NCUC as opposed to a separate governing document. Accordingly [the BC suggests to reframe] Section I as *Mission and Principles*”.

Provision language: “*The primary purpose of the Constituency is and to protect noncommercial online communications, which includes expression for political, personal, research, educational,*

*and recreational purposes.”*

MOC, an individual contributor, and the BC, identified a concern relative to this section of the primary purpose of the Constituency noting appears to be missing a clause which needs to be re-entered into the document, or that a clause was removed and the language was not updated.

MO, NCUC and NCSG member, submitted a comment in his personal capacity, to flag several items regarding the NCUC bylaws and to endorse them officially. MO divided his comments into two categories: 1. Process; and 2. Content.

Process wise, MO noted that the NCUC “bylaw revision and charter update process was done in an inclusive, transparent, and accountable manner by the NCUC leadership (executive committee (EC)). This included communicating with the consistency via the NCUC mailing list, and inviting members to offer their comments, edits, and suggestions in a bottom-up fashion via collaborative tools (such as Google Docs).

From a content standpoint, MO observes that “the updated bylaws present myriad improvements over the former ones. Aside from the changes noted by staff, the new bylaws also establish official operating procedures, which are currently under review by the NCUC”.

Overall, MO notes that he endorses the new NCUC Bylaws since in his view they “will strengthen the NCUC’s governance, make its operating procedures more transparent and accountable, addresses a number of inconsistencies and incongruences.”

BR, on behalf of ICANN Staff, submitted a comment noting on record that the typo in Section 1B flagged by MOC will be addressed and fixed, and that NCUC leadership was contacted accordingly.

RD, on behalf of the NCSG, submitted a comment flagging the NCSG’s support and endorsement of the NCUC Charter, noting that the NCSG considers the document “to be in line with the principles and values of [their] stakeholder group”

#### **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.*

The feedback summarized in Section III (above) does not require any special analysis by Staff other than to document the question/comments for review and disposition as recommended by the OEC and/or ICANN Board.

Following MOC’s comment and the substantive comments submitted by the BC and TG, Staff liaised with NCUC leadership who reviewed comments received. The NCUC provided written responses to each substantive item, which are tracked in the “Public Comment Issue Tracking Checklist: NCUC Charter” for further review and disposition as recommended by the OEC and/or ICANN Board.

# Public Comment Issue Tracking Checklist

## Proceeding Title: Proposed Changes to the NCUC Charter

<b>Open Date:</b>	24 August 2017	<b>Close Date:</b>	3 October 2017
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A total of 8 issues, suggestions, and recommendations were offered by the community and are documented in this Checklist. They are grouped into four categories as follows:

- Category A: Membership Eligibility
- Category B: Executive Committee Appointment
- Category C: References
- Category D: Miscellaneous

The following table shows the original disposition by Status category as of 17 October 2017 after a thorough review and response provided to ICANN Staff by Farzaneh Badii, Chair of the Noncommercial Users Constituency (NCUC) on behalf of the NCUC Executive Committee.

<b>Status</b>	<b>Number of Issues 08 Oct 2017</b>	<b>Number of Issues 17 Oct 2017</b>
Resolved	1	8
Under Review	7	0
Deferred/Postponed	0	0
Unknown	0	0
Needs Clarification	0	0
<b>Total</b>	<b>8</b>	<b>8</b>

# Public Comment Issue Tracking Checklist

1) Category A: Membership Eligibility		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
<p>1.1 In Section III Membership of the NCUC Charter, a concern was raised by a commenter regarding the eligibility example provided regarding membership-based organizations with commercial focus not being eligible. The NCUC Charter currently reads: “In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of commercial organizations and has a commercial focus, it would be ineligible for membership).</p> <p>It is suggested by a commenter, that rather than singling out a particular business organization, it might be better to note that <i>“while business and trade groups are often not for profit organizations [e.g. chambers of commerce, business alliances and trade associations], as their members are commercial organizations, such entities would not be eligible.”</i></p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Thank you for this comment which certainly has merits but we don’t think the change in the example will make much difference, the essence of an example is to clarify concepts and by no means it is to single out organizations. this is a minor change and since we have discussed this with our members multiple times and they are more comfortable with the original text, we prefer to stay with the original text.</p>

## Public Comment Issue Tracking Checklist

<p>1.2 A commenter flagged that within the NCUC Charter, when it comes to membership eligibility “there could be edge cases that could cause discussion; currently the Executive Committee has the right to review and to approve potential applicants, and while this is a practical solution, these decisions could be challenged and create friction between the Executive Committee and membership. It is therefore recommended by the commenter for the NCUC to consider changing this section to reflect that members may make the final decision if the Executive Committee is unable to reach consensus regarding eligibility matters.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Thank you very much for pointing this out. For NCUC, accountability and transparency are two of its very important principles and we would like to be very clear on our eligibility criteria. We have clarified in the operating procedures how the members can appeal removals in section IX and XI (7) <a href="https://www.ncuc.org/wp-content/uploads/2017/09/NCUC-Operating-Procedures-Sept-2017.pdf">https://www.ncuc.org/wp-content/uploads/2017/09/NCUC-Operating-Procedures-Sept-2017.pdf</a> and have noted that members can vote on the decision of the EC.</p>
<p><b>2) Category B: Executive Committee Appointment</b></p>		
<p><b>Issue/Suggestion/Recommendation</b></p>	<p><b>Status</b></p>	<p><b>Comments/Disposition</b></p>
<p>2.1 An issue was raised by a commenter regarding any members of the NCUC’s Executive Committee being appointed to their seats. It was raised that the respondent “respectfully disagrees that any members of the Executive Committee should be appointed” noting that “a democratic membership vote on all members of an executive committee gives it greater authority with all members, and externally, with the broader community”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> If this comment refers to the treasurer, the treasurer is an ex officio member of the EC. The position does not have the right to vote but the treasurer expertise and institutional memory is very important hence changing the treasurer at each election is not recommended.</p>
<p><b>3) Category C: References</b></p>		
<p><b>Issue/Suggestion/Recommendation</b></p>	<p><b>Status</b></p>	<p><b>Comments/Disposition</b></p>

## Public Comment Issue Tracking Checklist

<p>3.1 Section IIB of the NCUC Charter states as follows: <i>B. The membership shall consist of NCSG Member organizations and individuals that meet the membership criteria, complete the process set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG Members who decide to join the NCUC.</i></p> <p>A commenter noted that “given that in order to join the NCUC, first one must join the NCSG, it might be helpful to provide a link to the NCSG website in this document. It may also be helpful to explicitly reference that the NCSG has two Constituencies, so as to allow prospective members to align themselves properly”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Since NCSG might have other constituencies in the future we don’t think it is advisable to add them to NCUC bylaws and say that there are two constituencies. Also, links can be broken or moved so we prefer to refrain from linking to websites and places as much as we can to have current bylaws.</p>
<p>3.2 A commenter noted that within Section III Membership, I – Financial Disclosures Statements of the NCUC Charter, there is currently an undefined reference to “chapters”; it is therefore suggested to clarify the concept of “chapters” since it is not familiar to all readers.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> It means ISOC chapters. We can add a footnote in the bylaws and clarify.</p>
<p>3.3 A commenter suggested for “important resources available to the NCUC” to be referenced within the NCUC charter; including: “the NCUC part-time secretariat that assists on matters of voting and elections, and [that] the ICANN Ombudsman is available to provide input on challenging decisions”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> These resources are changing and not always the same so we refrain from mentioning them in the bylaws but we have mentioned some in NCUC operating procedures.</p>
<p><b>4) Category D: Miscellaneous</b></p>		
<p><b>Issue/Suggestion/Recommendation</b></p>	<p><b>Status</b></p>	<p><b>Comments/Disposition</b></p>



## Public Comment Issue Tracking Checklist

<p>4.1 Section I of the NCUC Charter “appears to represent an introduction and description of the basic principles of the NCUC as opposed to a separate governing document. Accordingly, [it is suggested to reframe] Section I as <i>Mission and Principles</i>”</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> We can make this change.</p> <p>Section I of the NCUC Bylaws has therefore been updated accordingly.</p>
<p>4.2 Several commenters flagged a typographical error in Section 1B of the NCUC Charter which currently reads: “<i>The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is and to protect noncommercial online communications, which includes expression for political, personal, research, educations and recreational purposes</i>”. It was suggested for the typographical error to be corrected by replacing the second sentence above with: “<i>The primary purpose of the Constituency is to protect...</i>”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Section 1B was updated as follows: “<i>The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is <del>and</del> to protect noncommercial online communications, which includes expression for political, personal, research, education<del>s</del> and recreational purposes</i>”</p>

**Notes:**

*Categories: Use as many separate topic groupings as needed to organize the issues; insert/delete rows as appropriate.  
Status may include: Under Review, Closed, Active, Resolved, N/A, or other classification pertinent to the issue.*