



22 May 2023

Subject: SSAC2023-11: SSAC Input on Bylaws Amendments and Documents to Implement the NomCom2 Review

To: Evin Erdogdu, ICANN Review Support & Accountability Project Manager

CC: Thomas Barrett, Chair Review Implementation Working Group
Cheryl Langdon-Orr, Vice-Chair Review Implementation Working Group

Background

On 17 April 2023, the Internet Corporation for Assigned Names and Numbers (ICANN) opened a public comment forum to obtain input on proposed Bylaws amendments and documents to implement the NomCom2 Review.¹ The SSAC wishes to acknowledge the significant time and effort by the Review Implementation Working Group (RIWG) and supporting ICANN org staff in reaching this important milestone. The quality of these documents is testament to their commitment.

SSAC Comments

The SSAC supports the proposals and finds that the draft Bylaws amendments are generally consistent with the recommendations of the Independent Examiner's Final Report,² the Feasibility Assessment and Initial Implementation Plan (FAIIP),³ the NomCom Review Detailed Implementation Plan,⁴ and the NomCom2 Review Final Report.⁵

¹ See Public Comment for Bylaws amendments and documents to implement the NomCom2 Review, <https://www.icann.org/en/public-comment/proceeding/bylaws-amendments-and-documents-to-implement-the-nomcom2-review-17-04-2023>

² See Independent Review of the ICANN Nominating Committee: Final Report, <https://www.icann.org/en/system/files/files/nomcom-review-final-05jun18-en.pdf>

³ See Feasibility Assessment and Initial Implementation Plan by the NomCom2 Review Implementation Planning Team, <https://www.icann.org/en/system/files/files/nomcom2-ipt-review-faiip-14dec18-en.pdf>

⁴ See NomCom Review Detailed Implementation Plan, <https://www.icann.org/en/system/files/files/nomcom-implementation-plan-15sep19-en.pdf>

⁵ See NomCom2 Review Final Report, <https://www.icann.org/en/system/files/files/nomcom2-review-final-report-30jun22-en.pdf>

Unaffiliated Director Statement

The ICANN Nominating Committee “Unaffiliated” Director Statement which,⁶ when finalized, will presumably incorporate the Nominating Committee Standard Operating Procedures, states (pp 2-3):

The highest priority for the NomCom shall always be to fill the ICANN Board with competent Directors. The concept of an Unaffiliated Director brings with it a preference that a certain amount of seats on the ICANN Board should be reserved for those with no prior experience or affiliation with ICANN. This preference might not always be possible to meet.

In any cycle for which the NomCom is required to select an Unaffiliated Director to the ICANN Board, if after a full search no competent candidate can be located that meets the Unaffiliated Director requirement, the NomCom may select an otherwise qualified candidate for the seat that has met all of the objective measures specified above for a period of at least two years prior to the start of the Board term for which the NomCom is making its selections. When exercising this exception, the NomCom is encouraged to select the candidate with the longest time period away from ICANN. This exception should be used sparingly, and the exception shall not be exercised if there are already three Unaffiliated Directors serving on the ICANN Board.

However, the new draft Bylaws state:

Section 7.2 (b) (ii) ensure that at least three of Directors nominated to fill Seats 1 through 8 on the Board qualify as “unaffiliated Directors” as that term is defined in the Nominating Committee Operating Procedures.

The reference to the Operating Procedures in this text seems to only relate to the definition of the term “unaffiliated Directors”, and there appears to be no provision in the Bylaws, following transition, for an exception should no competent candidate be found. These two documents therefore do not seem to be fully aligned. The SSAC interpretation of the Bylaws text is that at least three “unaffiliated Directors” are mandated (following transition), and presumably the Bylaws will take precedence over the NomCom Operating Procedures. The SSAC suggests that the language related to “unaffiliated Directors” in the draft Bylaws be reviewed in conjunction with the Review Implementation Working Group (RIWG) to ensure that a provision is made for an exception in line with the RIWG intent.

With regard to the restrictions specified for appointment as an “unaffiliated Director” (listed as points 1-10 on page 2 of the “Unaffiliated” Director Statement), these seem overly restrictive and

⁶ See ICANN Nominating Committee (NomCom) “Unaffiliated” Director Statement, <https://www.icann.org/en/system/files/files/draft-nomcom-unaffiliated-director-statement-10apr23-en.pdf>

may result in a very small pool of applicants in this category. The SSAC suggests that a time limit, such as 3 or 5 years, be introduced for the period in which those restrictions apply.

NomCom Standing Committee Charter

The SSAC supports the draft Nominating Committee Standing Committee Charter,⁷ but strongly suggests that the first dot point in Section II Purpose should explicitly state that the NomCom Operating Procedures must never be deemed confidential and should be made public.

The SSAC additionally would like to make two minor suggestions, both in Section IV. Composition (d) Membership Requirements.

In the first requirement:

“(i) NomCom Standing Committee members shall have each completed at least one full term on the NomCom prior to being appointed to the NomCom Standing Committee.”

The SSAC suggests that this may be better expressed as years rather than terms on the NomCom, since the length of terms has varied, especially for those who were 'non-voting members'.

In the fourth requirement:

*“(iv) Preference for new member appointments will be given to:
(3) Consideration of the WS2 diversity recommendation.”*

The SSAC suggests that this might be better expressed as "Consideration of the WS2 diversity criteria.”

Thank you for the opportunity to comment on these documents.

Rod Rasmussen
Chair, ICANN Security and Stability Advisory Committee

⁷ See Nominating Committee Standing Committee Charter (Draft), <https://www.icann.org/en/system/files/files/draft-nomcom-standing-committee-charter-10apr23-en.pdf>