

Statement of the Noncommercial Stakeholder Group on the [Draft Final Report of the NomCom2 Review](#)

The Noncommercial Stakeholder Group (NCSG) appreciates the opportunity to comment on the second independent review of the ICANN Nominating Committee (NomCom).

Before delving into the recommendations, we would first like to raise an issue which we have repeatedly emphasized in our public comment on the review assessment and which has not been addressed in the document.

I. Issues that have not been satisfactorily addressed in the Review:

Frequent changes in Operating Procedures

The assessment review had found that the procedures of the NomCom are changed far too frequently, with which the NCSG agreed and suggested: “To comment further and to be able to suggest recommendations the NCSG would like to request that information be made available on how the NomCom develops its own rules of procedure and processes, how often change occurs, what areas are changed, the process by which rules, procedures and processes are developed, who is consulted, and what the approval process is. We believe these are important issues to be addressed to prevent the NomCom from being captured by a group through the change of operating procedures. We believe operating procedure changes must not happen at the whim of the NomCom itself¹; moreover, the operating procedures and the long-term practices of the NomCom which have become customary must not be changed without consultation with the community.”² Recommendation 13 tries to address this issue, however it is insufficient. A more effective solution would be to form a standing committee to oversee NomCom.

Imbalances in representation

The solution for a lack of balance in representation on the NomCom is unsatisfactory (Recommendation 10). Whenever the NCSG raised this imbalance between the representatives of the Commercial Stakeholder Group (CSG) and the NCSG on NomCom, we have been instructed by the Board to weigh in during the NomCom review. We did. And

¹ At the moment the NomCom reserves the right to change its operating procedures “in the course of its work”. This creates uncertainty and results in too many modifications.

“Considerable care has been taken in developing the NomCom Procedures. In setting and publicizing its procedures, the NomCom reserves the right to modify them in the course of its work in order to ensure efficiency and effectiveness in fulfilling its responsibilities. If the NomCom concludes that modification of these procedures is necessary, the NomCom will post the changes on the NomCom web page.”

NomCom Operating Procedures A.(1),

<https://www.icann.org/resources/pages/nomcom2017-procedures-2017-02-07-en>

²

<https://mm.icann.org/pipermail/nomcom2-review/attachments/20180209/44b8a8c1/NomComReview-NCSGcomments.pdf>

we are not satisfied with the outcome. This was the response of the Board to the NCSG in Abu Dhabi about the imbalance of representation at NomCom:

George Sadowsky: "Thank you very much for the comment. The current distribution of seats in the NomCom really reflects the structure of ICANN after the 2003 reorg, and it hasn't changed since. This is of concern to a number of us. I was the NomCom chair in 2005, '6 and '7, and it was fairly apparent that a rebalancing of some sort seemed appropriate to recognize all of the SO and AC and other activities. In 2012, the Board started a discussion through a committee, a working group of which I was chair, to rewrite the NomCom rules. We abandoned it given that the NomCom -- the NomCom review was coming up, and we decided to give our partially completed report to that review -- to the review process. And unfortunately, the review processes with respect to the NomCom seem to have been delayed in both of the last two reviews. We now have a review in process, and I think that rebalancing is likely to be on their slate. I don't know the extent to which they have -- they have considered it, but I think we'll get a report for public comment fairly shortly and I think that your comment is quite valid."³

Considering that this issue has been known for a long time by the community, acknowledging that there is an imbalance is not difficult. We need this imbalance to be remedied immediately. We therefore ask that the revival of the academic seat on the NomCom be reconsidered.⁴

Dismissal of members of the NomCom

We have come to know of the dismissal of a NomCom member by NomCom leaders. We believe if the leadership of the NomCom is allowed to carry out such dismissals it must do so based on pre-established criteria and explain on what grounds it has dismissed the member. We are wary of the NomCom being able to dismiss members on its own with no recourse to due process. There must also be an appeals mechanism in place when such dismissals occur, and greater transparency around the rationales for the actions of the NomCom leadership.

Confidentiality used as an excuse for not being transparent and accountable

NomCom deliberations, as its operating procedures states, are only confidential in terms of deliberations about candidates:

"All NomCom members and ICANN organization staff supporting the NomCom will safeguard all internal NomCom communications concerning the Candidates and treat

³ ABU DHABI – Public Forum 1 Monday, October 30, 2017 – 17:00 to 18:30 GST ICANN60 | Abu Dhabi, United Arab Emirates, https://schr.ws/hosted_files/icann60abudhabi2017/24/I60AUH_Mon30Oct2017-Public%20Forum%201-en.pdf, page 48-49

⁴ For a background on this please refer to <https://www.icann.org/resources/pages/academia-nomcom-2011-04-30-en>

them as strictly private, confidential, and for the use of immediate committee members and organization staff supporting the NomCom only.

Communications of the NomCom are limited to the NomCom members and organization staff supporting the NomCom, and cannot include a NomCom member's assistant or other associate. *NomCom members will not disclose outside of the Committee any of the discussions, deliberations, communications, record and notes about the Candidates.*" [emphasis added]

We observed recently that the NomCom has tried to punish those who were critical of its conduct by arguing that everything is confidential within the NomCom. This is not correct and we do not want this to be repeated again. Recommendation 23 partially talks about transparency of NomCom. Other than that, recommendations are more about transparency than about the process of selecting candidates. None of these address the problem of using confidentiality as an excuse to deter the community from knowing when NomCom leaders and members are not being accountable. We suggest an addition to the operating procedure to make it clear that only deliberations about "candidates" are confidential and the members can freely discuss their concerns about process with the community.

Formal communication channels between the community and the NomCom must continue to be developed or established to accomplish this.

II. Comments on Recommendations

Recommendation 1: Formalize a job description for NomCom members that emphasizes diversity and independence and provide that description to the SO/ACs.

The NCSG supports this recommendation. However, we would like to note that this recommendation suffers from vague terms and a lack of clarity. The recommendation suggests that:

"Lastly, the job description should note that NomCom members should be committed to preserving the independence of the NomCom and are expected to act only in the best interests of the global Internet community and not on behalf of their business interests or the organization that appoints them to the NomCom. Given the concerns within the ICANN community that NomCom members may be voting in blocs, the importance of NomCom members acting with independence should be emphasized as soon as an individual considers their appointment to the NomCom."

It is not entirely clear what such wording as the "best interests" and "global Internet community" mean. These terms can be interpreted by different stakeholders in different and potentially conflicting ways. If there is a hypothetical situation when a NomCom member feels the interests of the global Internet community are aligned with the interests of the member's organization, how could one assure that this member maintains their independence? The concepts and terms in the recommendation are obscure, so there is no objective standard of independence that the NomCom members could be verified against. If

there is no need for such verification, this recommendation is somewhat acceptable as a declaration, however there is a need to be clear which purpose the language actually serves.

Recommendation 2: Implement and formalize training to further NomCom members' understanding of the roles and responsibilities of Board directors and the practices of high-performing Boards at other nonprofit organizations.

The NCSG supports this idea in principle, however regardless of the training received, NomCom members must remain independent and exercise their own judgment in making selections.

Recommendation 3: Implement and formalize training for NomCom leadership to further their understanding of their roles, authority, and responsibilities, and confirm or appoint next Chair earlier in the cycle.

As far as the NCSG is aware, ICANN used to offer a Chairing Skills course as a part of the ICANN Academy program. Given the importance of the NomCom in selecting ICANN leadership roles and the management of competing interests at play in any selection process, we believe the NomCom leaders can benefit from that course if it is still in place. If not, it should be offered again in the future.

Recommendation 4: Formalize training for NomCom members in the candidate evaluation process.

The NCSG supports this recommendation. We believe that training in interviewing and evaluating candidates is a viable proposal, and also an area where the NomCom could benefit from a professional trainer.

Recommendation 5: A professional recruiting consultant should continue to be involved in the role of identifying potential Board candidates. The role of the recruiting consultant should be clarified and published.

The NCSG supports this recommendation. However, we would like to emphasize the need for semi-regular reporting on recruitment success rates (i.e., how many recruits eventually are selected into leadership roles) compared to other means of recruitment.

Recommendation 6: A professional evaluation consultant should continue to be involved in the evaluation process for Board candidates. The role of the evaluation consultant should be clarified and published.

The NCSG supports this recommendation as it provides a good tool to maintain the NomCom's independence.

Recommendation 7: NomCom members, except for leadership positions, should serve two-year terms, but be limited to a maximum of two terms.

The NCSG does not object to this recommendation. However, we would like to raise the concern that four years in NomCom may be too long and may foster capture. A single, three-year term limit might be better.

Recommendation 8: Maintain the current size of NomCom. The current size of the NomCom is appropriate. The current size strikes an appropriate balance between the advantages of both smaller and larger groups.

The NCSG strongly believes that the NomCom's size is not only about numbers but also about a balance of representation of different stakeholder groups. Simple math shows that such balance is broken with the current NomCom size and composition: the Commercial Stakeholder Group has 4 NomCom members, while the Noncommercial Stakeholder Group has only 1 representative! Would this strike anyone as the right balance in terms of representation? If there is still a need to maintain the current size based on number, then we suggest reducing the number of the Commercial Stakeholder Group's representatives to one so that the NomCom maintains balance in size and has equal representation. This could also achieve significant cost savings in terms of supported travel. However, we could certainly predict that there would be some opposition to such a proposal. We therefore suggest refocusing the discussion about the size with proper consideration instead paid to representation. Otherwise, we regard such discussions as meritless.

Recommendation 9: All NomCom members should be fully participating and voting members, except for NomCom leadership.

The NCSG agrees with this recommendation.

Recommendation 10: Representation on the NomCom should be reviewed every five years, and, if necessary, re-balanced.

The review wrongly bases its assessment of the balance of the NomCom on the opinion of the "community" without making an objective assessment of the current "balance". The NCSG would like to emphasise again, as we have stated numerous times, that the imbalance of NomCom can very clearly be seen by simply counting the number of the representatives from the Commercial Stakeholder Group and the Noncommercial Stakeholder Group, the two groups that have differing views about most things at ICANN. The math gives us the following results:

- The Commercial Stakeholder Group has 4 delegates:
 - Business Constituency (2 delegates)
 - Internet Service Providers and Connectivity Providers Constituency (1 delegate)
 - Intellectual Property Constituency (1 delegate)
- The Noncommercial Stakeholder Group has only 1 representative

The Noncommercial Users Constituency represents the entire NCSG with its 1 delegate, and the Not-for-Profit Operational Concerns Constituency has 0 delegates.⁵

The recommendation implies that the community has to wait for a review in 5 years time to fix this imbalance. Such concerns as balanced and proper representation must be addressed as soon as possible, therefore, this recommendation must be reconsidered and urgent mechanisms must be suggested to remedy the imbalance.

Recommendation 11: The senior staff member supporting NomCom should be accountable to and report to the office of the CEO

The NCSG agrees with this recommendation.

Recommendation 12: NomCom leadership should have input on the NomCom budget and staffing resources.

While this recommendation might make sense, giving the NomCom the latitude to spend its budget in whatever way it deems appropriate is not the best approach in our opinion. For example, we were not in favor of NomCom having in person meetings to discuss the candidates. But this year, NomCom leaders decided that this is the better approach and decided to spend some of the budget to have an in person meeting. An independent standing committee might be able to provide a solution to this and prevent NomCom from spending the money on matters that are not priority.

Recommendation 13: Publish a “Process Diagram” and codify key elements of the NomCom process. Each year, the NomCom should be required to highlight and explain process changes to the ICANN community in an open session.

In the NCSG’s comment on the NomCom we raised an issue about the NomCom operating procedures changes. The NCSG is of the opinion that this recommendation does not fully address the issue, as we have stated in the beginning of this comment. It is not just a matter of visualizing the process as it must be more about making it more transparent and adding safeguards.

Recommendation 14: Formalize communication between the NomCom and the Board, SO/ACs, and the PTI Board in order to understand needed competencies and experience.

The NCSG agrees with this recommendation, while not giving more weight for any group inputs than others.

Recommendation 15: The NomCom should continue the practice of publishing detailed job descriptions for the Board, SO/AC, and PTI Board positions. The job

⁵ The RySG and RrSG also each have only one representative on NomCom

descriptions, in combination with specific needed competencies identified each year by the NomCom, should form the basis for recruiting and evaluation efforts.

The NCSG agrees with this recommendation.

Recommendation 16: Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for reappointment by the NomCom

The NCSG supports this recommendation.

Recommendation 17: Maintain current diversity requirements for NomCom appointees.

The NCSG strongly disagrees with this recommendation as it does not recognize that the NomCom is not diverse enough. Diversity of NomCom appointees must go beyond regional diversity and include gender, skills, and perspectives. The document reports that “Although many people thought diversity was important, very few thought it was more important than selecting high-quality candidates.”

This might well be the case but we speculate that the responses have been framed this way because the question posed had implied that diversity in candidates contradicts with appointment of highly qualified candidates. We would like this mistake to be corrected and for the diversity of the NomCom appointees to go beyond regional diversity. Surprisingly, the reviewers believe that there should be more independent, unaffiliated Directors (Recommendation 26), but they don’t see a necessity to have more diversity among NomCom appointees. In fact, diversity in background, skills, and gender can bring more independence to the ICANN Board of Directors.

Recommendation 18: Publish a candidate communication schedule and codify a communication process with candidates.

The NCSG supports this recommendation

Recommendation 19: ICANN staff and the recruiting consultant, along with NomCom members, should leverage the detailed job description and desired competencies and experience to develop a marketing plan to better target prospective candidates.

The NCSG supports this recommendation.

Recommendation 20: The evaluation consultant should do a preliminary screen of all Board candidates and provide blinded assessments to the NomCom to assist the NomCom with reducing the pool of candidates to the deep-dive shortlist.

The NCSG supports this recommendation.

Recommendation 21: The NomCom should use a standardized matrix to evaluate and prioritize candidates, based on desired competencies and experience.

The NCSG supports this recommendation.

Recommendation 22: The NomCom should provide consistent interview questions and an interviewer evaluation form for the candidates interviewed during the deepdive phase and the final face-to-face interviews.

The NCSG supports this recommendation

Recommendation 23: The NomCom should publish additional data on the candidate pool and the recruiting source of candidates.

The NCSG supports this recommendation.

Recommendation 24: Inform assessments of the NomCom by assessing the performance of the Board.

The NCSG supports this recommendation.

Recommendation 25: ICANN should investigate advancing its nominations process into a Leadership Development function

The NCSG supports this recommendation.

Recommendation 26: Provide clarity on desire for independent directors and designate three specific seats for “Independent Directors.”

The NCSG would like more clarification here. The premise that bringing on unaffiliated directors will foster more independence within the ICANN Board is questionable. Clear guidelines on what an independent director is in the ICANN context would help the Nomcom recruitment and selection process.