



Independent Review of the ICANN Nominating Committee

**Report to the
Internet Corporation for Assigned Names and Numbers**

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Executive Summary

The Internet Corporation for Assigned Names and Numbers (ICANN) relies on several different mechanisms to recruit and select volunteers to fill leadership positions on its Board of Directors, the Councils of its Supporting Organizations, and its Advisory Committees. ICANN believes that an important enabler of its mission is finding and appointing people who place the broad public interest of the global Internet community ahead of any particular interests to some of these bodies, including the Board. The reform process that led to the adoption of new Bylaws for ICANN in 2002 recognized this by reserving specific seats on the Board, the Councils of the Generic Names Supporting Organization (GNSO) and the Country-Code Names Supporting Organization (ccNSO), and the At-Large Advisory Committee (ALAC) for independent and unaffiliated volunteers recruited and appointed by a Nominating Committee.

This report presents the results of an independent review of the ICANN Nominating Committee (NomCom), which was undertaken in accordance with the Bylaws in order to determine

- (i) whether the NomCom has a continuing purpose in the ICANN structure; and
- (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

This review reaffirms the central rationale of using a process that includes a nominating committee to choose some of ICANN's leaders—ensuring that the broad public interest of the global Internet community is appropriately represented on ICANN's policy-making bodies—while providing strong support for making substantial changes to its structure and operations.

The recommendations in Part III of this document propose specific changes to current policies and practices which would transform the role, structure, and operation of the NomCom in order to dramatically improve its effectiveness in fulfilling its mission.

Summary of recommendations

- **Balance confidentiality and transparency.** Maintain the core confidentiality of candidate data, but eliminate secrecy everywhere else.
- **Treat candidates more respectfully.** Create a more collegial atmosphere by ensuring that candidates are well informed about the process and the NomCom

is in frequent communication with them regarding the status of their candidacies.

- **Recruit and select based on requirements.** Develop an explicit profile of the skills that are needed, and use that to guide the process.
- **Separate recruiting from selection.** Maintaining an active pool of interested volunteers is one job; selecting from that pool for leadership positions is another. Manage them separately.
- **Focus NomCom on its core mission** to seek genuinely independent and unaffiliated Directors. Do not worry about issue advocacy, technical recruiting, or other distractions.
- **Restructure the NomCom leadership roles** to provide a balance of continuity and fresh perspective. Appoint the volunteer Chair for a single one-year term, assisted by a permanent paid Administrative Director. Appoint the Chair a year in advance to serve as a nonvoting member (“Chair-elect”) of the NomCom during the year prior to becoming Chair.
- **Enforce participation rules.** Remove and replace NomCom members who don’t carry their weight.
- **Explicitly design and document NomCom processes** that deal with all of the “rules of engagement” issues that arise during the NomCom’s work. Ensure that participants (and those outside the NomCom as well) are fully aware of their roles and responsibilities.
- **Seek candidate information from many sources** beyond the Statement of Interest and the cited references.
- **Boost awareness of ICANN and NomCom.** Successful recruiting depends on visibility and reputation. Make potential candidates aware of the process, and that not being selected does not constitute rejection.
- **Hold NomCom appointees accountable.** Develop a mechanism to objectively assess the performance of NomCom appointees, and base decisions to re-appoint—or to recall and replace mid-term—on those data.
- **Audit the NomCom process** each year to determine how well it worked, and publish the results.

- **Manage outreach and recruitment.** Hire a permanent full-time Administrative Director (NomCom AD) to manage a continuous global outreach and recruitment process to identify motivated volunteers, establish relationships with them, and gather relevant information about them and their interests in ICANN. The recruitment function doesn't look specifically for "someone to serve on the GNSO Council"; it builds a database of ICANN volunteers, and collects information about the qualifications and other characteristics of people who might be candidates not only for specific offices but also for other volunteer roles within ICANN.
- **Select NomCom members by lottery.** Choose all of the voting members of the NomCom by random lottery from an annual list of NomCom volunteers, which anyone who meets specified objective criteria and agrees to abide by the NomCom Code of Ethics may join.
- **Distinguish between the "fiduciary" and "policy" roles of the Board.** The "fiduciary board"¹ oversees the ICANN staff organization, and is responsible for the financial, legal, contractual, regulatory, personnel, and other business management aspects of running the corporation; the "policy board" oversees the ICANN volunteer organization, and is responsible for the development, consideration, and promulgation of policies concerning Internet names and numbers.
- **Select Directors from the ICANN volunteer pool.** The NomCom selects all policy board Directors except those appointed by Supporting Organizations from a slate of candidates compiled objectively by the NomCom AD from the ICANN volunteer pool. The ALAC appoints two policy board Directors using whatever mechanism it considers to be appropriate. The fiduciary board recruits and selects fiduciary board Directors separately.
- **Select Supporting Organization Council members from the volunteer pool.** The GNSO and ccNSO Council seats currently filled by the NomCom remain reserved for people who represent the "broad public interest" perspective. Each

¹ We use the terms "fiduciary board" and "policy board" in this report to refer to the two different roles that the ICANN Board plays. These shorthand terms are used only to simplify the discussion, not to suggest that the Board should literally be divided into two separate bodies.

SO clearly documents the qualifications and other criteria for members of its Council; the NomCom AD objectively compiles a slate of candidates consisting of everyone in the ICANN volunteer pool who satisfies the SO's criteria and is willing to be considered for appointment to a Council position; and each SO defines its own mechanism for selecting people from that slate.

- **Devolve responsibility for the selection of At-Large Advisory Committee members to the ALAC.** It is no longer necessary or advisable for the NomCom to be involved in the selection of ALAC members.

All of the recommendations presented in this report are supported by the evidence compiled from extensive personal interviews, consultation with experts in organizational dynamics and corporate governance, and the documentary record.

Part I – INTRODUCTION

I.1 The ICANN Nominating Committee

The ICANN bylaws [1] call for a Nominating Committee (NomCom) [5] to make a specified number of appointments to the ICANN Board of Directors (Board), the Generic Names Supporting Organization (GNSO) Council, the Country-Code Names Supporting Organization (ccNSO) Council, and the At-Large Advisory Committee (ALAC):²

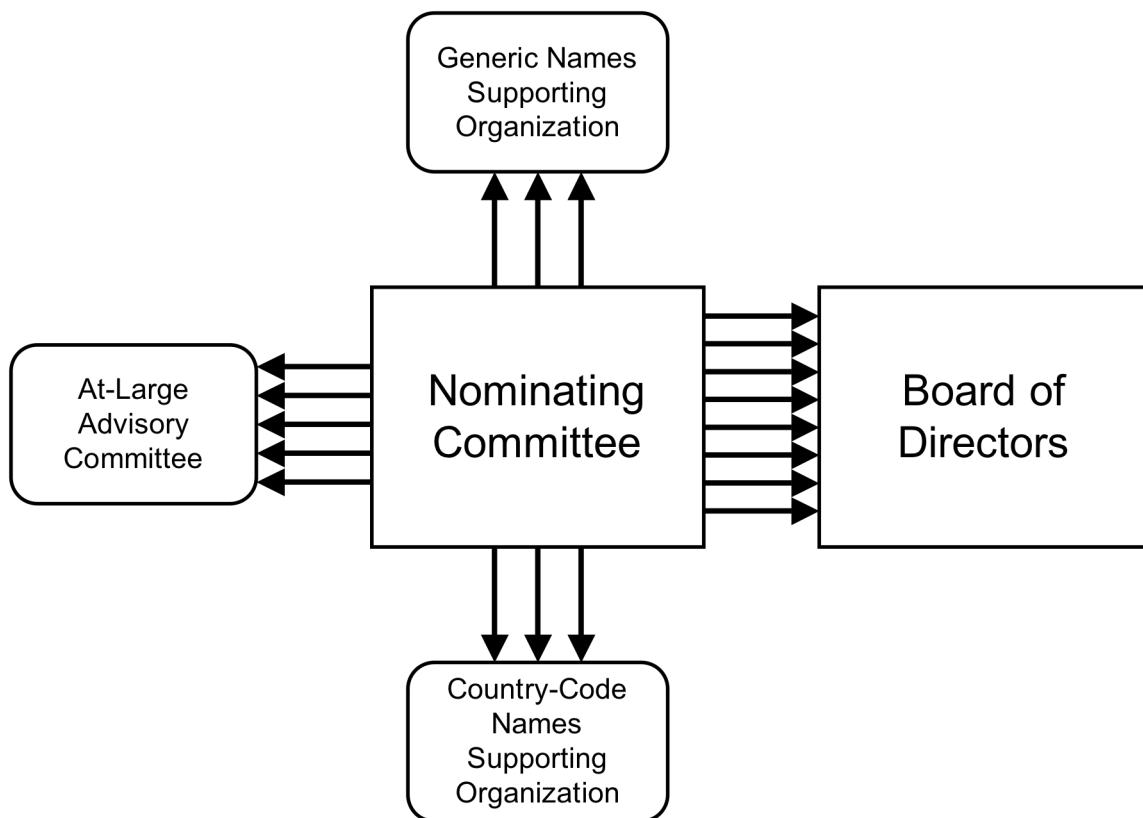


Figure 1—NomCom Appointments

The NomCom is created anew each year with the appointment by the Board of a non-voting Chair, who may appoint a non-voting Associate Chair to act as her assistant. The immediate past Chair also serves as a non-voting advisor. The voting membership and

² When the current (amended) bylaws were approved in 2006, the ALAC was still formally the “Interim ALAC.” The “Interim” qualifier was removed by a Board resolution in June 2007.

non-voting liaison representatives to the NomCom are then appointed by each of the constituent structures of ICANN, except the Board, as illustrated in Figure 2:

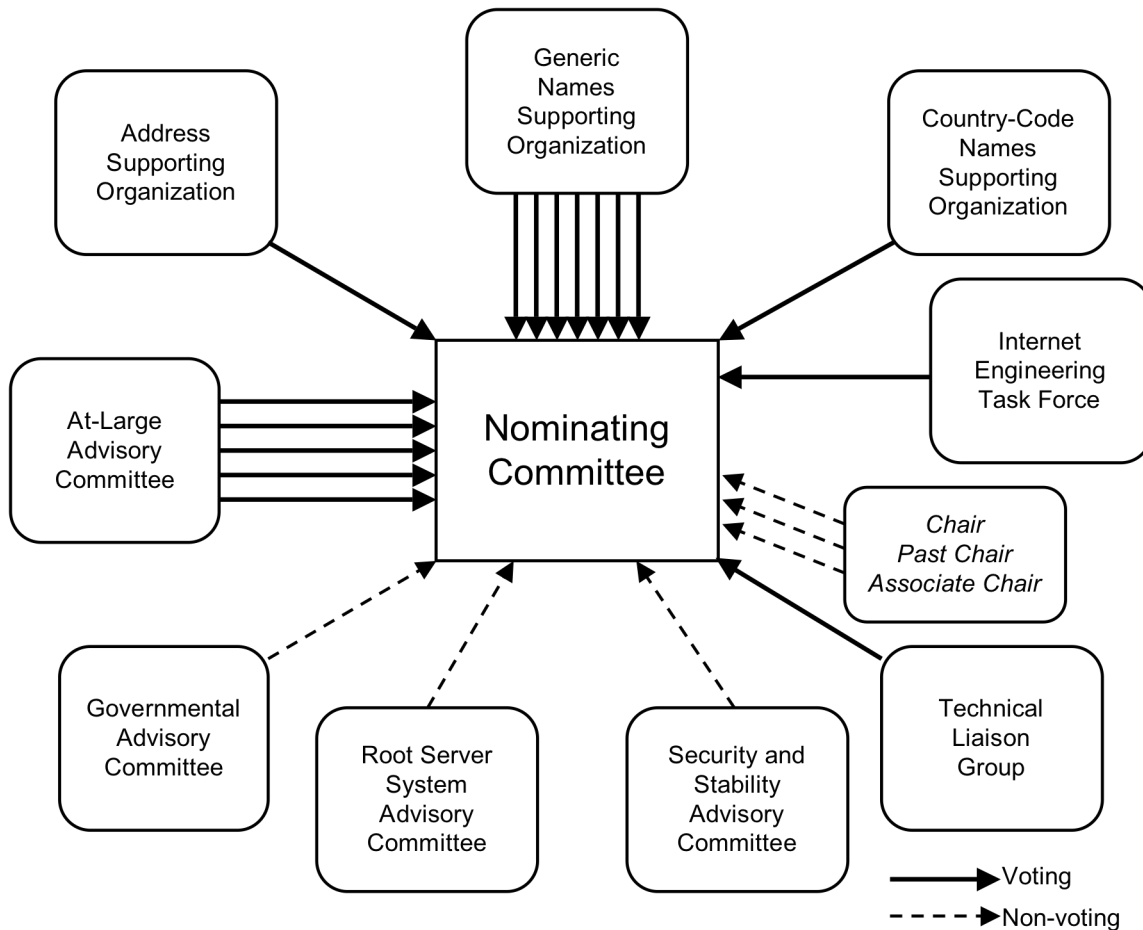


Figure 2—NomCom Membership

The NomCom is responsible for recruiting candidates for each of the positions it fills each year, and also for evaluating the candidates and making selections.

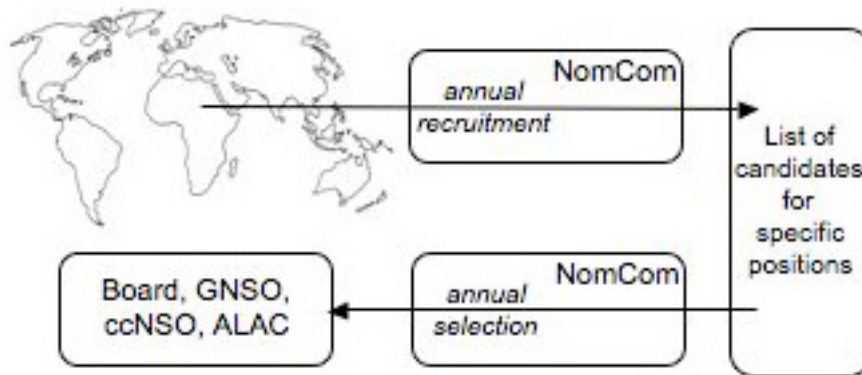


Figure 3—NomCom Recruitment and Selection

In addition to the statutory requirements of the Bylaws, the NomCom follows a set of formal [26] and informal procedures that have been developed in practice over the years since the first NomCom was created in 2003. Staff support for the NomCom is provided on a part-time basis by one or more ICANN employees, who also participate in most NomCom activities (but do not vote). The NomCom is disbanded after it has completed its annual task, although in practice many of its non-voting liaisons participate for more than one year (as they are entitled to do indefinitely), and roughly 50% of its voting members participate for two consecutive years (as they are entitled to do, but for no more than two consecutive years).

The three groups other than the Board to which the NomCom appoints members find all of their other members through their own internal processes.³ The Board, however, consists entirely of (voting) Directors and (non-voting) liaison representatives appointed by other groups, including the NomCom:

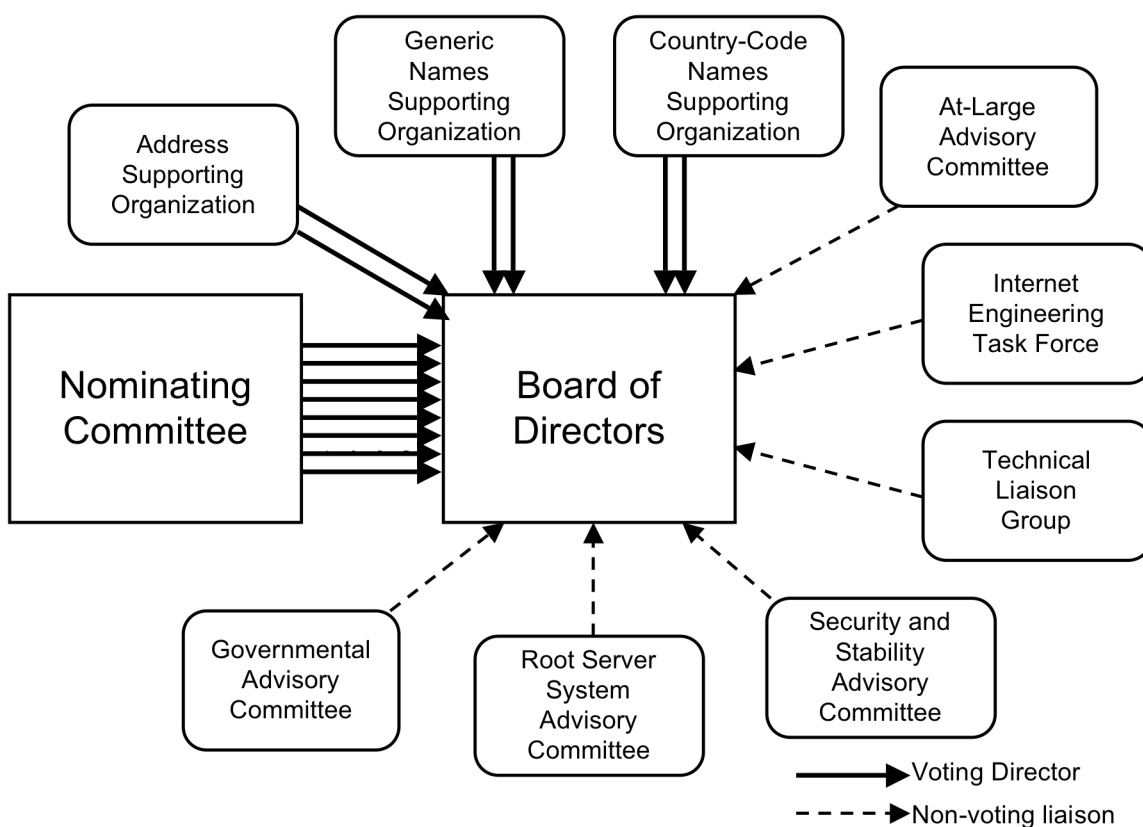


Figure 4—Appointments to the Board

³ They may also receive liaison representatives from other groups within ICANN.

NomCom appointments are final, in the sense that they are not reviewed or approved by any other body (including the body to which the NomCom appointments are made) before taking effect. A “due diligence” period of several months between the completion of the NomCom’s selection process and the public announcement of its appointments is provided to allow ICANN to perform background checks on the selected candidates.⁴

I.2 The NomCom Context

The NomCom exists and operates as part of a complex system that includes both the rest of ICANN and the global Internet community that ICANN serves. Unlike (for example) the Supporting Organizations, however, NomCom does not execute any part of ICANN’s mission; it exists solely as a means to identify and select individuals for leadership positions. This dependent role means that the NomCom cannot be meaningfully evaluated in isolation. Although the scope of this review does not extend beyond the NomCom, many of the observations and recommendations reported here have implications for other ICANN bodies in addition to their direct relevance to the NomCom.

I.3 The NomCom Independent Review

Article IV(4)(1) of the ICANN Bylaws [1] calls for a periodic independent review of each of the organizational structures within ICANN. In accordance with that mandate, this review [37] of the Nominating Committee was designed to determine:

- (i) whether the NomCom has a continuing purpose in the ICANN structure; and
- (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

The *Terms of Reference* for the NomCom review [3] elaborates on these two high-level questions:

“The broad question [of] whether the NomCom has a continuing purpose to play in ICANN includes consideration of the role that it was intended to play, whether it has met its objectives, and whether there are other

⁴ We have been told that at least one of the reasons for conducting background checks is that ICANN is incorporated in the State of California (USA) as a nonprofit public benefit corporation (<http://192.0.34.163/general/articles.htm>) under § 501 (c)(3) of the (U.S.) Internal Revenue Code of 1986, and as such, it is subject to (U.S.) State and Federal laws concerning people who may and may not legally serve as Directors.

ways to achieve the same goals. An assessment of whether changes in the NomCom’s structure or operations are needed depends upon how well it has performed its function during its four selection periods to date (2003-2006)⁵, and whether there are general or specific ways to enhance its effectiveness in the future. Several questions pertain to the composition of the NomCom, its internal procedures (including transparency), the selection process it utilizes, and the extent of its outreach.”

Appendix B contains a cross-reference between the specific questions listed in the *Terms of Reference* and the place(s) in this report in which the topic is addressed.

In Part II we report the direct observations of our review, focusing on the “facts on the ground”—what is actually happening within the NomCom and within ICANN, regardless of whether or not what is actually happening matches what the bylaws or other specifications say about how things are supposed to work. These are the essential data of our analysis.

The focus of the recommendations presented in Part III is improvements to the structure and operation of the NomCom and the role it plays in filling ICANN’s leadership positions. They arise from our broadly and deeply informed collective analysis of all of the observations reported in Part II. In proposing these improvements we have taken the intentions declared in the Bylaws, Board resolutions, and other authoritative formal declarations at face value. For example, where we observe a difference between what is declared (e.g., NomCom members “act as individuals and are not beholden to their appointing constituencies”) and what appears to be a fact on the ground (e.g., NomCom members acting not as individuals but as representatives of their appointing constituencies), our recommendation seeks improvement in the direction of what is declared.

⁵ A fifth NomCom was operating in 2007 during the course of this review. We have been able to include some information from the 2007 NomCom process in our review, but most of the information available to us refers to the process as it operated in 2003–2006.

Part II – FINDINGS

II.1 Sources

In this Part we present the objective findings of our independent review. These are derived from three principal sources:

- Individual interviews with 47 people who represent a variety of perspectives on NomCom, including NomCom members, successful and unsuccessful candidates, past and current members of the boards and councils to which NomCom appoints, and well-placed observers of the Internet and its governing bodies. Appendix A contains a list of the people we interviewed.
- Publicly available documentary materials, including ICANN’s corporate record, published papers and articles, blog entries, email exchanges, formal and informal presentations, and other reports that discuss the NomCom and related activities. Appendix A contains a complete list of sources and other references.
- Our own well-developed knowledge of ICANN, the NomCom, and the way in which other organizations accomplish the task of finding and appointing Board members and other leaders.

During a multi-stage review of documents, interview transcripts, and other source materials, we identified and evaluated a very large number of individual arguments, statements, and assertions, and distilled those into a set of observations that represent the findings of our review. These observations are based on data extracted from multiple sources, but in some cases a direct quotation⁶ from a particular document or interview provides an important illustration of an observation. When we include a quotation from a primary source in this report, we set it off typographically as follows:

“This is a direct quotation from a single primary source.”

Because the meaning and significance of a direct quotation depend on the context from which it is taken, we identify the source of each quotation that appears in this report.

II.2 Observations

Observations are statements that express our reasoned interpretation of the information we evaluated. They are numbered sequentially and set off typographically as follows:

⁶ In some cases—particularly those involving data from personal interviews—we edit or paraphrase the direct quotation in order to ensure that the source is not identifiable.

n Observations are derived from data subjected to collective analysis and evaluation; they represent the findings of our independent review.

In order to maintain narrative continuity, the organization of this section does not correspond directly to the organization of questions in the *Terms of Reference*. A cross-reference between the *Terms of Reference* and this report is contained in Appendix B.

The following sections group observations into four broad categories that refer to the role and purpose, structure, operation, and outcomes of the NomCom.⁷

II.2.1 Role and purpose

The role and purpose of the NomCom are declared in the Bylaws and reiterated in many other documents:

“There shall be a Nominating Committee of ICANN, responsible for the selection of all ICANN Directors except the President and those Directors selected by ICANN’s Supporting Organizations, and for such other selections as are set forth in these Bylaws.” [1]

In addition to its general obligation to make selections that satisfy the criteria that each body establishes for its members, the NomCom bears a specific “diversity” obligation that is stated in Article VII, Section 5 of the Bylaws:

“In carrying out its responsibilities...the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and...shall, to the extent feasible and consistent with the other criteria...make selections guided by Core Value 4 in Article I, Section 2 [of the Bylaws]” [1]

Core Value 4 is:

“Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.” [1]

This mandate has been interpreted in practice to mean that the NomCom must make its selections in such a way as to satisfy the criteria that the bodies to which it appoints have set for various types of diversity. It has become one of the “core objectives” of the NomCom:

⁷ The categories themselves are not an important part of our findings; the placement of an observation in one category or another is not itself significant.

“[4] Pursue diversity in geography, culture, skills, experience, and perspectives from across the global Internet community.” [26]

As the NomCom procedures have evolved over the past five years, the “diversity” mandate has expanded:

“It is understood that the criteria of cultural and geographic diversity... includes gender, ethnic, religious, or other forms of diversity.”

Not explicitly stated in the Bylaws, but also generally accepted as part of the NomCom’s mandate, is an obligation to appoint people who are independent with respect to the interests and agendas of specific ICANN constituency groups:

“The central rationale for using a nominating committee to select a portion of the ICANN leadership bodies is to balance those who can represent particular areas of knowledge and interests with those who place the broad public interest of the global Internet community ahead of any particular interests. NomCom’s role is to select individuals of the highest integrity and capability who place the broad public interest of the global Internet community ahead of any particular interests, and who are nevertheless knowledgeable about ICANN’s mission and environment.” [25]

This obligation has emerged from the ICANN community’s understanding of the “original intent” of specifying in the Bylaws that a nominating committee be used to select some of ICANN’s leaders (see, for example, Section II(A) of [28]).

II.2.1.1 Purpose of NomCom

We observed a broad consensus that the search for strong, independent, unaffiliated Board members is central to NomCom’s purpose. We observed an equally broad consensus that this central purpose should not be diluted by other considerations—in particular, that the NomCom should not be expected to find technical experts for the SOs, and that NomCom should not be exploited as an alternative, “second chance” route to the Board or other bodies for clearly affiliated people who were unsuccessful candidates for appointment by their natural constituency.

<p>1 The central purpose of the NomCom is to find genuinely independent and unaffiliated Board, Council, and ALAC members.</p>

Current and past NomCom members report that the additional obligations imposed on the NomCom by the community’s interpretation of the “diversity” mandate (as described above) are often difficult to reconcile with its central purpose. We observe that in addition to “over-constraining” the problem of finding good candidates, the

diversity mandate cannot even in principle always be satisfied by the NomCom, which has no power, for example, to correct a diversity imbalance on the Board in mid-cycle that is created by the removal and replacement of an SO-appointed Director.⁸

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| <p>2 The responsibility for achieving and maintaining cultural and geographic diversity on the bodies to which it appoints makes it difficult for the NomCom to pursue its central purpose.</p> |
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II.2.1.2 Should NomCom continue to exist?

We observed a strong consensus that the nominating committee approach is valid and sound and should be retained, but that there are problems with the way in which the current NomCom is implemented. There were significant outliers on both sides: those who believe that the fundamental approach is flawed (and who favor other mechanisms), and those who believe that the approach, as currently implemented, is entirely adequate.

It is generally true of non-profit organizations that a nominating committee operating independently, without interference from the bodies to which it appoints, confers substantial popular legitimacy on the organization it serves by validating the organization's commitment to operating transparently and in the public interest.

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| <p>3 A nominating committee is a good way to find and appoint independent people to some of ICANN's leadership positions, but the current NomCom could be substantially improved.</p> |
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II.2.1.3 Alternatives to NomCom

The current NomCom was originally conceived as—among other things—an alternative to direct election of At-Large Directors to the Board by popular vote. Direct election was proposed in 1999 as an effective means of opening ICANN to public participation [33], and an election for five At-Large Directors was conducted by ICANN in 2000, employing a nominating committee to build a slate of candidates for popular election in each of ICANN's five geographical regions:

[Resolution 00.31] "There shall be a Nominating Committee responsible for nominating a set of candidates for five At-Large Director seats, to be

⁸ Article VI, Section 2 of the Bylaws [1]: "the Nominating Committee shall ensure through its selections that at all times the Board includes at least one Director who is a citizen of a country in each ICANN Geographic Region."

placed on the ballot for consideration and selection by the At-Large members of ICANN in the year 2000. The Nominating Committee will solicit and accept recommendations for candidates from the global Internet community. The Nominating Committee may also affirmatively recruit candidates for nomination." [35]

Our review of the documentary record of the 2000 election and interviews with both proponents and critics of direct elections confirms a consensus that popular election of Directors and other ICANN leaders is not a desirable alternative to the current NomCom process for recruiting and selecting highly qualified candidates for ICANN's leadership positions. The most frequently cited obstacle to conducting an election is defining the franchise (who gets to vote?) and engaging it:⁹

"The notion of an impacted 'public' in ICANN is broad. Definitions of the 'public' affected by ICANN vary widely, in part due to regional differences in conceptualizing the concept of 'public' independent of other civil institutions. At the very least there is a continuum of interests in ICANN's activities, which, at their broadest, include all users and potential users of the Internet." [32]

Reviewing the results of the 2000 election, the At-Large Study Committee¹⁰ concluded in 2001 that the level of popular interest in ICANN and its activities was far too low to sustain the concept of a meaningful at-large "electorate," and that mechanisms other than direct elections would satisfy the desire for public participation more efficiently:

"We have concluded that the main interest of the wider Internet community is in the stability and reliability of the Internet itself, and that a structure for participation and representation that is seen as creating the best possibilities for this would meet with its tacit approval." [34]

The current NomCom is designed to satisfy this criterion:

"It should be noted that this NomCom process differs from an election, although the goal is the same: to elicit the Internet community's participation in a thoughtful process leading to the selection of very well-qualified individuals to fulfill the specific roles of their positions." [26]

A number of people interviewed during our review maintained that the potential benefit of electing some of ICANN's leaders directly by popular vote was great enough

⁹ Participation in the 2000 election was 0.0005% of the defined electorate [32].

¹⁰ An independent committee formed by ICANN's Board in 2001 to undertake a comprehensive study of the concept, structure, and processes relating to an ICANN At-Large membership.

to justify continued efforts to establish a viable franchise for direct public participation in the selection of Directors.

- 4** Direct elections are not a desirable alternative to the NomCom in the absence of a well-defined and adequately engaged electorate.

During our review we observed that the At-Large Advisory Committee (ALAC) has also been proposed as an alternative source of unaffiliated, independent Directors. As currently constituted, however, the ALAC is not prepared to undertake either the recruitment and evaluation of candidates or the appointment of candidates to positions on the ICANN Board or the SO Councils.

- 5** The At-Large Advisory Committee is not currently a viable alternative to the NomCom.

II.2.1.4 Inconsistent understanding of role and purpose

Although the role and purpose of the NomCom is clear to almost all observers at the most abstract level—“to get good people onto the Board and other ICANN bodies”—individual interpretations of the formal statements in the Bylaws [1] and NomCom procedures [26] diverge as soon as one digs deeper into the details. Some people focus on the role of the NomCom in ensuring that the unaffiliated have a voice; others emphasize the NomCom’s role in examining the Board and “balancing” it; and still others are most concerned with the role played by the NomCom in establishing ICANN’s “legitimacy.”

This divergence is not surprising given the number and variety of people in and around the NomCom, the strength of their individual perspectives, and the fact that serving on the NomCom is a short-term, part-time activity. We observed that the people in and around the NomCom do not necessarily have a common, aligned view of its purpose or the role and responsibilities of its members.

- 6** NomCom members do not consistently understand the overall role and responsibilities of the NomCom or agree on the details.

Because the NomCom’s role is dependent—its only job is to appoint people to other bodies—any uncertainty or confusion in the community about the role or requirements of the Board, the SOs, or the ALAC necessarily creates uncertainty and confusion about what the NomCom should be doing. We observe that uncertainties within ICANN itself

are reflected in corresponding uncertainties about how the NomCom should interpret its formal mandates; two examples follow:

- The proper balance within the Board between its fiduciary and policy-making roles; and within its policy-making role, the proper balance between technical expertise and social, political, and legal skills.
- The ongoing debate between those who believe that ICANN should fulfill a broad role as an “Internet governance body” in which all Internet users have an important stake and those who believe that ICANN’s mandate extends no further than the limited technical coordination and self-regulation of the DNS industry.

Although each of the bodies to which the NomCom appoints has published criteria and qualifications for membership, NomCom members report considerable disagreement within the NomCom about what they mean.

<p>7 NomCom members do not consistently understand ICANN or its constituent bodies well enough to interpret and apply the criteria and qualifications for appointments.</p>
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II.2.1.5 To which bodies does NomCom make appointments?

Figure 1 in Part I of this report illustrates the NomCom’s mandate to appoint people to positions on the ICANN Board, the GNSO and ccNSO Councils, and the ALAC.

The responsibilities of the ICANN Board are different from those of the SO Councils or the ALAC. The Board’s influence is exercised broadly across the entire spectrum of ICANN activities and participants, and it bears a unique fiduciary responsibility to the corporation.¹¹ The SO Councils and the ALAC operate in much more specific domains on behalf of much more narrowly defined constituencies. Finding and selecting candidates for the Board is therefore different in both scope and objective from finding and selecting candidates for the SO Councils and the ALAC. Current and former NomCom members report that the NomCom spends the bulk of its time on Board appointments, and that some NomCom members take their responsibilities with respect to Board appointments more seriously than their responsibilities with respect to appointments to other bodies.

¹¹ Section E of [38] provides a summary description of the duties of Directors. [36] describes the activities of an actual ICANN Board, although it is not definitive.

8 Recruiting and selecting candidates for the ICANN Board is fundamentally different from recruiting and selecting candidates for the SOs and ALAC.

The rationale for using the NomCom process to appoint three members of the GNSO Council and three members of the ccNSO Council is that both Councils benefit from a balance between those who can represent particular areas of knowledge and interests and those whose principal perspective is the broad public interest of the global Internet community [26]. During our review we observed a counter-argument that because the mission and responsibilities of the SO Councils are narrowly focused on the interests of their defined constituencies, rather than the community at large, using the NomCom to appoint SO Council members is less valuable.

We observed a different but equivalent counter-argument for the ALAC, which is already organized in such a way that “the broad public interest of the global Internet community” is well represented.

9 The rationale for NomCom appointments to the Board is stronger than the rationale for NomCom appointments to the SOs or ALAC.

II.2.2 Structure

Our review evaluated the following four elements of the structure of the NomCom:

- its composition, including who serves, the term of service, member participation, and NomCom size;
- its leadership;
- the relationship between the NomCom and the ICANN Board (and with the other bodies to which the NomCom appoints members); and
- the relationship between the NomCom and ICANN staff.

II.2.2.1 Composition of the NomCom

As defined in Article VII, Section 2 of the Bylaws [1], the NomCom is currently composed of 23 voting and non-voting members:¹²

- a non-voting Chair, appointed by the ICANN Board;
- the Chair of the previous year's NomCom, as a non-voting advisor;
- a non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair;
- a non-voting liaison appointed by the Root Server System Advisory Committee;
- a non-voting liaison appointed by the Security and Stability Advisory Committee;
- a non-voting liaison appointed by the Governmental Advisory Committee;
- five voting delegates selected by the ALAC;
- two voting delegates, one representing small business users and one representing large business users, selected by the Business Users Constituency of the GNSO;
- one voting delegate selected by each of the other five Constituencies of the GNSO;
- one voting delegate selected by the ccNSO Council;
- one voting delegate selected by the Address Supporting Organization (ASO) Council;
- one voting delegate selected by an entity designated by the Board to represent academic and similar organizations;
- one voting delegate selected by the Internet Engineering Task Force (IETF); and

¹² Figure 2 in Part I of this report illustrates the composition of the NomCom.

- one voting delegate selected by the ICANN Technical Liaison Group (TLG).

Representation

The *Terms of Reference* asks specifically whether the NomCom as currently populated adequately and fairly represents the different parts of the ICANN community. The question contains the implicit assumption that the composition of the NomCom should be broadly reflective of the composition of the ICANN community. However, once on the NomCom, people are expected to act in the best overall interests of ICANN, and not parochially “represent” any one constituency.

We observe that the NomCom is indeed broadly representative, including contributions from outside of ICANN itself (the IETF and TLG), although it conspicuously lacks representation from the Board. However, our review suggests that a deliberately “representative” model for populating the NomCom encourages NomCom members to think of themselves (and act) as constituency representatives rather than as individuals. The deliberately non-uniform distribution of NomCom membership—seven delegates from the GNSO, one from the ccNSO, five from the ALAC, etc.—reinforces the idea that NomCom members are expected to project the voices of their constituencies, rather than an independent voice, into the NomCom process.

10 The NomCom lacks representation from the Board, but otherwise adequately represents the different parts of the ICANN community.

11 The representative composition of the NomCom encourages members to think of themselves (and act) as constituency representatives rather than as individuals.

Preparation

In order to effectively recruit potential candidates, evaluate their qualifications with respect to the requirements of different ICANN leadership positions, and participate in the discussions and debates that lead to selection decisions, NomCom members must be well-informed about ICANN and able to reach out effectively to people who might be interested in volunteering to serve ICANN. Article VII, Section 4 of the Bylaws [1] states more formally that “delegates to the ICANN Nominating Committee shall be:

1. accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

2. persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
3. persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. persons who are able to work and communicate in written and spoken English.”

This is a very high standard. Current and past NomCom members and other observers report that people appointed to serve on the NomCom are often poorly prepared by their appointing body, and lack either sufficient knowledge of ICANN or the skills necessary to participate effectively in the NomCom process. In some cases this appears to be a consequence of the appointing body’s lack of interest in or commitment to the NomCom process; in others, the appointing body appears to place a greater emphasis on issue advocacy than other factors when selecting people to serve on the NomCom.

12 New NomCom members are not always well prepared to participate effectively.

When some members of a short-term, part-time volunteer group are much better prepared than others, they inevitably exercise much greater influence over the group’s activities. Our review suggests that when relative “ICANN insiders” are appointed to serve on the NomCom, their familiarity with the organization and its politics gives them a distinct advantage over their less well-prepared peers. This advantage is not unfair or abusive *per se*, but it can make the NomCom appear—both from the inside and from the outside—to be “controlled by insiders.” We observe that in some cases this perception has led people to suspect that NomCom selections are therefore too often also “ICANN insiders” when we can find no objective evidence to support that claim.

13 When some members are much better prepared than others, the NomCom appears to be controlled by “insiders.”

Term of service and continuity

Article VII, Section 3 of the Bylaws [1] defines the term of service for NomCom members:

“Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.”

In general, all volunteer groups must strike an appropriate balance between the benefits of continuity (efficient operation that builds on past experience) and the benefits of regularly introducing fresh perspectives (access to new ideas and resistance to the cronyism of the “established order”). We observe that the current arrangement, in which voting delegates are appointed for the one-year term of a single NomCom cycle but may be re-appointed for one additional term, produces in practice roughly 50% turnover from one year to the next [9], which is consistent with productive turnover rates in other part-time volunteer organizations.

<p>14 NomCom’s one-year term of service with one-year renewal strikes the right balance between continuity and productive turnover.</p>
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Uneven participation

Because NomCom service is a volunteer activity, and NomCom members are appointed by a wide variety of different groups, it is not surprising that we observe different levels of participation in the NomCom’s work by different members. Despite the fact that it must complete a very large amount of work in a relatively short (and inflexible) period of time, the NomCom has no good way to quickly remove and replace members who do not “carry their weight.”

The NomCom operating procedures [26] define the following mechanisms for removing a NomCom member:

“A NomCom member may be removed, following notice to the member, and if selected by a Supporting Organization constituency or Advisory Committee, after notice to that Supporting Organization constituency or Advisory Committee, by a majority vote of all NomCom members entitled to vote.”

No documented criteria or principles establish objective grounds for removal, however, which means that it is difficult to invoke the removal mechanism without inviting the challenge of subjective bias; and no clear mechanism is available to quickly fill a vacancy created by a non-participation removal.

15 NomCom lacks a practical mechanism for removing and replacing under-performing members.

Size of NomCom

Any group that is required to perform a certain amount of work in a fixed amount of time must balance the agility and efficiency of “smaller” against the workload capacity of “larger.” Because the NomCom is expected to fulfill two different roles—recruitment and selection¹³—it is both “too small” (for effective recruitment and outreach) and “too large” (for efficient deliberation and selection after candidates have been identified).

16 NomCom is “too small” for effective recruitment and outreach and “too large” for efficient deliberation and selection after candidates have been identified.

II.2.2.2 Leadership

The NomCom is led by a Chair who is appointed annually by the Board [1]. We observed that the Chair exercises considerable influence, and many current and former NomCom members reported that the success of the NomCom’s activities, particularly those involving outreach and recruiting, depended heavily on the skills of the Chair. In practice, the Chair establishes many of the “rules of engagement” that govern the way in which the NomCom operates. We also observed that the Chair has been the principal interface between the NomCom and the Board, and between the NomCom and the ICANN staff.

17 The success of the NomCom’s efforts depends heavily on the skills of the Chair.

The Bylaws give the Chair the option of appointing an Associate Chair, which every NomCom Chair has done. Current and recent past NomCom members report that the Associate Chair acts in many ways as a co-Chair, and exercises more influence than would be expected of someone fulfilling the “administrative assistant” role described in the Bylaws. We observe that the sheer size of the Chair’s job virtually guarantees that this will be the case. The commitment of time and energy expected of the Chair is much greater than can ordinarily be sustained in a volunteer, nominally “part time” position; this has made it difficult for ICANN to achieve a healthy balance between continuity

¹³ See section II.2.1.5.

and turnover in the Chair, because few volunteers have been willing to take the job. It has also complicated the task of planning for orderly succession in the Chair.

Our review suggests that the continuity associated with the long tenure of the current NomCom Chair and Associate Chair has improved the efficiency with which the NomCom operates, but has also led to the perception that an entrenched core group consisting of the Chair, Associate Chair, and ICANN support staff acts as an informal “executive committee” in ways that appear to disenfranchise other members.

18 The demands of the NomCom Chair’s job exceed what can reasonably be expected of a volunteer, part-time position.

19 The unrealistic level of effort expected of the Chair inhibits regular turnover and planned orderly succession.

II.2.2.3 Relationship between the NomCom and ICANN staff

The Bylaws say very little about the proper relationship between the NomCom and ICANN staff:

“ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.” [1]

The NomCom procedures add only a provision for the unilateral removal of a staff member by the Chair:

“A member of the NomCom staff may be removed by the Chair of NomCom, following notice to the ICANN CEO.” [26]

It is clear from our review that staff support is critical to the NomCom’s ability to conduct its work, and that both the Chair and the members of the NomCom rely on staff both for administrative assistance and for “institutional memory” with respect to process. As a matter of policy, the NomCom maintains a “wall” between the administrative staff support role and the deliberative role of the (voting and non-voting) NomCom members and liaisons.

Within the NomCom, we observed a high level of satisfaction with the *supporting* staff role, diminished somewhat by occasional concerns about the encroachment of a *participatory* staff role into the NomCom’s deliberations concerning potential candidates. We also observed some frustration among both staff and NomCom members that the lack of clarity concerning the “rules of engagement” between staff and the NomCom

made it more difficult than it should be to exchange useful information and insights that might, depending on who was interpreting the unwritten rules, be construed as “interference.”

20 The rules governing the relationship between the NomCom and ICANN staff are not clearly documented or understood.

21 Lack of clarity concerning what does and does not constitute “interference” by staff in NomCom deliberations inhibits communication and encourages suspicion.

II.2.3 Operation

The Bylaws describe the role and structure of the NomCom, but provide almost no guidance concerning the way in which it should operate. The first NomCom in 2003 developed and documented a working set of operating procedures,¹⁴ which have been revised and refined by subsequent NomComs [40, 26].

Our review evaluated the following six elements of NomCom operation:

- communication and public relations;
- criteria that govern the search for and evaluation of candidates;
- recruitment and outreach to potential candidates;
- interaction with candidates;
- deliberation, voting, and selection;
- secrecy, confidentiality, and transparency; and
- conflicts of interest.

II.2.3.1 Communication and public relations

Because it operates in an intrinsically obscure domain, ICANN has very limited natural visibility in the world outside of its own community. NomCom’s ability to recruit potential candidates who are not already “ICANN insiders” depends to a great extent on communication and public relations efforts to “market” ICANN to a global audience that is mostly unaware of what it does or why it represents an important and attractive volunteer opportunity.

¹⁴ See “Basic Operating Principles” in [39].

We observed that the NomCom has generated substantial goodwill towards ICANN during its five years of operation, and that it has contributed significantly to the perception that ICANN is a legitimately open organization that encourages public participation. We also observe that the NomCom is the ICANN activity that is most visibly directed outward, into the world beyond the Domain Name System, and is therefore an important ambassador for ICANN.

22 Broader awareness of ICANN and its mission would help NomCom recruit qualified volunteers.

23 As ICANN’s most visible outward-facing activity, the NomCom has a significant effect on the way in which ICANN is perceived in the world at large.

Although the NomCom is recognized and well-regarded as an outreach activity, we found that most people outside of the NomCom itself either were not aware of or did not fully understand its mission, responsibilities, procedures, schedule, or selection criteria.

24 The way in which the NomCom operates is not well understood outside of the NomCom itself.

II.2.3.2 Criteria and qualifications

The general criteria and qualifications for the selection of Directors and members of the SO Councils and the ALAC are specified in the Bylaws [1]. Beyond that, however, we find that the requirements of each body for specific skills or other characteristics, either generally or during a particular annual NomCom appointment cycle, are not well documented or understood. This lack of definition extends to the way in which the NomCom is expected to establish selection criteria: should it receive explicit instructions from, for example, the Board (“this year, we need someone with expertise in trademark and intellectual property law in Asia”); or should it operate independently and make its own decisions concerning the qualities that would best complement and balance the existing membership?

25 The NomCom lacks specific requirements for its annual Board, SO, and ALAC appointments, and it is not clear how those requirements should be established (or by whom).

II.2.3.3 Recruiting and outreach

The process whereby the NomCom solicits Statements of Interest [10] from potential candidates for the Board, SO Council, and ALAC positions that must be filled each year is documented in Section B(7) of its current Procedures [26], which also describes a general framework for active outreach to identify and encourage people who might not otherwise be inclined to consider volunteer service to ICANN.

The recruitment model on which the NomCom procedures are based is that of “applying for a position”: candidates complete and submit applications (Statements of Interest) and provide references; the NomCom obtains reference letters from each reference; NomCom members read the applications and reference letters, and may conduct interviews; and the NomCom then makes its selections. This model stands in contrast to an alternative approach based on what might be called an “invitation” model that is more commonly used to fill corporate executive and director positions, in which the hiring entity develops a specification or requirements list describing what it needs; commissions a recruiter to identify a small number of qualified candidates; interviews the candidates; and assuming that a good fit is found, invites one of the candidates to take the position. People who are familiar and comfortable with the “invitation” model, whether from past experience or cultural preference, are often not comfortable with the “application” model. During our review we observed that the NomCom’s application approach deterred interest from some potentially well-qualified candidates, and that some candidates who did apply considered the process to be unpleasantly disrespectful.

26 The NomCom “application” model for recruitment deters some potentially well-qualified candidates who are accustomed to and more comfortable with the traditional corporate “invitation” model.

Our review observed a clear distinction between recruitment and the subsequent process of evaluating candidates and selecting a slate of appointees; recruitment and selection followed different procedures, called for different NomCom member aptitudes and skills, and placed different demands on members’ time and participation patterns.

27 Recruitment and selection follow different procedures, call for different skills and aptitudes, and place different demands on NomCom resources.

We also observed that the annual NomCom outreach efforts produce a great deal of information about potential ICANN volunteers that is not well-managed from one year to the next, both because information about candidates who are not selected in one cycle is not routinely “rolled over” into the next cycle, and because the NomCom’s confidentiality obligation to candidates prevents the use of that information by any other part of ICANN.

28 Annual NomCom outreach generates information about motivated potential ICANN volunteers that is not available either to subsequent NomComs or to other parts of ICANN.

II.2.3.4 Relationship between NomCom and candidates

The NomCom’s “application” model of recruitment does not naturally encourage the formation or maintenance of a close relationship between the NomCom and people who submit Statements of Interest. We observed that some candidates (both successful and unsuccessful) were offended by what they considered to be a lack of communication from and interaction with the NomCom, particularly with respect to the status of their applications; “I didn’t hear anything from the NomCom until I read on the website that someone else was selected.”

29 Candidates want better and more timely information about the status of their candidacy and the progress of the NomCom process.

Some candidates with no prior experience with Director-level appointment processes also considered the background check to be unreasonably intrusive.

30 Some successful candidates consider the background check to be unreasonably intrusive.

Our review of NomCom–candidate interactions going back to 2003 suggests that the relationship between the NomCom and candidates has steadily improved as the NomCom’s procedures have evolved.

II.2.3.5 Deliberation, voting, and selection

During our review several past NomCom members reported that the NomCom did not always operate with a common understanding or agreement concerning the way in which candidate qualifications should be discussed and evaluated, and that therefore orthogonal or conflicting criteria for Board members and other appointees could not be

resolved easily. Some past NomCom members felt that because the rules governing deliberation were not explicit, they were often unsure when or how decisions about individual candidates were made.

31 The rules that govern the way in which candidate qualifications are evaluated and selections are made are not well-documented or understood.

32 Lack of internal agreement on the way in which deliberation and selection should be conducted makes it difficult for the NomCom to resolve conflicting criteria for evaluating candidates.

We observed that when the NomCom considers an incumbent candidate for re-appointment, it lacks objective information about the candidate’s performance in her current position. This appears to be due both to the fact that the information is not generally available—ICANN’s Board, SO Councils, and ALAC do not routinely assess the performance of their members—and to the lack of a formal mechanism for the NomCom to query another body for information about the past performance of a candidate for re-appointment.

33 NomCom lacks information about the past performance of incumbent candidates for re-appointment.

II.2.3.6 Secrecy, confidentiality, and transparency

The NomCom’s confidentiality obligation to candidates is asserted in Section 5 of the “Agreement to Adhere to the Code of Ethics” [25]:

“All NomCom members will safeguard all internal NomCom communications concerning the candidates and treat them as private, confidential, and for the use of immediate Committee members and NomCom staff only, without exception.

“NomCom members will not disclose outside of the Committee any of the discussions, deliberations, communications, records and notes, about the candidates. Further, NomCom members will not disclose outside of the Committee the identities of the candidates under consideration by NomCom, unless NomCom as a whole has decided to do so and the explicit consent of the candidate(s) in question has been obtained.”

Both the way in which the obligation is defined in [25] and the way in which it has been interpreted by competent legal observers limit it to information concerning individual candidates. Nevertheless, our review observed that the powerful emphasis on

candidate confidentiality impressed upon the NomCom members and staff led them to “err on the side of caution” and treat many other aspects of the NomCom’s operation as confidential “just to be safe.”

34 In practice, the importance of its obligation to maintain absolute candidate confidentiality has led the NomCom to be secretive about other aspects of its operation as well.

Current and past NomCom members reported that in some cases secrecy was intended not only to guard against the disclosure of confidential candidate information but also to shield the committee from lobbying and other outside influences. In general, people who had participated in the NomCom process felt that at least some of that “shielding” secrecy was justified; people observing the NomCom from the outside felt that it damaged the NomCom’s credibility.

35 Secrecy beyond what is required to preserve candidate confidentiality shields the NomCom from outside pressure and influence but also damages its credibility.

II.2.3.7 Conflicts of interest

Section A(4) of the Procedures [26] defines the NomCom’s conflict of interest policy; it does not specify a specific procedure for dealing with circumstances in which a violation of the policy has occurred, except to the extent that Section A(6) provides that failure to adhere to the code of ethics or the conflict of interest policy constitutes grounds for removal from the NomCom.

Our review found that the conflict of interest policy is well-understood by NomCom members, and that in all of the cases that we observed the documented rules for disclosure and recusal were followed.

36 Members properly disclose their financial and other relationships in accordance with the NomCom’s conflict of interest policy, and also properly recuse themselves from discussions when called for by the policy.

II.2.4 Outcomes

Our review of the outcomes produced by the NomCom process yielded three types of observations, pertaining to:

- the direct results of the process: the NomCom’s success in appointing highly-qualified people to the Board, SO Councils, and ALAC; and

- follow-through: whether NomCom appointees are given adequate orientation and preparation for their new jobs.

II.2.4.1 Direct results

Measuring the direct results of the NomCom process over the past five years with respect to the core objectives stated in [1] and [25], our review finds that the NomCom has been remarkably successful. We observe that for the most part even severe critics of other aspects of the NomCom process (including people who report dissatisfaction with specific individual NomCom appointments) believe that on the whole it has “appointed good people.”

37 On the whole the NomCom has appointed well-qualified, independent, and effective people to the Board, SO Councils, and ALAC.

Our review also finds that the NomCom process is inherently biased in favor of results that are broadly acceptable to a diverse community; its deliberately multi-stakeholder design favors uncontroversial and broadly acceptable candidates over those whose viewpoints or other attributes make them unattractive to one or more of the constituencies represented within the NomCom. We observe that the NomCom has occasionally found itself pursuing the appointment of the “least objectionable” candidate rather than the “best” candidate.

38 The NomCom’s multi-stakeholder process is inherently biased in favor of appointments that are uncontroversial and broadly acceptable.

II.2.4.2 Follow-through

Some candidates reported that after they were appointed by the NomCom they were not given adequate orientation, training in their roles and responsibilities, background materials, or other tools that would help them to be effective in their new jobs starting on the first day. We observe that the staff’s ability to help new appointees “get up to speed” would be improved by the timely conveyance of contact and other information about selected candidates to the staff.

39 Some NomCom appointees need more help “getting up to speed” in their new jobs; with better and more timely information about selected candidates, staff could fill this role.

Part III – RECOMMENDATIONS

In Part III we make specific recommendations based on the findings and conclusions reported in Part II. These recommendations focus on improvements to the structure and operation of the NomCom, and the role it plays in filling ICANN’s leadership positions, that follow directly from our review.

We take at face value the stated role and mission of ICANN itself, and its internal structure, except as it relates directly to the NomCom. Some of our recommendations, however, depend on the way in which other parts of ICANN may or may not change as a result of other independent reviews (and internal assessments). For example, if the upcoming review of the Board leads to a decision by ICANN to change the role or composition of the Board, that decision might have consequences for the NomCom’s process for selecting independent Directors that could affect one or more of the recommendations made here.

These recommendations arise from our broadly and deeply informed analysis of all of the observations reported in Part II; in most cases, therefore, no direct relationship exists between a particular observation and a particular recommendation. We note that many other recommendations for specific structural and process improvements have been made by past NomComs [9]; to the extent that those are concerned with the details of internal operation, we have not repeated them here.

Our review affirms the central rationale of using a process that includes a nominating committee to choose some of ICANN’s leaders—ensuring that the broad public interest of the global Internet community is appropriately represented on ICANN’s policy-making bodies¹⁵—while providing strong support for making the substantial changes to the way in which it operates that we propose here.

¹⁵ “The central rationale for using a nominating committee to select a portion of the ICANN leadership bodies is to balance those who can represent particular areas of knowledge and interests with those who place the broad public interest of the global Internet community ahead of any particular interests. NomCom’s role is to select individuals of the highest integrity and capability who place the broad public interest of the global Internet community ahead of any particular interests, and who are nevertheless knowledgeable about ICANN’s mission and environment.” [25]

III.1 Balance confidentiality and transparency

Confidentiality with respect to individual candidates is important, as it encourages interest from candidates who might otherwise avoid the potential public loss of face associated with a transparent candidate evaluation process.¹⁶ Confidentiality of deliberations also encourages free and open discussion within the NomCom, and it shields the NomCom from undue outside pressure. But total secrecy is an inappropriately blunt instrument with which to accomplish these goals, and it undermines the legitimacy of both the NomCom and ICANN itself. It directly interferes with the NomCom’s ability to do its job and with the ICANN community’s ability to measure how well the job is being done.

We recommend a reassessment of the NomCom policies concerning confidentiality that starts with the assumption that everything about the NomCom process is completely transparent, and then deliberately and parsimoniously identifies the specific information about individual candidates that must be confidential. This reassessment should start with a clear and well-documented rationale for confidentiality that focuses narrowly on what is required for the NomCom to fulfill its mission and takes relevant national privacy laws and expectations into account. With that done, everything else should be open, documented, and published.

III.2 Treat candidates more respectfully

ICANN depends on a high level of effort from dedicated volunteers. A candidate who submits a Statement of Interest (SoI) [10]—perhaps having been encouraged to do so by someone he or she trusts and respects—is not a supplicant, and not a job applicant, but a volunteer who has offered to step forward and contribute to the organization: a potential colleague. The current process does not reflect that perspective. While individual NomCom members are respectful of candidates, the process is not.

We recommend that the NomCom take steps to make the process more collegial and more predictable, and to communicate better with candidates. From the beginning,

¹⁶ We note that several of the people we interviewed felt that someone who was not comfortable with a transparent candidate evaluation process would find it difficult to operate effectively in an ICANN leadership position, and that candidate transparency would therefore be a reasonable and appropriate filter to discourage interest from people who are not “compatible” with the ICANN culture. Taken as a whole, however, our observations lead us to recommend that candidate confidentiality be maintained.

candidates and potential candidates should be given a roadmap of the process, so that they understand what will happen and when it will happen. The SoI should be re-written so that it is less like a job-application form and more like an opportunity for people to present themselves to ICANN, using a shorter initial version followed up by a longer questionnaire for short-listed candidates. The NomCom should communicate with candidates often, whether to acknowledge receipt of a reference's letter, to thank the candidate for an interview, or to explain where in the process the candidate stands. The NomCom should never ask candidates to participate in a conference call with an unknown number of unidentified people on the other end; and it should inform candidates immediately that they have been selected or not selected, giving in both cases the NomCom's reasons.

III.3 Recruit and select based on requirements

We have explored the distinction between a "pull" model, in which the Board (or other body to which NomCom appoints) communicates its requirements to the NomCom (e.g., "We need more expertise in IP law in Asia"), and a "push" model, in which the NomCom itself studies the Board (or other body) and determines what is needed. Both models have merit, and either would represent an improvement over the current situation, in which there is no institutionalized way for the NomCom to understand the bodies to which it makes appointments.

The NomCom should communicate regularly with the Board and other bodies, rather than relying upon individual NomCom members' (or the Chair's) relationship with them, in order to understand their requirements as they evolve over time. We recommend that the NomCom establish a formal procedure for discovering and understanding the requirements of each body to which it makes appointments.

III.4 Separate recruiting from selection

As we note in Part I, the NomCom fulfills two distinct roles: (1) searching for and recruiting qualified candidates, and (2) selecting from among those recruited a small number of appointments to the Board and other bodies each year. We also note that selecting for the Board is entirely different from selecting for the other bodies.

We recommend that these two different roles be separated so that they can operate differently. A permanent search and recruitment function should seek potential candidates for all ICANN leadership positions (and other volunteer contributions)

continuously, reaching out to encourage participation in ICANN throughout the year (not just when candidates are required for appointment to a specific leadership position). The resulting candidate pool should be maintained continuously from year to year.

The annual selection process carried out by the NomCom should draw from this candidate pool and make appointments only to the Board. The other bodies (SOs and ALAC) should define their own mechanisms for selecting from the candidate pool.

III.5 Focus NomCom on its core mission

We recommend that the NomCom focus exclusively on its core mission of appointing genuinely independent and unaffiliated directors, and develop internal controls to ensure that it does not simply offer an alternative path to a leadership position for people who have been unsuccessful reaching that position through a constituency appointment process.

NomCom should select for experience and other qualifications that satisfy the requirements of the bodies to which it makes appointments, not for issue advocacy; and it should not be solely responsible for achieving or maintaining geographical diversity on any of the boards to which it appoints.

III.6 Restructure leadership roles

Both continuity (experience and institutional memory) and regular turnover (preventing the entrenchment of an insider “old guard”) are important features of a successful volunteer organization.

We recommend that the NomCom strike a balance between continuity and turnover by adopting a leadership structure in which the volunteer Chair, appointed for a single one-year term by the Board, is assisted by a permanent paid Administrative Director. The Chair should be appointed a year in advance, and serve as a nonvoting member (“Chair-elect”) of the NomCom during the year prior to becoming Chair. The Administrative Director would maintain process and “institutional memory” continuity from year to year, and should be responsible for managing the ICANN staff support for the NomCom in addition to providing administrative assistance to each year’s Chair (eliminating the position of Associate Chair).

III.7 Enforce NomCom participation rules

Inadequate contribution and participation by some NomCom members not only shifts the workload onto others but also corrupts the process directly, by inserting poorly informed and/or unmotivated “non-performers” into the NomCom’s critical deliberations and decisions.

We recommend that the NomCom enforce its requirement [25] that members obey the rules and satisfy the obligations described in the NomCom procedures [26], particularly with respect to participation.¹⁷ The NomCom procedures should provide for the removal and replacement of an under-performing NomCom member either by the Chair¹⁸ or by a majority vote of the NomCom.¹⁹

III.8 Explicitly design and document the NomCom process

Although the NomCom procedures have been documented in [26], they do not deal with many of the issues that arise during the course of an actual NomCom season, and they are poorly understood by many NomCom members.

We recommend the explicit design and documentation of a deliberative and decision-making process that deals with all of the “rules of engagement” issues that arise during the NomCom’s work, including those that we have identified in Part II of this report: the role of staff and other non-voting participants in NomCom deliberations; the importance of requiring that hearsay, innuendo, and rumor be backed up by authoritative information; the rules for conducting investigations and discussions of individual candidates; and many others.

¹⁷ From [26]: “NomCom members are expected to engage in outreach, recruitment, and information gathering; to read the submitted and gathered information about each candidate under consideration; to participate in both deliberations about individual candidates and construction of slates of candidates that will fulfill the requirements for each of the leadership bodies for which NomCom selects members; to participate in NomCom teleconferences; to work diligently with NomCom colleagues toward an overall consensus on the best possible group of candidates to be selected; and to adhere to the Code of Ethics.”

¹⁸ The procedures should constrain the Chair’s authority to remove a NomCom member by requiring the concurrence of a majority of the NomCom membership.

¹⁹ The majority vote to remove should of course exclude the person who is the subject of the vote.

We also recommend that the NomCom implement an explicit process for educating new NomCom members so that they understand their roles and responsibilities.

III.9 Seek candidate information from many sources

We recommend the design and implementation of a process for gathering candidate information from a variety of sources, including but not limited to the references listed in the SoI.

III.10 Boost awareness of ICANN and the NomCom

ICANN's ability to recruit highly-qualified volunteers ultimately depends on its global visibility and reputation. It also depends on potential candidates' awareness of the NomCom as the formal process for staffing leadership positions in ICANN's volunteer organizations, and of how the NomCom operates.

We recommend that ICANN's marketing and public relations efforts include the NomCom, and in particular that those efforts promote two ideas that are critically important for the NomCom: that service to ICANN is a valuable contribution to the Internet community, and that not being selected by the NomCom is not "rejection."

III.11 Hold NomCom appointees accountable

Because the NomCom operates on an annual cycle in which it performs its work and then disbands, the NomCom that appoints a person does not exist afterward, and is therefore unable to hold that person accountable for her performance in the position to which she was appointed. The Board, SO Councils, and ALAC have their own procedures for dealing with under-performing members, but it is often difficult for them to take those steps in the absence of objective criteria for measuring and evaluating the performance of NomCom appointees.

We recommend that the Board, the SO Councils, and the ALAC define objective performance metrics for people who are appointed to their bodies by the NomCom, and that they establish procedures for measuring appointees' performance and removing under-performers. The results of these performance assessments should be available to the NomCom, which should base its decisions concerning the re-appointment of an incumbent on performance and contribution rather than opinions or advocacy positions.

III.12 Transform the NomCom process

The recommendations presented in this report are intended to transform the way in which the Nominating Committee's role is implemented within ICANN, so as to achieve all of the improvements identified by our review in a well-integrated fashion.

III.12.1 Role of the Nominating Committee

As we note in Part I of this report, the current NomCom is responsible for two different functions: reaching out into the world to identify and recruit good candidates for ICANN's leadership positions, and selecting each year a slate of appointments from among the candidates that have been found. It is also responsible for performing these functions for two different types of body: the ICANN Board, on the one hand, and the SO councils and ALAC, on the other.

We recommend that the recruitment and selection parts of the NomCom's role be conducted separately. Recruitment should be an ongoing activity that takes place continuously over a period of many years, independent of the annual cycle of selecting people to serve in leadership positions.

We also recommend that the selection part of the NomCom's role be performed separately (and differently) for the Board and for all other bodies.

These recommendations are described in detail in the following sections, and summarized graphically in Figure 5.

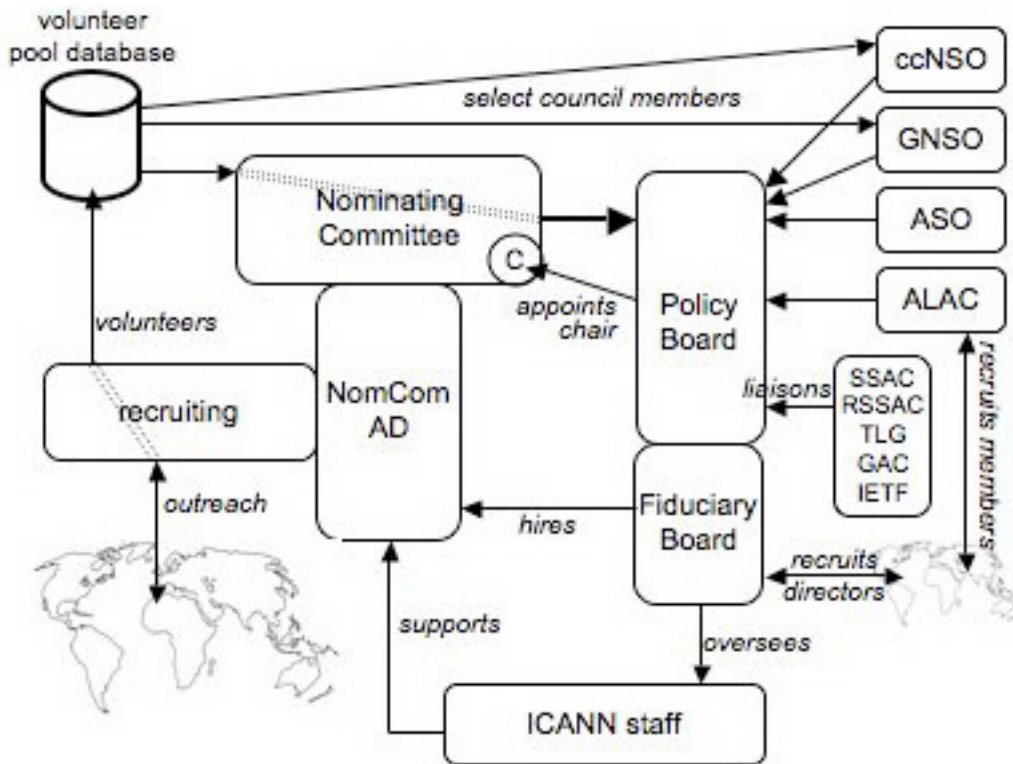


Figure 5—NomCom Role Recommendation

III.12.2 Management of the Nominating Committee

Our review suggests that it is important for the NomCom Chair and the members of the NomCom to be volunteers, but that the combined workload of recruitment and selection is more than can realistically be expected from a volunteer committee. In order to effectively separate the recruitment and selection roles of the NomCom, we recommend that outreach and recruitment be managed by a permanent, full-time (paid) NomCom Administrative Director (AD) appointed by and responsible to the Board²⁰, and that the annual selection process be managed by a (volunteer) NomCom Chair appointed by the Board for a single one-year term.²¹

²⁰ One way to achieve effective Board oversight of the NomCom AD outreach and recruitment functions would be to establish a standing Board outreach committee to support the activities of the AD.

²¹ We note that the reduced workload of the NomCom chair, in addition to making it possible for the chair to continue to be a volunteer position, should also make it easier to recruit highly qualified people to serve in the position.

The NomCom AD should also oversee staff support and perform other administrative functions for each year’s NomCom, but should not serve as a member of the NomCom in any deliberative or voting capacity. In this structure the role of the Associate Chair as described in the Bylaws [1] would belong to the NomCom AD.

To augment the continuity from one year to the next provided by the permanent NomCom AD, we recommend that the Board appoint the NomCom Chair one year in advance (the “Chair-elect”), and that the Chair-elect serve *ex officio* in the year prior to her service as Chair.

Our recommendation for selecting NomCom members is described in a later section.

III.12.3 Outreach and recruitment

Many people are willing and able to help ICANN fulfill its mission in many different ways, not all of which involve serving on the Board or a Council. Outreach and recruitment should therefore be a continuous, global process of identifying motivated volunteers, establishing relationships with them, and gathering relevant information about them and their interest in ICANN. The goal should be to identify and nurture relationships with a wide variety of people who are interested in ICANN and willing to play some role to benefit ICANN and the Internet. The recruitment function doesn’t look specifically for “someone to serve on the GNSO council”; it builds a database, and collects information about the qualifications and other characteristics of people who might be candidates not only for specific offices (e.g., the Board or an SO council) but for other volunteer roles within ICANN.

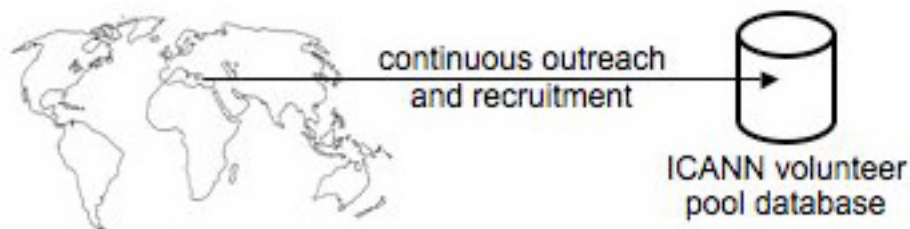


Figure 6—Outreach and Recruitment

This database of motivated volunteers would then be available for many purposes, including the formation of task forces, study groups, or advisory committees as needed, as well as the selection process for ICANN leadership positions.

Recruitment should take advantage of a broad range of resources—personal networks, professional search firms, Board alumni, a staffed “field operation,” the at-large community—to find potential volunteers, and should accept into the volunteer pool anyone who expresses an interest in serving ICANN.²²

III.12.4 Managing the volunteer pool

The NomCom AD should be responsible for managing the pool of volunteers—ensuring that the database contains complete and accurate information over time, maintaining communication with volunteers, and directing marketing and public relations activities designed to facilitate recruitment.²³

The NomCom AD should also be responsible for preparing, on request, “slates” of volunteers from the database who meet specified objective criteria, are eligible,²⁴ and are willing at that time to be considered for appointment to a specific position within ICANN. Examples of the way in which we recommend that this function operate will be found in the sections that follow.

III.12.5 Selecting Nominating Committee members

The transformed NomCom that we recommend would be responsible only for selecting people for leadership positions, drawing from a list of candidates (a “slate”) compiled objectively by the NomCom AD.²⁵ It would not be responsible for searching for or gathering information about candidates. Such a substantial change in the NomCom’s responsibilities²⁶ would also change the selection criteria²⁷ for NomCom members; the

²² Our review did not provide any basis for deciding whether or not requirements should be established simply to enter the volunteer pool—that is, separate from the requirements for actually being considered for a particular volunteer position.

²³ We note that the responsibilities assigned to the NomCom AD by our recommendation call for staff resources dedicated to and managed by the NomCom AD. How this should be organized within ICANN and/or through the use of outside resources is beyond the scope of our review.

²⁴ For example, someone currently serving on the NomCom might be a qualified member of the volunteer pool, but would not be eligible for selection to any position by the NomCom.

²⁵ “Objectively” means that the list includes every volunteer in the database who meets the specified objective requirements for the slate and agrees to be considered at that time for that position.

²⁶ The first “core objective” of the NomCom [25] is “Identify, recruit, and nominate the highest-quality nominees for the positions NomCom is charged to fill.”

ability to fairly and impartially evaluate the qualifications of candidates would be paramount, and the ability to recruit candidates would no longer be important.

As we note in Part II, despite the best efforts of well-intentioned people, past NomComs have found it difficult to consistently satisfy the mandate of impartiality stated in their Code of Ethics [25]:

“They act only on behalf of the interests of the global Internet community within the scope of the ICANN mission and the responsibilities assigned to NomCom by [the] ICANN Bylaws. They act as individuals and are not beholden to their appointing constituencies as they work by consensus to derive the NomCom slates of Selected Nominees for these leadership bodies.”

Our review suggests that this difficulty arises at least in part from the way in which NomCom members are selected; a long list of groups²⁸ both inside and outside of ICANN—including groups to which NomCom is expected to make appointments—each selects one or more NomCom members. Such an arrangement is not unreasonable in principle, but in practice it has had the effect of duplicating within the NomCom some of the same policy-driven partialities that are already represented in the direct appointments by various ICANN constituencies to Board, council, and ALAC positions. This has in some cases made it more difficult for the NomCom to focus on appointing people “who place the broad public interest of the global Internet community ahead of any particular interests.” [25]

Other organizations have successfully used an alternative that encourages nominating committee members to focus on the good of the organization as a whole by breaking the link between an individual NomCom member and a specific constituency. If NomCom members are clearly individuals rather than appointees from a particular group, they will be more likely to “act as individuals...not beholden to their appointing constituencies.”

To achieve this benefit, we recommend that all of the voting members of the NomCom be chosen by lottery from a pool of volunteers, which anyone who meets specified objective criteria and agrees to abide by the NomCom Code of Ethics may join. The

²⁷ <http://www.icann.org/general/bylaws.htm#VII-4>.

²⁸ The list is at <http://www.icann.org/general/bylaws.htm#VII-2>.

criteria should include the objective criterion #6 in the current Bylaws²⁹—“able to work and communicate in written and spoken English”—and an objective criterion based on the Bylaws’ subjective criterion #5—“understanding of ICANN’s mission and the potential impact of ICANN’s activities on the broader Internet community.”³⁰ Unlike the long-term ICANN volunteer pool described above, a NomCom volunteer pool should be created each year to feed a lottery for that year’s NomCom. The process should be managed by the NomCom AD.

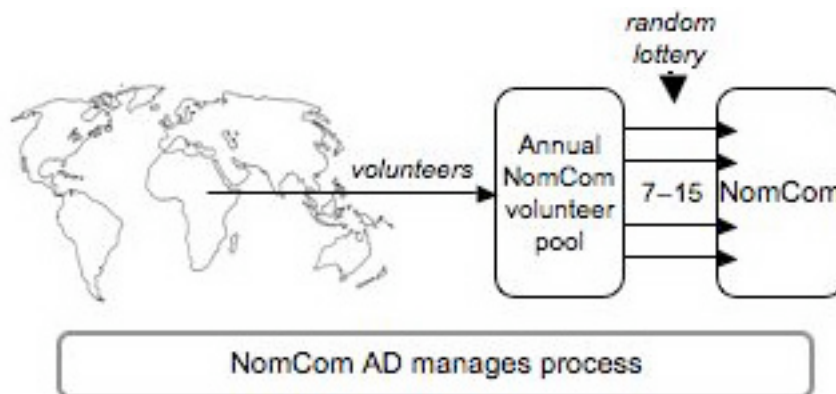


Figure 7—Selecting NomCom Members

III.12.6 Selecting ICANN Directors

We note in Part I of this report that the ICANN Board fulfills both a fiduciary role, in which it is responsible for the financial and business management of ICANN as a corporation, and a policy role, in which it is responsible for the strategic decisions that guide ICANN in the pursuit of its mission. We also note in Part I that the current process for selecting Board members does not guarantee that the Board will have all of the skills and experience necessary for it to fulfill its fiduciary responsibilities.

The two roles of the Board are sufficiently different and distinct to justify our use in this section of the terms “fiduciary board” and “policy board,” without explicitly recommending that the Board actually be divided into two separate bodies (which would be beyond the scope of the NomCom review). As we will use the terms here, the fiduciary board oversees the ICANN staff organization, and is responsible for the financial, legal, contractual, regulatory, personnel, and other business management

²⁹ <http://www.icann.org/general/bylaws.htm#VII-4>.

³⁰ Although we do not propose a specific criterion, we note that one possibility is “has attended at least one ICANN or RALO meeting in the past three years.”

aspects of running the corporation; the policy board oversees the ICANN volunteer organization, and is responsible for the development, consideration, and promulgation of policies concerning Internet names and numbers that lie within the scope of ICANN's mission and mandate.

We observe that the qualifications and criteria for a fiduciary board Director are not the same as those for a policy board Director (and *vice versa*). For example, it is more important to have financial-management expertise on the fiduciary board than on the policy board; and it is more important to have geographic and constituency diversity on the policy board than on the fiduciary board. This suggests that different mechanisms for selecting fiduciary board and policy board Directors, responsive to these different criteria, could produce better results than the system currently in use.³¹

We recommend that the NomCom be responsible—as it is today³²—for the appointment of all policy board Directors except those appointed by Supporting Organizations, selecting from a slate of candidates compiled objectively (as described above) by the NomCom AD from the ICANN volunteer pool. Although the findings of our review do not specifically support it as a recommendation, we believe that the NomCom AD would benefit from the assistance of the NomCom Chair in performing this function.

We recommend that the ALAC appoint two policy board Directors, using whatever mechanism it considers to be appropriate.³³ Our review provides no basis for recommending changes to the way in which SOs currently appoint Directors to the Board, with the exception that SOs should appoint only policy board Directors.

We recommend that the fiduciary board itself recruit and select fiduciary board Directors separately.³⁴

³¹ Although it is more properly a subject for the Board review, we recommend that the ICANN President be considered to belong *ex officio* only to the fiduciary board (as a voting member).

³² <http://www.icann.org/general/bylaws.htm#VII-1>.

³³ The intention is for the ALAC's responsibility for Board appointments to be the same as that of the SOs.

³⁴ Allowing the fiduciary board to select all of its own members could lead to an overly self-contained system. One way to counter that would be to use an outside recruiting firm to prepare a qualified slate of candidates, and have the fiduciary board make its selection from that slate.

III.12.7 Selecting Supporting Organization Council members

The rationale for using the NomCom process to appoint three members of the GNSO Council and three members of the ccNSO Council³⁵ is that both Councils benefit from a balance between those who can represent particular areas of knowledge and interests and those whose principal perspective is the broad public interest of the global Internet community [26]. The findings of our review support this rationale in principle, while suggesting that in practice the different requirements of the Board and the SO Councils make it awkward to use the same process for both. In particular, the way in which the “broad public interest” perspective applies to the composition of the Board is different from the way in which it applies to the composition of the Councils, which have a different (narrower) scope and more precisely defined responsibilities.

We recommend that the GNSO and ccNSO Council seats currently filled by the NomCom continue to be reserved for people who represent the “broad public interest” perspective. We also recommend that each SO clearly document the qualifications and other criteria for members of its Council; that the NomCom AD objectively compile for each SO, when requested to do so, a slate of candidates consisting of everyone in the ICANN volunteer pool who satisfies the SO’s criteria and is willing to be considered for appointment to a Council position; and that each SO define its own mechanism for selecting people from that slate.

III.12.8 Selecting At-Large Advisory Committee members

Our review suggests that the original rationale for relying on the NomCom to find and appoint five ALAC members has receded as the ALAC has matured, and that it is no longer necessary or advisable for the NomCom to be involved in the selection of ALAC members. In devising its own mechanism for selecting members, the ALAC might decide to take advantage of the NomCom AD’s outreach and recruitment efforts to find qualified candidates, but we see no reason to recommend that it do so.

³⁵ The NomCom is not involved in any aspect of the operation of the Address Supporting Organization (ASO), and the findings of our review do not support any recommendation to change this arrangement.

III.13 Audit the NomCom process

We recommend that the NomCom process be audited each year to determine how well it worked, and that the results of the audit be published before the next year's NomCom members are selected.

Appendix A – Sources and References

A.1 Personal interviews

We conducted individual telephone interviews with the following 47 people over a period of 10 weeks (from 16 July to 21 September 2007). Most of the interviews lasted for one hour. Everyone interviewed was informed of, and agreed to, the following privacy policy: “the fact that the interview took place with a named person will be public and published in our report, but none of the information gathered during the course of the interview will be attributed to a particular individual.”

For each person interviewed, the list below shows both nationality and the perspective from which the person was asked to comment on the Nominating Committee.

Name	Nationality	Relevant Perspective
Chris Disspain	UK	Current ccNSO chair
Adam Peake	USA	NomCom member 2004-2007 Associate chair
J. Beckwith Burr	USA	NomCom ccNSO council appointee
Roberto Gaetano	Italy	NomCom Board appointee
Jean Armour Polly	USA	ICANN community
Bret Fausett	USA	NomCom member 2003
Vint Cerf	USA	Current Board chair
Scott Bradner	USA	Internet Society Board secretary
Kieren McCarthy	UK	ICANN community

ICANN Nominating Committee Review

Name	Nationality	Relevant Perspective
Michael Fromkin	USA	NomCom member 2006-7
Karl Auerbach	USA	Past Board member
Susan Crawford	USA	NomCom Board appointee
Wolfgang Kleinwaechter	Germany	NomCom member 2006-7
Wendy Grossman	USA	ICANN community
Carlos Aguirre	Argentina	ICANN community
Jacqueline Morris	Trinidad	NomCom ALAC appointee
Marcus Faure	Germany	ICANN community
Fred Baker	USA	Past IETF chair
Jean-Jacques Damlamian	France	NomCom chair 2004
George Sadowsky	USA	NomCom chair 2005-2007
Tommy Matsumoto	Japan	ICANN community
Ram Mohan	USA	NomCom member 2003-2005
Elisabeth Porteneuve	France	ICANN community
Njeri Rionge	Kenya	NomCom Board appointee

ICANN Nominating Committee Review

Name	Nationality	Relevant Perspective
Alejandro Pisanty	Mexico	Past Board vice-chair
Guo Liang	China	ICANN community
Pindar Wong	Hong Kong	NomCom associate chair 2003-2004
Ken Fockler	Canada	NomCom member 2006-7
Darlene Thompson	Canada	North American RALO
Bill Manning	USA	NomCom member 2007
Lucy Lynch	USA	IETF rep to NomCom 2007
George H. Conrades	USA	Past Board member
Carolyn Love	USA	Corporate governance consultant
Paul Kane	UK	ICANN community
Janis Karklins	Latvia	Current GAC chair
Bruce Tonkin	Australia	Past GNSO council chair Current Board member
Patrick Jones	USA	NomCom staff support 2007
Donna Austin	Australia	NomCom staff support 2005-7
Paul Twomey	Australia	ICANN CEO and President

Name	Nationality	Relevant Perspective
Karen Lentz	USA	NomCom staff support 2003-4
Kurt Pritz	USA	ICANN Sr. VP services
Theresa Swinehart	USA	NomCom staff support 2004
John Jeffrey	USA	ICANN general counsel
Denise Michel	USA	ICANN VP policy development
Marilyn Cade	USA	Past NomCom member
Jeanette Hofmann	Germany	Past NomCom member
Suzanne Sene	USA	U.S. GAC representative

A.2 References

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- [2] ICANN Announcement: Request for Proposals for Independent Evaluator for Nominating Committee Review, 25 April 2007 (<http://www.icann.org/announcements/announcement-2-15mar07.htm>).
- [3] Terms of Reference for Independent Review of the Nominating Committee, 15 March 2007 (<http://www.icann.org/reviews/tor-review-nomcom-15mar07.htm>).
- [4] Public comments received on the draft Terms of Reference posted in December 2006 (<http://forum.icann.org/lists/nomcom-review-tor>).
- [5] The 2007 Nominating Committee (<http://nomcom.icann.org>).

- [6] The ICANNwiki entry for the NomCom (http://www.icannwiki.org/Nominating_Committee).
- [7] ICANN's Strategic Plan, Operating Plan, and Proposed Budget (http://www.icann.org/strategic-plan/draft_stratplan_2007_2010_clean_final.pdf).
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- [10] Statement of Interest ICANN Nominating Committee 2007 (<http://nomcom.icann.org/soi-2007.html>).
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- [13] The real-time captioning from the Nominating Committee's workshop at the June 2006 ICANN meeting in Marrakech (<http://www.icann.org/meetings/marrakech/captioning-NomCom-29jun06.htm>).
- [14] Kieren McCarthy's September 2006 blog comments on the NomCom process, in which he was a participant as a candidate in 2006 (<http://kierenmccarthy.co.uk/2006/09/16/new-icann-board-members-decided-this-weekend/#more-563> and <http://kierenmccarthy.co.uk/2006/09/19/door-of-icann-secrecy-opens-a-crack>).
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- [17] Bret Fausett's September 2006 blog entry responding to Karl Auerbach's comments (http://blog.lextext.com/blog/_archives/2006/9).

- [18] Kieren McCarthy's December 2006 blog entry "NomCom Nonsense Continues" (<http://kierenmccarthy.co.uk/2006/12/06/nomcom-nonsense-continues>).
- [19] Wendy Grossman's blog entry recounting her experience as an unsuccessful NomCom candidate in 2006 (http://www.pelicancrossing.net/netwars/2006/11/icann_dreams_1.html).
- [20] Bret Fausetts July 2007 blog entry (<http://blog.lextext.com/blog/icann/archives/2007/7/24/3115433.html>).
- [21] "Selection of the ICANN Board of Directors," David G. Post and Michelle E. Arnold (<http://www.temple.edu/lawschool/dpost/ICANNBoard.htm>).
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- [38] Formal Call for Statements of Interest and Suggestions for Candidates, 2 May 2007 (<http://nomcom.icann.org/formal-call-2007.html>).
- [39] The 2003 NomCom Selection Process, presentation by Linda Wilson on 26 June 2003 at the ICANN meeting in Montréal (<http://www.icann.org/presentations/wilson-montreal-26jun03.pdf>).
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A.3 Other sources

Public comment email from Danny Younger.

Appendix B – Cross-Reference between the Terms of Reference and this Report

In the following tables, the entry in the left column is taken directly from the Terms of Reference; the entry in the right column is a cross-reference to the section(s) of this report in which the topic is addressed.

PART I. Does the NomCom have a continuing purpose in the ICANN structure?

1. What is the current purpose of the NomCom?	I.1, II.2.1.1
2. To what extent has the NomCom process been able to select persons who place the broad public interest of the global Internet community ahead of any particular interests?	II.2.2.1, II.2.4.1, III.12.5
3. Should this goal remain the primary goal in filling positions, or are there other elements that are also important to consider?	II.2.1.1, II.2.2, III.5, III.12.6
4. Of those persons selected by the NomCom process since 2003, do any particular qualifications predominate?	II.2.4
5. Do people selected by the NomCom appear to play a greater, comparable or lesser role in decision-making within their respective bodies, in comparison to those persons selected by other means?	II.2.4
6. What should be the purpose of the NomCom going forward?	III.3, III.4, III.5, III.12
7. What other methods of selection for leadership positions might be considered?	II.2.1.3, II.2.3.3, III.4, III.12
8. What are the benefits, drawbacks and costs of such options?	II.2.1.3, II.2.3.3, III.12

PART II. Is there any change in structure or operations that could improve the NomCom’s effectiveness?

NomCom Composition	
9. Do the members of the NomCom reflect adequately the different parts of the ICANN community?	II.2.2.1
10. Are any parts of the ICANN community over-represented or under-represented in the NomCom?	II.2.2.1
11. Should the NomCom include representatives from outside the ICANN community and, if so, how should they be selected?	III.12.2, III.12.5
12. What should be the relationship, if any, between the NomCom and the bodies for which it is filling positions?	II.2.1.5, II.2.2, III.3, III.11, III.12
13. What is the optimal size of the NomCom for it to be most effective?	II.2.2, III.12.5
14. Have members selected for the NomCom had the skills needed to conduct their work most effectively?	II.2.1.4, II.2.2
15. Should there continue to be a distinction between voting and non-voting members of the NomCom?	III.6, III.8, III.12.5
Internal Procedures	
16. Are there elements of the NomCom’s work that should be more transparent? If so, how would such transparency be balanced against the protection of personally sensitive information?	II.2.3.6, III.1, III.13
17. To what extent is there, or should there be, continuity of internal information from year to year?	II.2.2, II.2.3.3, III.4, III.6, III.12.2, III.12.3, III.12.4

<p>18. Have NomCom decisions been made in accordance with the published procedures?</p>	<p>II.2.3.5</p>
<p>19. How have any actual or potential conflicts of interest between NomCom members and candidates under consideration for leadership positions been resolved?</p>	<p>II.2.3.7</p>
<p>20. Are the safeguards in place to deal with potential or actual conflicts of interest between NomCom members and candidates adequate?</p>	<p>II.2.3.7</p>
<p>21. What kind of support has ICANN provided for the NomCom? What kind of support should ICANN provide?</p>	<p>I.1, II.2.2.3, II.2.4.2, III.8, III.10 III.12</p>
<p>Selection Process</p>	
<p>22. Are the selection criteria set forth in the bylaws for each position the NomCom fills the right ones (see also Question 4)? For example, do the criteria enable the NomCom to examine the skills set of the current members of each body before selecting its candidates? Are they flexible enough to allow for evolution of ICANN bodies pursuant to their periodic reviews? Should the implications of increased emphasis on corporate governance, as symbolized by the Sarbanes-Oxley Act in the United States and the Higgs Report in the United Kingdom, affect the criteria used for selecting new members for the Board?</p>	<p>II.2.1.4, II.2.1.5, II.2.3.2, II.2.3.5, III.3, III.5, III.12.6</p>
<p>23. Does the Statement of Interest (SOI) required of each candidate provide the NomCom with adequate information to make its decisions?</p>	<p>II.2.3.3, III.2, III.9</p>
<p>24. How does the reference-checking process work?</p>	<p>II.2.3.3, III.9</p>

25. To what extent does the NomCom communicate directly with candidates?	II.2.3.4, III.2
26. What procedures and working methods have the different NomComs used to identify top candidates, and then to make the final selections?	II.2.3
27. How effectively has due diligence at the end of the selection process worked?	I.1, II.2.3.4
Outreach	
28. What is the aim of outreach?	II.2.1.1, II.2.1.5, II.2.3.1, III.4, III.10, III.12.3
29. What kind of outreach has occurred each year?	II.2.3.3
30. How effective has outreach been to identify potential candidates? For example, what percentage of new candidates submit SOIs each year? Has the distribution of geographic representation of candidates changed?	II.2.3
31. How effective have NomCom members been at outreach? For example, how many candidates each year are encouraged to apply by members of the NomCom? Are these candidates more likely to be successful than other candidates?	II.2.3
32. Does any particular constituency suggest more NomCom candidates than others?	II.2.3
33. Should ICANN or the NomCom seek to generate additional candidate interest and, if so, how?	II.2.3.1, III.1, III.2, III.4, III.10, III.12.3
34. Have any issues arisen regarding the requirement that SOIs be submitted in English?	II.2.3

Overall	
35. How well has the NomCom performed in each of the years (2003, 2004, 2005 & 2006) in which it has filled leadership positions?	II.2.4
36. What are the annual costs of the NomCom process?	See [9]
37. Has the NomCom had the resources necessary to accomplish its task?	II.2.3
38. Are there ways it could accomplish its task more cost-effectively?	III
39. What other general or specific measures can enhance the effectiveness of the NomCom?	III
40. What, if any, are the cost implications of such measures?	(none)