ICANN 30 JULY 2014 BOARD MEETING
Reference Materials

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ARTICLE XI: ADVISORY COMMITTEES

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

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i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities. A final decision by the ICANN Board to not follow the advice of the Governmental Advisory Committee must be supported by a by a two-thirds vote of all members of the Board that are eligible to vote on the matter.

REFERENCE MATERIALS TO BOARD SUBMISSION No. 2014.07.30.1d

TITLE: **Meeting Venue Location and Convention Centre Contract for October 2015 ICANN Meeting**

DETAILED ANALYSIS:

1. Background:
In May 2013, ICANN called for expressions of interest to assist as host of the October 2015 ICANN Public Meeting, which is to be held in the Europe region. The proposal that is recommended for approval, from the Internet Neutral Exchange (INEX), is discussed below.

2. Site Visits:
Confidential Negotiation Information

-   Dublin, Ireland: A preliminary site visit was conducted in April 2014.

3. Discussion of Issues:
Dublin, Ireland – The Convention Centre Dublin (CCD)
-   Meeting Rooms: The CCD has excellent conference facilities for an ICANN Meeting.
-   Area Hotels: Nearby hotels offer a wide variety of guest room accommodations. Most are within walking distance of the CCD. A limited number will require a 10-minute shuttle bus ride.
-   Food & Beverage Outlets: There are many restaurants and pubs in close proximity to the CCD.
-   Air Travel: Air access to Dublin is good, however, almost all international itineraries will require a stop in a European hub city.
-   Ground Transportation: Dublin Airport is 12 kilometers/15 minutes from the meeting venue. Taxi fare is approximately US$35. Airport shuttles are available for approximately US$10.
-   Safety & Security: A preliminary risk assessment by ICANN security has not identified any areas of concern for Dublin that would require other than standard security measures provided for an ICANN Meeting.
-   Gala: INEX has committed to funding and running a Gala for all delegates.

Representatives from the Internet Neutral Exchange (INEX) are capable and anxious to host.

Staff recommends that the board approve Dublin, Ireland as the location of the October 2015 ICANN Meeting.

4. Convention Centre Costs:
The contract for the Convention Centre Dublin will include:
Confidential Negotiation Information

*Note that negotiations are in progress. This is currently an estimate, which we do not believe will be exceeded.

Staff recommends that the board approve the expenditure (including contracting and disbursements) for the contract with the Convention Centre Dublin, as described above.

*** Confidential Proposal Information Set Forth Below***

Confidential Business Information

*** Confidential Proposal Information Set Forth Above***

Submitted by: Nick Tomasso
Position: VP, Meetings & Int'l Real Estate Operations
Date Noted: 17 July 2014
Email and Phone Number   nick.tomasso@icann.org Contact Information Redacted

REFERENCE MATERIALS TO BOARD SUBMISSION No. 2014.07.30.1e

TITLE: Budget for Lease of new ICANN Istanbul Hub Office

ICANN must meet its stated objective to maintain and staff a Hub Office in Istanbul, Turkey. To accommodate the projected increase in the number of staff there, it is necessary to move to a larger facility. The best solution is to lease permanent office space in the same building as the existing "Regus" serviced office, at a much lower cost per square meter. The building location has proven, over time, to be a good one for conducting business in Istanbul, and for staff commuting.

Exhibit A identifies the new office costs, and provides a comparative analysis vs. the existing space.

ICANN will enter into a five-year lease, with an option to break the lease after three years, with 90-days' written notice.

There are adequate funds allocated in the FY2015 Budget to cover the expense for the move and expansion of the Istanbul Hub Offices.

Submitted by: Nick Tomasso
Position: VP, Meetings & Int'l Real Estate Operations
Date Noted: 10 July 2014
Email and Phone Number   nick.tomasso@icann.org   Contact nformation Redacted

REFERENCE MATERIALS - BOARD SUBMISSION No. 2014.07.30.2a

TITLE: **Report of the ICANN Board Working Group on the Nominating Committee**

Exhibit A: Report of the BWG-NomCom (ICANN Board Working Group on the Nominating Committee

Exhibit B: Board Working Group on the Nominating Committee Charter

Additional Information:

Background of Review of Nominating Committee (History and timeline)

NomCom Review and Related Activities	Date
Final Report of Independent Consultant, Interisle Consulting Group	October 2007
Final Report of the NomCom Review Finalization Working Group (Jonathan Cohen; Steve Goldstein; Alejandro Pisanty; Thomas Roessler - Chair, George Sadowsky - non-voting advisor)	January 2010
Board received the Final Report of the NomCom Review Finalization Working Group	March 2010
SIC decided **not** to conduct a limited scope review of the NomCom to address composition, separation of recruiting and selection, ethics and operational improvements. Instead, SIC decided to recommend that the Board through the BGC address areas of concern, including those raised by NPOC, whose charter was approved in November 2010.	July 2013 (Durban)
The SIC agreed to recommend that the Board create a WG, approve its charter, and appoint members	Nov 2013 (Buenos Aires)
The Board approved the establishment of a Board Working Group on Nominating Committee (BWG-NomCom) in accordance with the Charter recommended by the SIC, the membership of which will be addressed by the Board Governance Committee.	7 Feb 2014
Board adopted a revised Charter of the BWG-NomCom and named Board members to serve on the working group (George Sadowsky – Chair, Ram Mohan, Ray Plzak and Mike Silber)	27 March 2014 (Singapore)
BWG-NomCom issued Final Report	7 July 2014
Report of BWG-NomCom distributed to the member of the SIC, seeking their approval to forward the Report to the Board for discussion and Public Comment	14 July 2014
Board Meeting	30 July 2014
SIC Meeting	8-10 September 2014 (Istanbul)
Next NomCom Review to commence	March 2015

NomCom Review Recommendations

The Independent Reviewer issued 17 recommendations (summarized below) and the NomCom Review Finalization Working Group issued comments and conclusions for each of the 17 recommendations. For more information, see Final Report of the NomCom Review Finalization Working Group and Final Report of Independent Consultant, Interisle Consulting Group.

	Reviewers' recommendations
A) Outreach and recruitment	1. Create a full-time Administrative Director position
	2. Treat candidates more respectfully
	3. Recruit and select based on requirements
	4. Separate recruitment from selection
	5. Seek candidates' info from many sources
	6. Boost awareness of ICANN and NomCom
B) Selection and appointment	7. Select all policy Directors from ICANN volunteer pool; ALAC to appoint two voting Directors
	8. SOs to select their Council Members from ICANN volunteer pool, based on qualifications needed, to be documented by SOs
	9. ALAC to select its At-large Committee Members
C) Membership and leadership	10. Reduce NomCom membership
	11. Select NomCom Members by lottery from a list of volunteers
	12. Focus NomCom on its core mission to seek independent, unaffiliated Directors
	13. Restructure NomCom leadership rules, providing balance of continuity and fresh perspectives
D) Operations	14. Balance confidentiality and transparency; maintain core confidentiality of candidates' data and eliminate secrecy everywhere else
	15. Enforce participation rules, by removing non performing Members
	16. Design and document NomCom key processes
	17. Audit yearly NomCom effectiveness, and publish results

Other relevant information:

- BGC – NomCom Charter

Signature Block:

Submitted by: Larisa Gurnick

Position: Director, Strategic Initiatives

Date Noted: 18 July 2014

Email: larisa.gurnick@icann.org

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Report of the ICANN Board Working Group on the Nominating Committee

7 July 2014

Executive Summary

Formed in February 2014, the Board Working Group on Nominating Committee (BWG-NomCom) is charged with performing the review called for in Recommendation 10 of the Nominating Committee Review Finalization Working Group, addressing issues of the size and composition of the Nominating Committee, as well as the Related issues of NomCom's recruitment and selection functions. Some of the specific issues identified for consideration included:

- Whether the current disproportionate representational model is appropriate for the NomCom in the future;
- Determination of the appropriate length of term of service by NomCom members and whether term limits should be imposed;
- Whether the NomCom should continue to fill other key positions in addition to Board positions.

In performing its work, the BWG-NomCom considered the role of the NomCom in ICANN, as well as issues of representation and parity among the entities across ICANN that have members serving on the NomCom. The BWG-NomCom recommends that: (a) the NomCom membership be redefined to allow for a representation that provides greater diversity and parity; and (b) that two-year terms be established for NomCom members, with no ability for a member to serve two consecutive terms, with the possibility of the term being truncated after one year.

Background

The ICANN Nominating Committee (NomCom) is charged with the appointment of eight of the 16 voting directors of the ICANN Board, as well as appointing members to the councils of the Country Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO), as well as the At-Large Advisory Committee (ALAC).[1]

As part of ICANN's organizational review process, a review was conducted over the NomCom, starting in 2007.[2] The Board received the Final Report of the NomCom

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[1] https://www.icann.org/resources/pages/bylaws-2012-02-25-en#/VII

[2] See https://www.icann.org/resources/pages/nomcom-2012-02-25-en for a history of the NomCom review process.

Finalization Review Working Group on 12 March 2010 (the "Final Report"), which called for a review in three-years' time of issues of the composition, size and recruitment function of the Nominating Committee (NomCom).[3]

The Structural Improvements Committee (SIC) recommended that the follow-up work identified in the Final Report be addressed through the establishment of a Board working group formed to execute Recommendation 10 with inclusion of consideration of Recommendation 4 of the Review Finalization Working Group. On 7 February 2014, the Board approved[4] the creation of the BWG-NomCom and its Charter, amended on 27 March 2014.[5] A copy of the Revised Charter is contained in Attachment 1 to this report. In fulfilling its work, the BWG-NomCom reached out to the leadership of ICANN's SOs and ACs, and met with members of the current NomCom to discuss the issues presented in the Charter.

Size and Composition

The NomCom is currently composed of 15 voting members, 3 non-voting members, 1 non-voting Chair, 1 non-voting Chair-Elect, and 1 non-voting associate chair, for a total of 21 individuals.

Voting members are composed in the following manner:
- Five members appointed from the At-Large Advisory Committee, with one from each Regional At-Large Organization
- Seven members are appointed from the GNSO, with one from each constituency that existed at the time the NomCom membership was defined
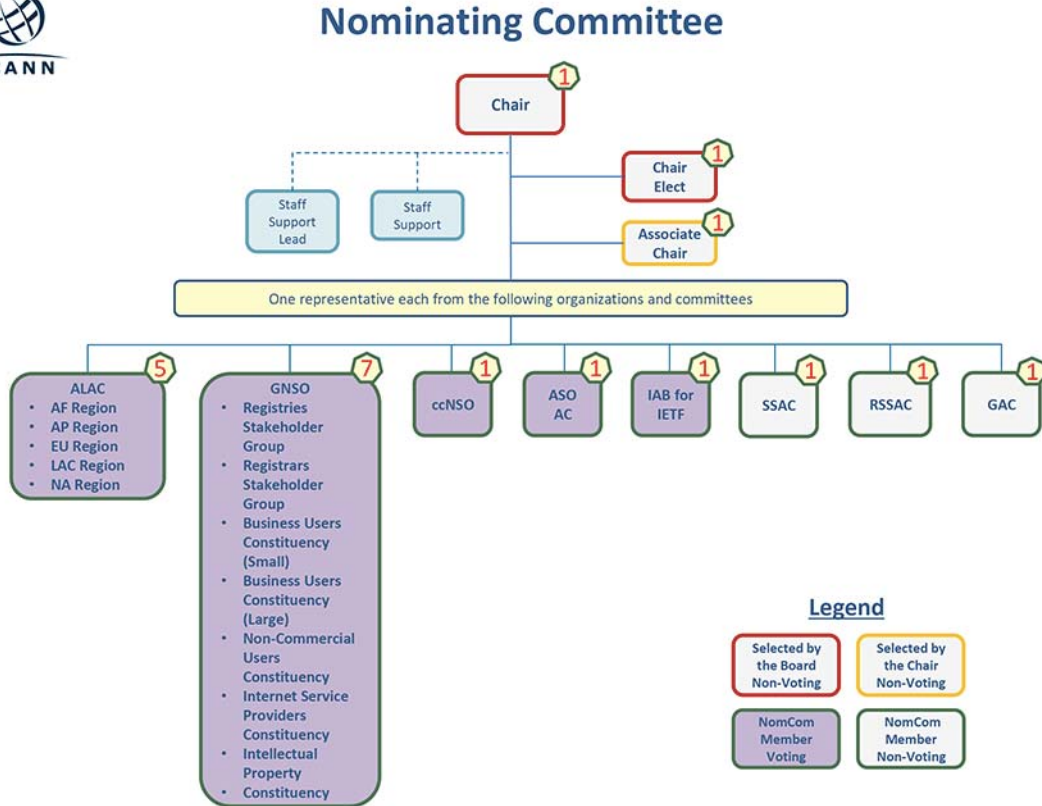- One member each is appointed from the ccNSO the ASO and the IAB (IETF).

See *Figure 1* for a diagram of the current NomCom composition.

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[3] See https://www.icann.org/en/groups/reviews/nomcom/nomcom-review-finalization-wg-final-report-29jan10-en.pdf.
[4] https://www.icann.org/resources/board-material/resolutions-2014-02-07-en#/2.b
[5] https://www.icann.org/resources/board-material/resolutions-2014-03-27-en#/2.a
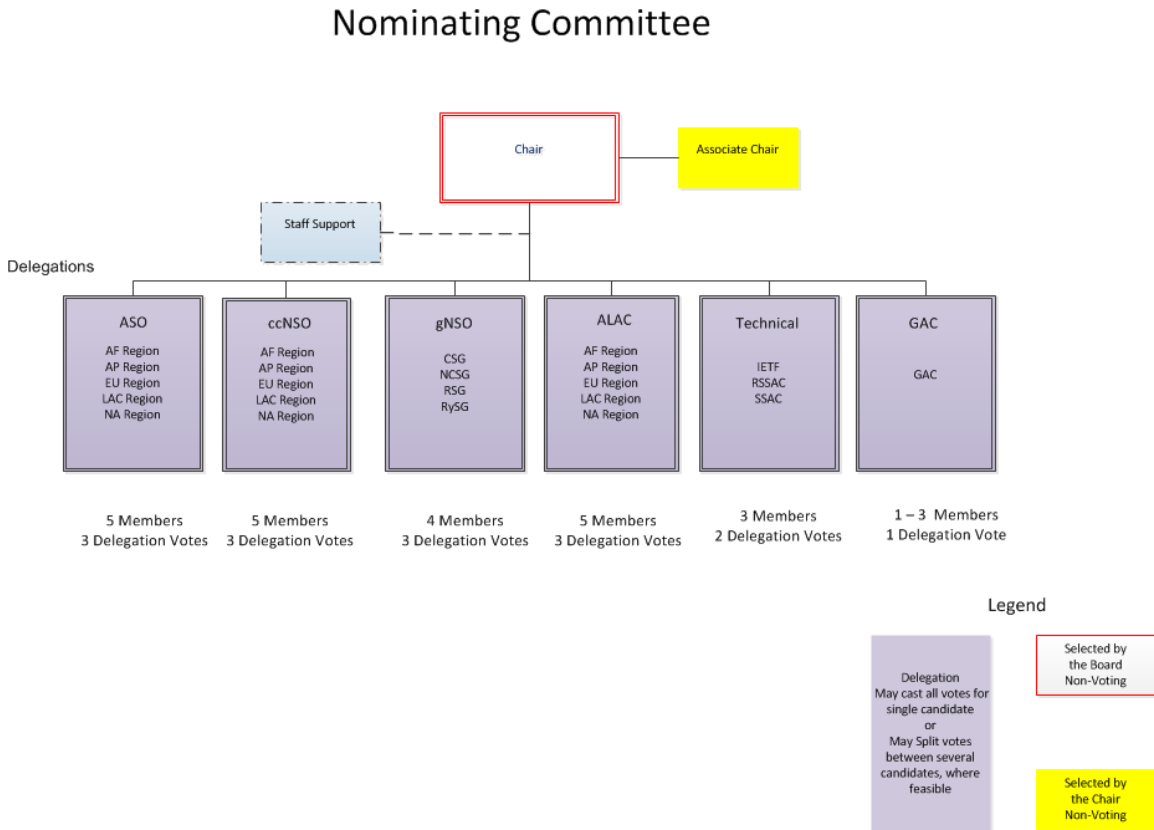
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Figure 1

Nominating Committee

Proposed NomCom composition:

The BWG-NomCom recommends that the size of the NomCom be expanded to 23-25 members, along with a non-voting Chair and Associate Chair, for a total of 25-27 individuals. In the case of the ASO, ALAC, ccNSO, GNSO members are to be appointed based upon the 2nd level of their organizational structure. The members for the IAB (IETF), RSSAC, SSAC, and GAC would be appointed as indicated below.

- Five members appointed from the At-Large Advisory Committee, with one from each Regional At-Large Organization
- Five members appointed from the ccNSO, with one from each geographic region
- Five members appointed from the ASO, with one from each geographic region
- Four members appointed from the GNSO, with one from each Stakeholder Group
- Up to three members appointed from the GAC
- One member each from the IAB (IETF), SSAC and RSSAC

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The BWG-NomCom took cognizance of the recommendation in the Final Report of the Review Working Group that the NomCom is too big for an effective selection process, but felt that the nomination process required input from multiple sectors of activity and regional balance, and that this diversity would only be possible if the NomCom did not diminish in size. See *Figure 2* for the recommended composition.

Nominating Committee

| Chair | | | | | Associate Chair |

Staff Support

Delegations

ASO	ccNSO	gNSO	ALAC	Technical	GAC
AF Region AP Region EU Region LAC Region NA Region	AF Region AP Region EU Region LAC Region NA Region	CSG NCSG RSG RySG	AF Region AP Region EU Region LAC Region NA Region	IETF RSSAC SSAC	GAC
5 Members 3 Delegation Votes	5 Members 3 Delegation Votes	4 Members 3 Delegation Votes	5 Members 3 Delegation Votes	3 Members 2 Delegation Votes	1 – 3 Members 1 Delegation Vote

Legend

Delegation
May cast all votes for single candidate
or
May Split votes between several candidates, where feasible

Selected by the Board Non-Voting

Selected by the Chair Non-Voting

Aligning NomCom Structure to SO/AC Structures

The BWG-NomCom's size and composition recommendations better align the structure of the NomCom to the structure of ICANN's Supporting Organizations and Advisory Committees while still keeping in mind principles of equality in balance and scalability. For purposes of this document, the ICANN Supporting Organizations, Advisory Committees, and any outside organization that appoints members to the NomCom shall be referred to as Appointing Entities.

Recommendation 1 - Enhancing Regional Representation and Diversity – ASO, ccNSO and ALAC

The BWG-NomCom recognizes that regional representation and diversity is important to reflect within the NomCom, and further that the structures of the ASO, ccNSO and the ALAC support the use of appointees selected from across geographic regions. As a result, the ASO and the ccNSO would each appoint five members as

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opposed to the one each currently appoints. Each organization would appoint one member from each of their five geographic regions. The ALAC's representation on the NomCom would remain the same, as each of the five Regional At-Large Organizations already appoints members to the NomCom.

Recommendation 2 - Aligning with Organizational Structure – GNSO

Because the gNSO does not use regional representation as their organizational structure, but rather special interests, the BWG-NomCom recommends that gNSO appoint four members to the NomCom to align with the Stakeholder Group structure as set out in the ICANN Bylaws. This represents a reduction in the GNSO's current number of appointees to the NomCom, as the Commercial Stakeholders Group currently selects four members to the NomCom. All other Stakeholder Groups currently select one.

The Commercial Stakeholders Group seats are currently apportioned to the individual constituencies that comprise the Stakeholder Group (Business Constituency (2); Internet Service Providers Constituency (1) and the Intellectual Property Constituency. This historical apportionment has contributed to a perception that as new constituencies are added within the Non-Contracted Parties House of the GNSO[6], that each new constituency should be apportioned a seat on the NomCom. However, tying the NomCom size to the development of the GNSO – particularly in relation to one portion of the GNSO – raises both scalability and parity issues. Scalability is a concern, in that the size of the NomCom at 20 members[7] was already cited as potentially too large for effective deliberations. Therefore, allowing for automatic additions to the NomCom size when a new Constituency is approved is not aligned with that concern. The parity issue arises in regards to the potential that the Non-Contracted Parties House of the GNSO would (1) have the largest representation on the NomCom above any other SO/AC; and (2) have the ability to increase their representation on the NomCom while no other grouping maintains that same ability. It is on this basis that the representational model for the GNSO is structured at the 2nd level, the Stakeholder Group level, as opposed to the 3rd level, the Constituency level.

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[6] The Contracted Parties House does not allow for new constituencies.
[7] At the time of the NomCom Review, the Chair-Elect position did not exist.

Recommendation 3 – GAC Representation Capable of Increase at GAC Discretion

The BWG-NomCom recommends that due to the growing membership of the GAC, and the diversity of view among governments, it is appropriate for the GAC to appoint up to three members to the NomCom, instead of the one non-voting member that is currently afforded to the GAC. The number of appointees is at the discretion of the GAC.

Recommendation 4 - Technical Entity Inputs Remain Unchanged

The BWG-NomCom recommends that there be no change to the numbers of members to the NomCom representing the IETF, the SSAC and the RSSAC. Each of these groups will appoint one member on the NomCom.

Recommendation 5 – Organization of NomCom by Delegation

The BWG-NomCom recommends that the members of the NomCom be organized into delegations: ASO, ccNSO, GNSO, ALAC, Technical, and GAC. The ASO, ccNSO, GNSO and ALAC Delegations would have 5 members each, selected as described in Recommendations 1 and 2. The Technical Delegation would have 3 members as described in Recommendation 4, and the GAC Delegation would, as described in Recommendation 3, have up to 3 members. The manner in which the delegations would vote during the selection process is explained in Recommendation 8.

Recommendation 6 – NomCom Leadership Positions

The BWG-NomCom recommends the NomCom leadership positions be changed from 3 (Chair, Chair-Elect and Associate Chair) to 2 (Chair and Associate Chair). Specific aspects of this recommendation are presented in Recommendations 10 through 14.

Selection Processes

Recommendation 7 – Removal of Non-voting Member Roles

The BWG-NomCom recommends that all members (excluding the two leadership positions) should have the ability to vote for candidates.

This allows for greater parity in the selection process and the voting structure of the NomCom. Today, only the ASO, ccNSO, GNSO, ALAC and IETF members have the ability to vote, while the RSSAC, SSAC and GAC members serve in a non-voting capacity.

Allowing voting across all delegations better serves the purpose of the NomCom by placing all delegations on an equal footing, as compared to the current structure of voting and non-voting members.

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The diversity of viewpoints combined with parity of voting makes it more likely that the broader ICANN community, acting through their members, would better support NomCom decisions.

Recommendation 8 – Candidate Selection Voting by Delegation

The BWG-NomCom proposes that voting selection be conducted by delegation. The ASO, ccNSO, GNSO and the ALAC delegations will each have 3 votes; the Technical delegation will have 2 votes; and the GAC delegation will have 1. Each delegation may cast all of their votes for a single candidate, or may split their votes for multiple candidates, where feasible.[8]

Rationale:

Voting by delegation demonstrates support for a candidate across the diversity and the variety of interests that make up the ICANN community. By their composition, each delegation represents the diversity of its Appointing Entity. The particular perspective of each Appointing Entity in the ICANN community adds another facet of diversity. The internal diversity of the ASO, ccNSO and the At-Large is geographical; the internal diversity of the GNSO is by special interest; the diversity of the technical delegation is reflected in the specific aspects of the various technical Appointing Entities. The presence of a GAC delegation brings a needed government perspective to the NomCom. Voting by delegation provides a degree of parity for the technical and GAC delegations vis-à-vis the other delegations. Delegations may split their vote between several candidates thus indication a differential of preference in a particular delegation. If voting were allowed on a 1:1 basis, granting voting status to the technical entities and the GAC would not do much to achieve parity as they would be few among many.

Organization by delegation allows persons of a similar general perspective to deliberate from their particular diverse views within that general perspective. The candidate that emerges from the delegation would then be acceptable to the general community of the Appointing Entity. The emergence of a single candidate from multiple delegations would then demonstrate acceptability to multiple segments of the ICANN community. In order for a candidate to succeed, there must be support from across at least three of the delegations in order for any candidate to be appointed, and thus is a mechanism through which it becomes less likely that any single grouping of votes can determine the outcome of the selection process. A

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[8] Entities may wish to create a procedure for the direction of voting for delegations and method of selection of delegation leader, but are not required to do so. However, any procedures for these or any other matter that are developed cannot permit reference back to the appointing entity, as that would impair the confidential nature of the NomCom's selection and deliberative process.

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candidate who gains consensus support amongst these delegations is truly selected by diverse interests.

Terms of Service

Recommendation 9 – Implement Two Year Terms for Voting Members

The BWG-NomCom recommends that the terms for all voting members be for two years, with no member allowed to serve for two consecutive terms. Within each delegation that has 5 members, terms will be staggered so that not all terms conclude in the same year. The imposition of term limits assures that no single member of the NomCom (or group of reappointed members) can influence selections across three Board member selection cycles, which is protection against capture of the NomCom (and potentially, capture of the Board). Staggering of terms will allow for continuity in membership, so that no one NomCom would be comprised of a totally new membership.

Any member may resign at any time by giving written notice to the Chair of the Appointing Entity, with a notification copy to the NomCom Chair. Such a notice is effective at the time of receipt. Any member may be removed at any time by a vote of two-thirds (2/3) of the members. In the event of removal the Appointing Entity may opt to fill the vacancy or it may elect to not fill it. Not filling a vacancy will not affect the delegation vote count. It will remain the same even though the number of members has been reduced by the vacancy.

Recommendation 10 – Leadership of the NomCom

The BWG-NomCom notes that the selection of the Chair of the NomCom should be performed with due care and thus recommends that the BGC create clear qualifications and criteria for the attributes for the selection of the leadership role. The performance and outcome of the NomCom are strongly tied to the quality of the leadership of the Chair. In addition to the qualification criteria for members to the NomCom, the Board in its selection of a Chair must also take into account qualities of leadership. Such qualifications could include but not be limited to qualities such as decisiveness, confidence, focus, ability to delegate, and communication.

The BGC's recruitment process for the NomCom Chair should be performed in a professional manner, and without restriction to only the ICANN communities. The Chair can be selected from within or outside the ICANN community. In addition to a general call for candidates, the board could request that each Appointing Entity of members to the NomCom to also suggest a candidate for NomCom Chair. The board could also consider other recruitment techniques such as advertising of obtaining the services of a recruiting firm. Whatever technique or combination of techniques used to recruit candidates for the NomCom Chair, the result must be a pool of strong and viable candidates.

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Recommendation 11 – Implement Two Year Term for Chair

The BWG-NomCom recommends that the term for the Chair be two years, with no Chair allowed to serve for two consecutive terms. The imposition of term limits assures that no Chair can influence selections across three Board member selection cycles, which is protection against capture of the NomCom (and potentially, capture of the Board).

Recommendation 12 – Succession Planning for Chair

The BWG-NomCom recommends that the Chair-Elect position be removed. The current structure selects a Chair-Elect, who must be reaffirmed at the conclusion of the Chair-Elect's term, with no surety of selection to the Chair position. This results in uncertainty about who the leadership of the NomCom will be in the succeeding year. To provide for succession in the event of an unforeseen vacancy in the Chair position, the BWG-NomCom recommends that the Board could make an interim appointment from one of the delegation heads on the current NomCom. The delegation from which the interim Chair was selected could then be back filled by the Appointing Entity. Alternatively, the Board could make an interim appointment of an individual who is not a member of the current NomCom.

Recommendation 13 – Regular Review of NomCom Chair Performance

The BWG-NomCom recommends that the BGC conduct an anonymized survey of the NomCom to assess the performance of the NomCom Chair. This survey should be conducted at least twice during the term of the NomCom with the results provided confidentially to the BGC. This allows the BGC a method to provide timely feedback to the Chair about the Chair's performance, and about changes that might be appropriate to enhance productivity and comity. The BGC would only reflect back to the Chair of the NomCom the information gained from the survey; it could not add its own comments or evaluation.

Recommendation 14 – Succession Planning

The Chair may be removed at any time by a vote of two-thirds (2/3) of the delegations. Each delegation must vote unanimously for removal of the Chair. The interim replacement would be made as provided for in Recommendation 12.

Appointment to Other Entities

Recommendation 15 – Maintain NomCom Appointments to Entities Other Than the Board

In fulfillment of its charter, the BWG-NomCom reached out to the leadership of groups other than the Board to which the NomCom makes appointments (GNSO, ccNSO and ALAC) on the issue of whether there was value in the NomCom

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continuing to make appointments to entities other than the Board. The responses received generally noted the value of the NomCom appointees and encouraged the continuation of these selections. As a result, the BWG-NomCom recommends no change in the NomCom process for appointing members to the GNSO, ccNSO, and ALAC.

Recruitment

With regard to Recommendation 4 of the Nominating Committee Review Finalization Working Group, since the publication of the report, the NomCom has started working with an internationally recognized recruiting firm and conversations with the NomCom indicate that this process is working well. As a result, the BWG-NomCom is not issuing any recommendations on the recruitment aspect of the NomCom.

**Revised Charter for Board Working Group on Nominating Committee
Recruitment & Selection Process and Size & Composition**

Background/Purpose

In its Final Report issued in January 2010, the Nominating Committee (NomCom) Review Finalization Working Group did not address the size or composition of the NomCom but rather, at Recommendation 10, recommended follow-up and consideration of this issue in three years. Consistent with the final report recommendations, the NomCom size and composition issue should now be addressed.

This also includes the issue of recruitment and selection. In Recommendation 10, there was recognition that the use of the NomCom as a recruitment committee required *more* membership, while the deliberative processes of the NomCom would likely benefit from a smaller membership. Though other portions of the NomCom Review Working Group Final Report, such as Recommendation 4, noted that the NomCom had already begun working toward separation of the recruitment role, that separation has not been thoroughly achieved.

As a result, any consideration of the composition and size of the NomCom in line with the three-year follow-up suggested at Recommendation 10 naturally includes additional consideration of the potential separation of the recruitment and selection functions.

The **Board Working Group on Nominating Committee (BWG-NomCom)** will conduct the follow-up effort in line with the recommendations of the Review Finalization Working Group.

The purpose of the BWG-NomCom is to execute the recommendation of the Review Finalization Working Group (recommendation 10) to address the size and composition, and the recruitment and selection process of the NomCom, as well as address the related issues, including:

- Whether a representational model is appropriate for the NomCom in the future;
- Determination of the appropriate length of term of service by NomCom members and whether term limits should be imposed;
- Whether the NomCom should continue to fill other key positions in addition to Board members.

This follow-up effort will also consider any relevant input from the work of the second Accountability and Transparency Review Team (ATRT 2), which issued its Final Report on 31 December 2013, as well as other relevant developments.

The BWG-NomCom will issue recommendations, as appropriate.

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Responsibilities

In preparing for the needed Board decisions, the BWG-NomCom shall:

a. Undertake a factual analysis to determine whether the ICANN NomCom's current composition as well as the recruiting and selection meet the requirements;

b. Analyze and assess data gathered based on a set of appropriate benchmarks and metrics;

c. Perform outreach to assess feasibility of the alternative measures identified;

d. Consider and factor in, as appropriate, parallel projects (for example, ATRT2 and Strategic Planning);

e. Summarize the findings from steps above and recommend actions to be taken in a draft report for public comment; and

f. Evaluate public comments received, adapt the draft report findings as appropriate in preparing a final report, for consideration and decision by the ICANN Board.

Membership

The membership of the BWG-NomCom is proposed to include up to eight Board members, in line with the composition of the previously assembled Review Finalization Working Group. The SIC suggest that the Board consider the option of adding non-Board members for additional community perspective.

Timeline

The BWG-NomCom shall plan its work to comply with the following milestones. The SIC recognizes that this timeline may need to be adjusted in order to accommodate discussions and consultations with the community.

- 2 June 2014: Draft report delivered to the Structural Improvements Committee (SIC)

- ICANN 50 (22-26 June 2014): Draft report for Board discussion and publication for public comment, as appropriate.

- July 2014: draft report published for public comment

- Mid-August 2014: end of public comment period

- 10 September 2014 (Board Workshop): SIC considers final report modified in light of comments and suggests Board action

- ICANN 51 (12-17 October 2014): Final report submitted to Board for approval

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References

a. Final report of the NomCom Review Finalization Group issued in January 2010
http://www.icann.org/en/groups/reviews/nomcom/nomcom-review-finalization-wg-final-report-29jan10-en.pdf .

b. Nominating Committee Improvements Implementation Project Plan adopted in March 2012
http://www.icann.org/en/groups/reviews/nomcom/nomcom-improvements-implementation-plan-01mar12-en.pdf

ICANN REFERENCE MATERIALS NO. 2014.07.30.2b

TITLE: **Board Compensation**

PROPOSED ACTION: **For Board Action**

Document/Background Links

Please find the following attachments:

Attachment A is Towers Watson's Report, dated April 2014, on ICANN Board Compensation that was posted for public comment, which can also be found at https://www.icann.org/en/system/files/files/board-compensation-considerations-30apr14-en.pdf.

Attachment B is a redlined set of proposed Bylaws revisions required if the Board decides to approve offering compensation to non-voting Board liaisons, which can also be found at https://www.icann.org/en/system/files/files/proposed-revisions-compensation-05may14-en.pdf.

Attachment C is the Report of Public Comments received.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 14 July 2014
Email: amy.stathos@icann.org
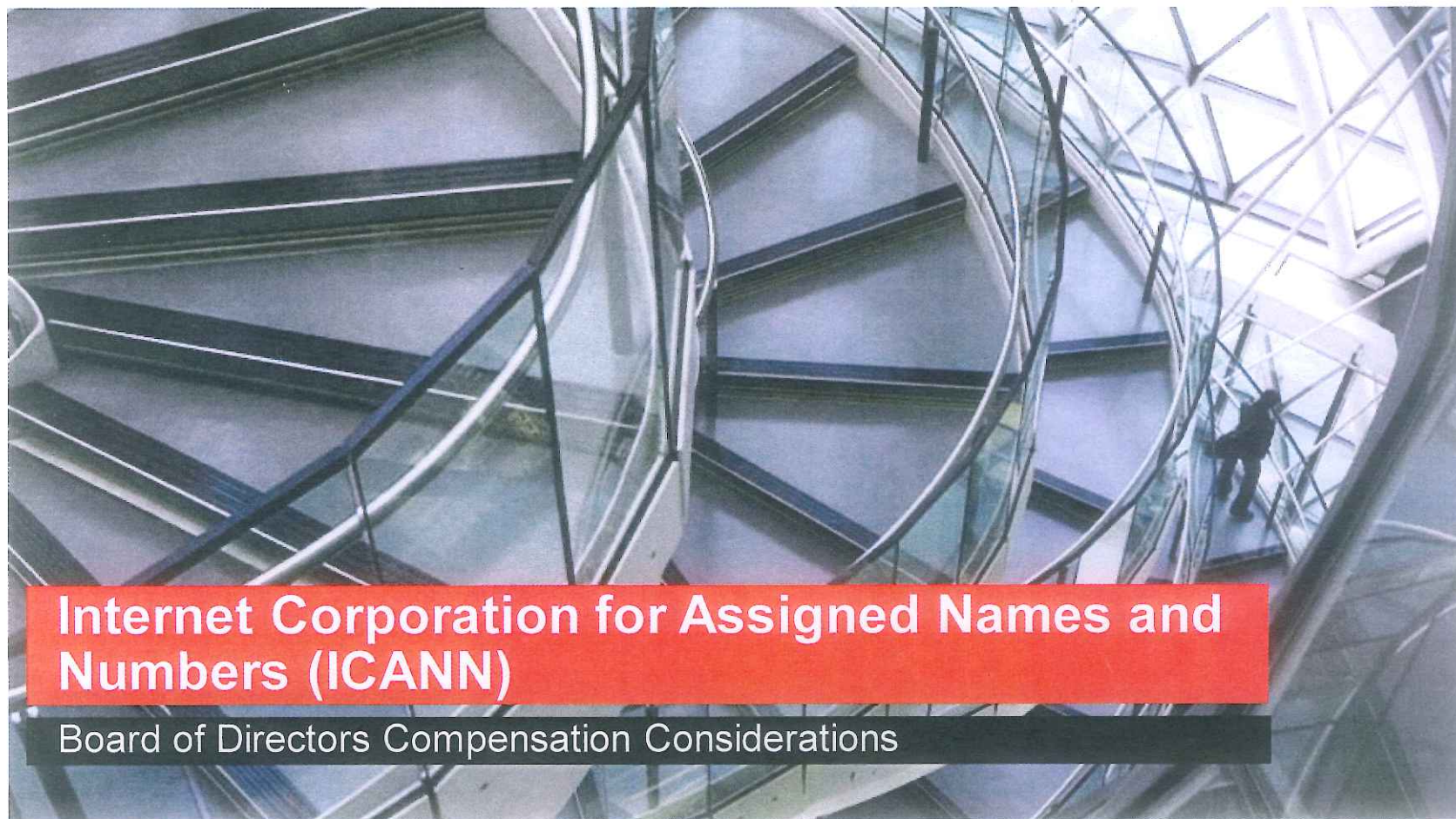
Internet Corporation for Assigned Names and Numbers (ICANN)

Board of Directors Compensation Considerations

A presentation to ICANN's Compensation Committee

April 2014

towerswatson.com

Introduction

- In October 2013, ICANN's Compensation Committee ("Committee") asked staff to engage Towers Watson to re-evaluate the reasonableness of the structure of its outside director compensation program, including the level of compensation, which was originally established for the Board Chair in 2010 and the remaining Board members in 2011

- The scope of this report includes an update of the reasonableness review of total annualized cash compensation and pay program structure for outside (non-executive) directors.

- Board members are "disqualified persons" under Intermediate Sanctions rules of Internal Revenue Code Section 4958 and compensation paid to them can be eligible to earn the presumption of reasonableness only if a committee of authorized, independent persons approves their compensation

  — This report does not address the roles of ICANN non-voting Board liaisons who are not "disqualified persons" subject to the Intermediate Sanctions rules of Internal Revenue Code Section 4958 but who have similar responsibilities to Board members and serve as appointed representatives for ICANN constituent groups

- The objective of the report is to provide the Board with data to set and justify that the total compensation paid to the Board members is reasonable

Introduction *continued*

- ICANN is an international, nonprofit, multi-stakeholder organization. It is responsible for the stability and interoperability of the DNS, the distribution of IP addresses and accurate recordation of protocol parameters

- Furthering this mission requires ICANN to serve a diverse stakeholder base in a transparent manner

- Over the past 15 years, both the Internet and ICANN have grown in complexity. In coming years, as the Internet becomes even more accessible to people around the globe, ICANN expects the volume of work to grow at even a faster pace than it has in recent years

- Service on ICANN's Board involves global responsibilities, necessitates a substantial time commitment which also involves international travel and requires individuals with skills and experience across a broad range of areas

Nonprofit Board Compensation Trends

- Compensation paid for service on nonprofit boards is rare, reported by 16% of nonprofit organizations in the 2012-13 NACD Nonprofit Governance Survey[1]; however, there are benefits to compensating nonprofit board members:
    - Promotes economic diversity, giving members an opportunity to serve who might otherwise be unable to do so
    - Promotes professionalism rather than amateurism
    - Attracts the most qualified and able individuals
    - Awards in a tangible way valuable personal time and contributions made for the mission
    - Promotes more risk taking
    - Stimulates better attendance at board and committee meetings
    - Holds board members more accountable for performance
- However, the Attorneys General in several states are scrutinizing nonprofit Board of Director pay

[1]While 33% of large organizations reported compensating Board Directors

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It is important that compensation be comparable to that of other nonprofit organizations and not deemed excessive by the IRS

Overview of Internal Revenue Code Section 4958

Background – Excess Benefit Transactions and Rebuttable Presumption

- Certain "disqualified persons," including directors, of a §501(c)(3) organization like ICANN may be assessed excise taxes if they are involved in an excess benefit transaction

- An excess benefit transaction is any transaction in which the director receives an economic benefit from ICANN that is greater than the consideration, including services performed, that the director provides to ICANN

- IRS rules provide for a "rebuttable presumption" process that results in the *presumption* that compensation paid to a disqualified person, including a director, is reasonable

- The presumption is triggered if ICANN complies with three requirements:
  - Compensation is approved by an authorized body of ICANN whose members are free of financial conflict of interest regarding the compensation being reviewed
  - The authorized body considers "appropriate data as to comparability" prior to making its decision
  - The authorized body documents its decision making process adequately and within a reasonable amount of time after the decision

Overview of Internal Revenue Code Section 4958

<u>Overview of Internal Revenue Code Section 4958</u> *(continued)*

Nature and Effect of the Presumption

- When established, the presumption imposes on the IRS the burden of showing that comparability data relied upon are not valid, which is a substantial benefit in any dispute with the IRS

- If all directors are compensated, it may make it difficult to trigger the presumption

- However, while the IRS considers the presumption to be a "best practice," it is not a legal requirement

Overview of Internal Revenue Code Section 4958 *continued*

Suggested Process If Presumption Cannot be Established

- Directors agree not to receive more than "reasonable compensation" for their services ("reasonable compensation" is an amount paid by like organizations for like services under like circumstances)

- ICANN follows a process in setting compensation that is reasonably calculated to prevent the payment of more than reasonable compensation

  - This is a process that follows the presumption to the extent possible

- It is essential that ICANN retain and rely upon custom market-comparability studies conducted by independent valuation consultants

- The valuation consultants should issue a report that meets the requirements of a "reasoned opinion" of valuation counsel for purposes of the IRC § 4958 rules

- The consultants should be on hand and available to discuss their reports when compensation is being set

- The valuation process and the opinion should be reviewed annually

Overview of California Nonprofit Corporations Code

Background

- California Nonprofit Corporations Code protects volunteer/unpaid directors of nonprofit corporations against personal liability for acts. Specifically, no cause of action for monetary damages may be asserted against a director or officer of a California Nonprofit Corporation qualifying under §501(c)(3) on account of any negligent act or omission occurring:

  - Within the scope of that person's duties as a director acting as a board member, or officer acting in an official capacity

  - In a manner that the person believes to be in the best interest of the corporation; and in the exercise of his or her policymaking judgment

  - Limitation only applies if the corporation maintains a general liability insurance policy of at least $1 million (for a corporation with an annual budget in excess of $50,000) in force both at the time of the injury and at the time that the claim is made. Limitation is also subject to carve-outs for self-dealing transactions, intentional or willful gross negligence, fraud and other bad faith action

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Overview of California Nonprofit Corporations Code
continued

Background *(continued)*

- Compensated directors of California nonprofit corporations are still protected against personal liability for failure to discharge their obligations as a director, subject to the following:
  - Conduct is subject to the "business judgment rule," requiring directors to act in good faith, with reasonable inquiry and in the best interests of the corporation and exercising reasonable care as an ordinarily prudent person under like circumstances
  - Does not protect directors against liability for self-dealing actions or participation in tortious conduct
  - California Nonprofit Corporations Code also provides that directors of a nonprofit public benefit corporation, without regard to compensation, must be indemnified by the corporation if successful on the merits in defense of any proceeding

Background and Methodology

Defining a Comparable Market for ICANN's Board of Directors

- Similar to the framework for examining ICANN's executive compensation, we have assembled a peer group of for-profit and nonprofit organizations that we believe will serve as the best benchmark for outside director compensation at ICANN

- The peer group analysis was supplemented with data from published surveys

- We consider market data sources covering the following comparable markets to be relevant:

  - For-profit general industry companies of similar size (revenue)

  - Nonprofit organizations of similar size and complexity, particularly global, multi-stakeholder organizations

Comparability Data Sources Reviewed
• TWDS 2012 Report on Director Compensation Policies and Practices
• NACD 2012- 2013 Nonprofit Board Governance Survey
• NACD 2012-2013 Director Compensation Report
• Select Form 990s (Nonprofit organizations)
• Select Proxy Reports (For-profit companies)

TWDS: Towers Watson Data Services
NACD: National Association of Corporate Directors

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Board Compensation – Form of Compensation

- **Form of Compensation**: In terms of the structure of outside director compensation, organizations often provide one or more of the following:
    - **Annual retainer**: flat fee intended to cover annual board service; often paid annually or in quarterly installments; typically differentiated between normal directors and the independent chairman (if any)
    - **Board meeting fee**: per meeting fee paid for attendance at board meetings; reduced fee is often paid for telephonic meetings; all outside directors typically receive the same fee
    - **Committee retainer**: annual fee paid for committee service; often differentiated by committee and the associated workload/complexity; often differentiated between committee members and committee chairs; especially demanding committees may receive a premium
    - **Committee meeting fee**: per meeting fee paid for attendance at committee meetings; reduced fee is often paid for telephonic meetings; all outside directors typically receive the same fee
    - **Equity grant**: among publicly-traded, for-profit organizations, it is common to provide annual grants of restricted stock and/or stock options
- The chart below illustrates the typical method of payment for Board service:

Role/Service	Meeting Fee Only	Retainers Only	Meeting Fees & Retainers
Chairman of the Board	0%	57%	43%
Board Service	0%	58%	41%
Committee Member	47%	46%	7%
Committee Chair	1%	96%	2%

Source: 2012 TWDS Board of Directors Compensation Policies and Practices - U.S.
Audit Committee data used for Committee Member and Committee Chair

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Board Compensation – Amount of Compensation

- To determine reasonable compensation levels, we have focused on the average of median *cash* compensation based on the following rationale:

  - Nonprofit directors have less risk associated with their role than public company directors (e.g., legally required SEC disclosure requirements, stock exchange requirements, and risks associated with public ownership)

    — As a result, the median compensation of nonprofit companies is nearly always below for-profit companies

  - Equity is not available to nonprofit organizations

- Due to the complexity of ICANN's business and the need to attract and retain qualified leadership, both for-profit and nonprofit data are appropriate as the talent does reside within many sectors

- The chart below summarizes our findings:

Source*:	25th %ile	Cash Median	75th %ile
2012-2013 NACD General Industry (For-Profit)[1]	$36,934	$54,967	$81,884
Public Company Peer Group (For-Profit)	$32,500	$49,500	$60,152
990 Analysis (Nonprofit)	$6,180	$21,875	$32,263
Average**	$25,000	$45,000	$60,000

* Data reflects a blend of "Micro" segment - Revenues of $50M < $500M and "Small Companies" segment - Revenues of $500M < $1.0B

**Average data rounded to the nearest $5,000.

Board Compensation – Amount of Compensation:
Nonprofit Boards

- Peer group compensation data were collected from each company's most recently filed Form 990 and are presented on the following page
  - The peer group of nonprofits who pay their outside directors is comprised of nonprofit peers identified in the executive compensation framework plus additional organizations identified in prior analyses
  - Eight of the organizations in the executive compensation framework do not pay their Board members and are not included in this analysis
- Due to the particular reporting requirements in the Form 990s, we can only determine total compensation figures for the Board members of the peer group organizations
  - Data such as annual retainers and meeting fees are not reported separately
  - Board roles such as Committee Chairs and Committee members are not disclosed; due to limited role disclosure, the peer group data are summarized as follows:
    — Chair of the Board
    — Average of all other directors – this excludes the Chair of the Board and includes all other Board roles (Vice Chair, Committee Chair, Committee members and regular Board members)

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Details of Select Nonprofits

Organization	Year of 990	Revenue ($000s)[4]	# of Dirs Receiving Compensation[5]	Outside Chairman Avg Pay	Avg Director Pay (non-Chair)	Estimated Total Board Cost
Intl Financial Reporting Stds. Foundation[3]	2011	$41,974	18	--	$35,442	$637,955
American Inst of Certified Public Accountants[3]	2011	$213,213	3	$20,000	$21,875	$63,750
Financial Accounting Foundation[1]	2011	$46,294	14	--	$48,170	$674,375
CNA Corporation	2010	$125,894	15	$33,500	$17,571	$279,500
Int. Institute of Tropical Agriculture[2]	2011	$47,427	15	--	$4,309	$64,638
Intl Food Policy Research Institute	2011	$81,713	11	$15,900	$7,360	$89,500
Ithaka Harbors Inc.	2011	$64,199	9	$9,376	$5,000	$49,376
Logistics Management Institute	2010	$192,015	11	$50,615	$31,900	$369,615
Analytic Services Institute	2010	$123,666	10	$40,000	$31,111	$320,000
Altarum Institute[3]	2011	$66,418	12	$55,625	$28,841	$372,875
Riverside Research Institute	2010	$86,931	7	$48,165	$32,625	$243,915
Institute for Study Abroad	2011	$44,311	6	$2,500	$2,500	$15,000
Rand Corporation[3]	2011	$287,428	11	$7,957	$3,492	$42,879
Society for HR Management[3]	2011	$101,873	12	$35,000	$17,727	$230,000
SRI International[3]	2011	$588,914	10	$180,000	$50,206	$631,853
75th Percentile		$158,954	13	$48,778	$32,263	$371,245
Average		$140,818	11	$41,553	$22,542	$272,349
Median		$86,931	11	$34,250	$21,875	$243,915
25th Percentile		$55,813	10	$14,269	$6,180	$64,194

Notes:

The American Bar Association, included in the 2011 analysis, did not report any trustee compensation in its most-recent Form 990.

[1] FAF approved a revised governance structure approved by the Board of Trustees in 2008 creating a new Chairman position; Chairman is also an Officer

[2] Board Chair information reported for partial year only

[3] Organizations included in the Executive Framework

[5] Reflects most up to date revenue figures available

[6] Includes Directors receiving compensation and outside chairmen only

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Details of Select For-profits

Company	FYE Revenue ($mm)	# of Outside Board Members	Fees Earned or Paid in Cash			Audit Committee		Compensation Committee		Nominating / Governance Committee	
			Retainer	Median Total Cash Compensation Paid Board Member	Chairman Extra Retainer	Committee Extra Retainer	Chairman Extra Retainer	Committee Extra Retainer	Chairman Extra Retainer	Committee Extra Retainer	Chairman Extra Retainer
Ancestry.com Inc.	$400	7	$30,000	$32,000	--	$5,000	$8,000	$4,000	$6,000	$2,000	$3,000
ComScore, Inc.	$255	6	$25,000	$31,000	--	$10,000	$8,000	$5,000	$5,000	$1,000	$2,000
Digital River Inc.	$386	5	$60,000	$60,152	$50,000	$5,000	$15,000	$4,000	$11,000	--	$10,000
Internap Network Services Corp.	$274	7	$20,000	$43,000	$30,000	$7,500	$7,500	$5,000	$5,000	$5,000	$2,500
iPass Inc	$126	6	$20,000	$49,500	$20,000	$5,000	$10,000	$5,000	$5,000	$5,000	$5,000
j2 Global Communications Inc.	$371	5	$60,000	$57,500	--	--	$20,000	--	$15,000	--	$15,000
Limelight Networks, Inc.	$180	6	$25,000	$27,500	$25,000	$5,000	$10,000	$2,000	$8,000	--	--
Unwired Planet	$0	7	$40,000	$83,000	$20,000	$15,000	$15,000	$9,000	$6,000	$5,000	$5,000
QuinStreet, Inc.	$305	6	$34,000	$51,000	--	--	$15,000	--	$15,000	--	$15,000
Travelzoo Inc.	$151	3	$30,000	$66,000	--	--	$30,000	--		--	--
ValueClick Inc.	$661	5	$25,000	$32,500	--	--	$20,000	--	$7,500	--	$7,500
VeriSign, Inc.	$874	5	$40,000	$77,500	$100,000	$25,000	$15,000	$20,000	$10,000	$10,000	$5,000
Web.com Group, Inc.	$408	6	$25,000	$43,500	$8,000	$7,500	$5,000	$4,000	$3,000	$1,500	$1,500

	FYE Revenue ($mm)	# of Outside Board Members	Retainer	Median Total Cash Compensation Paid Board Member	Chairman Extra Retainer
75th Percentile:	$400	6	$40,000	$60,152	$40,000
Average:	$338	6	$33,385	$50,319	$36,143
50th Percentile:	$305	6	$30,000	$49,500	$25,000
25th Percentile:	$180	5	$25,000	$32,500	$20,000

Footnotes:

* "Total cash compensation" for the typical director is based on the median value reported in the "fees earned or paid in cash" column of the director summary compensation table included in the most recent proxy statement. Directors serving in board leadership positions (chairs of the Audit, Compensation, Risk and Governance committees, lead director and/or chairman) are excluded from determining the median value. Similarly, directors that did not serve the entire year, but are otherwise included in the director summary compensation table in the proxy, are excluded from determining the median value.

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Board Compensation – Amount of Compensation:
Other Considerations – Time Commitment

- When considering the introduction of compensation, it is important to consider relative time commitment

  - ICANN's Board currently holds three in-person meetings each year, each of which are six to seven days in length and require international travel, 10 special telephonic meetings, and three in-person retreats, each of which are two to three days in length (not including travel)

  - The chart below compares ICANN Board meetings to other organizations

Item	BoardSource Nonprofit	Towers Watson Nonprofit	NACD Nonprofit	Towers Watson For-Profit	ICANN (2013)*
Board Meetings Per Year (in person and telephonic)	7.4 (average)	6 (median)	5.8 (average)	7 (median)	15
Avg. Board Meeting Time	3.3 hours	--	4.9 hours	--	2 - 2.5 hours
Avg. # of Committee Meetings for each Committee	--	3.6	3.7	4.3	8.2
Annual Retreat Prevalence	52%	--	--	--	3

- All ICANN directors serve on at least one Committee, but typically serve on at least two committees. In addition, Board work outside of the above average number of meetings for 2013 has increased significantly which was considered in developing the recommendation.

  - Board meetings include international travel which is not represented in the chart above but was considered in the final recommendation

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Conclusions

Reasonableness

- The vast majority of not-for-profit organizations continue to provide no compensation to Board members

- While select organizations have chosen to compensate their Board members, stakeholder attention and (potential) regulatory developments keep the number of organizations limited

- Unlike executive compensation, director compensation among nonprofit organizations may not always be directly related to company size, time commitment and level of responsibility

- Based on applicable market data and consideration of time commitment, we feel that it would be reasonable to pay outside directors $40,000 to $45,000 annually for board service

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Conclusions *continued*

- **Form and Amount**
  - Offer annual cash retainer of $40,000 - $45,000 for outside directors and continue $75,000 for the Chairman of the Board; allow directors to elect whether or not they would like to receive the retainer
    - Principle #1: **Comparable amounts**. Approximates median of comparable for-profit and nonprofit market levels; Chairman of Board are typically compensated at higher levels to recognize the additional responsibilities and time commitment that is often required; mitigates perception that compensation would be the primary reason someone would join the Board; supports participation by directors in developing countries. This Principle as it relates to the Chair of the Board may also apply to the Chair for the New gTLD Program Committee.
    - Principle #2: **Keep it simple**. Single fee avoids administrative hassles of meeting fees (e.g., what constitutes a meeting, tracking telephonic meeting fees) and avoids perception that directors are holding meetings or establishing committees for financial gain. Additional compensation for Committee Chair work is intended to recognize the additional time and effort spent by the Chairs to prepare for committee meetings. Current ICANN Board members serve on multiple Committees and often in Chair roles. This supports a single increased fee for all Board members and elimination of a separate fee for Committee Chairs.
    - Commit to reviewing Board compensation regularly (both in terms of the practice itself, as well as compensation levels). We understand the current work plan calls for a view every two years.

Notes on Nonprofit Peer Group

- The following organizations included in the executive framework do not pay their outside Board members:

  - American Enterprise Institute for Public Policy

  - Brookings Institute

  - Carnegie Institution of Washington

  - Center for Strategic and International Studies, Inc.

  - Heritage Foundation

  - Internet Society

  - National Academy of Sciences

  - World Resources Institute

Notes on Survey Sources

- *Proxy peer group*: Data represent 13 for-profit companies with median revenues of $338 million

- *Form 990 Research*: Data represent 15 nonprofit organizations with median revenues of $86 million

- *NACD General Industry*: Data represent a blend of "Micro" segment - Revenues of $50M < $500M and "Small Companies" segment - Revenues of $500M < $1.0B. 304 and 298 companies participated in the NACD's 2012-2013 Director Compensation Report (median revenues $253 and $681) respectively

Article VI, Board of Directors

Section 1. COMPOSITION OF THE BOARD

The ICANN Board of Directors ("Board") shall consist of sixteen voting members ("Directors"). In addition, four non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in Section 9 of this Article. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN Board.

****

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;

3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;

4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

5. Persons who are able to work and communicate in written and spoken English.

****

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

a. One appointed by the Governmental Advisory Committee;

b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;

c. One appointed by the Security and Stability Advisory Committee established by Article XI of these Bylaws;

d. One appointed by the Internet Engineering Task Force.

2. The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN written notice of its appointment.

3. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.

4. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

···

Section 22. COMPENSATION

1. Except for the President of ICANN, who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.

2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN for services to ICANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.

3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

7. As used in this Section 22, the following terms shall have the following meanings:

(a) An "Independent Valuation Expert" means a person retained by ICANN to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (iv) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.

(b) A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement

that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(c) "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Report of Public Comments

Title:	Board Member Compensation
Publication Date:	14 July 2014
Prepared By:	Amy A. Stathos

<table>
<tr><td colspan="3">Comment Period:</td><td colspan="2">Important Information Links</td></tr>
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<tr><td>Reply Close Date:</td><td colspan="2">12 June 2014</td><td colspan="2">View Comments Submitted</td></tr>
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<tr><td>Staff Contact:</td><td colspan="2">Amy A. Stathos</td><td>Email:</td><td>amy.stathos@icann.org</td></tr>
</table>

Section I: General Overview and Next Steps

Now that comments have been received, first the ICANN Compensation Committee will consider the comments and make a recommendation to the ICANN Board for consideration.

Section II: Contributors

At the time this report was prepared, a total of seven (7) public comments had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Internet Architecture Board	IAB Chair	IAB
ICANN Business Constituency	Steve DelBianco	BC

Individuals:

Name	Affiliation (if provided)	Initials
Seun Ojedeji		SO
Albert Soto		AS
Michele Neylon		MN
Alan Greenberg		AG
Klaus Stoll		KS

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

One commenter (MN) found the presentation about board compensation "very useful and enlightening." MN also stated that it only seems reasonable that board members are compensated for their time and effort and a lack of compensation can lead to many able candidates being unable to apply for a role. MN also noted that compensation should be available for Liaisons who bring specific subject matter expertise to the board,. MN, along with one other commenter (SO), also asked why the GAC liaison was excluded.

The BC "endorses this change to ICANN Bylaws, in order to attract qualified directors who could not devote significant time to ICANN board participation unless they were to receive compensation."

One commenter (SO) thinks the Bylaws revisions are reasonable, but noted that it is important to ascertain that this won't be a double pay to the non-voting member (such as if the group is paying the liaison for their service on the Board). SO also pointed out one reference to five, rather than four, non-voting liaisons in the Bylaws.

The IAB expressed a note of caution and pointed out that the Report on ICANN Board Compensation explicitly excludes Liaisons from its discussion. The IAB recognizes that Liaisons make a similar commitment of time and effort to the Board as Directors, and that they are historically treated the same and considered equals, except that Liaisons do not vote and can not be held responsible for the Board's decisions. The IAB therefore wonders whether the current compensation proposal is a first step in altering the definition of Liaisons more generally, and if in the future the IETF is going to be appointing a form of voting Board member, the IAB would like analyze all the consequences at once, rather than in piecemeal fashion. The IAB is therefore reluctant to support a plan to compensate Liaisons as though they are Directors, due to the different status under the Bylaws of each. The IAB would like to understand what, if any, future plans there might be about the structure of the Board in order to understand the ramifications of this potential change.

AG commented, and was seconded by KS, that subject to a number of related considerations, it is reasonable to compensate Board members, including Liaisons, and noted that the level of compensation suggested is reasonable, although does point out the percentage of proposed increase, indicating it might be relatively high. The considerations include understanding the evidence of the rationale behind what he notes as a reason often cited for needing Board compensation, which is that having no compensation limits the available candidates who will make themselves available for the ICANN Board. AG notes that given that there is often competitive bids for SO/AC seats on the Board, and the Nominating Committee regularly says that it has difficulty selecting Board members due to the surplus of eminently qualified candidates, it would be good to see hard evidence of the rationale.

AG further suggests that the introduction of Board compensation widened the gulf between Board members and volunteers within ICANN, and this proposed change widens that gulf further. AG states that while there is no question many Board members work very hard for ICANN, the same can be said for many ICANN volunteers. AG believes, as he suggests has been claimed, that many in the community put in far more time and effort than some Board members. AG further noted that SO

and AC Chairs have been identified as meeting these levels of commitment, and many or perhaps all do. However, there are others who do not receive the existing benefits given to Board members and AC/SO Chairs who also dedicate unending hours and effort to ICANN.

AG further stated that Board, and now Liaison compensation without consideration of the contributions of others, denigrates the efforts of volunteers. While AG notes that such acknowledgment need not be financial compensation he suggests there are other benefits that Board members get that other volunteers (and Chairs) would appreciate, although he does not specify.

Two commenters (MN and SO) asked why the GAC liaison was excluded and two commenters (SO and AS) suggested that the Bylaws edits should be in the UN languages.

Section IV: Analysis of Comments

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

In terms of the comments relating to the specific compensation issue posted for public comment, and related considerations that some commenters have raised, these will be submitted first to the Compensation Committee for consideration. After the Compensation Committee makes a decision, it will present its recommendation to the Board for consideration.

In terms of the comments related to the six UN languages, once approved, the revised Bylaws will be translated into the six UN languages.

In terms of the questions about the exclusion of the GAC liaison, the current GAC liaison has stated that the GAC liaison is not permitted to accept compensation. Accordingly, the position was excluded from possible compensation. ICANN will continue to monitor if circumstances change that would permit the GAC Liaison for accept compensation if it is offered to non-voting liaisons.

As it relates to the reference to the five rather than four liaisons, that issue has already been addressed in the proposed Bylaws revisions that were posted for public comment.

Pages 52/67 thru 67/67 Redacted
Confidential Employment Matter