

**REFERENCE MATERIALS - BOARD PAPER NO. [To be assigned by  
Secretary]**

**TITLE:** **Acceptance of the Second Organizational Review of the Nominating Committee – Final Report and Feasibility Assessment and Initial Implementation Plan**

The following attachments and links are relevant to the Board’s consideration of the second Organizational Review of the NomCom – final report and Feasibility Assessment and Initial Implementation Plan.

**Documents**

Exhibit A is the independent examiner’s [final report](#).

Exhibit B is Implementation Planning Teams’ [Feasibility Assessment and Initial Implementation Plan](#).

Exhibit C is the [Summary Report](#) of Public Comment Proceeding for the independent examiner’s draft final report.

Exhibit D is the independent examiner’s presentation to the Organizational Effectiveness Committee of the ICANN Board on 8 January 2019.

Exhibit E is the Implementation Planning Team’s presentation to the Organizational Effectiveness Committee of the ICANN Board on 8 January 2019.

**Background links**

ICANN Bylaws, Article 4, Section 4.4, available at <https://www.icann.org/resources/pages/governance/bylaws-en/#article4.4>.

Public Comment proceeding for the independent examiner’s draft final report available at.

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**Independent Review of the ICANN Nominating Committee:  
Final Report**

Report Prepared for the Internet Corporation for Assigned Names and  
Numbers (ICANN)

By Professor William Brown, Dr. Mark Engle, and Dr. Greg Rafert<sup>1</sup>

June 5, 2018

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## I. Introduction

The ICANN Bylaws require the formation of an ICANN Nominating Committee (NomCom) to recruit and select members of the ICANN Board of Directors (ICANN Board), Supporting Organizations (SOs), Advisory Committees (ACs), and the Public Technical Identifiers (PTI) Board.<sup>2</sup> In addition, the ICANN Bylaws also stipulate that the NomCom be independently reviewed at least once every five years.<sup>3</sup> In accordance with this requirement, our review includes:

- An assessment of whether the NomCom has a continuing purpose within the ICANN structure.
- An assessment of how effectively the NomCom fulfills its purpose and whether any change in structure or operations is needed to improve effectiveness, in accordance with the ICANN-provided objective and quantifiable criteria. In particular, we assess:
  - NomCom nominating cycles from 2011 onwards with regard to the effectiveness of the appointments by the NomCom selection process, without conducting performance assessments of individual NomCom appointees.
  - The composition and size of NomCom.
- An assessment of the extent to which the NomCom as a whole is accountable to the wider ICANN community, its organizations, committees, constituencies, and stakeholder groups to make effective selections.<sup>4</sup>

This report provides findings and recommendations based on interviews with, and a survey of, ICANN community members, our observations of NomCom meetings, our experience with ICANN, and extensive work with other nonprofit and volunteer-based organizations aimed at improving their effectiveness and board member selection processes.

Our assessment of the NomCom revealed that the NomCom is operating effectively but has room for improvement. With respect to areas for improvement, we identified two recurring themes that we have used to frame our recommendations. The first is that the NomCom's policies and processes limit the extent to which the NomCom is able to effectively identify the competencies needed in leadership positions within ICANN (especially with respect the Board), recruit candidates based on those needed competencies, and identify individuals in the candidate pool that best fulfill those needed competencies.

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<sup>2</sup> NomCom 2012 FAQs, p. 20 available at <https://www.icann.org/resources/pages/faqs-74-2013-11-12-en>, accessed on November 6, 2017; ICANN Bylaws Article 8, Section 1, available at <https://www.icann.org/resources/pages/governance/bylaws-en#VII-1>, accessed on December 1, 2017.

<sup>3</sup> ICANN Bylaws, Article 4, Section 4, available at <https://www.icann.org/resources/pages/governance/bylaws-en#VII-1>, accessed on December 1, 2017.

<sup>4</sup> ICANN NomCom Review RFP - Project Overview, available at <https://www.icann.org/en/system/files/files/rfp-nomcom-review-19jan17-en.pdf>, accessed on November 3, 2017.

The second theme is that a lack of institutional knowledge and codified best practices reduces the effectiveness of the NomCom and harms its reputation within ICANN, the latter of which further limits its ability to recruit and select high quality candidates. Although the NomCom faces unique challenges associated with the ICANN multi-stakeholder model, in our opinion, policies and procedures that shield the NomCom from influence of the Board or promote “resetting” of the NomCom each year generally do more harm than good. In addition, a lack of codified best processes creates inefficiencies and allows the NomCom to change its processes each year with short notice and limited input from the ICANN community, which is inconsistent with ICANN’s commitment to transparency and accountability.

We provide a total of 27 recommendations in our Final Report. Below, we briefly highlight our principal recommendations, which include:

- Implementing training for NomCom members on Board governance, leadership, and candidate interviewing and evaluating techniques.
- Extending NomCom members’ term to two years and allowing all non-leadership members to vote.
- Rebalancing the NomCom to more accurately reflect the larger ICANN community.
- Codifying NomCom processes and formalizing job descriptions for both NomCom members and appointees.
- Developing standardized evaluation approaches to make recruiting and evaluation processes more consistent and fair.
- Clarifying the desire for and definition of independent Board directors.

In what follows, Section II provides background on the NomCom, Section III discusses the methodology we followed for our independent review of ICANN’s NomCom, and Section IV summarizes strengths of the NomCom. Sections V, VI, and VII then detail our findings and recommendations as follows:

- Section V provides findings and recommendations related to the composition and responsibility of the NomCom and its members. These recommendations focus on training NomCom members, processes for appointing NomCom members, the role of recruiting and evaluation consultants, and issues related to the size and structure of the NomCom.
- Section VI provides findings and recommendations related to the NomCom’s processes for candidate recruitment and evaluation. A recurring theme throughout this section is the need for the NomCom to codify processes at all stages of the NomCom cycle, whether it is developing candidate job descriptions, performing outreach, or evaluating candidates.
- Section VII contains additional recommendations, the implementation of which requires support from the ICANN Board and/or other members of the ICANN community. It focuses on strengthening the process for implementing recommendations related to the

NomCom, developing leaders within the ICANN community, and ensuring seats for independent directors on the Board.

## **II. Background**

### **A. ICANN**

ICANN is an international nonprofit organization that assists in coordinating the Internet Assigned Numbers Authority (IANA) functions.<sup>5</sup> ICANN's multi-stakeholder model is structured to ensure that ICANN represents the interests of industries, non-commercial organizations, individual Internet users, the technical community, and national governments. While final decisions on Internet policy recommendations rest with the Board of Directors, the SOs and ACs also develop policy recommendations and advise the Board.<sup>6</sup> Thus, appointing qualified volunteers to serve on the ICANN Board, SOs, ACs, and the PTI Board is crucial to ICANN's mission.

### **B. ICANN's Nominating Committee**

Since 2002, the ICANN Bylaws have required the formation of the NomCom to recruit and select members of the ICANN Board of Directors, SOs, and ACs.<sup>7</sup> On October 1, 2016, the ICANN Bylaws were amended to task the NomCom with appointing members to the PTI Board.<sup>8</sup> While the members of the NomCom are appointed by the ICANN Board and other ICANN bodies, the NomCom was designed to be independent from the ICANN Board, SOs, and ACs.

The NomCom is responsible for selecting, in total, eight voting members of the ICANN Board, two directors of the PTI Board, three members of the Generic Names Supporting Organization (GNSO) Council (two voting and one non-voting), three voting councilors of the Council of the Country Code Names Supporting Organization (ccNSO), and five voting members of the At-Large Advisory Committee (ALAC).<sup>9</sup> Within a given year, the NomCom will typically nominate three ICANN Board directors, two PTI Board directors, one or two GNSO Council members, one ccNSO councilor, and two or three ALAC members.

The NomCom has a maximum of 15 voting members and six non-voting members, each of whom serves a one-year term. Voting members can serve two consecutive terms, after which they must

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<sup>5</sup> Welcome to ICANN!, available at <https://www.icann.org/resources/pages/welcome-2012-02-25-en>, accessed on November 15, 2017.

<sup>6</sup> Beginner's Guide to Participating in ICANN, p. 2, available at <https://www.icann.org/resources/pages/beginners-guides-2012-03-06-en>, accessed on November 15, 2017.

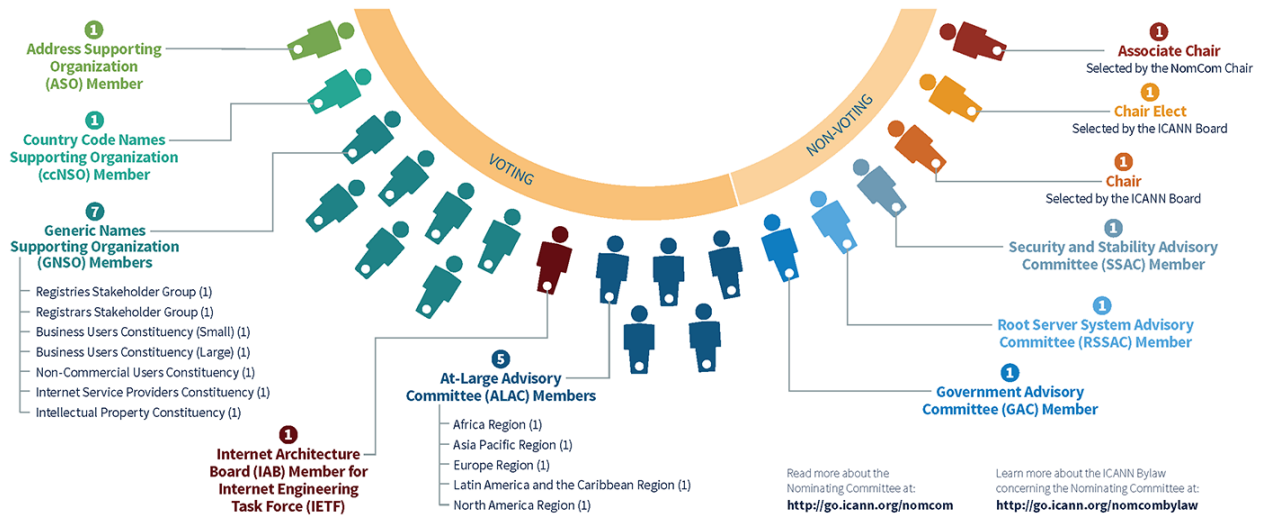
<sup>7</sup> NomCom 2012 FAQs, p. 20 available at <https://www.icann.org/resources/pages/faqs-74-2013-11-12-en>, accessed on November 6, 2017; ICANN Bylaws Article 8, Section 1, available at <https://www.icann.org/resources/pages/governance/bylaws-en#VII-1>, accessed on December 1, 2017.

<sup>8</sup> ICANN Bylaws as amended October 1, 2016, Article 8, Section 2, available at <https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article8>, accessed on March 12, 2018.

<sup>9</sup> ICANN Bylaws Article 8, Section 2, available at <https://www.icann.org/resources/pages/governance/bylaws-en#VII-1>, accessed on December 1, 2017.

wait two years to serve on the NomCom again.<sup>10</sup> The NomCom Chair and Chair-Elect (selected by the ICANN Board) and the Associate Chair (selected by the NomCom Chair) lead the committee and are non-voting members. The other NomCom members are appointed by Constituencies within the SOs/ACs. Although the Government Advisory Committee (GAC) can appoint one member, it has historically not done so. The structure of the NomCom is summarized in Figure 1 below.

**Figure 1: Structure of the 2017 Nominating Committee<sup>11</sup>**

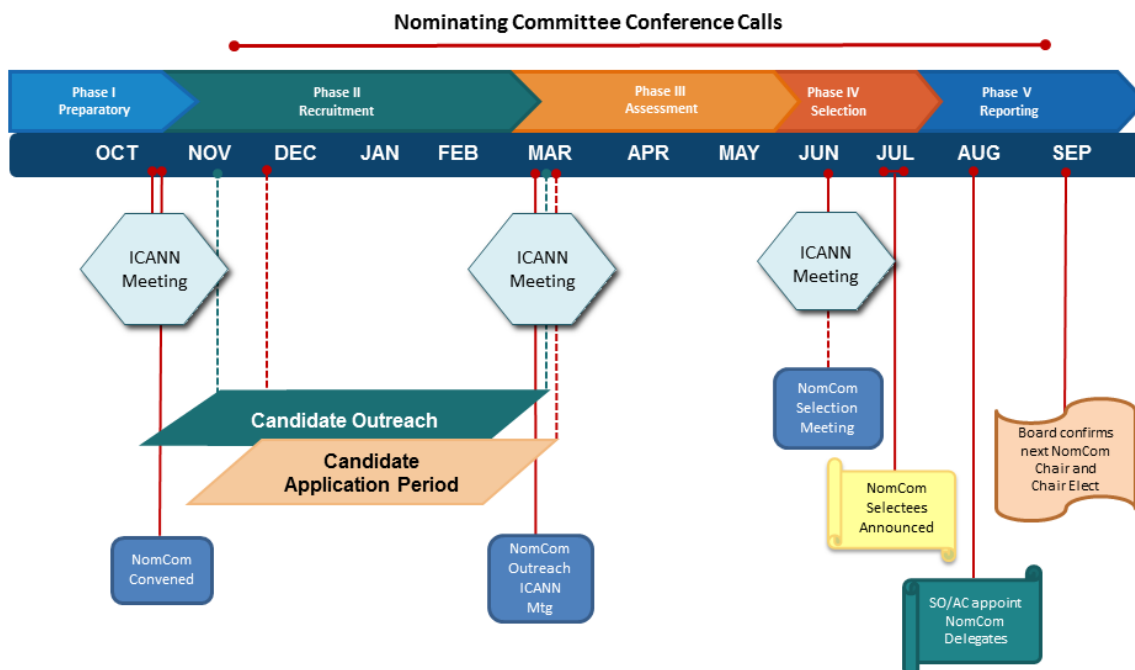


The NomCom schedule currently has five phases: preparatory, recruitment, assessment, selection, and reporting, which are summarized below in Figure 2. Each year, the NomCom is convened in October, conducts outreach and evaluation through early July, and announces selections in September.

<sup>10</sup> ICANN Bylaws Article 8, Section 3, available at <https://www.icann.org/resources/pages/governance/bylaws-en#VII-1>, accessed on December 1, 2017.

<sup>11</sup> NomCom 2017 Webpage, available at <https://www.icann.org/nomcom2017>, accessed on December 1, 2017.

**Figure 2: ICANN Nominating Committee Cycle<sup>12</sup>**



As shown in Figure 2, the NomCom recruitment phase begins in November and ends in March. During this period, NomCom members engage in outreach and the NomCom accepts applications.

The main steps of the Recruitment Phase for the 2017 NomCom were as follows:<sup>13</sup>

November 8-9, 2016: The 2017 NomCom convened to discuss and plan outreach opportunities.

January 11 - March 21, 2017: The application period was opened.<sup>14</sup> The application process involved the following steps:

- Interested individuals submitted the online Application Request Form, and received an acknowledgement email from NomCom Staff.
- Individual applications were created on the NomCom wiki platform. Candidates were notified of the application and sent information about the application process. The applications were kept confidential.
- NomCom Staff monitored applications and reviewed completed applications. NomCom Staff either acknowledged that forms are complete or informed candidates if information

<sup>12</sup> NomCom 2017 Webpage, available at <https://www.icann.org/nomcom2017>, accessed on December 1, 2017.

<sup>13</sup> More details on the recruitment of candidates can be found on the NomCom 2017 Webpage, available at <https://www.icann.org/nomcom2017>, accessed on December 1, 2017.

<sup>14</sup> The PTI Board application period starts February 7 and ends March 21. See NomCom 2017 Webpage, available at <https://www.icann.org/nomcom2017>, accessed on December 1, 2017.



was missing. Towards the end of the application period, NomCom Staff reminded candidates who have not completed their applications.

- The application form was disabled at the end of March 21, prohibiting new applications. There was, however, a nine-day grace period to allow candidates to complete an application if they had started one. Any incomplete applications after the grace period were not considered.

Following the Recruitment Phase, the Assessment Phase begins in April and ends in early June. During this phase, the NomCom reviews candidate materials (the Statement of Interests, or SOIs) and identifies a shortlist of candidates. Roughly 20 to 25 Board candidates (but not SO/AC or PTI Board candidates) are typically selected to be interviewed by the assessment consultant, which conducts phone interviews and reports back to the NomCom with an assessment of the candidates. The NomCom then forms “deep-dive” teams that are typically composed of two NomCom members, which assess candidates in more detail, leading to a selection of approximately ten shortlisted Board candidates for in-person interviews at the ICANN meeting in June.

To narrow the list of candidates, the NomCom has typically sorted candidates into green, yellow, and red “buckets” based on candidate quality. The NomCom shortlist is typically limited to approximately 20 candidates across all positions and ten candidates for in-person interviews. In prior years, the average (mean) value of NomCom members’ scores was used to rank candidates; more recently the NomCom has taken into account variation of scores and moved to using the median.

During the Selection Phase, the NomCom deliberates over the final candidates and makes its selections. In early July, the candidates are notified if they are selected or not, and those who are not selected are asked if they would like to be considered for the following year. Selected candidates undergo additional due diligence and are confirmed if the due diligence is positive. NomCom appointees are announced publicly in September.

### **III. Methodology of the Independent Review of the NomCom**

Our independent review of the ICANN NomCom has been divided into two stages: (1) assessment of the NomCom’s performance and (2) recommendations to improve the NomCom’s effectiveness. Our final report represents both stages.

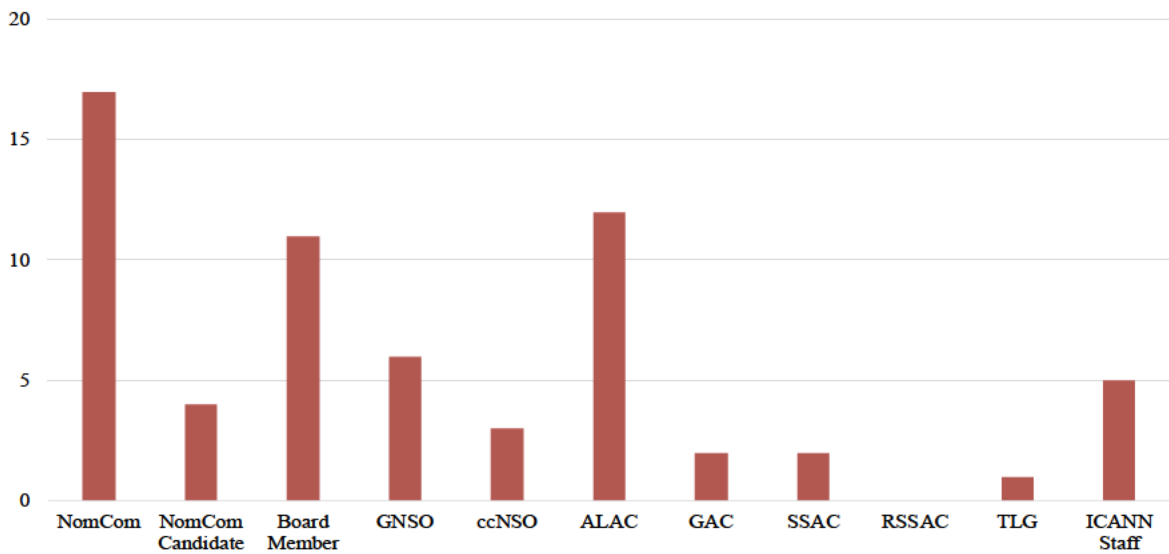
During our independent review of the NomCom, we conducted over 60 individual semi-structured interviews with current and former members of the NomCom and ICANN Board, members of ICANN bodies that send delegates to the NomCom, other members of the ICANN community, and ICANN staff. These interviews were conducted in-person at ICANN59 and ICANN60, and remotely. They were intended to capture a wide variety of individuals’ views on the role of the NomCom, the strengths and weaknesses of the NomCom, and the relationship between the NomCom and the ICANN community.

To ensure we spoke with individuals that possessed a variety of perspectives, interviewees came to our attention and were selected through a variety of channels. We spoke with some people as a result of their direct involvement with the NomCom. We reached out to others based on recommendations from within the community. We also interviewed people who contacted us directly and expressed an interest in sharing their feedback on the NomCom. And, we contacted others to ensure more diverse representation of those interviewed.

Figures 3, 4, and 5 show the composition of interviewees in terms of their affiliations within ICANN, their gender, and the global region in which they reside, respectively.

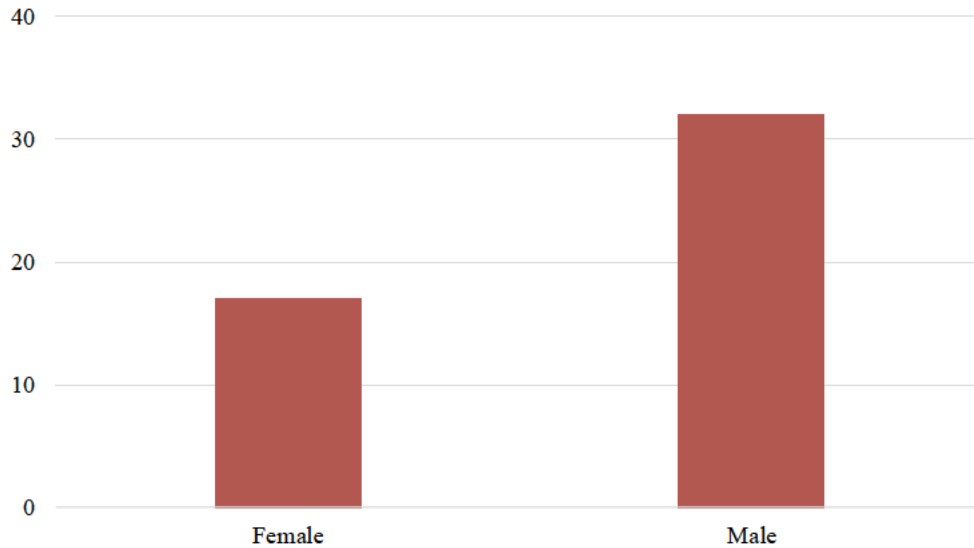
**Figure 3: Current/Former ICANN Roles and Affiliations<sup>15</sup>**

*Number of Interviewees*

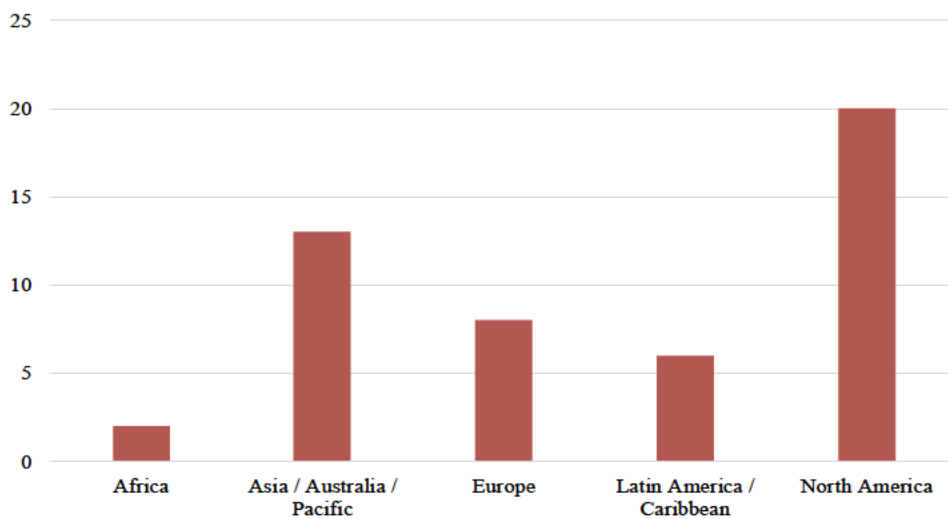


<sup>15</sup> The number of interviewees in each category does not sum to the total number of interviewees because there is some overlap in organizational affiliation.

**Figure 4: Gender Composition**  
*Number of Interviewees*



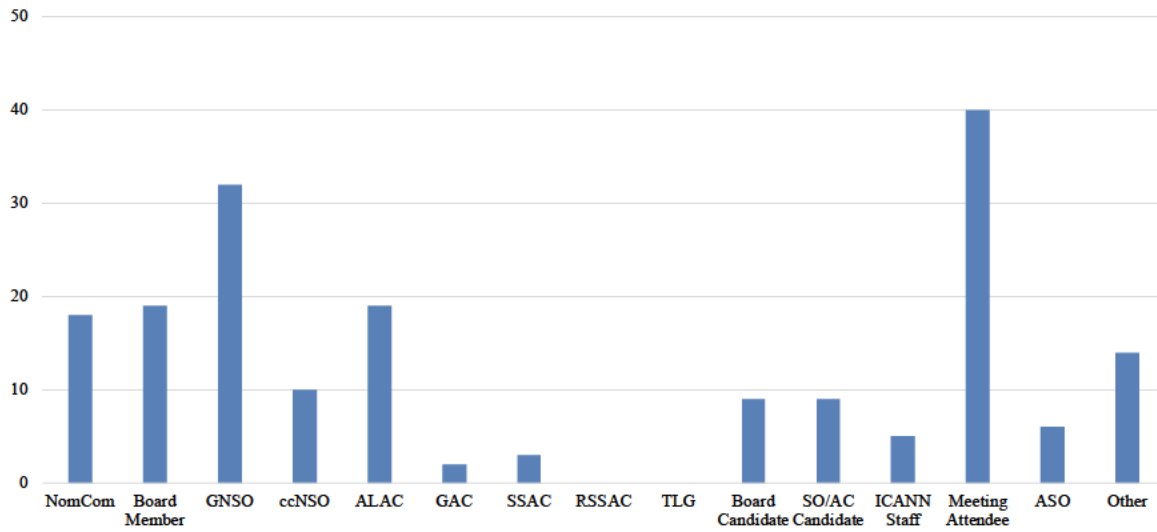
**Figure 5: Region in which Interviewees Reside**  
*Number of Interviewees*



We also received input from the community through an online survey. The purpose of the survey was to collect feedback from a wider set of respondents across the ICANN community and serve as a means for people who were not interviewed to provide feedback on the NomCom. The survey was informed by our interviews and was refined in collaboration with the NomCom Review Working Party (RWP). The survey was publicized widely, used best practices in survey design, and helped us determine the extent to which additional interviews would be necessary.

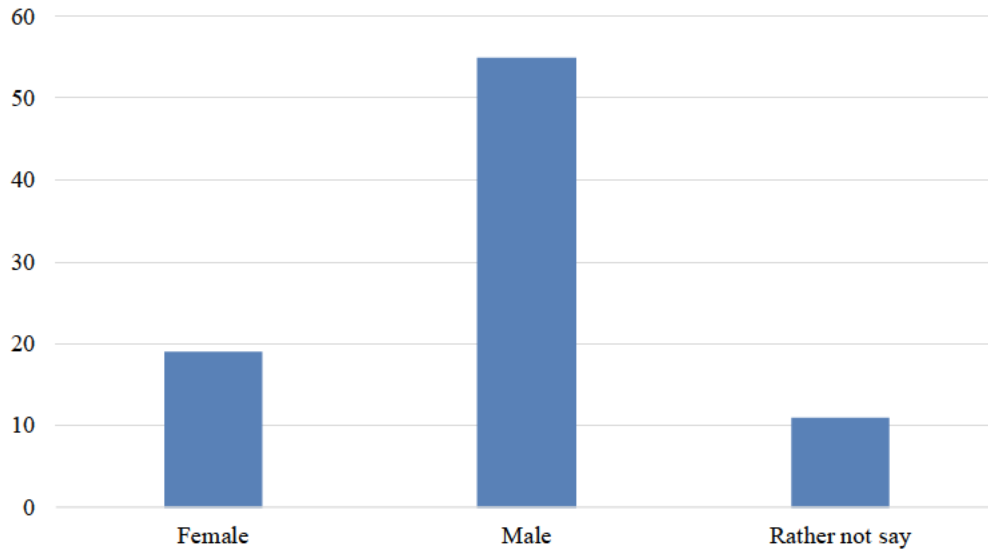
The online survey collected feedback from current and former members of the NomCom, the ICANN Board of Directors, and SOs/ACs, as well as from ICANN staff and other individual members of the ICANN community. The survey had 85 total respondents. Figures 6, 7, and 8 show the makeup of the group of survey respondents in terms of their affiliations within ICANN, their gender, and the global region in which they reside, respectively.

**Figure 6: Current/Formal ICANN Roles and Affiliations<sup>16</sup>**  
*Number of Survey Respondents*

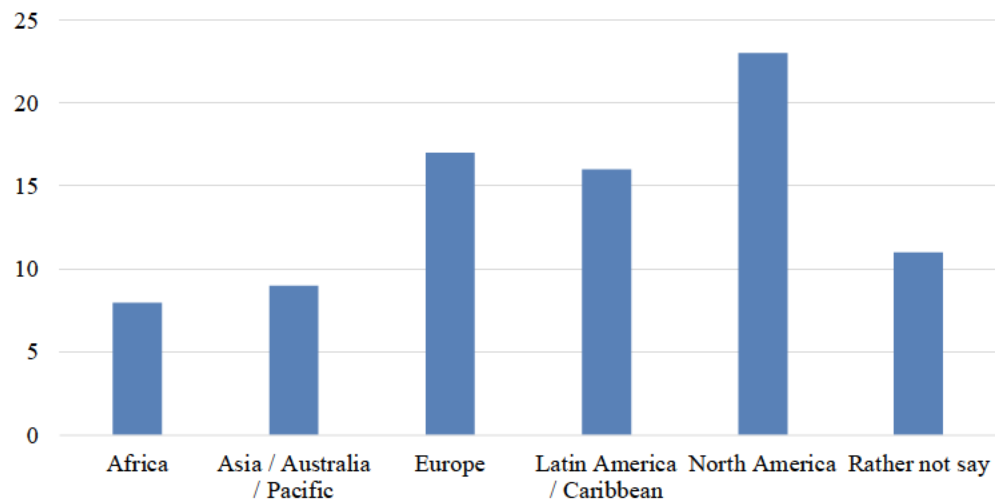


<sup>16</sup> The number of survey respondents in each category does not sum to the total number of respondents because there is some overlap in organizational affiliation.

**Figure 7: Gender Composition**  
*Number of Survey Respondents*



**Figure 8: Region in which Survey Respondents Reside**  
*Number of Survey Respondents*



The information collected through our interviews, online survey, review of documents and reports, and auditing of NomCom meetings provide the basis of the findings and recommendations outlined in this report. It is important to emphasize that our approach to assessing the NomCom does not require perfect representation across the ICANN community. We have not, for example, drawn conclusions based principally on the frequency with which we heard a particular opinion during our interviews or through the survey instrument. Rather, the interviews and online survey were methods for gathering diverse perspectives across ICANN with the goal of ensuring we have heard and considered many diverse opinions before making our assessment and our recommendations.

#### **IV. Strengths of the Nominating Committee**

The NomCom is seen by the ICANN community as generally performing its role effectively, but with room for improvement. Based on our assessment, we agree with this characterization and affirm the NomCom’s continuing role in recruiting and selecting individuals to leadership positions within ICANN. The NomCom tends to select high quality people overall, although our assessment suggests there is a moderate amount of variability in the quality of candidates chosen, particularly with respect to Board candidates.

The NomCom has improved significantly along a number of dimensions since 2011, especially in its treatment of candidates, and in its commitment to transparency and engagement with the ICANN community. These improvements are the result of steps taken by previous NomComs through implementing the recommendations of prior NomComs and the recommendations included in the 2007 independent review of the NomCom and the Accountability and Transparency Review (ARTR) Team reports of 2010 and 2013. As an example of such improvement from year to year, the 2018 NomCom has implemented, partially or in whole, several recommendations we had formed based on our assessment of the 2017 NomCom’s policies and procedures.<sup>17</sup>

#### **V. Findings and Recommendations: Composition and Responsibilities of the NomCom Members**

This section contains findings and recommendations pertaining to the composition and responsibilities of the NomCom and its members. These findings and recommendations are related to training of NomCom members, processes for appointing NomCom members, and issues related to the size and structure of the NomCom.

- A. Finding: The NomCom is generally seen as performing its role effectively, but there is room to improve the functioning of the NomCom. The extent to which NomCom members are independent and prioritize the interests of the global Internet community in their decision-making is an area of concern within ICANN. The NomCom itself is not seen as sufficiently diverse, particularly with respect to gender.**

The NomCom “seeks to ensure that ICANN benefits from individuals who place the public interest of the global Internet community ahead of any particular special interests, but who nevertheless are, or commit themselves to becoming, knowledgeable about the environment in which ICANN operates.”<sup>18</sup>

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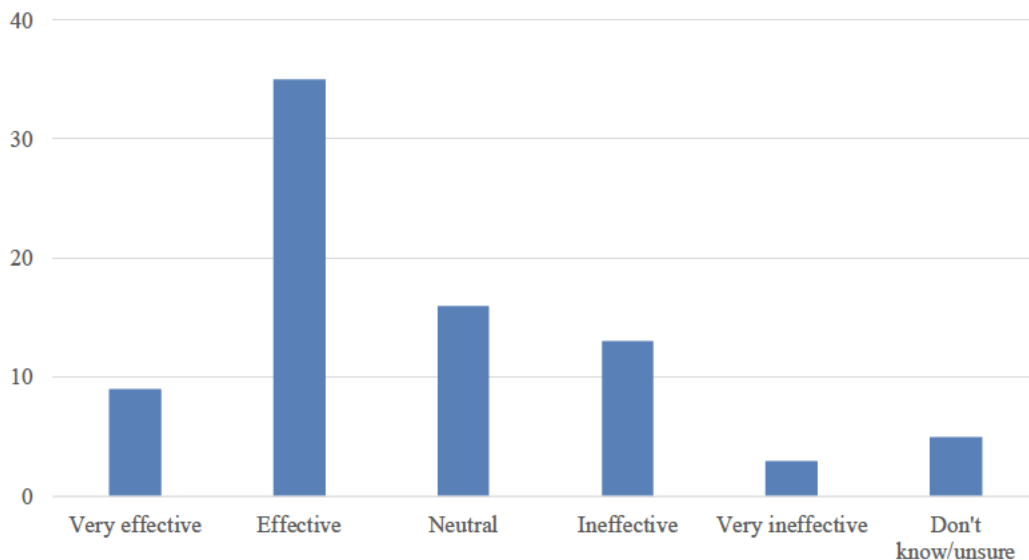
<sup>17</sup> These include (1) creating a job description for ICANN Board positions, although our recommendation includes job descriptions for SOs/ACs and the PTI Board as well as ways the job description should be improved, (2) providing interview training for NomCom members, and (3) publishing statistics in the NomCom Final Reports on the recruiting source of candidates, although once again we think the NomCom can make a further improvement in the information it provides.

<sup>18</sup> NomCom 2017 Operating Procedures, available at <https://www.icann.org/resources/pages/nomcom2017-procedures-2017-02-07-en>, accessed on November 27, 2017.

A majority of people identified success for the NomCom as appointing high-quality, effective individuals to the Board and other SOs/ACs, often using words such as “well-qualified,” “good contributors,” and the “right match for the role.” A few others, often in addition to describing the role of NomCom as that of appointing high-quality and effective individuals, included in NomCom’s role the purpose of appointing individuals with diverse perspectives, preserving its independence, and appointing candidates with consensus.

As shown in Figure 9, when asked whether the NomCom is or is not effective in performing its role, the most frequent answer was “Effective.” The distribution of responses in Figure 9 was common in other questions related to the effectiveness of the NomCom, such as effectiveness in candidate recruiting, and effectiveness in candidate evaluation. In all, roughly 60 percent of respondents rated the NomCom as “Effective” or “Very Effective” while 40 percent of survey respondents described the NomCom as “Neutral,” “Ineffective,” or “Very Ineffective.”

**Figure 9: How Effective is the NomCom in Performing its Role?**  
*Number of Survey Respondents*



Survey respondents and interviewees acknowledge the difficult role of the NomCom given the complexity of ICANN and its multi-stakeholder model. Some individuals noted that while the NomCom was imperfect, it was the best method currently for preventing the Board from being “self-perpetuating.” Others expressed the general concern that the NomCom was created to replace direct election and that the importance of that purpose seems to have been forgotten or diminished.

The majority of people indicated that the NomCom should continue to appoint members to both the Board and SOs/ACs. A few people thought the NomCom may not need to appoint people to ALAC because ALAC already has a function for appointing ALAC members, while a few others thought the NomCom should appoint all Board members.

NomCom members are expected to act as individuals on behalf of the interests of the global Internet community, and should not be beholden to the constituencies that appointed them to the NomCom, or to other organizations or corporations.<sup>19</sup> NomCom selections are final and do not need the approval of any other body or individuals within ICANN.

A common concern raised by both interviewees and survey respondents was that NomCom members too often voted as blocs based on the organization that sent them to the NomCom or some other common interest. As a result, these people felt that sending delegates to the NomCom was seen as a way for those organizations to advance an agenda instead of appointing people that acted in the best interest of the broader ICANN community.

Some individuals said that the NomCom interview process was unfair due to conflicts of interest, either in terms of NomCom members appointing people they do business with, or in terms of ICANN organizations appointing NomCom members who will select candidates that more closely align with their interests.

People frequently gave the NomCom poor marks for diversity, especially gender. There have been four or five women on the NomCom since 2014 with the exception of the 2016 NomCom. There were only two women on the NomCom in 2016.

A number of people thought organizations that send delegates to the NomCom should focus more on diversity, with some suggesting diversity should be a goal during the processes to select NomCom delegates. Many people, however, including those who thought the NomCom needed to be more diverse, thought competency on the NomCom was more important than diversity and that diversity on the NomCom was less important than diversity on other bodies, especially the Board.

Others noted that diversity may be difficult to achieve in practice given that NomCom members are appointed by different bodies, some of whom only appoint one person to the NomCom. We note that from 2011-2017, only the ALAC, GNSO, and SSAC appointed a woman to the NomCom.<sup>20</sup>

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

Each year, the NomCom should develop a thorough description of the responsibilities and (requisite or desired) competencies of a NomCom member, as well as a statement of the current diversity composition of the NomCom, and desire for independence for NomCom members, in order to assist the SOs/ACs in appointing members to the next year's NomCom.<sup>21</sup> The job description should be posted to the NomCom website and sent to the SOs/ACs so that it is part of

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<sup>19</sup> ICANN Bylaws Article 8, Section 4, available at <https://www.icann.org/resources/pages/governance/bylaws-en#VII-1>, accessed on December 1, 2017.

<sup>20</sup> Between 2011 and 2017, the rates at which ALAC, GNSO, and SSAC appointed women to the NomCom were 8 out of 35, 6 out of 49, and 1 out of 7, respectively.

<sup>21</sup> For clarity purposes, the term “competencies” refers broadly to skills, experience, personal qualities and behaviors, etc. Competencies should not be interpreted narrowly as referring only to “hard” skills such as financial management. Strategic planning, communication and teamwork, etc. are all included under the term competencies.



the process by which the SOs/ACs select their NomCom members. SOs/ACs should use the description and diversity statement to recruit and select delegates to send to the NomCom.

An official job description would help ensure that individuals applying to be a NomCom member understand the role and the time commitment they would be taking on, as well as standards of conduct. Currently, NomCom member responsibilities and competencies are listed across several different NomCom resources, and thus are not easily located.<sup>22</sup>

The job description should emphasize that the ideal NomCom delegate would have human resource (HR) expertise, recruiting experience, and/or a keen understanding of the role of board members. Although potential NomCom members should not be disqualified simply because they might have limited experience in these three areas, highlighting these qualities in the job description would further align the capabilities of the NomCom members with the core function of the NomCom. The description should also note that gender and regional diversity are important considerations, and it should include the time required of NomCom members.

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

**B. Finding: NomCom members have significant technical and policy-related experience in their fields but do not always fully understand the role of Board members and the skills and attributes needed to be a successful Board member at ICANN.**

Appointing directors to the ICANN Board is one of the NomCom's key roles, and some interviewees indicated that appointing Board members should be a higher priority for the NomCom than appointing members of other ICANN bodies. However, the interviews suggest that, especially given ICANN's growth in recent years, the skills needed to be a Board director are significantly different than they were ten or even five years ago, and the NomCom needs to be aware of these changes when appointing Board directors.

ICANN is currently a 20-year-old organization that realizes approximately \$140 million in revenue each year.<sup>23</sup> As the size, complexity, and competency of the organization has evolved, the role of the Board requires different competencies and experience than when ICANN was a younger, smaller organization. Interviewees and survey respondents frequently expressed the viewpoint that

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<sup>22</sup> For example, the NomCom's Operating Procedures describe the obligations of NomCom members in general terms. The NomCom's Background Information and Code of Conduct describe the rationale for the NomCom, a conflict of interest policy, and expected standards of behavior. The Code of Conduct states explicitly that NomCom members are to act only on behalf of the interest of the global Internet community. The NomCom's Guidelines provide an overview of the NomCom, including core objectives of the NomCom.

<sup>23</sup> "What Does ICANN Do?" available at <https://www.icann.org/resources/pages/what-2012-02-25-en>, accessed on February 12, 2018. Financial Information for ICANN, available at <https://www.icann.org/resources/pages/governance/financials-en>, accessed on February 12, 2018.

NomCom members need more experience with, and a better understanding of, recruiting and selecting individuals for an organization the size of ICANN. Multiple people expressed a similar sentiment: that the fundamental problem is that candidates are recruited by people who do not fully understand what the Board does or what competencies are necessary to be effective on the Board.

NomCom members often have significant technical and policy knowledge in their fields, but do not have Board experience at an organization the size and complexity of NomCom. As one interviewee put it: “I’m worried, because in the next 10 years, if we think we’ve had challenges so far, we’ve not seen anything yet.” The skills needed to be a Board member are also different than those needed on the GNSO, ccNSO, and ALAC. So, while NomCom members have the requisite skills to evaluate candidates for SOs/ACs, there is a dearth of knowledge relative to the necessary skills of a Board candidate.

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

In determining the types of Board members that are needed both now, and as ICANN continues to evolve, it is important that NomCom members have certain questions in mind when selecting Board members. For example, what does a high functioning Board do in a large, complex organization? How does this role differ from a younger, less complex organization’s needs for directors? And, more generally, what makes a “good” Board member in a large organization such as ICANN?

It is not realistic to expect all NomCom members to start with a deep understanding of the role of Board members nor experience evaluating the needed competencies and experience of a Board at an organization the size of ICANN. But, understanding what makes a successful Board member and what makes a successful Board are the foundation of effective recruiting and evaluation efforts. The NomCom would therefore benefit from a short training program, conducted by an outside consultant who has experience working with nonprofit Boards, to assist NomCom members in thinking about what competencies and experience are required for high-functioning Boards and their members.

The NomCom leadership should be responsible for selecting the outside consultant and determining whether the training program is required for all NomCom members or just new NomCom members. The training should take place early in the NomCom cycle, ideally at the Annual General Meeting.

We note that the training should be conducted by the outside consultant in a way so as to not affect the independence of NomCom members, and should not be overly burdensome with respect to the time commitments required. With respect to the latter point, given that many of our recommendations are designed to reduce the time requirements for NomCom members, we do not anticipate that incorporating this type of training, which can typically be conducted over the course of several hours, will burden NomCom members.

**C. Finding: The leadership structure of the NomCom generally works well, although the effectiveness of the NomCom depends heavily on the effectiveness of the Chair.**

The NomCom leadership is composed of a Chair and a Chair-Elect, both of whom are appointed by the Board. Typically the Board appoints the Chair-Elect as the Chair of the next NomCom, though the Board retains the right to appoint any other person as Chair. At the Chair's discretion, the Chair may appoint a non-voting Associate Chair. In recent years, the Associate Chair has been the Chair from the previous NomCom.

Most respondents (including the vast majority of NomCom members) thought the current NomCom leadership structure was effective as-is, though a few thought it was highly ineffective. A few people noted that having the previous year's Chair advise the new NomCom was valuable to the Chair, Chair-Elect, and the entire NomCom as it helped preserve processes from year to year. In general, those we spoke with said it was very valuable for the Chair to have previous NomCom experience. A few others took a different view of having the previous Chair advise the new Chair, as they thought it gave too much influence to the processes of a previous NomCom. Others thought the NomCom leadership structure was not sufficiently insulated from variation in the performance of the Chair.

A few people were concerned by the fact that the Board selects the Chair and Chair-Elect, and thought the NomCom should select its own leadership or that the Chair should be involved in selecting the Chair-Elect.

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

This formal training should supplement the informal advising by the Associate Chair (typically the previous year's Chair) and the training provided by the Chair to the Chair-Elect.

Most volunteer committee chairs of nonprofit organizations have not had training in how to facilitate meetings, work with staff, and manage communications. In our experience, this can lead to inconsistency across years in how such committees function and perform. Leadership training for the NomCom Chair and Chair-Elect should focus on the following areas: techniques to facilitate committee meetings, agenda development and management, balanced participation by committee members, meeting deadlines and ensuring both leaders and volunteers perform and communicate appropriately, partnering with the staff to agree on responsibilities, processes and procedures, communications plans, and discussing realistic expectations.

Currently the next NomCom Chair is often appointed shortly before their tenure begins. We recommend advancing this confirmation or appointment to 60 days prior to the beginning of his or her term in order to prepare and organize for the next NomCom cycle. The training should therefore take place after the NomCom Chair is confirmed but before the Annual General Meeting (i.e., before the NomCom convenes for the first time). The training program should be selected by NomCom leadership, with assistance and coordination provided by NomCom staff.

We note that the training should not be overly burdensome with respect to the time commitments required. Given that many of our recommendations are designed to reduce the time requirements for NomCom members (including NomCom leadership), we do not anticipate that incorporating this type of training, which can typically be conducted over the course of several hours, will burden NomCom members.

**D. Finding: NomCom members have exerted, and continue to exert, tremendous effort and time to the activities of the committee. On average, NomCom members lack substantive recruiting and selection experience for an organization the size and complexity of ICANN.**

Overall, interviewees and survey respondents thought that while the NomCom has improved significantly in recruiting and evaluating candidates, there is still room for improvement. A frequent comment was that NomCom members needed more interview experience and/or training in order to make the interview process more professional, consistent, and effective.

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

With the exception of the 2018 NomCom, the NomCom has not to our knowledge provided interview training to its members. Although the NomCom has improved considerably since 2011 in its professionalism during on-site interviews and is overall performing well, we believe interview training would increase the extent to which the NomCom treats candidates in a consistent and professional manner, and would improve ICANN's ability to attract high-caliber talent.<sup>24</sup>

Training should emphasize that interviewing and candidate contact are two-way interactions when recruiting high caliber candidates, and that it is both a sales and evaluation process when interacting directly with candidates during deep-dives and on-site interviews. Professionalizing this contact requires training in expectations of candidates and mechanisms to evaluate if interviewees are worth the time and investment. For example, how do you probe answers in order to evaluate competencies? How do you get beyond the surface in an interview? What do you look for in reactions by candidates? What types of questions should you expect from a competent candidate?

Training should be conducted by an independent HR or recruiting consulting firm with experience in educating individuals on how best to interview candidates for the Board and other leadership positions. This training could be done as an orientation for new members, with an abbreviated training for returning members. The training program should be selected by NomCom leadership, with assistance and coordination provided by NomCom staff.

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<sup>24</sup> This recommendation is consistent with feedback we received from the community. When survey respondents and interviewees were asked what changes they would make to the NomCom, increasing and/or providing training was one of the most common responses received. It is also consistent with recommendations of previous NomComs. The 2013, 2014, and 2015 NomComs recommended and/or accepted the recommendation of the previous NomCom regarding providing training on "interviewing techniques and relevant other recruitment/HR skills." 2013 NomCom Final Report, Section 4.4.1; NomCom 2015 Final Report, p. 26.

We note that the training should not be overly burdensome with respect to the time commitments required. Given that many of our recommendations are designed to reduce the time requirements for NomCom members, we do not anticipate that incorporating this type of training, which can typically be conducted over the course of several hours, will burden NomCom members.

**E. Finding: There is a lack of understanding around the role of, and consensus regarding, the effectiveness of the professional recruitment firm OB Brussels.**

The NomCom is assisted in candidate recruiting by OB Brussels. It is a sister company of OB Frankfurt, which previously assisted the NomCom during the evaluation of Board candidates. OB Brussels and OB Frankfurt are prohibited from communicating or sharing information to avoid conflicts of interest and to ensure each assists the NomCom without influencing the other.

Opinions diverged on the role of professional recruiting firms. A common view was that a professional recruiting firm should have primary responsibility for identifying candidates and retaining institutional memory regarding the candidate pool. As a result, outreach efforts by NomCom members would become unnecessary or of secondary importance and therefore incremental to the efforts of OB Brussels. Several people thought OB Brussels was important because it was better at finding people outside the ICANN community, or that a firm was needed with additional international reach. A few others had a very different perspective, believing a recruiting firm was not needed given the outreach by NomCom members.

A number of people thought the NomCom needed to do a better job working with the recruiting firm to communicate the needs and the unique challenges associated with ICANN and the positions the NomCom is looking to fill. A few people wondered if a specialist recruiting firm might help (for example, more specialized firms to recruit within corporate vs. nonprofit spaces), or if a recruitment firm should place greater emphasis on whether candidates had conflicts of interest or were more likely to vote on behalf of a narrow interest.

Some survey respondents and interviewees thought the effectiveness of OB Brussels should be evaluated in light of alternative firms and/or outreach methods. The 2016 NomCom recommended that future NomComs establish a Sub-Committee to research alternative recruitment partners but also recommended the processes be maintained for the current cycle.<sup>25</sup>

Lastly, several people thought the role of the recruiting firm was not transparent and suggested that basic statistics on candidates from the recruiting firm should be collected and published each year (e.g., statistics on the number of candidates recruited by and the number of NomCom appointees that came through OB Brussels).

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<sup>25</sup> ICANN 2016 Nominating Committee Final Report, pp. 16, 25, available at <https://www.icann.org/en/system/files/files/nomcom2016-report-12oct16-en.pdf>, accessed on November 28, 2017.

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

A professional recruiting firm should continue to be involved in the recruiting process for an organization of the size and complexity of ICANN. The main objective of the recruiting consultant should be to identify qualified candidates, with an emphasis on candidates that have not previously been associated with ICANN. What the recruiting consultant does, how it does it, and where in the process the handoff to the NomCom takes place is important information for the NomCom to be clear about to both the consultant and the ICANN community.

To enhance transparency, the role and purpose of the recruiting consultant should be codified in the Operating Procedures or Guidelines. There is currently little information regarding the purpose and role of the recruiting consultant in NomCom documentation, or the nature of their activities. For example, the only reference to the recruiting consultant (also referred to as the “recruitment provider”) for the 2018 NomCom was in the Guidelines, which notes the following step was taken by the NomCom: “Selection and contracting of recruitment provider.” The Final Reports published by the NomCom sometimes contain additional insights into the role and responsibilities of the consultant.<sup>26</sup> However, the level of detail provided in those reports varies year to year.<sup>27</sup>

In addition, the recruiting consultant should provide a presentation to the NomCom each year, during the Annual General Meeting just after the new NomCom is seated, to review their role and function, noting what opportunities both the recruiting firm and the NomCom see to improve the recruitment process. This has sometimes occurred during past NomCom cycles, but is not a codified process.<sup>28</sup>

Codified processes related to the recruiting consultant should include the purpose of any meetings with the NomCom. It should also include a description of activities undertaken by the recruiting consultant, which, based on our recommendations in this report, might include assisting the Board with identifying needed competencies and experience, and working with the NomCom to turn them into a detailed job description.

In the public comments provided on our Draft Final Report, commenters noted the importance of (1) confirmation of a free, fair process, (2) limiting any single consultant’s term to approximately two years, (3) the consultant submitting all candidates to NomCom, (4) the NomCom being clear about consultant processes, and (5) the need for results to be reported as an essential part of the process. We agree with all responses, and incorporate these into our recommendation, except for the suggestion that the term be limited to approximately two years. We instead recommend that

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<sup>26</sup> For example, the 2016 NomCom Final Report noted that “After initial contact by the NomCom Chair, a representative of OB-Brussels (the recruiting consultant) was invited to attend a NomCom meeting to present various options for the future cooperation with the committee.” 2016 NomCom Final Report, p. 16.

<sup>27</sup> The 2015 NomCom Final Report does not describe any interactions with OB Brussels or the nature of its activities other than to thank OB Brussels and OB Frankfurt (the evaluation consultant) for their extremely valuable expertise and assistance. 2015 NomCom Final Report, p. 29.

<sup>28</sup> See, for example, 2016 NomCom Final Report, p. 16.

the consultant be evaluated on an annual basis, and be retained for as long as they continue to provide the NomCom with a sufficient number of well-qualified candidates.

**F. Finding: The role and effectiveness of the professional evaluation firm (previously OB Frankfurt), generates some disagreement within the ICANN community.**

Opinions diverged on the role of the professional recruiting firm during the candidate evaluation processes. Some individuals thought OB Frankfurt’s input on candidates was not useful because it was not specific enough, while others thought its input was useful and brought a much-needed “HR perspective” on candidates that was sometimes lacking among NomCom members. Others thought that OB Frankfurt should be more involved in the evaluation phase, particularly when it comes to early screening of Board member candidates. They thought this would reduce the workload on the NomCom members by decreasing the time spent on narrowing the pool of candidates, and perhaps allow NomCom members to devote more time to evaluating candidates in depth.

We note that the number of completed applications has increased in recent years. The 2014, 2015, and 2016 NomComs received 58, 81, and 105 completed applications.<sup>29</sup> Given that the NomCom reviews each of these applications, this increases the workload for the NomCom to identify a shortlist of candidates.

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

A professional evaluation firm should continue to be involved in the evaluation process for Board candidates (but not SO/AC or the PTI Board candidates), given the size and complexity of ICANN. The main objective of the evaluation consultant should be to assist the NomCom with the evaluation of candidates by providing an experienced and independent perspective on candidates. What the evaluation consultant does, how it does it, and how its role fits into the activities of NomCom members is important information for the NomCom to be clear about both internally and to the ICANN community.

To enhance transparency, the role and purpose of the evaluation consultant should be codified in the NomCom’s Operating Procedures or Guidelines. There is currently little information regarding the purpose and role of the evaluation consultant in NomCom documentation, or the nature of their activities. For example, the only reference to the evaluation consultant (also referred to as the assessment provider) for the 2018 NomCom is in the Guidelines, which notes that the “assessment consultant performs interviews and reports.”<sup>30</sup> The Final Reports published by the NomCom

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<sup>29</sup> ICANN 2016 Nominating Committee Final Report, p. 22.

<sup>30</sup> 2018 NomCom Guidelines, available at <https://www.icann.org/resources/pages/nomcom2018-guidelines-2017-12-15-en>, accessed on February 22, 2018.

sometimes contain additional insights into the role and responsibilities of the evaluation consultant;<sup>31</sup> however, the level of detail provided in those reports can vary from year to year.<sup>32</sup>

In addition, the evaluation consultant should provide a presentation to the NomCom each year, during the fall AGM meeting (just after the new NomCom is seated), to review what their role and function is, identifying opportunities to improve the evaluation process. This has sometimes happened during past NomCom cycles, but is not a codified process.<sup>33</sup>

Codified processes related to the evaluation consultant should include the purpose of any meetings with the NomCom. It should also include a description of activities undertaken by the evaluation consultant, which, based on our recommendations in this report, might include an early screen of applications, whether the consultant focuses its assessments on particular qualities or skills, and how the consultant's scorecard assists the NomCom.

In the public comments provided on our Draft Final Report, commenters noted the importance of (1) the consultant submitting all candidates to the NomCom, and (2) the NomCom being clear about its processes. We agree with all responses, and incorporate these into our recommendation, but emphasize that the consultant should prioritize candidates based on the NomCom's identified criteria and competencies.

**G. Finding: The NomCom term length of one year, even if often renewed for a second year, may not allow for sufficient learning and engagement of members.**

As outlined in the ICANN Bylaws, each voting member of the NomCom serves a one-year term and may at most serve two successive one-year terms. After serving two successive one-year terms, a person must remain off the NomCom for at least two years before that person is eligible to serve another term. Non-voting members serve terms designated by the organization that appointed them to the NomCom.

When asked whether any changes should be made to the term length of NomCom members, the majority of respondents suggested a two-year term length, although a few people wondered if two-year terms would make it more difficult to attract delegates to the NomCom. Sixty percent of survey respondents thought terms should be two years, with 19 and 15 percent preferring one- and three-year terms, respectively. Roughly 75 percent of interviewees also preferred two years. Increasing term limits to two years was also one of the most common answers when interviewees and survey respondents were asked what one or two changes they would make to the NomCom.

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<sup>31</sup> For example, the 2014 NomCom Final Report described the activities of OB Frankfurt (the former evaluation consultant) as follows: "For each of the shortlisted Board candidates, the NomCom received from OB Frankfurt a form that summarized their abilities in 'managing business, managing people and managing self', in addition to factors like motivation, intercultural emotional intelligence and self-perceived strengths and weaknesses. When read together with the SOI's and recommendations, they provided a very useful expert outsider's view in the next phase." 2014 NomCom Final Report, p. 13.

<sup>32</sup> The 2015 and 2016 Final Reports contained far fewer details about the evaluation consultant.

<sup>33</sup> See, for example, 2013 NomCom Final Report, Section 4.3.3.



When asked if NomCom members should serve more than one term and if so how many, most respondents thought serving two terms over a lifetime was appropriate, though preference for one and three terms was also common. A few people expressed concern at having individuals serve many times on the NomCom, with some members saying that hearing about what happened on the NomCom several years ago was not helpful.

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

One-year terms should be maintained for the Chair, Chair-Elect, and Associate Chair. However, given the advantages and disadvantages associated with shorter and longer terms, two-year terms for NomCom members in non-leadership positions strike an appropriate balance compared to one- or three-year terms. Two-year terms, staggered so that roughly half of the NomCom seats are filled each year, provide for a more consistent transition from the previous NomCom and allow NomCom members to adjust to the learning curve of being a NomCom member.

We also recommend that NomCom members be allowed to serve up to two, two-year terms over their lifetimes, with consecutive terms allowed. The two-term limit is designed to avoid the possibility of excessive influence from having an individual return to the NomCom repeatedly. And, while there is no perfect answer regarding whether NomCom members should be required to step away from the NomCom before their second term, we believe consecutive terms are appropriate. Even if every NomCom member served two consecutive terms, the large size of the NomCom would result in significant turnover every two years.

In addition to the benefits described in the finding above, this recommendation will increase the institutional memory of the NomCom and therefore should increase the ability of the NomCom to assess its own processes, including, for example, the performance of external consultants.

**H. Finding: The current size of the NomCom is appropriate.**

Many people indicated that a balance needed to be struck when considering the size of the NomCom; more members may help handle the large work load of the NomCom and make it easier to have fair representation across the ICANN organizations that send delegates to the NomCom, while fewer members may increase the efficiency of NomCom processes. Overall, a few people thought the NomCom would operate more efficiently if there were fewer individuals, while very few people thought the NomCom should include more members.

**Recommendation 8: Maintain the current size of NomCom.**

The current size of the NomCom is appropriate and strikes a balance between the advantages of a smaller as opposed to larger NomCom: in particular, the tradeoff between efficiency of a smaller group in making decisions and reaching consensus, and the need for representation of SOs/ACs and representation of diverse perspectives potentially held by members within SOs/ACs.

**I. Finding: There is concern over the role and participation of non-voting members.**

As shown previously in Figure 1, the NomCom may have up to six non-voting members. In addition to the three leadership positions that are non-voting, the three non-voting members are members of the SSAC, RSSAC, and GAC, though traditionally the GAC has not appointed a person to the NomCom. (A GAC working group is currently evaluating if, and how, the GAC can participate in the NomCom.<sup>34</sup>)

Up until the 2018 NomCom, non-voting members participated in straw polls, but did not participate in final votes. In the 2018 NomCom, it is our understanding that non-voting members do not participate in straw polls or final votes. Survey respondents were evenly split on whether non-voting members should be given full voting-rights or if the current system should stay in place, although people frequently questioned the purpose of having non-voting members at all. Very few people thought non-voting members should participate less (e.g., be removed from the NomCom or be prohibited from participating in straw polls). A few people noted that non-voting members provide valuable and influential perspectives.

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

The SSAC, RSSAC, and GAC NomCom members should be converted into voting members with the ability to fully participate in all NomCom activities.<sup>35</sup> The newly-voting members would be subject to the same requirements as current NomCom voting members: in particular, they would be subject to the same term limits.

This recommendation would replace the current system in which non-voting members are on the NomCom (and may or may not participate in straw polls) but cannot cast final votes. The current hybrid system:

- Is rarely present in other nonprofit selection or nominating committees;
- Allows each NomCom to alter the influence of the non-voting members by changing whether they can participate in straw polls without any input from the ICANN community or the organizations that appointed the non-voting members; and,
- Creates a system in which individuals who (1) ICANN believes add a valuable perspective to the NomCom and (2) participate in all other NomCom activities, including conducting deep-dives and interviews of candidates, are nevertheless unable to cast a final vote in a manner consistent with the standards required of NomCom members.<sup>36</sup>

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<sup>34</sup> The GAC Working Group on GAC Participation in NomCom, available at <https://gac.icann.org/working-group/gac-working-group-on-gac-participation-in-nomcom#meetings>, accessed on December 3, 2017.

<sup>35</sup> The GAC remains free to decide whether to send a delegate to the NomCom.

<sup>36</sup> With respect to voting, the 2018 NomCom Operating Procedures state the following: “Voting in all matters within the Nominating Committee shall be conducted in accordance with ICANN Bylaws. Whenever the Chair calls for a vote on any matter, votes of the Nominating Committee members designated as voting members under ICANN Bylaws shall be counted. Matters which constitute the act of decisions of the Nominating Committee in particular, which are

The current non-voting, non-officer, members do not have term limits set by the ICANN Bylaws that govern the NomCom,<sup>37</sup> which could contribute to a perception of undue influence, including lobbying and institutional knowledge that games the system. Requiring those members to adhere to the same term limits as other NomCom members promotes a balanced field of influence amongst the individual NomCom members.

While it is somewhat unusual to have the three NomCom leadership members be non-voting members, it works well in this context due to the large size of the NomCom and the fact that ICANN and the NomCom desire the NomCom leadership to be impartial and unbiased since they are appointed by the ICANN Board.

**J. Finding: There is concern that the NomCom may not accurately represent constituencies (both across SOs/ACs and within SOs/ACs).**

Representation on the NomCom was generally seen as sufficient for each ICANN organization that sends delegates to the NomCom. Some people questioned why the GAC was not represented, and others thought ALAC and GNSO were overrepresented. Still others thought that non-commercial stakeholders were generally underrepresented.

A number of people thought the NomCom needed to be rebalanced, both across ICANN organizations and within ICANN organizations. Regarding the latter, for example, more than one person thought the GNSO should consider rebalancing their NomCom appointees to match the structure of the GNSO. Currently, the GNSO sends a delegate to the NomCom for “large” business users and another for “small” business users but this structure is not part of the current GNSO Council.

**Recommendation 10: Representation on the NomCom should be re-balanced immediately and then be reviewed every five years.**

Periodically reviewing and re-balancing the NomCom makeup ensures that it appropriately reflects the ICANN community, both from a historic and prospective vantage point.

A recommendation on a precise way to rebalance the NomCom would require a comprehensive assessment of representation within the ICANN community, including a full understanding of the history and possible future of representation within the SOs/ACs. It will also require input from the Board and the formation of a cross-constituency working group which includes representation from emerging communities or groups within the ICANN community.

During our assessment, we heard from a large number of individuals who suggested the NomCom was unbalanced, both across organizations and within organizations (i.e., across constituencies within an SO/AC). Not surprisingly, the opinions we heard varied widely and were often

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outcome determinative with respect to the selection or non-selection of any Candidate within the process of assessments or selections of the Nominating Committee shall be deemed to be a vote.” 2018 NomCom Operating Procedures, Section A.6.d, accessed on March 15, 2018.

<sup>37</sup> ICANN Bylaws Article 8, Section 8.3(c), available at <https://www.icann.org/resources/pages/governance/bylaws-en/#article8>, accessed on February 11, 2018.

inconsistent with each other. For example, some people indicated that one SO/AC was overrepresented in terms of the number of delegates sent to the NomCom from that SO/AC, while others thought such representation was needed given the relatively greater diversity of viewpoints held by constituencies within that SO/AC compared to other SOs/ACs. Ultimately, any rebalancing of the NomCom will require a detailed assessment of all ICANN stakeholder groups. ICANN should therefore convene a working group immediately, and every five years thereafter, to study how best to rebalance the NomCom based on input from each of the organizations with representation on the NomCom and the broader ICANN community.

Our recommendation of five year intervals is based on ICANN's typical review requirements for organizations, as well as our experience with other similar, volunteer-based organizations.<sup>38</sup>

**K. Finding: The NomCom is highly dependent on ICANN Staff support. There is concern that the NomCom staff is under-resourced, which has affected the functioning of the NomCom.**

There are two staff members who support the NomCom. Staff assist NomCom members with outreach efforts and with candidate applications. Staff also receive feedback from candidates and NomCom members to improve processes, and address requests for further assistance from other departments within ICANN.

Two relatively common remarks on the role of NomCom staff were that the NomCom was (1) heavily dependent on staff support and (2) under-staffed and under-resourced. As a result, this reduced the effectiveness of NomCom leadership and the NomCom as a whole, and sometimes made it difficult for the NomCom to effectively inform candidates of changes in schedules or deadlines.

There was also concern raised about a lack of integration of the NomCom staff members within the ICANN staff structure.

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

In the nonprofit community, governance is the responsibility of the CEO and nominating committee staff functions are typically linked to the office of the CEO. The principal reason for this is that the CEO is responsible for overall governance, and influencing and implementing organizational strategy, and is therefore thinking critically about the future in terms of what ICANN will look like and what ICANN will need. The CEO provides authority and understands the complexity of ICANN and the needs of the Board and other leadership positions. Linking the NomCom's senior staffer (i.e. the NomCom's Senior Project Manager) to the office of the CEO further invests the CEO in the success of processes that select ICANN leadership.

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<sup>38</sup> See, for example, ICANN Bylaws Article 4, Section 4.4, available at <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>, accessed on February 11, 2018; Welcome to ICANN Reviews, available at <https://www.icann.org/resources/reviews>, accessed on May 22, 2018.

In addition, the NomCom senior staffer should undergo an annual review with the office of the CEO. As a development function, the NomCom leadership should provide written developmental feedback each year to whomever the senior staffer reports to in the office of the CEO.

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

Traditionally, the NomCom leadership has not been engaged in the budgeting process. And yet, NomCom leadership should have knowledge of the budget and should have input on allocating resources, while management/staff should retain overall responsibility for the budget.

There should therefore be a formal mechanism for NomCom leadership to provide input on resources, while ultimate control of the budget remains with ICANN management. Input from NomCom leadership should occur at the end of each NomCom cycle, based on the NomCom experience that year, and should be considered when the next NomCom budget is drafted.

## **VI. Findings and Recommendations: Processes of the NomCom**

This section contains findings and recommendations related to NomCom processes of recruiting and evaluating candidates. A recurring theme throughout the section is the need for the NomCom to codify processes at all stages of the NomCom cycle, whether it is developing job descriptions, conducting outreach, or evaluating candidates.

**A. Finding: The NomCom has made progress in increasing the extent to which it preserves policies and procedures from year to year, however, it still “reinvents the wheel” on many process issues and exhibits a lack of continuity.**

The NomCom has adopted the motto that process is open but (personal) data is confidential. Since 2013, the NomCom shares processes (policies and procedures) from one NomCom to the next in the NomCom Annual Report, allowing the subsequent NomCom to adopt and enhance the processes of the previous NomCom. Those who had an opinion on this document felt that it was an improvement over prior years.

When asked whether the NomCom is effective at preserving processes across years, survey respondents were roughly split, with half suggesting it was effective and the other half ineffective. Nearly one quarter of all respondents, and half of the ineffective responses, rated the NomCom as “very ineffective” at preserving processes.

Based on our audit of the NomCom meeting at ICANN60, a lack of continuity was apparent. A number of processes and operating rules are discussed each year, requiring an extensive amount of time. This is consistent with feedback we received in response to interview and survey questions, including from current and former NomCom members. For example, when asked what one or two changes one would make to the NomCom, one of the most common answers for both survey respondents and interviewees was increasing the continuity of processes from year to year.

People often described the NomCom as having to “reinvent the wheel” each year and indicated that the initial meetings are too focused on creating or tweaking procedures.

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

Publishing a Process Diagram and codifying processes will help to provide transparency for the ICANN community, increase continuity in processes, and streamline process issues that each NomCom addresses each year. This will allow the NomCom to streamline what works and make those processes available for candidates and the ICANN community. It will also increase the extent to which candidates and the ICANN community view the NomCom processes as fair and transparent, and reduce the influence of the NomCom leadership in setting a particular year’s operating rules. Publishing this diagram also puts less burden on staff as the process is institutionalized and publicized.

While some people may believe that the ability of the NomCom to change rules and processes each year furthers its goal of being independent, these changes come at the expense of the NomCom’s overall efficiency and effectiveness. A lack of written processes can also increase perceived bias when the community does not fully understand the reasoning behind any changes. Moreover, such changes, when made on short notice and without input from the ICANN community, are generally inconsistent with ICANN’s commitment to transparency and accountability. As such, we recommend that the NomCom post changes to its processes on its website for viewing by the ICANN community. Furthermore, we suggest the NomCom hold a public session at the ICANN Spring meeting to discuss any changes.

The Independent Examiner created the process diagram (Appendix 1) and process table (Appendix 2) below as illustrative examples, based on our understanding and interpretation of the 2017 NomCom process. The “NomCom Work Phases” diagram currently published on the NomCom website is helpful for internal purposes and for community members seeking specific information on NomCom processes,<sup>39</sup> but it includes tasks (e.g., “work on travel arrangements to ICANN meeting”) that are less relevant in a diagram that is meant to increase public understanding of the NomCom’s processes. The examples presented in Appendix 1 and Appendix 2 are intended to be more easily understood by someone who is less familiar with the NomCom. Their appeal is that they more clearly illustrate the flow of the different steps in the NomCom process. The NomCom should also consider adding information on the timing of each step when it develops its own version.

An example of processes that should be more clearly codified by the NomCom are differences in the evaluation process of Board candidates compared to SO/AC and PTI Board candidates. The NomCom Guidelines, Operating Procedures, and other materials (such as the NomCom Work Phases diagram) are too vague in this respect and do not distinguish any differences, such as the fact that the evaluation consultant has provided scorecards for Board candidates, but not for SO/AC

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<sup>39</sup> See <https://www.icann.org/nomcom2018>, accessed on March 1, 2018.

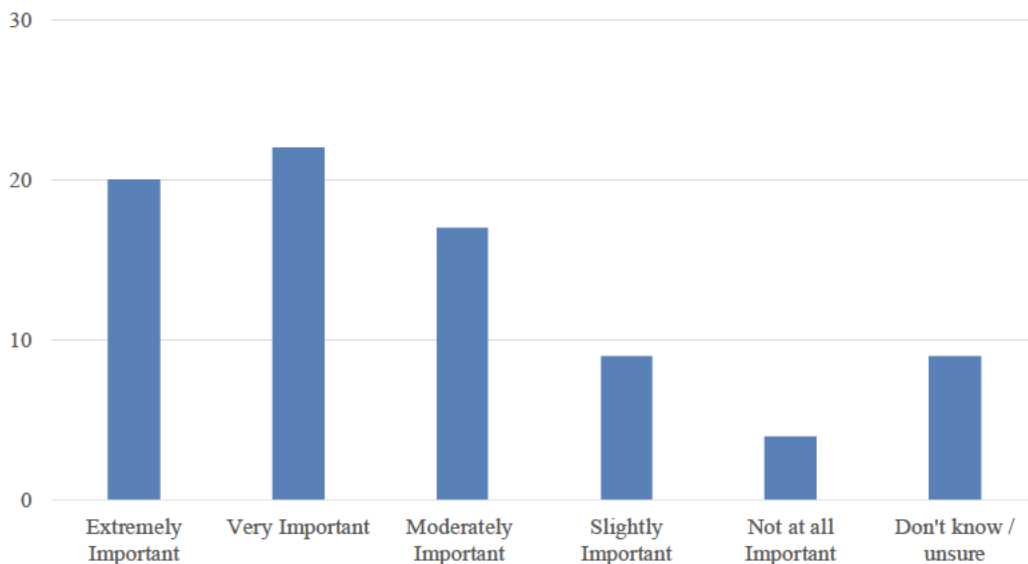
and PTI Board candidates. Another example is codifying the process by which the NomCom seeks guidance from the Board, SOs/ACs, or PTI Board, or seeks feedback on candidates up for re-appointment to ensure previously-given guidance or requirements are not forgotten from one NomCom to the next.

In the public comments provided on our Draft Final Report, commenters thought this recommendation needed to be stronger or did not go far enough. In response, we note that codifying processes to increase transparency and accountability are included throughout this report, which often call for codifying current informal processes or codifying new processes. Thus, our overall recommendation to codify key elements of the NomCom process is inherent in many of the recommendations in this report, including: creating job descriptions for NomCom members (Recommendation 1) and candidates (Recommendation 15), seeking advice from the Board, SOs/ACs, and PTI Board (Recommendation 14), using recruiting and evaluation consultants (Recommendations 5 and 6), communicating with candidates (Recommendation 18), establishing participation/voting status of individual NomCom members (Recommendation 9), and reporting (Recommendation 23) and budgeting (Recommendation 12). Good practices should be codified and improved upon by subsequent NomComs in a manner transparent to the ICANN community, which necessitates having clear, written procedures.

**B. Finding: There is a lack of communication between the NomCom and Board/SOs/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SOs/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.**

A majority of survey respondents and interviewees thought the NomCom needed more dialogue with ICANN organizations and committees; very few thought the NomCom needed less dialogue. In addition, Board advice given to the NomCom was rated by the majority of survey respondents as being “extremely important” or “very important” as shown below in Figure 10.

**Figure 10: How Important is ICANN Board Advice when Recruiting, Evaluating, and Selecting Board Candidates?**  
*Number of Survey Respondents*



In interviews, we received various responses related to the nature of communications between the NomCom and other ICANN organizations, which is indicative of processes that are not well defined or known, and can change from year to year.

Most people thought that there was room to improve the communication between the NomCom and the Board about the competencies needed for Board directors, and many thought the NomCom is not sufficiently aware of the competencies needed by the Board. Overall, respondents thought the Board advice was accurate, though some suggested the Board tended to focus on specific skill sets needed rather than general qualities that make good Board members.<sup>40</sup> Others noted it was not always easy for the Board to come to a consensus on the skills or attributes needed by the Board, and that the Board should communicate their feedback to the NomCom more clearly so that the NomCom does not receive conflicting information.

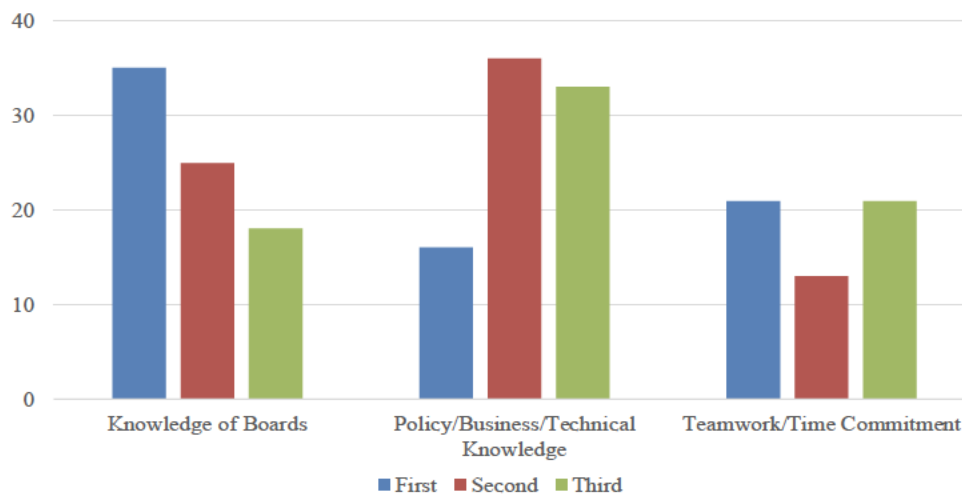
Figure 11 shows how survey respondents ranked the most important skills for NomCom appointees to the Board. Knowledge of boards was ranked first (most important), followed by teamwork or time commitment, and then policy, business, and/or technical knowledge.

<sup>40</sup> Board advice is posted to the NomCom website. The Board letter to the 2017 NomCom is dated March 9, 2017 is available at <https://www.icann.org/en/system/files/files/icann-board-nomcom-guidance-09mar17.pdf>, accessed on November 14, 2017.



**Figure 11: Ranking of Most Important Skills for NomCom Appointees to the ICANN Board**

*Number of Survey Respondents*



The Board was seen as providing more useful and frequent advice as compared to the SOs/ACs to which the NomCom appoints individuals. Members of the SOs/ACs, however, sometimes thought the NomCom did not ask for advice. (For example, it was said that the NomCom should either ask the ALAC directly or rely on the ALAC strategic plan, which lays out who ALAC needs going forward.)

Individuals also suggested that NomCom members need a better understanding of the roles of the Board, ALAC, GNSO, ccNSO, and PTI, as well as the skills needed to succeed in those roles. Increased dialogue between those bodies and the NomCom, particularly when informing the NomCom of needed skills and criteria, was a common answer given by individuals when asked what one or two changes they would make to the NomCom.

A number of individuals (including both current/former Board members and current/former NomCom members) noted that it would be helpful to obtain performance assessments for NomCom's appointees, especially for Board appointees, since otherwise the NomCom has little information as to how their appointees performed when they are being considered for reappointment. This sentiment was echoed by others who indicated it was sometimes hard to trust the NomCom when competent appointees were not reappointed and incompetent appointees were reappointed. This in turn led to a general questioning of NomCom processes, and an overall feeling that the NomCom was not sufficiently transparent since these individuals had a difficult time understanding how the NomCom came to its decisions. Improving the process by which people are re-appointed by the NomCom may therefore improve the overall perception of the NomCom within the community.

Some people suggested making Board 360 reviews available to NomCom members,<sup>41</sup> although most thought they should be used for personal, professional development purposes rather than being provided to the NomCom.

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

The NomCom and Board, SOs/ACs, and PTI Board would benefit from formal channels for communicating how their needs are evolving and the implications of these changes in terms of recruiting and selecting qualified nominees. Each year, these bodies should both submit in writing and meet with the NomCom to formalize needed competencies and experience, and any eligibility requirements.<sup>42</sup> (The Board currently does so.) Requisite skillsets for each SO/AC appointment should be annually determined and communicated to the NomCom by adapting the matrix provided in Appendix 3 to each SO/AC's specific needs.

Given that the NomCom “resets” to some extent each year, formalizing communication will reduce the likelihood that the NomCom selects a candidate that conflicts with previously-given requirements or advice, as happened recently with the ccNSO in September 2017. Furthermore, understanding the strategic priorities identified by ICANN leadership and the requisite competencies needed to compose a Board or SO/AC position requires a consistent and keen assessment of candidates' capacities to fulfill needed competencies and experience.

We recognize that it is sometimes challenging for the members of these bodies to agree among themselves on a clear set of criteria for candidates, since members may have different opinions on how their organization is changing and on the characteristics of a quality nominee. Engaging the recruiting consultant in this communication for Board candidate positions could help to advance their ability to assess and communicate needed competencies and experience. Furthermore, engaging a recruiting consultant in identifying competencies and experience needed in Board members is standard for nonprofit organizations of the size and complexity of ICANN.

We are cognizant of the concern among some members of the ICANN community that the Board may be too involved in the NomCom. Based on our experience, the potential harm caused by a lack of communication (i.e., a NomCom that does not appoint Board members with the competencies and experience ICANN needs going forward) outweigh those concerns. In addition, the recommendations in this report, especially those related to codifying processes, are a more effective way to reduce both Board and other external influence by limiting the extent to which NomCom leadership can influence year-to-year operations of the NomCom without full transparency and accountability to the ICANN community.

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<sup>41</sup> This suggestion was also made during a 2016 360 Review of the NomCom leadership team.

<sup>42</sup> A similar recommendation to increase communication between the NomCom and SOs/ACs was made by the 2010 NomCom Review Finalization Working Group and the 2016 NomCom. ICANN 2016 Nominating Committee Final Report, p. 25 and Final Report of the NomCom Review Finalization Working Group 2010, p. 6.

**Recommendation 15: The NomCom should publish detailed job descriptions for Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form the basis for recruiting and evaluation efforts.**

Using input from the Board, SOs/ACs, and the PTI Board outlined in the previous recommendation, and in consultation with the recruiting consultant, the NomCom should develop a detailed job description of Board, SO/AC, and PTI Board members. We note that the 2018 NomCom recently took steps to move in this direction by publishing a job description for Board members.<sup>43</sup> This is a significant improvement over previous iterations and should be continued and codified as a standard operating procedure. A well-crafted job description should not change significantly each year.

In addition to a job description, having clear criteria and well-defined competencies is an area that is incompletely defined for many boards and organizations, and in our opinion this remains true for the positions filled by the NomCom. While the job description reflects universal responsibilities of, and competencies sought, in Board, SO/AC, and PTI Board members, highly effective recruiting and evaluation efforts also require an articulation of specific competencies desired for the seats being filled each year. Such competencies should be presented through a matrix, with an example provided in Appendix 3. The Board currently provides this advice to the NomCom, but it is the NomCom's responsibility to assess that advice and develop it into specific competencies used to recruit and evaluate candidates. There are currently no codified processes for SOs/ACs to communicate this advice to the NomCom.

Along with the job description, the specific competencies and experience desired by the NomCom should be posted with the application and should inform the Statements of Interest. This ensures that all candidates are aware of the desired skills, competencies, and experience, and have the opportunity to demonstrate how their competencies and experience match those desired by the NomCom that year.

For example, one nonprofit Board indicated in their published competencies that prior Board experience with a large nonprofit organization is important for a director.<sup>44</sup> As another example, if building awareness of the role of ICANN in the global Internet community is a key strategic priority for ICANN, it may be important to indicate that training and skills related to communications are key competencies.<sup>45</sup> If these two competencies are the primary criteria for

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<sup>43</sup> ICANN Board Member: Job Description, available at <https://www.icann.org/en/system/files/files/board-member-job-description-26feb18-en.pdf>, accessed on February 27, 2018.

<sup>44</sup> This nonprofit's job description notes that "Leadership skills are [a] must; leadership experience on other Board of Directors is an advantage."

<sup>45</sup> This nonprofit's job description notes that "Communication Requirements: Ability to work and communicate in spoken and written English is essential. Good speaking and listening skills are necessary for this position in order to work successfully with others to achieve goals by consensus."

candidates in a given year, candidates without either board experience or communications experience may self-select out of the process for that year.<sup>46</sup>

As noted in a previous recommendation in this report, we recommend engaging in a collaborative discussion with the recruiting consultant about the competencies needed by Board members so as to incorporate their professional experience and insight. Our experience with recruiting firms is that they spend considerable time understanding and communicating the desired competencies for a position with potential candidates.

**Recommendation 16: Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for re-appointment by the NomCom.**

The NomCom should receive feedback from the Board, SOs/ACs, and PTI Board when considering whether to reappoint someone for an additional term.

In our experience, it is rare for a nominating or selection committee to reappoint individuals without insight into their performance. Using Board 360 reviews is one possibility for providing feedback to the NomCom. However, there is legitimate concern among the ICANN community that providing the 360 reviews of Board members to the NomCom is contrary to the purposes of the 360s by transforming the reviews from a purely developmental tool that encourages honest feedback to one that may determine whether a Board member is reappointed.

If the Board, SOs/ACs, and/or PTI Board and the NomCom cannot agree on a system for providing feedback to the NomCom, then a new system should be designed to provide at least some basic information for the NomCom to consider. For example, each organization should prepare a scorecard indicating each person's level of participation in in-person meetings, teleconference and web meetings, etc., as well as any participation in working groups or sub-committees. Those being considered for re-appointment should also complete an application that indicates their competence and experience in the requisite areas aligning with ICANN's strategic priorities as suggested in the sample provided in Appendix 3.

Although this recommendation may increase the extent to which the Board, SOs/ACs, and PTI Board influence the decision-making of the NomCom, it is necessary that the NomCom have such information in order to make the most informed decisions possible. Without such information, the NomCom's decision-making can be influenced by incomplete and outdated information. The absence of formal channels also increases the likelihood that informal channels may develop,

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<sup>46</sup> Another example may be useful to illustrate the level of detail the NomCom should include in the job description. One organization communicated two desired competencies in the following manner: "Governance and Leadership Skills and Abilities: Applicants are preferred who have extensive experience governing or interacting with the leadership of large, complex organizations. Candidates should have skills in public policy development, setting strategic direction, monitoring organizational effectiveness, overseeing large/complex operations, and determining critical legislative or other programmatic policies. Knowledge and Experience: The Board is seeking to expand its capabilities in four areas: 1) new business model development to diversify revenue streams, 2) digital transformation and Big Data, 3) brand revitalization through new product/marketing initiatives, and 4) human resources expertise (executive compensation and succession planning)."

which can increase the extent to which the NomCom may be influenced by inaccurate and incomplete information.

**C. Finding: There is some disagreement over whether the NomCom should incorporate additional diversity requirements for its appointees.**

The NomCom is currently required to meet geographic diversity requirements for its selections to the Board; in particular, the NomCom’s appointments to the Board must ensure that each geographic region (Europe, Asia/Australia/Pacific Islands; Latin America/Caribbean Islands; Africa; and North America) has at least one and no more than five directors on the ICANN Board. The NomCom must also ensure that the five members appointed to ALAC include one person from each geographic region. The PTI Board, GNSO, and ccNSO do not have geographic requirements.

Although many people indicated that diversity was important, very few thought it was more important than selecting high-quality candidates. Survey respondents were split on whether the NomCom should have other diversity requirements for its appointees other than geographical diversity requirements for appointees to the Board and ALAC. Of those who expressed support for the idea of additional requirements, the most common response was to consider having more diversity for developing countries due to the fact that their needs differed from developed countries even within the same geographic region.

Others thought the NomCom should not be the only entity within ICANN responsible for “patching” a lack of diversity on the Board or SOs/ACs.

**Recommendation 17: Maintain current diversity requirements for NomCom appointees.**

We do not believe additional diversity requirements would be in the interest of ICANN or the NomCom, nor do we believe such requirements are practical given that the NomCom appointees for the Board and ALAC are already subject to geographic requirements, and NomCom appointees to the ccNSO, GNSO, and PTI Board are few in number.

In the public comments provided on our Draft Final Report, some commenters disagreed with this recommendation, noting that either (1) diversity was not sufficient and could be improved or (2) the NomCom itself was not sufficiently diverse.

Regarding the first point, our recommendation should not be interpreted as a sign that we believe diversity of NomCom appointees cannot (or should not) be improved but rather an acknowledgement of the limitations of requirements given the positions filled by the NomCom. Instead, achieving diversity (whether based on gender, geography, background, and experience, among others) is best accomplished through improvements to the NomCom training, recruiting, and evaluation processes that this report recommends.

Regarding the second point, it is worth emphasizing that this recommendation does not suggest diversity on the NomCom itself cannot or should not be improved, but again acknowledges the impracticality of imposing diversity requirements for the NomCom itself.

**D. Finding: The NomCom’s interactions with candidates has improved significantly over the past five years and is generally viewed positively. However, several candidates expressed negative experiences regarding their interactions.**

The NomCom’s interactions with candidates were generally seen as being effective or neutral, with a few individuals describing the interactions as either very effective or very ineffective. Negative experiences tended to note problems associated with interviews conducted by the NomCom, although a few individuals noted problems associated with the recruiting efforts of the NomCom. Where negative, feedback generally related to NomCom members being unprofessional during interviews. We also heard from candidates and NomCom members that the NomCom lacked sufficient communication with candidates.

While making generalizations about candidate experiences across years is difficult, those who had an opinion generally thought the NomCom had made improvements in this area, even if they thought additional improvements needed to be made. Some people thought the processes could be clearer and that some of the procedures during the application processes discouraged qualified candidates from applying. Others thought that having published job descriptions and criteria when recruiting would be helpful in outreach efforts. Currently, the NomCom publishes a high-level (and relatively generic) set of criteria when it announces open leadership positions.<sup>47</sup>

A few people thought that the NomCom could use more resources and an improved application system, reducing the workload for both candidates and NomCom Staff. The current application system, described previously, is a confidential wiki that is used to store candidate application information. The current system was described as “not ideal” and as a “band-aid” solution, with several people wondering if a dedicated tool would be easier to manage and also improve security.

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

The NomCom should establish a communications plan that codifies who is in charge of communicating with candidates at each stage of the NomCom process and when candidates are notified of the status of their application. A codified process demystifies the process and promotes transparency and fairness.<sup>48</sup> A poor communication process reflects poorly on the NomCom and hinders its efforts to attract high-quality candidates.

A communication schedule should be published for viewing by all candidates and the ICANN community. For example, the evaluation consultant, NomCom staff, or the NomCom Chair should

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<sup>47</sup> See, for example, Open Leadership Position 2017, available at <https://www.icann.org/resources/pages/nomcom2017-positions>, accessed on November 28, 2017.

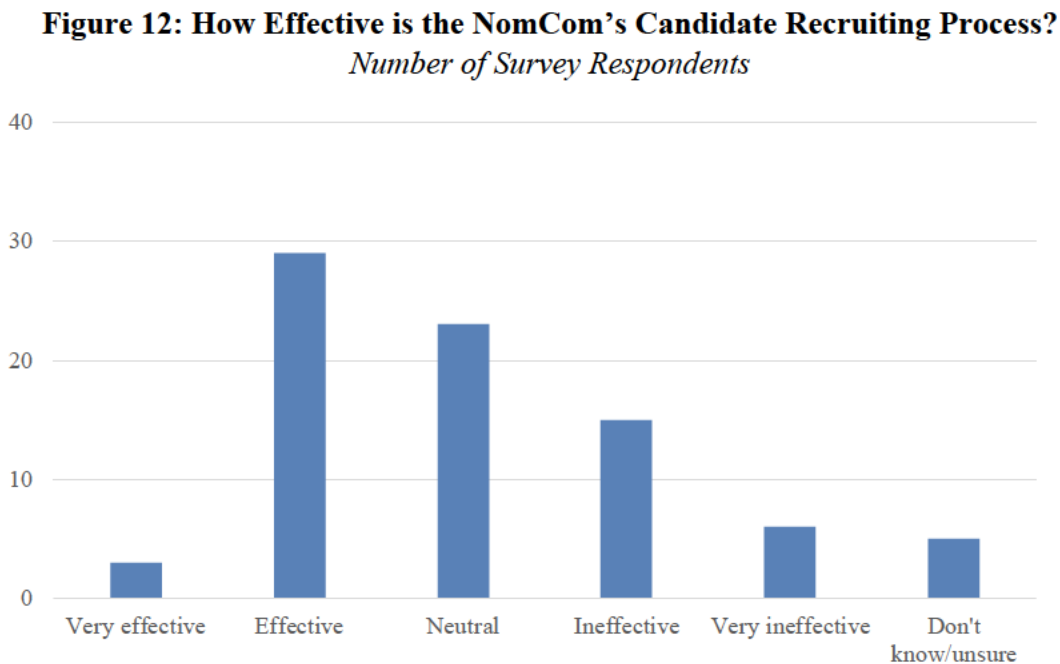
<sup>48</sup> A related recommendation was made by the 2016 NomCom, which suggested “creating a ‘walk-thru’ of events a NomCom applicant goes through.” ICANN 2016 Nominating Committee Final Report, p. 25.

be the only communicant until the interview stage. Our interviews and observations of the NomCom confirmed that the NomCom’s lack of prompt communication with candidates (especially candidates that did not progress to subsequent rounds of evaluation) can result in candidates viewing the NomCom as not serious or unfair. A lack of communication also encourages candidates to talk informally amongst themselves for insights into the process, which negatively affects the perception of both the NomCom and ICANN.

**E. Finding: NomCom’s recruiting processes are generally effective, especially in recent years, but there is room for improvement. The NomCom should continue to increase the diversity of the candidate pool.**

NomCom members are expected to publicize the call for applications and do their best to identify and recruit candidates. Each NomCom member is asked to share and present action plans for identifying candidates. Outreach activities by NomCom members may include attending meetings and conferences hosted by ICANN or other relevant organizations, and those activities may vary from year to year depending on the needs of the Board, SOs/ACs, and PTI Board.

Figure 12 presents the responses to the question of whether the NomCom recruiting processes are viewed as being effective or not effective.



In both interviews and survey responses, individuals expressed several areas of concern regarding the recruitment process. In particular, when asked about the diversity of the candidate pool, people thought diversity had increased significantly in recent years, particularly along gender lines, although many people thought the NomCom should do more, sometimes much more, to increase the diversity of the candidate pool, including additional outreach to underrepresented groups (particularly women and certain geographies such as those in the Southern hemisphere). Others

noted that the NomCom was doing more to recruit women and that this was reflected in more diverse candidate pools in recent years.

Opinions tended to diverge on the extent to which the NomCom should recruit candidates who are associated with ICANN versus looking for and prioritizing candidates who are less familiar with ICANN. For example, some people thought that outreach (as well as evaluation) of candidates tended to be too concentrated in the constituencies already associated with ICANN, including the constituencies of NomCom members, and as a result not enough was being done to attract and appoint others less familiar with ICANN. Others thought that the recruiting efforts of NomCom members tended to be very effective because the individuals reached by NomCom members had a good understanding of ICANN and especially the needs of SOs/ACs.

Some individuals also noted that the recruitment process could be longer, perhaps extending to a year-round basis, and that the Global Stakeholder Engagement department within ICANN could be more involved in identifying potential candidates.

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

While NomCom members should be a part of the recruitment process, it is best practice not to consider them to be the primary avenue for recruiting qualified candidates. For the size and complexity of ICANN, a formal marketing plan should be constructed for use from year to year, including a communications strategy. Targeting diverse candidates can be effectively accomplished through the marketing and communications plan, and such a plan helps the recruiting consultant and the NomCom consider new types of marketing and recruiting efforts, as well as more broadly, prioritize potential outreach efforts.

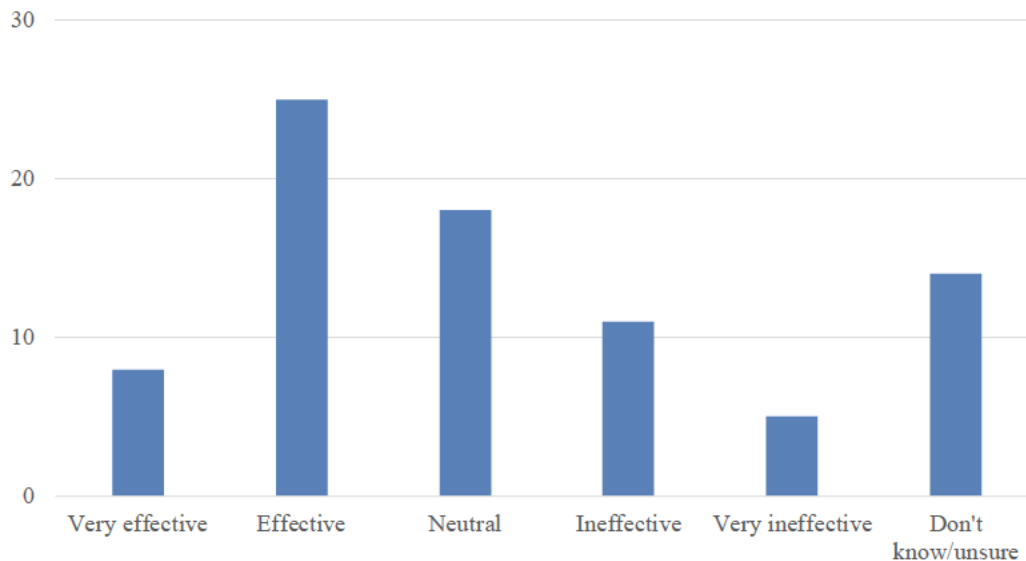
For example, an effective marketing plan would identify regional Internet organizations to be targeted for assisting in communicating the desired competencies and experience or representation requisite for ICANN leadership positions.

**F. Finding: The NomCom does not always evaluate candidates in a consistent manner.**

Survey responses to our question of whether the NomCom evaluation process was effective or ineffective are shown below in Figure 13.



**Figure 13: How Effective is the NomCom’s Candidate Evaluation Process?**  
*Number of Survey Respondents*



The majority of people we spoke with thought the processes used to narrow down the candidate pool to the shortlist and then select candidates from that shortlist had improved over the last five or six years. However, a common viewpoint was that while there were a number of decision-making processes the NomCom followed during the evaluation phase, they were not well documented and should be (1) institutionalized/codified and (2) shared with the community to increase transparency. People often thought that additional details on the processes used to evaluate candidates would decrease the extent to which evaluations of candidates were seen by the community as a “black box” and reduce the likelihood that NomCom selections would be seen as “arbitrary.” Others thought each candidate needed to be more consistently evaluated relative to a set of criteria specific to the position they were applying for, and our conversations with current NomCom members has indicated the NomCom is considering doing so.<sup>49</sup>

Some people thought the evaluation of candidates was not always consistent because it depended too much on the person conducting the deep-dive, citing differences in, for example, effort and style, and also the fact that NomCom members may be positively or negatively biased towards the candidate. Consistent with this, people thought a more standardized process, with consistent questions and evaluation criteria, along with interview training, would produce more replicable

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<sup>49</sup> These sentiments were echoed in previous reviews. For example, the Accountability and Transparency Review Team 2 Report noted the following: “The issue of Board composition and selection had been the subject to two intendent reviews that predated ATRT1. ATRT1 found that the greatest relevance to its review process was the recommendation for ICANN to recruit and select based upon clear skill set requirements. This included the establishment of a formal procedure by which the Nominating Committee (NomCom) would discover and understand the requirements of each body to which it makes appointments. ATRT1 found that, “[a]s such, codifying the processes for identifying, defining and reviewing these skills requirements, as well as the mechanisms by which stakeholders are consulted, could assist in improving the Board’s overall performance.” Accountability and Transparency Review Team 2, Report and Recommendations, December 31, 2013, pp. 16-17.

results across deep-dive teams. Others noted that interview questions from 20 NomCom members sometimes lack coherence and that interviewing with time constraints is difficult because the NomCom cannot spend extra time on subjects that turn out to be especially important.

A few people indicated that candidates associated with ICANN could receive either favorable or unfavorable treatment (for example, someone associated with ICANN being passed over for outsiders who were less well known but ultimately less effective), while others thought the process made it too difficult to return to candidates who had been put in the “yellow” bucket if the small group of finalists turned out not to be as strong as originally thought. Some interviewees expressed concern that, in practice, once the “green” bucket had been filled with 20 candidates, there was pressure to stop discussion of additional candidates.

Finally, the NomCom generally spends more time on evaluating candidates for the Board compared to other positions. People felt the SO/AC selections tended to be of lower quality compared to Board selections.

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

This recommended screen is limited to the evaluation of Board candidates only and serves two purposes. First, it assists the NomCom in eliminating candidates who do not meet basic criteria and needed competencies of Board members. Ideally, this would be performed exclusively by the evaluation consultant, in a manner agreed upon by the evaluation consultant and the NomCom, with the goal of giving the NomCom enough applications so that the NomCom can ultimately select the deep-dive shortlist. Importantly, the NomCom would retain the ability to evaluate any of the previously-eliminated applications if it desired.

Second, providing blinded assessments to the NomCom through a professional process improves consistency and continuity. This is necessary in order to identify and prioritize the best possible talent without biasing the process through name recognition. Currently, the evaluation process is inconsistent among NomCom members and also varies from year to year across NomComs.

Indeed, during our assessment, a number of ICANN community members, including previous NomCom members, expressed concerns about the extent to which all candidates were being treated consistently and fairly. We also heard concerns that the NomCom was subject to capture and that candidates could be dismissed prematurely (in some cases for having a lack of affiliation with ICANN, and in other cases for having too much of an affiliation with ICANN, with the former being more frequent). Relatedly, we heard from more than one previous NomCom member that candidates suggested by the recruiting consultant could sometimes be dismissed too quickly by the NomCom.

Best practices call for clearly articulating specific competencies and experience desired for the seats being filled each year, and consistency in interpreting how a candidate compares to those competencies. An impartial professional is best equipped to implement a fair and transparent

process. The foundation of such a process should be a blinded evaluation (by name) of each applicant relative to how their competencies meet the needs of the open position. This blinded evaluation, performed by the evaluation consultant, would then be provided to the NomCom members for use by the NomCom when selecting the deep-dive short list.<sup>50</sup>

Appendix 3 provides a sample matrix that identifies current directors' competencies, which helps identify the gaps between the current Board makeup and the desired competencies to recruit for. This example includes just a few illustrative skills and personal qualities. Elements of this sample matrix would be completed by individual Board members and also augmented by ICANN staff. The evaluation consultant would then use this assessment and the job description to perform the blinded assessment of all applicants, eliminating those that clearly do not meet requirements (such as geographic diversity) and basic competencies. Identifying gaps in this manner encourages the NomCom to see what gaps may develop on the Board in the coming years and evaluate candidates accordingly.

**Recommendation 21: The NomCom should use a standardized tool to evaluate and prioritize candidates, based on desired competencies and experience as determined annually. This tool will not replace qualitative assessments of candidates.**

This matrix should reflect the criteria and needed competencies and experience outlined in the job description, and should be used by all NomCom members when evaluating candidates. Utilizing a common evaluation form supports consistent evaluation of candidates across all NomCom members and does so in accordance with the various desired competencies identified by the NomCom for the open positions that year. A sample matrix is provided in Appendix 3 to this report.

The goal of providing standardized evaluation tools is *not* to turn the evaluation process into an algorithmic scoring system. In fact, our use of the term competencies, as noted previously, encompasses soft skills, qualities, experiences, and background. Rather, an evaluation form is meant to ensure individual NomCom members are considering the competencies identified by the NomCom when evaluating candidates. More standardized interviews and evaluation forms improve consistency, replicability, and ultimately fairness of the NomCom overall, and the deep-dive phase in particular.

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

Providing a NomCom "Interview Guidelines" document with prepared questions and an integrated evaluation mechanism to each NomCom member responsible for interviewing candidates will aid in consistency and professionalism. The questions should be reviewed and informed by input from

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<sup>50</sup> The 2016 NomCom recommended that future NomComs request "a summary/metrics document from the assessment firm to easily compare each candidate." ICANN 2016 Nominating Committee Final Report, p. 26.

the professional evaluation consultant, with sufficient flexibility that the NomCom can follow up on key topics with individual candidates as necessary.

**G. Finding: The NomCom has made significant progress in becoming more transparent, but transparency of its processes is still a concern within parts of the ICANN community.**

The NomCom follows the principle that “process is transparent and data (i.e., information related to candidates) is kept confidential.” Thus, the NomCom is allowed to publish the processes that the NomCom agrees to implement and follow, as well as statistical information on the candidate pool, as long as that information does not identify individual candidates.

The NomCom has increased the extent to which it publishes such information. In particular, the NomCom undertook a series of steps designed to increase transparency following a previous NomCom review initiated in 2007 and “Accountability and Transparency” review reports published in 2010 and 2013.<sup>51</sup> These improvements include: holding regular open NomCom sessions at ICANN meetings, publishing the NomCom cycle and statistics on the candidate pool, which more recently has taken the form of monthly report cards, and explaining the selections made. The NomCom also publishes a report at the end of each cycle with recommendations for the next NomCom, and makes available 360 reviews for NomCom members.<sup>52</sup> Those who commented on these steps thought they were an improvement.

When asked directly whether the NomCom needed to be more or less transparent, survey respondents and interviewees were often split, with some indicating it was sufficiently transparent and others indicating it needed to be more transparent. However, when asked other questions about the processes of the NomCom, survey respondents and interviewees frequently raised the issue of transparency and suggested individuals did not have a good understanding of NomCom processes, especially processes related to the evaluation of candidates. Overall, when survey respondents were asked what one or two changes they would make to the NomCom, an increase in transparency was the most common answer. There was, however, a discrepancy in the extent to which NomCom members thought the NomCom needed to be more transparent, with very few NomCom members mentioning transparency in the top one or two things they would change about the NomCom.

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

Many of the recommendations in this report are designed to increase the transparency and accountability of the NomCom, from the role and description of NomCom members and

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<sup>51</sup> Interisle Consulting Group, Independent Review of the ICANN Nominating Committee, October 23, 2007, available at <https://www.icann.org/en/system/files/files/report-23oct07-en.pdf>, accessed on November 3, 2017; Final Recommendations of the Accountability and Transparency Review Team, December 21, 2010, available at <https://www.icann.org/en/system/files/files/final-recommendations-31dec10-en.pdf>, accessed on November 8, 2017; Accountability and Transparency Review Team 2, Report and Recommendations, December 31, 2013, available at <https://www.icann.org/en/system/files/files/final-recommendations-31dec13-en.pdf>, accessed on November 8, 2017.

<sup>52</sup> NomCom 2017 360 Reviews, available at <https://www.icann.org/nomcom2017/#360reviews>, accessed on November 17, 2017.

consultants, to codifying communication, recruiting, and evaluation processes. See, for example, Recommendations 1, 5, 6, 11, 13, 15, and 18.

In addition to those recommendations, we recommend the NomCom increase the information provided on the candidate pool by including the recruiting source of candidates. The 2016 NomCom's final report included, for the first time, summary statistics of the candidate pool that included the source of the application (e.g., colleague/friend/constituency, recruiter, ICANN meeting or announcement, or social media).<sup>53</sup> The NomCom should continue (and codify) this practice going forward, as it provides the ICANN community with much-needed insight into the success of recruiting efforts.

We further recommend that the NomCom should document and publish how candidates from each recruiting source fared during the evaluation phase. (For example, how many candidates from each source made the deep-dive shortlist, were selected for interviews, and were ultimately selected by the NomCom?<sup>54</sup>) While the number of applicants is important information, the quality of those candidates is equally if not more important. Additional information on the quality of the candidates would increase transparency and assist the NomCom in evaluating outreach efforts. (We note that the NomCom should ensure all such disclosures are consistent with its confidentiality requirements.)

## **VII. Findings and Recommendations: Additional Topics**

This section contains additional recommendations formed during our assessment of the NomCom. These focus on the Board and leadership development within ICANN, as well a new standing body to assist in continually improving the NomCom.

**Recommendation 24: An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to suggest and assist in implementing changes to NomCom processes.**

This body would suggest and assist in implementing changes to NomCom processes, since the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities. This body should include the current NomCom Chair, and the prior two former NomCom Chairs.

This body should be empowered to suggest recommendations, while noting that any suggestions should be provided to the ICANN community for public comment. To be successful, we note that the Board must ensure adequate funding and resources are allocated.

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<sup>53</sup> ICANN 2016 Nominating Committee Final Report, p. 14.

<sup>54</sup> The 2013 NomCom noted in its Final Report that 10 Statements of Interest were received from candidates suggested by OB Brussels, of which two were selected for face-to-face interviews but did not make the final selection. 2013 NomCom Final Report, Section 4.2.2.

**Recommendation 25: Inform assessments of the NomCom by assessing the performance of the Board.**

Ultimately, a key measure of the effectiveness of the NomCom’s appointment of ICANN Board members is the effectiveness of the ICANN Board. We recommend that once each year ICANN assess the performance of the Board using the BoardSource Board Self Assessment tool (BSA), a well-known and effective measure of a board’s performance. BoardSource’s easy, online assessment processes provides a Board with the opportunity to speak openly and candidly about gaps in competence and performance of the board as a whole and can be customized to highlight individual concerns.

The results from this assessment will aid the NomCom in better understanding potential competency gaps in the current makeup of the Board. Analyzing BSA results longitudinally will then inform future efforts to improve the NomCom’s processes (as well as those of the Board).

**Recommendation 26: ICANN should investigate advancing its nominations process into a Leadership Development function.**

This is an emerging practice in the nonprofit community and encourages early careerists and new participants to understand leadership opportunities in an organization and develop requisite skills in order to personally and professionally advance. For ICANN, this transformation could involve the current Fellows program in a more robust manner, aiding individuals and ICANN in identifying, cultivating, and recruiting emerging leaders for the future. A key element of a leadership development function is the publishing of pathways for being considered as a future leader.

The overall goal of advancing a nominations process into a Leadership Development function includes three elements. The first phase is to create a process for identifying, cultivating, and recruiting an ICANN volunteer leadership team that is balanced in thought and representation, but comprised of key competencies that advance organizational performance for ICANN; this process would be proactive in seeking out early careerists and educating them on leadership pathways within ICANN. The second and third phases combine to support individuals on their personal, professional, and ICANN leadership development journey, including how they develop personal and corporate leadership skills. The end result is to evolve the current Nominating Committee function into a Leadership Development Committee function that benefits ICANN, internet professionals, and their employers.

**A. Finding: The extent to which NomCom appointees are independent and prioritize the interests of the global Internet community in their decision-making is an area of concern within ICANN.**

NomCom appointees are expected to act in the public interest of the global Internet community and not on behalf of a narrower set of interests. The majority of survey respondents either “agree” or “strongly agree” that the NomCom should prioritize appointees that act independently. Some people expressed in the interviews that the NomCom’s primary role is to appoint individuals who

are not affiliated with ICANN at all (i.e., not “ICANN insiders”) and can therefore bring new ideas to ICANN.

When asked what one or two changes they would make to the NomCom, a number of individuals cited increasing the independence of NomCom appointees in order to reduce the chance that people vote in blocs based on narrow interests rather than the interest of the broader ICANN community. A few interviewees were unclear as to whether Board members appointed by the NomCom should act independently, and as to what acting independently means in practice.

**Recommendation 27: Provide clarity on desire for independent directors and designate three specific seats for “Independent Directors.”**

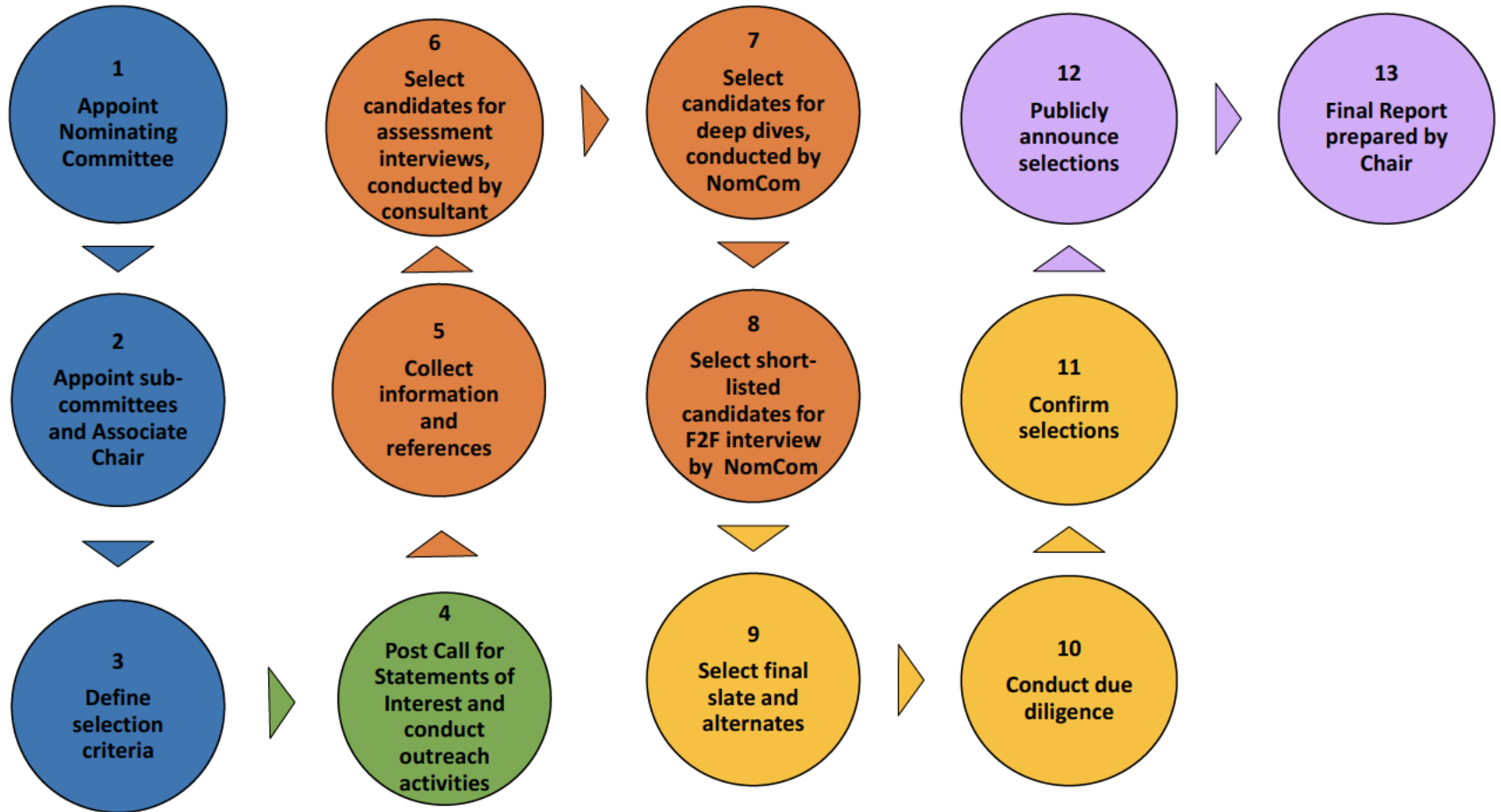
Our recommendation recognizes the challenges inherent in identifying and selecting fully independent directors. There is also some ambiguity among NomCom members in regards to selecting individuals with limited or no prior experience with ICANN. We suggest that Independent Directors are those with limited prior ICANN experience, for the purpose being 1) to find highly strategic directors that bring an outside perspective to ICANN, and 2) to provide a duty of loyalty to ICANN overall versus the perception of duty to an ICANN constituency. We recommend that three seats be designated for Independent Directors, with three year terms so that one seat is considered each year.

We do not suggest that all eight NomCom directors be independent. Our recommendation for designating three seats is an acknowledgement that it could be difficult to find completely unaffiliated directors<sup>55</sup> and that appointing people to the ICANN Board with previous experience at ICANN (who otherwise meet the NomCom’s goal of finding people who act in the best interests of the global Internet community) can be a benefit. Of course, the NomCom would be free to fill other Board seats with individuals that meet this definition of independent.

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<sup>55</sup> This point was made in the 2010 NomCom Review Finalization Working Group Report, pp. 12-13, available at <https://www.icann.org/en/system/files/files/nomcom-review-finalization-wg-final-report-29jan10-en.pdf>, accessed on February 12, 2018.

**Appendix 1: Example NomCom Process Diagram, Based on the 2017 NomCom Process**





**Appendix 2: Example Process Table, Based on the 2017 NomCom Process**

<b>Step</b>	<b>Who does it?</b>	<b>Comments</b>
<b>1</b>	Appoint Nominating Committee	<p>Board, SOs/ACs</p> <p>Board: Non-voting Chair, Non-voting Chair-Elect One non-voting liaison appointed from each of the following groups:</p> <ul style="list-style-type: none"> <li>• Root Server System Advisory Committee</li> <li>• Security and Stability Advisory Committee</li> <li>• Government Advisory Committee</li> </ul> <p>Voting delegates appointed from each of the following groups:</p> <ul style="list-style-type: none"> <li>• At-Large Advisory Committee (5 delegates)</li> <li>• Generic Names Supporting Organization as follows: <ul style="list-style-type: none"> <li>○ Business Constituency (2 delegates)</li> <li>○ Registries Stakeholder Group (1 delegate)</li> <li>○ Registrars Stakeholder Group (1 delegate)</li> <li>○ Internet Service Providers and Connectivity Providers Constituency (1 delegate)</li> <li>○ Intellectual Property Constituency (1 delegate)</li> <li>○ Non-Commercial Users Constituency (1 delegate)</li> </ul> </li> <li>• Council of the Country Code Names Supporting Organization (1 delegate)</li> <li>• Council of the Address Supporting Organization (1 delegate)</li> <li>• Internet Engineering Task Force (1 delegate)</li> </ul> <p>Voting delegates can serve at most two successive one-year terms, after which two years must elapse before delegate is eligible again. Non-voting delegate term is designated by entity that appoints them. Chair and Chair-Elect: one-year term concluded at next annual meeting. Board has authority to not appoint Chair-Elect.</p>
<b>2</b>	Appointment of sub-committees and Associate Chair	<p>NomCom</p> <ul style="list-style-type: none"> <li>• NomCom Chair appoints Associate Chair (discretionary) to serve during all or part of the Chair's term.</li> </ul>

			<ul style="list-style-type: none"> <li>NomCom has freedom to appoint sub-committees for particular purposes such as outreach activities and handling conflicts of interest.</li> <li>NomCom supported by two staff members: Senior Project Manager and Project Manager. Other persons can be identified (e.g. IT, Legal).</li> </ul>
<b>3</b>	Selection Criteria: Positions, eligibility requirements, competencies & representation	Empowered Community; NomCom (limited), Board, Board Governance Committee (BGC), PTI, ALAC, ccNSO, GNSO	<p>Positions:</p> <ul style="list-style-type: none"> <li>NomCom nominates Director Seats 1-8 only; two directors of the Public Technical Identifiers (PTI); 5 members of the At-large Advisory Committee; 3 members of the Country Code Names Supporting Org. (ccNSO) Council; 3 members of the Generic Names Supporting Org. (GNSO).</li> </ul> <p>Competencies</p> <ul style="list-style-type: none"> <li>Standard leadership competencies (e.g. integrity, objectivity, sound judgment, etc.); Technical skills training; English speaking</li> <li>Focused consultation will be held with bodies to which the NomCom appoints members in order to inform and update the NomCom about desired skill sets.</li> </ul> <p>Eligibility Requirements:</p> <ul style="list-style-type: none"> <li>Geographic and cultural diversity</li> <li>Individuals who have demonstrated the maturity, experience, knowledge and skills to handle the tasks and make sound judgments</li> <li>Additional considerations are denoted for GNSO, ALAC, ccNSO</li> </ul>
<b>4</b>	Post call for Statements of Interest and conduct outreach activities	NomCom; SOs, ACs, and other groups in the ICANN community, individuals, Recruiting Consultant	<ul style="list-style-type: none"> <li>Call for Statements of Interest (SOI) posted on ICANN website with online application form, including NomCom timeline. (Note: application includes references.)</li> <li>Select and contract Recruiting Consultant</li> <li>Public NomCom meetings</li> <li>NomCom engages all ICANN stakeholder groups to encourage candidate interest</li> <li>NomCom members present action plan to identify candidates</li> <li>Call is open 60 days</li> </ul>
<b>5</b>	Collect information and references	NomCom, NomCom Staff	<ul style="list-style-type: none"> <li>Select and contract Assessment Consultant</li> <li>Handle SOIs received, acknowledge receipt, update SOI repository system</li> <li>Conference calls to assess progress and fine-tune actions</li> <li>Updates to community on progress, by postings on ICANN website and presentations</li> </ul>

<b>6</b>	Select candidates for assessment interviews conducted by consultant	NomCom, Assessment Consultant	<ul style="list-style-type: none"> <li>Request information from references, handle responses, update SOI repository system</li> <li>Select candidates for interviews, contact selected candidates</li> <li>Assessment Consultant performs interviews and reports back to NomCom</li> <li>Assessment information posted in SOI repository system</li> </ul>
<b>7</b>	Select candidates for deep-dives conducted by NomCom interviewer teams	NomCom	<ul style="list-style-type: none"> <li>Select candidates for deep-diver team interviews</li> <li>Conference calls to assess progress and fine tune actions</li> <li>Deep diver teams are formed and assigned to candidates,</li> <li>Deep diver teams perform interviews and report back to NomCom</li> </ul>
<b>8</b>	Select short-listed candidates for face-to-face interviews with NomCom teams	NomCom	<ul style="list-style-type: none"> <li>Select short-listed candidates for interviews</li> <li>Face-to-face interviews with short list candidates</li> </ul>
<b>9</b>	Select final slate and alternates	NomCom	<ul style="list-style-type: none"> <li>Deliberations and decisions made on final slate, with alternates</li> <li>Selected candidates contacted, to confirm interest and inform on next steps</li> </ul>
<b>10</b>	Conduct due diligence	NomCom	<ul style="list-style-type: none"> <li>Check credentials and consult with others not named by the candidate</li> </ul>
<b>11</b>	Confirm selections	Executive Committee	<ul style="list-style-type: none"> <li>2 months before the commencement of each ICANN Annual Meeting, the NomCom shall give the EC Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting</li> <li>The EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the website</li> <li>Inform unsuccessful candidates of outcome, ask if they want their application retained for next year's NomCom</li> </ul>
<b>12</b>	Publicly announce selections	NomCom	<ul style="list-style-type: none"> <li>Announced to ICANN with rationale for selection</li> </ul>
<b>13</b>	Final report prepared by Chair	NomCom	

### Appendix 3: Sample Evaluation Matrices

#### Current Board Members: Skills and Experience

	Appointed By	Gender	Age	Region	Employment Status	Marketing	Advocacy / Govt. Relations	Financial / Audit	Regulatory / Compliance	Technical Expertise (gTLD, ccTLD, etc.)
<b>Departing Directors</b>										
Director 1	NomCom	F	55	NA	Full-Time					X
Director 2	NomCom	M	60	Europe	Full-Time	X				
Director 3	NomCom	M	52	Africa	Part-Time				X	
Director 4	ccNSO	M	73	Africa	Retired		X			
Director 5	NomCom	F	64	NA	Retired			X	X	
<b>Up for Reappointment</b>										
Director 6	NomCom	F	70	Europe	Part-Time		X			
<b>Remaining Directors</b>										
Director 7	NomCom	M	75	LA	Retired			X		X
Director 8	NomCom	M	68	Africa	Retired				X	
Director 9	NomCom	M	58	NA	Part-Time		X			
Director 10	ASO	M	55	NA	Full-Time				X	
Director 11	ASO	M	52	AAP	Full-Time	X				
Director 12	GNSO	F	61	NA	Full-Time	X	X			
Director 13	GNSO	M	70	Europe	Part-Time		X	X		
Director 14	ccNSO	M	69	AAP	Retired					X
Director 15	ALAC	M	63	LA	Full-Time			X		

#### Board Candidates

Source	Gender	Age	Region	Employment Status	Skills and Experience					Personal Qualities			Total (out of 40)	Notes	
					Marketing	Advocacy / Govt. Relations	Financial / Audit	Regulatory / Compliance	Technical Expertise (gTLD, ccTLD, etc.)	Leadership	Communication Skills	Unbiased			
Candidate 1	Open Call	F	48	Europe	Full-Time	4	0	0	0	2	5	5	4	20	HR experience
Candidate 2	OB	M	60	LA	Full-Time	0	3	2	5	1	5	4	5	25	
Candidate 3	Referral	F	55	AAP	Part-Time	2	0	1	4	5	4	5	5	26	Good references

Note: Skills, Experience, and Personal Qualities are scored from 0 (worst) to 5 (best).

# **Feasibility Assessment and Initial Implementation Plan (FAIIP)**

**by the**

**NomCom2 Review**

**Implementation Planning Team (IPT)**

**Completed with consensus on**

**14 December 2018**

## INTRODUCTION

The purpose of this document is to provide the Organizational Effectiveness Committee (OEC) of the ICANN Board with a community assessment of the feasibility of the recommendations in the independent examiner's final report, and to provide an initial plan of how to implement them.

From the ICANN Multistakeholder Strategy and Strategic Initiatives' [Organizational Reviews Handbook](#):

"The [Review Working Party] RWP reviews the final report and checks the [independent examiner's] IE's recommendations for usability, feasibility, prioritization [of easier to implement recommendations being addressed before more complex ones], resources, budget, and timeline. After its analysis, the [Implementation Planning Team (IPT)] develops a feasibility assessment and initial implementation plan...

"Following...approval of the feasibility assessment and initial implementation plan, ICANN organization collects relevant materials. These include the final report, staff report of public comments, and feasibility assessment and initial implementation plan, and sends them to the OEC for consideration. Both the IE and the leadership of the [IPT] present their findings (final report and feasibility assessment and initial implementation plan respectively) to the OEC."

The NomCom Review IPT has thoroughly reviewed and discussed each of the 27 recommendations, taking into account cross-community work, and comments from the public and the ICANN community.

The IPT understands the importance of a proper implementation, and has developed the document with this in mind.

It is important to afford the community the means in both time and resources to implement these recommendations properly, and to have participation from the pertinent parties, especially in the case of changes to the [Nominating Committee Operating Procedures](#), and in understanding fully how they should be undertaken.

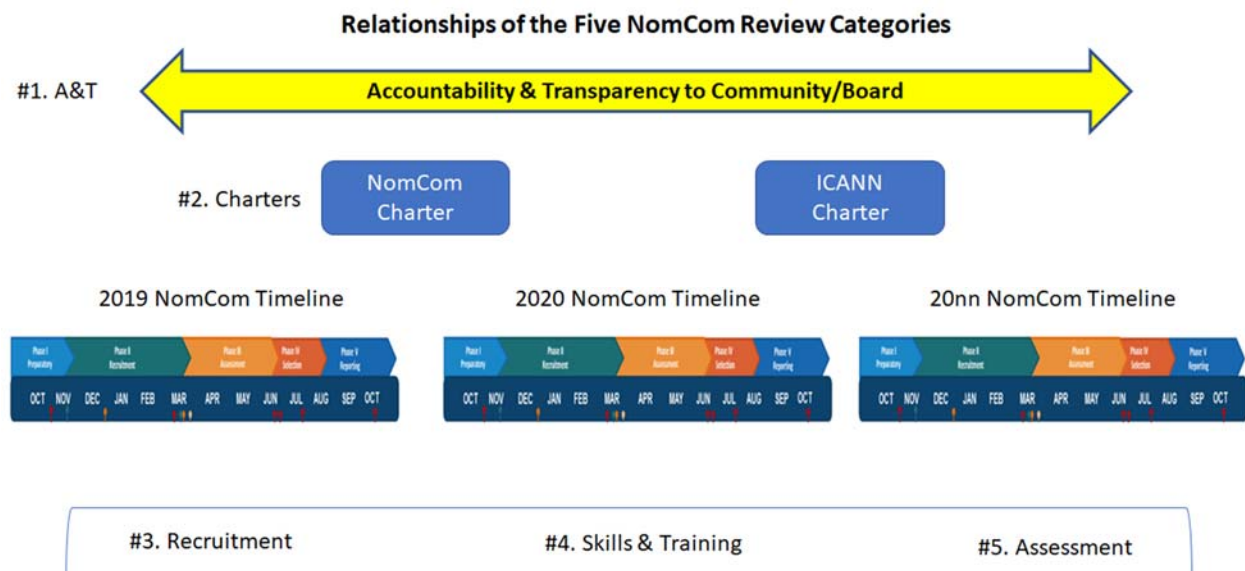
Also, since Bylaws changes are included in the scope of the recommendations; the OEC and the Board are impacted parties to the implementation.

## Recommendation Categories

The IPT categorized the 27 recommendations identified in the IE final report into [five categories](#). These categories range from overarching issues impacting the NomCom’s mission to more operational-type issues. The categories are:

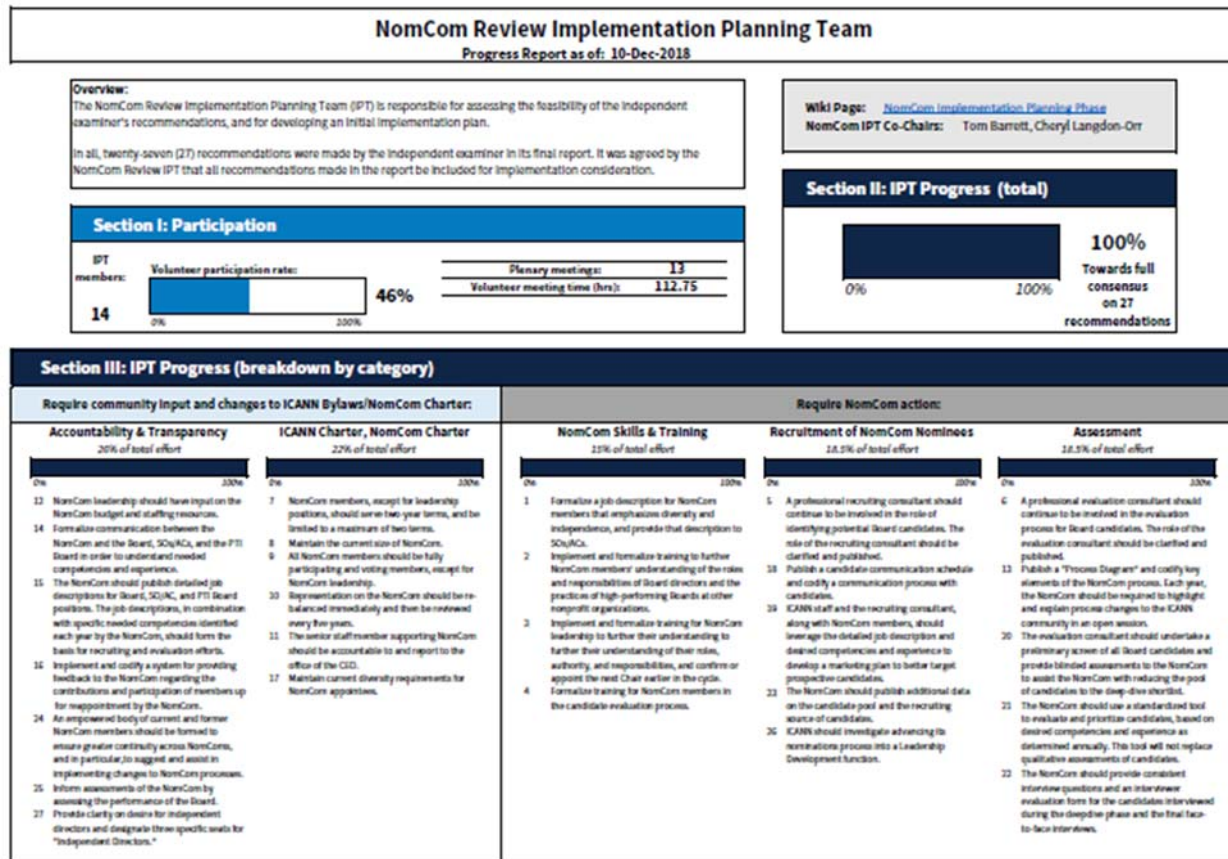
1. **Accountability & Transparency:** This category relates to ensuring the NomCom is fulfilling its mission. It includes seven recommendations.
2. **ICANN/NomCom Charters/Operating Procedure:** This category relates to proposed changes to Bylaws impacting NomCom governance. It consists of six recommendations.
3. **Skills & Training:** This category relates to requisite skills of NomCom members and training to ensure NomCom members are provided a common set of skills for their role. There are four recommendations in this category.
4. **Recruitment:** This category relates to candidate recruitment. It consists of five recommendations.
5. **Assessment:** This category relates to assessment processes and criteria for candidate selection. There are five recommendations in this category.

The five categories are not equal in significance. In particular, category 1 and 2 above are “macro”-level issues related to ICANN’s mission, which in turn influence the next three “micro”-level categories that relate more to the operational details of the NomCom. This conceptual relationship of these categories is illustrated in the following graphic:



## IPT Scorecard and List of Recommendations

The infographic below summarizes the 27 recommendations and identifies the category to which each was assigned. This infographic was published by the IPT to track its progress during the feasibility assessment and implementation planning phase:



## Feasibility Findings

The detailed findings of the FAIP are shown on the following pages. The IPT utilized the template that MSSJ developed for other ICANN reviews with a few minor variations.

## Definition of Consensus

For reaching consensus on its responses to the questions posed in the FAIP template, the IPT chose to follow the definitions provided in the [GNSO Working Group Guidelines](#).

## Prioritization of Recommendations

Recommendations requiring community input will implement over a long duration of time, and thus their implementations will complete later than recommendations that can be



implemented over a shorter period of time, namely those recommendations that can be implemented by the current NomCom alone, by adapting its workflow and general practices.

### **Interdependent Recommendations**

In addition to the hierarchy of categories, there are also overarching recommendations that impact multiple other recommendations. One example is Recommendation #24-shown below.

#### **Recommendation 24: Establishment of a Standing Committee**

The IE's recommendation to establish a standing committee resulted in the assignment of several responsibilities to it which are reflected throughout the FAIP document, including oversight, operations maintenance, providing solutions, and maintaining systems and processes. The IPT sees the standing committee as a body providing continuity to the NomCom across years in order to build and maintain institutional memory, and ensuring accountability and transparency in NomCom administration and operations to the NomCom stakeholders and to the overall ICANN community.

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

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**Independent examiner finding**

The NomCom is generally seen as performing its role effectively, but there is room to improve the functioning of the NomCom. The extent to which NomCom members are independent and prioritize the interests of the global Internet community in their decision-making is an area of concern within ICANN. The NomCom itself is not seen as sufficiently diverse, particularly with respect to gender.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	(no IPT comments)

Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (bodies appointing members to the NomCom)
Anticipated resource requirements for the implementation (volunteers time, FTE's, tools)	Not applicable - no additional volunteer time is needed once the 'job description' has been formulated by the implementation team.
Expected budget implications once implemented (high, medium, low)	Not applicable
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Easy: Once the job description has been formulated, the bodies that appoint members to the NomCom will simply apply the new criteria in the selection processes to future NomCom's.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Medium: A transparent and clear job description, describing desired expertise and experience of NomCom members, emphasizing diversity and independence, will lead to a more effectively functioning NomCom.
Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation	Not applicable

<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Design job description for NomCom members by: <ul style="list-style-type: none"> <li>○ Soliciting input from current and former NomCom members</li> <li>○ Soliciting input from NomCom supporting staff</li> <li>○ Soliciting input from bodies appointing members to the NomCom</li> <li>○ Looking at industry-wide best practices</li> </ul> </li> <li>● Share redesigned job description with the bodies who nominate to the NomCom</li> <li>● Publish job description in an appropriate place on the ICANN.org website</li> <li>● Maintenance/updates to NomCom job description to be the responsibility of the NomCom Standing Committee (see Recommendation #24)</li> </ul>

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

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**Independent examiner finding**

NomCom members have significant technical and policy-related experience in their fields but do not always fully understand the role of Board members and the skills and attributes needed to be a successful Board member at ICANN.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>The job description described in Recommendation #1 may well include an understanding or experience in board governance. However, since there will certainly be NomCom members lacking this background, this recommendation is intended to compensate.</li> </ol>

	<ol style="list-style-type: none"> <li>2. Formal, in-depth training in the form of a multi-day program shall be implemented for all NomCom members to ensure graduate-level knowledge and proper recognition of director roles and responsibilities.</li> <li>3. We may be able to leverage existing orientation materials used for new members of the Board.</li> <li>4. ICANN organization may require additional resources to support and coordinate training. A third-party vendor may be required to develop and/or deliver training.</li> <li>5. Resources and funds will be required to support related travel and accommodations, vendors and any additional ICANN organization staff required to support.</li> </ol>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community; ICANN organization (NomCom, Board supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time; ICANN org is expected be able to absorb supporting the training as part of its current workload.

<p>Expected budget implications once implemented (high, medium, low)</p>	<p>High: Providing professional training courses for NomCom members will require funds.</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Hard: Identifying a suitable trainer / educational courses; securing sufficient budget for training of all current and incoming NomCom members on an ongoing basis; align the training with the NomCom appointment cycle to make sure incoming members are training once they take their seat or immediately afterwards.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>High: A better formation of NomCom members, including a better understanding of what makes a high-performing board member, will lead to better and more informed NomCom appointments to the ICANN Board, and potentially also to other bodies receiving NomCom appointees.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Identification and/or the development of suitable training/educational courses; securing appropriate budget.</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Long: ≤ 30 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Consult with current and past NomCom members, as well as bodies that appoint members to the NomCom what the training should include</li> <li>● Determine if existing orientation resources given to new Board members can be leveraged for the NomCom.</li> </ul>

	<ul style="list-style-type: none"><li>● Identify appropriate training options and/or educational courses</li><li>● Decide which training is best suited, taking into consideration factors such as: duration, timing (and possible alignment with NomCom cycle), budget, location, etc.</li><li>● Design a feedback mechanism to assess the usefulness and benefits of the training course on an annual basis (to be overseen by the NomCom Standing Committee, see Recommendation #24)</li><li>● Estimate funding requirements and make budget request during the next budget cycle (NomCom)</li><li>● Once budget is allocated, start training during the next NomCom cycle</li><li>● Based on the feedback, decide whether current training is appropriate or whether different training needs to be provided (to be overseen by the NomCom Standing Committee, see Recommendation #24)</li><li>● Consider supplementing training with mentoring to new NomCom members by members who have completed the specified training.</li></ul>
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**Recommendation #3:** Implement and formalize training for NomCom leadership to further their understanding of their roles, authority, and responsibilities, and confirm or appoint the next Chair earlier in the cycle.

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**Independent examiner finding**

The leadership structure of the NomCom generally works well, although the effectiveness of the NomCom depends heavily on the effectiveness of the Chair.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. Formalized training shall be given to NomCom leadership.</li> <li>2. NomCom leadership across years shall be contiguous, as there are negative consequences of unfilled NomCom leadership seats. Leadership appointment confirmation shall occur earlier in the cycle--potentially</li> </ol>

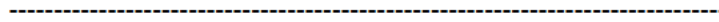
	<p>in June, on the last day of the June ICANN policy meeting.</p> <ol style="list-style-type: none"> <li>3. Leadership appointments should provide preference to individuals who have completed Leadership/ Facilitation workshops (ICANN or non-ICANN)</li> <li>4. Implementation of this recommendation shall include adjustments in timing for dependencies to filling leadership seats, including earlier completion of annual 360 reviews, and necessary information provided to the Board earlier in the cycle.</li> <li>5. ICANN organization may require additional resources to support and coordinate training. A third-party vendor will be required to develop and deliver training. Resources and funds will be required to support related travel and accommodations, vendors and any additional ICANN organization staff required to support.</li> <li>6. There should be published selection criteria, selection process, and deadlines for the appointee of the NomCom Leadership team by the Board.</li> </ol>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom); ICANN organization (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time; ICANN org is expected be able to absorb supporting the training as part of its current workload.

<p>Expected budget implications once implemented (high, medium, low)</p>	<p>High: Providing professional training courses for NomCom leadership will require funds--could potentially, for efficiency, be associated with training provided for in Recommendation #2.</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Hard: Identifying a suitable trainer / educational courses; securing sufficient budget for training of all current and incoming NomCom leadership on an ongoing basis; align the training with the NomCom appointment cycle to make sure incoming leadership receives training upon taking their position or immediately afterwards.</p> <p>Need to set and publish selection criteria and deadlines for the appointment of the Leadership team.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>High: A better informed NomCom leadership may lead to better and more effectively chaired NomCom.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Identification of suitable training/educational courses; securing appropriate budget.</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Long: ≤ 30 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Consult with current and past NomCom members and leadership, as well as bodies that appoint members to the NomCom, to determine what the training should include</li> </ul>

	<ul style="list-style-type: none"><li>● Identify appropriate training options and/or educational courses</li><li>● Investigate if existing ICANN Leadership training and/or ICANN Learn modules and/or other self-paced learning modules with deadlines can be leveraged to maximize effectiveness</li><li>● Investigate to determine if training can be sourced in combination with training as per other recommendations for training</li><li>● Decide which training is best suited, taking into consideration factors such as: incorporation with NomCom training as per Recommendation #3, timing (and possible alignment with NomCom cycle), budget, location, etc.</li><li>● Design a feedback mechanism to assess the usefulness and benefits of the leadership training course on an annual basis (to be overseen by NomCom Standing Committee, Recommendation #24)</li><li>● Estimate funding requirements and make NomCom budget request during the next budget cycle</li><li>● Once budget is allocated, start leadership training during the next NomCom cycle</li></ul>
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**Recommendation #4:** Formalize training for NomCom members in the candidate evaluation process.



**Independent examiner finding**

NomCom members have exerted, and continue to exert, tremendous effort and time to the activities of the committee. On average, NomCom members lack substantive recruiting and selection experience for an organization the size and complexity of ICANN.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. Formalized training could be given to all NomCom members for conducting candidate evaluations including but not limited to training articulated in Recommendation #2.</li> </ol>

	<p>2. ICANN's Human Resources department shall be a contributor to the effort of selecting the training organization, as it is required that the trainer contracted understand ICANN, and have the ability to communicate specifically about NomCom's role in the context of ICANN.</p> <p>3. ICANN organization may require additional resources to support and coordinate training. A third-party vendor will be required to develop and deliver training. Resources and funds will be required to support related travel and accommodations, vendors and any additional ICANN organization staff required to support.</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom); ICANN organization (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time; ICANN org is expected be able to absorb supporting the training as part of its current workload.
Expected budget implications once implemented (high, medium, low)	High: Providing professional training courses for NomCom members will require funds.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes	Hard: Identifying a suitable trainer / educational courses; securing sufficient budget for training of all current and incoming NomCom members on an ongoing basis; align the timing of training with the NomCom appointment cycle to make sure incoming members are in training upon taking their seat or immediately afterwards.

<p>and other dependencies (easy/medium/hard)</p>	
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>High: A better formation of NomCom members, including a better understanding of what makes a high-performing board member, will lead to better and more informed NomCom appointments to the ICANN Board and all other bodies receiving NomCom appointees.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Identification of suitable training/educational courses; securing appropriate budget; determining role of ICANN org HR</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Long: ≤ 30 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Consult with current and past NomCom members, as well as bodies that appoint members to the NomCom to determine what the training should include</li> <li>● Identify appropriate training options and/or educational courses with input from ICANN org HR</li> <li>● Decide which training is best suited, taking into consideration factors such as: duration, timing (and possible alignment with NomCom cycle), budget, location, etc.</li> <li>● Design a feedback mechanism to assess the usefulness and benefits of the training course on an annual basis</li> </ul>

	<ul style="list-style-type: none"><li>● Estimate funding requirements and make NomCom budget request during the next budget cycle</li><li>● Once budget is allocated, start training during the next NomCom cycle</li><li>● Based on the feedback, decide whether current training is appropriate or whether different training needs to be provided, overseen by NomCom Standing Committee (see Recommendation #24)</li></ul>
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**Recommendation #5:** A professional recruiting consultant should continue to be involved in the role of identifying potential Board candidates. The role of the recruiting consultant should be clarified and published.

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**Independent examiner finding**

There is a lack of understanding around the role of, and consensus regarding, the effectiveness of the professional recruitment firm OB Brussels.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The implementation team shall document and publish the role of the professional recruiting firm(s).</li> <li>2. Implementation, in determining the role of the recruiting firm(s), shall include an analysis, including cost and benefit, to having the recruiting function operate throughout each year.</li> </ol>

3. Implementation of this recommendation shall include a mechanism for determining when a change in recruiting firm(s) should be made, and the role of the NomCom Standing Committee (see Recommendation #24) in the process. Review and consideration for changing recruiting firms shall be tied to Recommendation #23, with respect to getting better data on recruiting sources of candidates. If it is determined that an addition or change in recruiting firms is needed, the work to secure a new/additional recruiting firm shall occur well in advance of the NomCom cycle in which it is intended to begin operating.
4. Recruiting firms shall be periodically reviewed by NomCom to determine the value added to NomCom, and if the firms' efforts need to be redirected or re-focused. Conducting periodic reviews and maintaining the results across reviews shall be the responsibility of the NomCom Standing Committee (see Recommendation #24).
5. Analysis of cost, benefit, and ease of implementation shall be performed to determine if two recruiting firms should be utilized instead of one, and if the additional firm should be specialized (e.g., geography, language, other representation of diversity) to address areas of underrepresentation.
6. The NomCom Standing Committee (see Recommendation #24) shall perform assessments for selection of potential recruiting firms, contract new recruiting firms with ICANN Legal, and prepare the selected firm(s) for the upcoming cycle, including directing the contracted recruiting firm(s) to specialized geographic or other diversity needs.
7. The NomCom Standing Committee (see Recommendation #24) shall perform forecasts to determine upcoming open seats in receiving bodies by reviewing the terms of seated appointees, along with their regions, to anticipate and communicate

	<p>upcoming geographic needs, and to identify the most appropriate recruiting firm(s) based on the identified needs.</p> <p>8. Recommendation #15 should be incorporated into the scope of the recruitment efforts and be the basis for measuring the effectiveness of recruitment efforts.</p> <p>9. ICANN organization could maintain an inventory of recruiting firms in a matrix that contains each firm’s capabilities including regional presence, specializations, industry focus etc. Each years NomCom should define comprehensive recruitment requirements that could be used to vet and select recruiting firms from the existing inventory. Each years NomCom could assess the effectiveness, strengths and weaknesses of firms used. That information can be maintained as part of the inventory and as criteria to add or remove potential vendors.</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom, NomCom Standing Committee), ICANN org (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time; no additional FTEs are expected to result from implementing this recommendation
Expected budget implications once implemented (high, medium, low)	Low: No budget implications are expected as a result of implementing this recommendation.
How would you rate the potential ease of implementation for this	Medium: The role of the recruiting firm should be clarified by the implementation team with input from current and former NomCom members, and NomCom supporting staff.

<p>recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>Medium: Clarifying the role of the recruiting firm will increase transparency and accountability of the NomCom processes and may further increase community confidence in the NomCom's appointments.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Draft the current role and responsibilities of the recruiting firm based on consultation with: <ul style="list-style-type: none"> <li>○ Current and former NomCom members</li> <li>○ NomCom supporting staff</li> <li>○ ICANN HR, if applicable</li> </ul> </li> <li>● Publish the role and responsibilities documentation</li> <li>● Ensure a process exists so that the written job descriptions described in Recommendation #15 define the scope of the recruitment efforts</li> </ul>

	<ul style="list-style-type: none"><li>● Empower the NomCom Standing Committee (see Recommendation #24) to maintain and, if needed, update the role and responsibilities document of the recruiting company</li><li>● Ideally, there should be only one firm. If more than one, this should be addressed by the NomCom in its budget cycle.</li><li>● The implementation team may want to reach out to the current NomCom to confirm that the implementation is in line with what is needed.</li></ul>
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**Recommendation #6:** A professional evaluation consultant should continue to be involved in the evaluation process for Board candidates. The role of the evaluation consultant should be clarified and published.

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**Independent examiner finding**

The role and effectiveness of the professional evaluation firm (previously OB Frankfurt), generates some disagreement within the ICANN community.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Yes
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The role of the evaluation firm, including its process, and its evaluation guidelines to the NomCom shall be documented and published, for the benefit of the firm, candidates, and potential candidates, as well as for the benefit of the ICANN community.</li> </ol>

	2. The written job descriptions referred to Recommendation #15 should guide the evaluation criteria of all candidates.
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom); ICANN org (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Not applicable
Expected budget implications once implemented (high, medium, low)	Not applicable
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Easy: The role of the external firm does not change; rather their role is to be captured and published to assure accountability, transparency, and consistency of their services.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom	Medium: A better understanding of the role of the external firm may lead to increased transparency, accountability, and consistency of the NomCom's processes and thus to increased community trust in the NomCom's work.

<p>accountability and transparency, etc. (high, medium, low)</p>	
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Document the role/purpose of the external firm, including all relevant, and non-sensitive, components of their contractual obligations with ICANN org and with the NomCom.</li> <li>● Ensure a process exists for the evaluation phase and firms utilize the written job descriptions described in Recommendation #15</li> <li>● Publish document on the NomCom website and make sure that it is updated if/when the role of the firm is modified.</li> </ul>



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

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**Independent examiner finding:** The NomCom term length of one year, even if often renewed for a second year, may not allow for sufficient learning and engagement of members.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. Non-leadership members of the Nominating Committee shall serve a two-year term, after which they shall step down from the NomCom.</li> <li>2. Once a term is completed, the individual could be re-appointed for another two-year term, after a minimum hiatus of two years.</li> </ol>

	<p>3. No lifetime term-limits are to be imposed on NomCom members at this stage; however, the next NomCom review shall assess whether lifetime term-limits for NomCom members may or may not be useful to introduce.</p>
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Implementation Details	IPT Response
<p>Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?</p>	<p>ICANN community (NomCom), ICANN org (NomCom support staff)</p>
<p>Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)</p>	<p>Not applicable</p>
<p>Expected budget implications once implemented (high, medium, low)</p>	<p>Low: No budget implications are anticipated.</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Easy: Only requires a change to the NomCom’s operations.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom</p>	<p>Medium: A two-year term will require fewer selection processes by the organizations that appoint members to the NomCom; greater accumulation of institutional knowledge among NomCom members due to longer term times.</p>

<p>accountability and transparency, etc. (high, medium, low)</p>	
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Medium: &lt; 20 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ol style="list-style-type: none"> <li>1. Amend the NomCom Operating Procedures</li> <li>2. 'In consultation with the SOs and ACs, the Implementation Team shall: <ul style="list-style-type: none"> <li>● inform the bodies appointing members to the NomCom about the new term-limits and appointment circles</li> <li>● address if SOs and ACs will need to change their bylaws to accommodate this NomCom change</li> </ul> </li> <li>3. Consider introducing the change over two years, to have only one half of the first term of the NomCom to which the new terms apply, be seated for two years and the other half for one year; in the subsequent year, the other half (whose term ends after one year) will be replaced by two-year term members. So that in future each year, half of the NomCom is being renewed.</li> </ol>

**Recommendation #8:** Maintain the current size of NomCom.

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**Independent examiner finding**

The current size of the NomCom is appropriate.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"><li>1. The implementation team shall implement as written in the recommendation.</li><li>2. Note: This recommendation might conflict with the outcome of recommendation #10 “Rebalancing”.</li></ol>

Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	Not applicable
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Not applicable
Expected budget implications once implemented (high, medium, low)	Not applicable
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Not applicable
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Not applicable
Activities, if any, on which implementation is dependent, or	Not applicable

that are dependent on implementation of this recommendation	
<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	Not applicable
Please provide a high-level summary of proposed implementation steps	No implementation is required. May be impacted by Recommendation #10.

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

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**Independent examiner finding**

There is concern over the role and participation of non-voting members.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<p>1. All currently active members, including members from non-receiving bodies (SSAC, RSSAC) shall be fully participating throughout the process, not just in the final vote.</p> <p>Note: The GAC seat is currently unfilled. Could be impacted by Recommendation #10.</p>

	2. This recommendation may be revisited by the IPT to provide additional refinement.
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom); ICANN org (NomCom support staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time
Expected budget implications once implemented (high, medium, low)	Low: No budget implications are anticipated.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Easy: Change of NomCom Operating Procedures.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom	Low: Voting is currently used only in the rarest of circumstances within the NomCom.



accountability and transparency, etc. (high, medium, low)	
Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation	Not applicable
What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months	Medium: ≤ 20 months
Please provide a high-level summary of proposed implementation steps	<ol style="list-style-type: none"> <li>1. Change NomCom Operating Procedures.</li> <li>2. Possibly change SO Bylaws of non-voting members.</li> </ol>

**Recommendation #10:** Representation on the NomCom should be re-balanced immediately and then be reviewed every five years.

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**Independent examiner finding**

There is concern that the NomCom may not accurately represent constituencies (both across SOs/ACs and within SOs/ACs).

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The implementation team shall determine the definition of “rebalancing”.</li> <li>2. “Rebalancing” shall not necessarily include or exclude consideration for increasing or decreasing the size of the NomCom. Rebalancing can be rotational.</li> </ol>

	<ol style="list-style-type: none"> <li>3. "Rebalancing" shall include consideration for the growth and expansion of SO/ACs. Rebalancing may include seat(s) for representation where there is currently no seat.</li> <li>4. The implementation team shall determine the methodology for rebalancing, including defining and soliciting appropriate community input.</li> <li>5. The implementation team shall consider the distinction between intra-SO/AC rebalancing and NomCom rebalancing, and which organization's operating procedures require modification.</li> <li>6. The implementation team shall include, in the rebalancing exercise, examination of the unfilled GAC seat and its future role and status on the NomCom.</li> <li>7. The IPT notes that composition of NomCom and allocation of seats is determined in ICANN Bylaws, Section 8.2. Any changes to that as part of rebalancing will require a change to the ICANN Bylaws.</li> <li>8. The implementation team shall consider that constituencies are created from time to time within ICANN. Re-balancing could include a variety of considerations such as representation from various constituencies, or representation as considered among all component parts of ICANN.</li> </ol>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community - bodies appointing members to the NomCom

<p>Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)</p>	<p>Not applicable: no changes to current volunteer time; FTEs</p>
<p>Expected budget implications once implemented (high, medium, low)</p>	<p>Not applicable</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Medium: A rebalancing might mean that some bodies that appoint members to the NomCom might have fewer seats or might have to be unrepresented on the NomCom in certain years. Getting agreement from all bodies may be challenging.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>High: Equal representation by all ICANN community bodies on the NomCom is the basis for the committee’s impartial and community-serving work.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Once the implementation team agrees how to ‘rebalance’ the NomCom, all bodies that appoint members to the NomCom need to agree before the changes can be implemented.</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Medium: ≤ 20 months</p>

<p>Please provide a high-level summary of proposed implementation steps</p>	<ol style="list-style-type: none"><li>1. Gain understanding of current balance and allocation of NomCom membership seats (Section 8.2 ICANN Bylaws).</li><li>2. Reach agreement how the term ‘rebalancing’ is understood in the context of this recommendation, and guidelines/principles by which rebalancing will occur.</li><li>3. Reach agreement on the rebalance should look like. Consider soliciting perspectives from outside of ICANN.</li><li>4. Assure support from the bodies appointing members to the NomCom.</li><li>5. Consider whether the NomCom’s composition/balance should be moved to the NomCom Operating Procedures to avoid the need to change the Bylaws every five years when the balance is reassessed, in line with this recommendation.</li><li>6. Change the ICANN Bylaws to reflect the rebalanced NomCom and/or amend the Bylaws to reflect just the overall number of NomCom members, with the detailed composition determined in the NomCom Operating Procedures.</li><li>7. Noting that NomCom seats are determined in the ICANN Bylaws and that, at time of the development of the current Bylaws, there was, for example, no NPOC or NCUC, the implementation team is encouraged to investigate if it is useful for SO/AC’s to determine internally how to accomplish rebalancing.</li></ol>
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**Recommendation #11:** The senior staff member supporting NomCom should be accountable to and report to the office of the CEO.

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**Independent examiner finding**

The NomCom is highly dependent on ICANN Staff support. There is concern that the NomCom staff is under-resourced, which has affected the functioning of the NomCom.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the issue/finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	1. The IPT may revisit this recommendation to determine additional qualifiers to the recommendation: <ul style="list-style-type: none"> <li>a. NomCom staff shall be accountable to ICANN org, and to NomCom</li> <li>b. feedback shall be given on all staff supporting NomCom, not just the senior staff member</li> </ul>

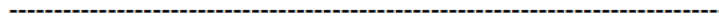
	<p>c. the specific department and role of the entity to which NomCom staff report shall be named; the reporting structure shall be documented</p> <p>d. guidelines for NomCom feedback on NomCom staff shall be defined</p> <ul style="list-style-type: none"> <li>i. timing of feedback and reporting</li> <li>ii. description of the mechanism for assessing quality of performance</li> <li>iii. details of the process and roles for collection and reporting of feedback to ICANN org</li> </ul> <p>e. consideration of CCWG WS2, Recommendation #7, will be given, with respect to defining and assessing accountability and performance of NomCom staff.</p> <p>CCWG WS2 final report:  <a href="https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-27mar18-en.pdf">https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-27mar18-en.pdf</a></p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom); ICANN org (HR, NomCom support)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time: Providing feedback on NomCom support
Expected budget implications once implemented (high, medium, low)	Not applicable
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources,	Medium: Implementation shall not be delayed by implementation of WS2 Recommendation #7.

increased budget, Bylaws changes and other dependencies (easy/medium/hard)	
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Medium: Consistent and transparent feedback on the support level of ICANN org to the NomCom may help improve the support and lead to a more effectively supported/run NomCom.
Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation	Wording of WS2 Recommendation #7 ( <a href="https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en">https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en</a> ), but not necessarily its implementation; to be determined by implementation team, timing of implementation of WS2
What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months	Long: ≤ 30 months
Please provide a high-level summary of proposed implementation steps	Design according to guidelines presented in WS2 Recommendation #7 ( <a href="https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en">https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en</a> )



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



**Independent examiner finding**

The NomCom is highly dependent on ICANN Staff support. There is concern that the NomCom staff is under-resourced, which has affected the functioning of the NomCom.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>To prevent the NomCom from being under-resourced, outgoing NomCom leadership, and potentially the Standing Committee (Recommendation #24) will provide input to ICANN org on NomCom budget and staffing resources. To accomplish this, a standing process, and guidelines for annual NomCom input will be established.</li> </ol>

2. NomCom input is defined as timely comments provided on every NomCom-related budget item during ICANN org's annual budget planning phase. This may include requests for resources including additional or modified staffing or other support, tools, funding, re-allocation of funding, or requests for clarification of ICANN org's proposed allocation of funds. ICANN org must provide detailed and timely responses to NomCom input.
3. All input provided by the NomCom to ICANN org must be in line with the NomCom's mission and existing operational procedures, and must adhere to ICANN community transparency and accountability objectives and guidelines.
4. A process and calendar timing are to be established to account for alignment of annual NomCom cycles with ICANN org budget development, and to establish roles and responsibilities of the NomCom--current and/or prior leadership, NomCom Standing Committee (see Recommendation #24), current membership, and/or a NomCom committee--for contributing to the effort to compose and manage input, for agreement/approval of the input, and for NomCom leadership's communications of the input with ICANN org.
5. When formulating the implementation of this recommendation, WS2 Project Cost Support Team documentation (<https://community.icann.org/x/NJbDAw>) should be referenced as needed.
6. Alignment of the delivery of NomCom budget and staffing requirements with the budgeting cycle may present challenges since the budget is finalized by the Board during the fiscal year prior to the NomCom term and prior to the seating of the NomCom leadership team; the NomCom Standing Committee (see Recommendation #24) might be better suited to assume these responsibilities.

Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN staff, ICANN community (NomCom)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time No additional FTEs: ICANN staff should be able to absorb the support of the implementation into its workload.
Expected budget implications once implemented (high, medium, low)	Likely medium: Budgetary implications are subject to the requests submitted.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Easy: Implementation will likely require the creation of a workflow to align ICANN’s budget cycle with a formalized input process for the NomCom. Once the workflow is created, the requests process should be repeatable each year.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Medium: Greater NomCom effectiveness due to better planned and targeted budgetary requests and, subject to Board approval, budget allocations.
Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation	Possibly assess role of the NomCom Standing Committee in providing input into the budgetary process (see Recommendation #24).

<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Short: 0-10 months: Establishing the workflow and creating a NomCom process to provide input into the annual budget process should be achieved relatively quickly.</p> <p>Input in NomCom staffing and budget is to be accomplished according to guidelines documented in Recommendation #7 (“Recommendations to improve staff accountability”) of the CCWG WS2 final report and Annex 7 at <a href="https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en">https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en</a>. If/When the recommendation is implemented, workflow should be adjusted to agree with the implemented recommendation.</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Source workflow of ICANN budget cycle</li> <li>● Source workflow of NomCom annual cycle</li> <li>● Align the two workflows and create a workflow process for when and how the NomCom provides input into the budget, including: <ul style="list-style-type: none"> <li>● Determine role of NomCom Standing Committee in this process</li> <li>● Determine role of the NomCom as a whole in this process</li> <li>● Determine role of the NomCom leadership in this process</li> </ul> </li> <li>● Create a workflow how and when NomCom leadership can provide input in future NomCom staffing and budget decisions, using CCWG WS2 Recommendation #7 as guideline (see <a href="https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en">https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en</a>).</li> </ul>

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

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**Independent examiner finding**

The NomCom has made progress in increasing the extent to which it preserves policies and procedures from year to year, however, it still “reinvents the wheel” on many process issues and exhibits a lack of continuity.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Yes
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The implementation team may expand the recommendation to include other means of addressing the lack of continuity, as well as means intended to build institutional memory and to minimize opportunities for "reinventing the wheel."</li> </ol>

	<p>2. Maintaining the implemented measures shall be a responsibility of the NomCom Standing Committee (See Recommendation #24).</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom Standing Committee, Recommendation #24)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time: after initial publication, minimal volunteer time to update on an annual basis.
Expected budget implications once implemented (high, medium, low)	Medium: Additional system resources may be required to create document archive.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Easy: Capturing of current progress and creating documentation can be done by implementation team.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved	Medium: More transparency and increased understanding of how the NomCom works may increase acceptance and accountability of its work.

<p>Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Capture current NomCom processes by <ul style="list-style-type: none"> <li>○ consulting NomCom Operating Procedures.</li> <li>○ consulting with current and former NomCom members.</li> <li>○ consulting with bodies that appoint members to the NomCom.</li> </ul> </li> <li>● Identify documentation and diagrams to be created, with consideration for use of infographics.</li> <li>● Draw-up documentation and associated diagrams.</li> <li>● If professional services are needed, determine budget and, if it cannot be covered by current budget, make budget request.</li> <li>● Establish a location for preserving documentation, for use by future NomComs.</li> <li>● Publish documentation.</li> <li>● Review and update documentation on an annual basis.</li> </ul>

	<ul style="list-style-type: none"><li>● Create process for assessing the annual recommendations published by each NomCom and determining if external groups and resources are needed for implementation (Standing Committee).</li></ul>
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**Recommendation #14:** Formalize communication between the NomCom and the Board, SOs/ACs, and the PTI Board in order to understand needed competencies and experience.

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**Independent examiner finding:** There is a lack of communication between the NomCom and Board/SO/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	No
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. To provide for sufficient communication annually between the NomCom and ICANN Board, SO/AC’s, and PTI Board of the desired skills, experience, and competencies of potential candidates and re-appointments, a process for annual formalized communications will be established.</li> </ol>

2. Implementation of this recommendation will include establishment of guidelines and methodology for the process to ensure that the NomCom receives clear, detailed communication of candidates' desired attributes. Implementation will take into consideration the length of time required to complete the communication process.
3. Details of the formal process may be accomplished by the implementation team or, alternatively, by the NomCom Standing Committee (see Recommendation #24).
4. The process will include communication to the NomCom of current written advice from the Board/SOACs/PTI, followed by a NomCom-composed job description to the Board/SOACs/PTI, and detailed communications about the advice and description including mutual clarity and agreement to prioritization of desired qualities. The process defined will ensure that communications continue until clarity and agreement are achieved prior to engagement of the recruiting firm(s).
5. The process will identify needs and opportunities for real time and face-to-face communications, and who among the NomCom will be responsible for assuring that necessary communications take place, as well as accounting for appropriate documentation and sharing of the outcome of these communications.
6. In consideration of the NomCom's accountability to the ICANN community, the implemented methodology and guidelines will be shared with the community in a way to be determined by the implementation team.
7. If a NomCom Standing Committee is established (see Recommendation #24), the Standing Committee will oversee the process to confirm that the needs of all parties are (or can be) satisfied by the defined process, or if modifications are needed to increase effectiveness and improve outcome.

	8. Include consideration for Recommendation #16 in the process.
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community, ICANN Board, NomCom
Anticipated resource requirements (volunteers time, FTEs, tools)	Volunteer time: Including members of all bodies to which the NomCom appoints members, as well as the NomCom and the NomCom Standing Committee (see Recommendation #24).
Expected budget implications once implemented (high, medium, low)	Low: Recommendation is expected to have minimal impact on ICANN’s annual budget.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	<p>Medium: Communication processes and channels between the NomCom and the bodies to which the NomCom appoints members need to be set up.</p> <p>The bodies to which the NomCom appoints members need to establish clear and consistent requirements for candidates prior to the start of each annual NomCom cycle.</p> <p>Depending on implementation details, additional communication channels and processes, e.g., possible face-to-face meetings during the AGMs between the NomCom and the bodies to which the NomCom appoints candidates, might need to be organized.</p>
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved	High: The better the NomCom understands the skills and diversity requirements of the bodies to which it appoints candidates, the better the NomCom can serve the ICANN community by fine-tuning its selection processes.

<p>Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Bodies to which the NomCom appoints candidates need to provide clear and consistent input as to the skill sets and diversity requirements it needs from the NomCom appointees, prior to the start of each annual NomCom cycle.</p>
<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months</p> <p>Medium: ≤ 20 months</p> <p>Long: ≤ 30 months</p>	<p>Medium: ≤ 20 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● A consultation to understand community needs might have to take place first, followed by coordinating discussions among the bodies to which the NomCom appoints candidates, to assure their consistent and transparent communication to the NomCom.</li> <li>● Consider providing a template to each receiving SO/AC and Board to complete, to provide NomCom with its requirements each year, as a starting point to collecting requirements. Development of the template should be in cooperation with receiving bodies intended to use them.</li> <li>● The NomCom selection process needs then to be adapted to best absorb the skill/diversity input it receives annually from the bodies to which it appoints candidates.</li> <li>● A calendar timeline of NomCom activities occurring prior to November seating of the new NomCom should be documented, to include elections of representatives and collecting details on needed competencies and experience for appointments.</li> </ul>

**Recommendation #15:** The NomCom should publish detailed job descriptions for Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form the basis for recruiting and evaluation efforts.

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**Independent examiner finding:** There is a lack of communication between the NomCom and Board/SO/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	The IPT agrees with the spirit of the recommendation with some minor edits (see below).
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Yes
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	<p>The NomCom should publish detailed job descriptions for Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form a <del>the</del> basis for recruiting and evaluation efforts.</p> <p><b>Rationale for change:</b> Although detailed job descriptions are an important and essential component for recruiting and evaluation efforts, they are not the only important and essential component.</p>

<p>IPT comments on the implementation process.</p>	<ol style="list-style-type: none"> <li>1. To provide for sufficient communication annually between the NomCom and ICANN Board, SO/AC's, and PTI Board of the desired skills, experience, and competencies of potential candidates and re-appointments, detailed job descriptions will be published, and will be used, among other inputs, as a basis for recruiting and evaluation efforts.</li> <li>2. Implementation of this recommendation will include a designation of timing (timing in the process, calendar timing) and fora for publication, as well as reference to the context for the publication. Only job descriptions considered finalized will be published. Job descriptions will be published timely.</li> <li>3. The context provided for published job descriptions will be documented and will serve as a reference providing context to all audiences reading any description. The documented context will be posted online and will accompany all job descriptions as a URL link or footnote.</li> <li>4. The text accompanying published job descriptions will address NomCom's independence in modifying descriptions and criteria, NomCom's commitment to accountability to the community, and NomCom's independence in candidate selection and decision-making.</li> <li>5. The NomCom needs to publish a timeline for when advice and feedback is provided by the bodies, so it is available for each incoming NomCom.</li> </ol>
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Implementation Details	IPT Response
<p>Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?</p>	<p>ICANN organization: NomCom, NomCom Standing Committee (see Recommendation #24)</p>

<p>Anticipated resource requirements (volunteers time, FTEs, tools)</p>	<p>Volunteer time</p>
<p>Expected budget implications once implemented (high, medium, low)</p>	<p>Low: Recommendation is expected to have minimal impact on ICANN’s annual budget.</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Easy: Once Recommendation #14 is implemented, establishing a process whereby the bodies to which the NomCom nominates candidates provides the NomCom with its skill and diversity requirements for future nominees, the NomCom can then use that information to publish job descriptions as part of its annual recruitment cycle.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>High: The more details the NomCom can provide on the requirements for potential candidates, the better candidates it will be able to select and the more effective it can serve the ICANN community.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Implementation of Recommendation #14 should ideally precede the implementation of this recommendation.</p>
<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months</p> <p>Medium: ≤ 20 months</p> <p>Long: ≤ 30 months</p>	<p>Medium: ≤ 20 months; to follow implementation of Recommendation #14.</p>

<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"><li>● Based on the implementation details of Recommendation #14, NomCom<ul style="list-style-type: none"><li>○ receives useful input on skill and diversity requirements from the bodies to which it appoints members and</li><li>○ uses that information to publish its annual job description for open positions.</li></ul></li></ul>
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**Recommendation #16:** Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for re-appointment by the NomCom.

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**Independent examiner finding:**

There is a lack of communication between the NomCom and Board/SO/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. An understanding of existing efforts to collect performance assessment and feedback by receiving bodies should be gained prior to start implementation of this recommendation, to draw on best practices and avoid overlap.</li> </ol>

2. Feedback outside the formal feedback mechanism should be strongly discouraged, as it may result in unbalanced and subjective input.
3. Feedback mechanism will be defined by the implementation team in consultation with the current NomCom and bodies receiving appointees.
4. Feedback mechanism must be voluntary and designed to:
  - Solicit structured and reliable information.
  - Adhere to all relevant privacy and confidentiality policies, which should be addressed in the document and the process
  - Be timely so that NomCom can take the feedback into account for its annual selection cycle.
5. Structured feedback may be garnered by requesting responses from the body for each candidate seeking re-appointment (e.g., “Does your organization support re-appointment of this candidate?”, “Does your organization grant or withhold consent to re-appointment of this candidate?”, using, wherever possible, a scaled response (e.g. 1-5)).
6. When designing the feedback mechanism, the implementation team should provide guidelines as to the weight the NomCom should attribute to the feedback it receives when considering re-appointments to the same or appointments to a different body.
7. As part of the feedback mechanism, candidates seeking NomCom re-appointment should be encouraged to share with the NomCom any applicable form of peer-review. Implementation team should explore whether a peer review midterm or at another point is appropriate or useful, and investigate how to conduct the review, respecting privacy rules.
8. The NomCom Standing Committee (see Recommendation #24), in consultation with the NomCom and the bodies receiving NomCom appointees, should make annual recommendations on how to improve the feedback mechanism.

Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community
Anticipated resource requirements (volunteers time, FTEs, tools)	Volunteer time
Expected budget implications once implemented (high, medium, low)	Low: This recommendation is expected to have minimal impact on ICANN's annual budget.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Medium: Community consultation, coordination between the bodies to which the NomCom appoints candidates, all need to take place for an effective implementation of this recommendation.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Medium: The more details the NomCom receives on the performance of candidates seeking re-appointment, the better decisions the NomCom will make and the better it will be able to serve the ICANN community.
Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation	This new process that will provide feedback to the NomCom on candidates seeking reappointment should be integrated with the skill and diversity requests that the NomCom receives.

<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months</p> <p>Medium: ≤ 20 months</p> <p>Long: ≤ 30 months</p>	<p>Medium: ≤ 20 months</p> <p>This should be implemented together with Recommendation #14.</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Establish an understanding of existing efforts to collect performance assessment and feedback by receiving bodies.</li> <li>● Details of the feedback mechanism to be defined by the implementation team in consultation with the current NomCom and bodies receiving appointees.</li> <li>● Integration with the process flow resulting from the implementation of Recommendation #14.</li> </ul>

**Recommendation #17:** Maintain current diversity requirements for NomCom appointees.

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**Independent examiner finding**

There is some disagreement over whether the NomCom should incorporate additional diversity requirements for its appointees.

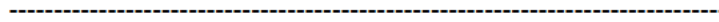
IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The implementation team shall implement as written in the recommendation. Document existing diversity requirements.</li> <li>2. Bodies receiving NomCom appointees are free to tailor their advice to the NomCom to include diversity criteria that they are seeking.</li> </ol>

Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	Not applicable
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Not applicable
Expected budget implications once implemented (high, medium, low)	Not applicable
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Not applicable
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Not applicable
Activities, if any, on which implementation is dependent, or that are dependent on	Not applicable

implementation of this recommendation	
<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	Not applicable
Please provide a high-level summary of proposed implementation steps	<p>No implementation is required.</p> <p>Bodies receiving NomCom appointees are free to tailor their advice to the NomCom to include diversity criteria that they are seeking.</p>

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



**Independent examiner finding**

The NomCom’s interactions with candidates has improved significantly over the past five years and is generally viewed positively. However, several candidates expressed negative experiences regarding their interactions.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. Implementation shall result in a documented, predictable process where expectations of high-level NomCom communications of timelines are public and available to candidates, the community, and the wider public.</li> </ol>



	<p>2. Annual surveys should be conducted of all NomCom applicants to enable continuous improvement of NomCom communications. The Standing Committee shall play a role in these surveys, and consideration of their results.</p>
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Implementation Details	IPT Response
<p>Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?</p>	<p>ICANN community including NomCom</p>
<p>Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)</p>	<p>IPT does not anticipate additional volunteer time once schedule is drafted and codified</p>
<p>Expected budget implications once implemented (high, medium, low)</p>	<p>Low: IPT does not anticipate any budgetary implications.</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Easy: The candidate schedule should be based on current best practices.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved</p>	<p>Low: Implementation of this recommendation will help set expectation for candidates and provide additional transparency and accountability of the NomCom's processes.</p>

<p>Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>This could be included into the tool kit (see Recommendation #21) but is not dependent on its inception.</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Draft candidate communication schedule by consulting <ul style="list-style-type: none"> <li>○ current and former NomCom members.</li> <li>○ current and former NomCom candidates/ appointees (subject to any and all privacy and confidentiality concerns and requirements).</li> </ul> </li>   <li>● Assess NomCom’s workflow and codify/incorporate candidate communication schedule.</li>   <li>● Publish communication schedule and timelines.</li> </ul>

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

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**Independent examiner finding**

NomCom’s recruiting processes are generally effective, especially in recent years, but there is room for improvement. The NomCom should continue to increase the diversity of the candidate pool.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. Additional avenues for better targeting prospective candidates shall be explored, in addition to leveraging the detailed job descriptions and desired competencies and experience. Improvements to the marketing plan shall also:</li> </ol>

	<ul style="list-style-type: none"> <li>a. provide for identifying qualified candidates in underserved and less-developed regions and helping them, where possible, to integrate into ICANN’s SO/AC networks to help them develop relevant skills going forward.</li> <li>b. operate on a longer recruiting cycle, up to 18 months, or on an on-going basis to anticipate needs in future NomCom cycles.</li> </ul> <p>2. The NomCom Standing Committee (see Recommendation #24) shall oversee improvements to the marketing plan and shall provide needed continuity in marketing efforts during the transition period from one NomCom to the next.</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom, NomCom Standing Committee); ICANN org (NomCom supporting staff); other (independent recruiting firm)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Once implemented, no additional resources should be necessary.
Expected budget implications once implemented (high, medium, low)	Medium: Targeted outreach may require additional funds, if necessary, these should be either absorbed by current budget allocations or by requesting additional funds in future budget requests.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes	Medium: Developing a marketing plan requires in-depth understanding of the recruitment needs of the ICANN Board as well as other bodies to which the NomCom makes appointments; targeting the right candidates may require ongoing refinements.

<p>and other dependencies (easy/medium/hard)</p>	
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>Medium: Benefit of a well-implemented and effective marketing plan will result in the successful recruitment of candidates with needed skills and/or from underrepresented regions.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Implementation of Recommendations #14, #15, #17</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Medium: ≤ 20 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Once Recommendations #14, #15, and #17 are implemented, develop a marketing plan by <ul style="list-style-type: none"> <li>○ consulting with current and former NomCom members.</li> <li>○ consulting with NomCom supporting staff.</li> <li>○ consulting with the recruiting firm(s).</li> <li>○ consulting with the NomCom Standing Committee (if in place; see Recommendation #24).</li> <li>○ consulting within the ICANN community.</li> </ul> </li> <li>● Consider engaging the ICANN community in identifying potential candidates.</li> <li>● Formalize and implement the marketing plan to</li> </ul>

	<p>increase outreach.</p>
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- Establish a feedback mechanism to measure the success of the marketing plan and provide the Standing Committee (see Recommendation #24) with guidelines on how to assess the success of the plan and ways to modify it if necessary.

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

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**Independent examiner finding**

The NomCom does not always evaluate candidates in a consistent manner.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. Implementation must be sensitive to maintaining independence of the NomCom: Evaluation firm recommendations are not binding on the NomCom. The NomCom must not be limited in choice. The firm’s selections must not bind NomCom to just those choices.</li> </ol>

	<ol style="list-style-type: none"><li>2. Consistency in evaluation of candidates by the evaluation firm should be ensured by NomCom defining the evaluation firm's deliverables and processes, to include<ol style="list-style-type: none"><li>a. a preliminary screen of all Board candidates using consistent data across candidates</li><li>b. the evaluation firm's delivery of blinded assessments to the NomCom that are<ol style="list-style-type: none"><li>i. thorough</li><li>ii. the result of a known process</li><li>iii. consistent across all candidates</li><li>iv. the result of specialized board evaluation for knowledge/skills</li></ol></li><li>c. defining a point in the process where access to all data for all candidates is shared with the NomCom</li></ol></li> <li>3. Consistency in evaluation of candidates shall be supported by NomCom's implementation of measures for input to the evaluation firm intended to result in more equal evaluation by the evaluation firm<ol style="list-style-type: none"><li>a. providing consistent application materials and details across all candidates</li><li>b. providing job descriptions as detailed in Recommendation #15</li><li>c. providing guidance in the form of an agreed upon, documented evaluation process</li><li>d. providing direction in the form of documented expectations/defined deliverables</li></ol></li> <li>4. Consistency in evaluation of candidates shall be supported by NomCom's implementation of measures for input to potential candidates, to ensure applicants provide sufficient detail to allow for equal evaluation<ol style="list-style-type: none"><li>a. publishing NomCom's evaluation process</li><li>b. publishing job descriptions as detailed in Recommendation #15</li></ol></li></ol>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community, ICANN org; other: NomCom’s external evaluation firm(s)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	The details of the blind evaluation process need to be detailed and documented by the firm; IPT does not anticipate additional volunteer work compared to the status quo.
Expected budget implications once implemented (high, medium, low)	Low: IPT expects little or no budget impact since the firm is already budgeted for.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Medium: The exact role of the firm in providing a deep-dive shortlist needs to be determined, as well as its ability to do so without limiting the NomCom’s access to candidate information, and without reducing the applicant pool.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Medium: Additional work by the firm could free up the NomCom to focus their attention on the most promising candidates.
Activities, if any, on which implementation is dependent, or that are dependent on	Not applicable

<p>implementation of this recommendation</p>	
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Medium: ≤ 20 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Determine the parameters of the initial screen by the evaluation firm, including steps to prevent: <ul style="list-style-type: none"> <li>○ losing access to candidate data prior to sharing with the NomCom</li> <li>○ limiting the NomCom’s choices of candidates</li> <li>○ making the firm’s recommendation for a short list binding on the NomCom</li> </ul> </li>   <li>● Establish when in the NomCom cycle the short list should be produced to have maximum benefit for the current NomCom</li>   <li>● If necessary, amend the firm's contract going forward to allow for this additional work (ICANN org)</li>   <li>● Establish a feedback mechanism to assess the effectiveness of providing a deep-dive shortlist to the NomCom and adjust the firm's remit for the following year, if necessary (to be maintained by NomCom Standing Committee, see Recommendation #24)</li> </ul>

**Recommendation #21:** The NomCom should use a standardized tool to evaluate and prioritize candidates, based on desired competencies and experience as determined annually. This tool will not replace qualitative assessments of candidates.

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**Independent examiner finding**

The NomCom does not always evaluate candidates in a consistent manner.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<p>The standardized tool for NomCom’s evaluation and prioritization of candidates should be based on desired competencies and experience as determined annually, and will not replace qualitative assessments of candidates.</p> <p>The IPT notes that ICANN org has selected and is in the process of implementing a tool for managing applications and evaluating candidates. This tool will be implemented for use</p>

by the 2019 NomCom for the application, assessment, and selection phases of work. This tool should be reviewed to confirm it is in line with the following IPT comments:

1. Implementation of this recommendation shall result in the establishment of a framework that will be used as a tool kit at the start of each NomCom cycle for the development of consistent selection criteria based on annual determination of desired competencies and experience, including their weighing and prioritization.
2. A combination of structure (common set of questions for all interviews) and flexibility (interviewer ability to ask questions specific to each interviewee) is ideal. The structure should not be constraining.
3. Implementation of this recommendation shall include mechanisms to ensure annual NomCom accountability and predictability, including direction to annual NomCom's to solicit input from receiving bodies on weighing and prioritization of competencies and experience (see Recommendation #16), the development of job descriptions (see Recommendation #15), interview methodology, as well as other aspects of the evaluation process.
4. The framework developed shall be informed by industry best practices and research-based sources including, potentially, custom professional advice. The framework shall contribute to the objective of reducing variance in candidates' recruitment and evaluation experience, and to the objective of eliminating the need for each NomCom to form its processes from scratch.
5. The NomCom Standing Committee (see Recommendation #24) shall be responsible for ownership of the framework, and shall perform regular reviews of it to determine its effectiveness, and to determine and implement any improvements needed.

Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom, NomCom Standing Committee), ICANN org (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time: NomCom Standing Committee; IPT does not anticipate additional FTEs being necessary for ICANN org to support this recommendation once implemented
Expected budget implications once implemented (high, medium, low)	Medium: recommendation aims to standardize/formalize information sharing between different NomCom's- IPT does not anticipates any budgetary implications.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Hard: The implementation will include the creation of a comprehensive tool kit that is shared between NomCom's to help standardize processes--input from current and former NomCom members and other community members is required. A means for capturing and documenting details of the tool kit shall be devised. The role of NomCom Standing Committee in maintaining and updating the toolkit needs to be established.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	High: Capturing information and standardizing processes across different NomCom's will further increase the effectiveness and efficiency of the NomCom.
Activities, if any, on which implementation is dependent, or	A clear understanding what processes need to be captured in the toolkit

<p>that are dependent on implementation of this recommendation</p>	<p>Establishment of the NomCom Standing Committee</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Long: ≤ 30 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Determine what process information, and other relevant data, needs to be captured in the toolkit by: <ul style="list-style-type: none"> <li>○ Consulting current and former NomCom members</li> <li>○ Consulting those bodies that appoint members to the NomCom</li> <li>○ Consulting with NomCom support staff</li> <li>○ Consulting with other sources to determine industry best practices, potentially with the help of ICANN HR</li> </ul> </li> <li>● Determine the role of the NomCom Standing Committee (see Recommendation #24) in drafting, maintaining, and updating the tool kit once created</li> <li>● Draft the tool kit and solicit support for its content with current and former NomCom members, NomCom supporting staff</li> <li>● Assure that the tool kit information is shared in a timely manner with the incoming NomCom and overall community.</li> </ul>

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

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**Independent examiner finding**

The NomCom does not always evaluate candidates in a consistent manner.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The objective of this recommendation is to “professionalize” the NomCom process.</li> <li>2. A framework for interview questions and interviewer evaluation shall be established for use by each year’s NomCom to provide a consistent candidate experience across interviews, and consistent evaluation across interviewers.</li> </ol>

	<p>3. A combination of structure (common set of questions for all interviews) and flexibility (interviewer ability to ask questions specific to each interviewee) is ideal. The structure should not be constraining.</p> <p>4. The results of implementation of this recommendation shall be incorporated into the standardized tool kit (see Recommendation #21).</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom, NomCom Standing Committee); ICANN org (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	IPT does not anticipate any additional resource requirements outside of the NomCom Standing Committee.
Expected budget implications once implemented (high, medium, low)	Low: IPT does not anticipate additional budget requirements.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Medium: Once the tool kit is designed (see Recommendation #21), the implementation of this recommendation will become part of it.



<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>High: Increased consistency between different NomCom's may lead to more transparent and consistent recruitment efforts and should result in the selection of better candidates by the NomCom.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Recommendation #21: This will become part of the tool kit.</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Long: ≤ 30 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Capture what questions and evaluation tools are currently being used by the NomCom.</li> <li>● Establish which questions and tools should be used by every NomCom and thus be Included into the toolkit by consulting: <ul style="list-style-type: none"> <li>○ Current and former NomCom members</li> <li>○ Current and former NomCom appointees</li> <li>○ NomCom supporting staff</li> <li>○ External firm(s)</li> </ul> </li> <li>● Once finalized, integrate these questions and tools into the tool kit (see Recommendation #21)</li> <li>● Instruct the NomCom Standing Committee (see Recommendation #24) to review these questions and tools annually as part of their maintenance of the toolkit.</li> </ul>

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

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**Independent examiner finding**

The NomCom has made significant progress in becoming more transparent, but transparency of its processes is still a concern within parts of the ICANN community.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li data-bbox="634 1728 1300 1875">1. The additional data provided shall recognize confidentiality, and the balance between confidentiality and transparency. No personally identifiable data shall be included.</li> </ol>

	<ol style="list-style-type: none"><li>2. The implementation team shall determine the additional data to be provided, in consultation with the ICANN community, with the ICANN Board, and with consideration of reliable data that the NomCom is reasonably able to obtain. In addition to "recruiting source," consideration shall be given to also providing:<ol style="list-style-type: none"><li>a. Geographic distribution of candidates</li><li>b. Geographic range of marketing efforts</li><li>c. Specialty/Background matching stated needs</li><li>d. Recruiting source</li><li>e. Data that can be used to assist in evaluating performance of the recruiting firm(s)</li><li>f. Data that can be used to assist in evaluating performance of the marketing plan</li><li>g. Additional data, as determined by the implementation team</li></ol></li><li>3. The implementation team shall account for the tendency of recruiting firms to focus on quantity of candidates above quality of candidates, and the NomCom's desire for high-quality candidates.</li><li>4. The implementation team shall determine what data to provide on all successful candidates as well as the entire candidate pool.</li><li>5. The implementation team shall refer to any applicable guidelines from ATRT2: <a href="https://www.icann.org/en/system/files/files/final-recommendations-31dec13-en.pdf">https://www.icann.org/en/system/files/files/final-recommendations-31dec13-en.pdf</a></li><li>6. Once determined, the implementation team shall codify the expectation of data, for use by all future NomCom's, and for consistency across years in reporting to the ICANN community and ICANN Board. The NomCom Standing Committee (see Recommendation #24) shall oversee this process to maintain consistency across years.</li></ol>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom); ICANN org (NomCom supporting staff)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	IPT does not anticipate the requirement for additional resources outside of the NomCom Standing Committee.
Expected budget implications once implemented (high, medium, low)	Low: IPT does not anticipate additional budget implications.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Easy: Some additional data may have to be gathered and what information is being published may be refined over the duration of several NomCom cycles.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	Medium: Providing additional, non-sensitive data, on processes and candidates will further increase the NomCom's transparency and accountability.

<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion?  Short: 0-10 months  Medium: ≤ 20 months  Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Establish what data has been published over the past three to five years.</li> <li>● Determine what additional data is either available or should be captured going forward - noting that no data captured should be subject to privacy concerns nor confidentiality requirements.</li> <li>● Publish new data sets going forward and assure that the same data is published each year (, subject to agreed-upon refinements).</li> <li>● Empower the NomCom Standing Committee to assess whether more or less data ought to be published going forward.</li> </ul>

**Recommendation #24:** An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to suggest and assist in implementing changes to NomCom processes.

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**Independent examiner finding:** The NomCom is highly dependent on ICANN Staff support. There is concern that the NomCom staff is under-resourced, which has affected the functioning of the NomCom.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	The IPT agrees with the spirit of the recommendation with some minor edits (see below).
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Yes
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	<p>An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomCom’s, and in particular, to <del>suggest</del> <b>recommend</b> and assist in implementing <del>changes</del> <b>improvements</b> to NomCom <del>operations</del> <b>processes</b>.</p> <p><b>Rationale for change:</b> To reflect the intended weight of the body’s output, and to reflect the body’s specific focus on improvements.</p>
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>The NomCom Standing Committee recommended to be formed will serve in an advisory/community feedback role, including but not limited to:</li> </ol>

	<ul style="list-style-type: none"> <li>i. Defining/improving relevant training for NomCom members.</li> <li>ii. Suggesting improvements to annual processes (recruiting, assessment, selection).</li> <li>iii. Assessing performance of the NomCom’s recruiting vendor.</li> <li>iv. Recommending and overseeing improvements to the NomCom’s communication channels, including its wiki pages.</li> <li>v. Providing support/solution to the NomCom in case of difficulties/conflicts</li> <li>vi. Assisting the NomCom by providing input into budget and staffing issues (see Recommendation #12).</li> <li>vii. Assisting in the communication between the NomCom and the Board, SO/ACs, and the PTI Board to improve the NomCom’s understanding of needed skills and experiences (see Recommendation #14).</li> <li>viii. Contributing to the annual feedback mechanism between different NomCom’s as well as between the NomCom and the bodies receiving NomCom appointees (see Recommendation #16).</li> </ul> <ol style="list-style-type: none"> <li>2. When establishing this body, the independent examiner’s final report should be referenced for the body’s scope of empowerment and responsibilities.</li> <li>3. The body will not participate in any way in the annual recruitment, evaluation or selection of candidates.</li> <li>4. The body shall not cause delays or distractions to the work of the NomCom.</li> <li>5. When interacting with the NomCom, the body shall give deference to NomCom members’ obligations and the NomCom’s timelines.</li> <li>6. The size and composition of the NomCom Standing Committee will be determined by the implementation team. A public comment shall be used for finalizing the composition and competencies of this body.</li> </ol>
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	7. A subset of the Implementation Team could serve as a bridge until the Standing Committee is seated.
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community, IPT
Anticipated resource requirements (volunteers time, FTEs, tools)	Volunteer time: No additional FTEs: ICANN staff should be able to absorb the support of the implementation into its workload.
Expected budget implications once implemented (high, medium, low)	Likely medium: Budgetary implications are subject to the requests submitted; funding requests for the operation of the NomCom Standing Committee could made by the community.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Hard: Determinations of the size, composition, length of terms, and competences of the NomCom Standing Committee are all subject to community input and may require several rounds of public consultation and/or public comment. The integration of the NomCom Standing Committee’s work with the annual cycle of the NomCom will also be crucial to assure maximum support of the NomCom’s work while minimizing any detrimental impact on the NomCom’s timing and general work progress.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom	High: The NomCom Standing Committee will anchor institutional memory and support the NomCom’s work in the long-run through a community-led effort.



<p>accountability and transparency, etc. (high, medium, low)</p>	
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Community support for the size, composition, length of terms, and competences of the NomCom Standing Committee.</p>
<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months</p> <p>Medium: ≤ 20 months</p> <p>Long: ≤ 30 months</p>	<p>Long: ≤ 30 months: determining the parameters of the NomCom Standing Committee in terms of composition and function will require community consultation and public comments - all of this will take considerable time to make sure the Committee, once established, operates effectively, and is supported in its efforts by the community and by the NomCom itself.</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Determine size, composition, length of terms of its members, competences, and any other relevant factors related to the NomCom Standing Committee.</li> <li>● Determine logistics surrounding the operating of the NomCom Standing Committee such as: where and how frequently it should meet, by which rules it should operate, and other formation principles.</li> <li>● Determine how the NomCom Standing Committee's work will best integrate with the NomCom's annual cycle.</li> <li>● Gather community input throughout this process.</li> <li>● Assure community support for the final proposal via public comment.</li> <li>● Start the process of member selection (e.g., call for volunteers, SO/AC nomination, etc.) and, once completed, constitute the NomCom Standing Committee.</li> </ul>

**Recommendation #25:** Inform assessments of the NomCom by assessing the performance of the Board.

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**Independent examiner finding:** Not applicable (no finding is associated with this recommendation)

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	IPT agrees with the spirit of the recommendation with some minor edits (see below).
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Yes
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	<p><b>Improve</b> <del>Inform assessments of the</del> NomCom selection decisions by assessing the performance and needs of <b>all bodies receiving NomCom appointees.</b> <del>the Board.</del></p> <p><b>Rationale for change:</b> Expand recommendation to cover all bodies receiving NomCom appointees, and to focus on making improvements.</p>
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The implementation should provide a permanent solution as to how the NomCom can obtain a better understanding of the required skills for new candidates of the Board as well as of all other bodies receiving NomCom appointments.</li> <li>2. Bodies receiving NomCom appointees should provide the NomCom with timely details of their overall performance</li> </ol>

	<p>(without singling-out individuals) and skill requirements for new appointees.</p> <p>3. Expectations of a first-year appointee should be documented and made publicly available.</p> <p>4. The IPT believes that this could be achieved via:</p> <ul style="list-style-type: none"> <li>● Determining how the NomCom can obtain annual performance assessments of its nominees, as well as what, if any, skill gaps exist within the bodies receiving NomCom appointments.</li> <li>● An assessment of whether the BoardSource “Board Self-Assessment Tool” (BSA), as suggested in the final report, should be performed.</li> <li>● NomCom should also be encouraged to consult relevant industry sources when making its appointments, such as “Building a Great Board,”(at <a href="https://boardleadership.kpmg.us/relevant-topics/articles/2016/05/building-a-great-board.html">https://boardleadership.kpmg.us/relevant-topics/articles/2016/05/building-a-great-board.html</a>).</li> <li>● The Standing Committee could conduct surveys of the various bodies as part of this assessment.</li> </ul> <p>5. All assessments and other relevant information shall be subject to the relevant privacy and confidentiality requirements.</p> <p>6. The NomCom will need to communicate the deadlines for sending feedback to the NomCom each year.</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN	ICANN community

community, ICANN Board, ICANN organization, other?	
Anticipated resource requirements (volunteers time, FTEs, tools)	Volunteer time: No additional FTEs: ICANN staff should be able to absorb the support of the implementation into its workload.
Expected budget implications once implemented (high, medium, low)	Low: Implementation is unlikely to have any significant budgetary implications.
How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)	Hard: Implementation will require different groups within the ICANN community to provide consistent and transparent information to the NomCom and the wider public while maintaining all relevant confidentiality requirements. Such inter-community coordination will require substantial community input and, potentially, a public comment period to ascertain community support.
How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)	High: The more details the community and the bodies that receive NomCom appointees can provide on the requirements for potential candidates, the better the NomCom will be able to select optimal candidates and the more effectively the NomCom can serve the ICANN community.
Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation	This recommendation should be implemented in conjunction with Recommendations #14, 15, 16.
What is the anticipated duration of the implementation effort to completion? Short: 0-10 months	Medium: ≤ 20 months

<p>Medium: ≤ 20 months</p> <p>Long: ≤ 30 months</p>	
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● The implementation team should consider alignment with and leveraging of the review work coordinated through the ICANN Board Governance Committee.</li> <li>● Determine how the NomCom can obtain annual performance assessments of its nominees, and how the quality of NomCom appointees could be improved (if applicable).</li> <li>● An assessment of whether the BoardSource “Board Self-Assessment Tool” (BSA), as suggested in the final report, should be implemented, and if so, how.</li> <li>● Determine how the NomCom could consult relevant industry when making its appointments, such as “Building a Great Board,” (at <a href="https://boardleadership.kpmg.us/relevant-topics/articles/2016/05/building-a-great-board.html">https://boardleadership.kpmg.us/relevant-topics/articles/2016/05/building-a-great-board.html</a>).</li> <li>● Determine if the NomCom Standing Committee (see Recommendation #24) has a role to play in this process.</li> <li>● Assure community support for the final implementation proposal through consultation.</li> </ul>

**Recommendation #26:** ICANN should investigate advancing its nominations process into a Leadership Development function.

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**Independent examiner finding**

Not applicable (no finding is associated with this recommendation)

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	Yes
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Not applicable
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	Not applicable
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>1. The implementation team shall conduct an investigation into the feasibility of developing and incorporating a Leadership Development function into the NomCom's nominations process, for offering to non-appointed candidates.</li> <li>2. The implementation team's investigation shall include feasibility of the following:               <ol style="list-style-type: none"> <li>a. identifying candidates who, if not appointed, have potential for future appointment, and</li> </ol> </li> </ol>

	<p>who have an ongoing interest in ICANN, and an interest in leadership development opportunities.</p> <ul style="list-style-type: none"> <li>b. identifying methods and opportunities for providing leadership development, especially in underserved areas.</li> <li>c. establishing steps in the annual recruitment and evaluation process to provide awareness to candidates of volunteer and development opportunities available within ICANN should they not be selected for appointment.</li> <li>d. explore referrals to the Fellowship process</li> <li>e. Identifying SOs and ACs with mentorship opportunities.</li> </ul> <p>3. The implementation team shall work with the ICANN community in its investigation, to arrive at an optimal solution.</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community (NomCom, and at least those bodies to which the NomCom makes appointments)
Anticipated resource requirements for the implementation (volunteers time, FTEs, tools)	Volunteer time: Developing a leadership development function may require additional volunteer time once in place; ICANN org FTEs: Depending on the scope it may also require additional FTEs.
Expected budget implications once implemented (high, medium, low)	Low: Depending on the exact functioning of the leadership development function, the IPT does not anticipate the need for a significant amount of funds be required.

<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Hard: Determining what the leadership development function should look like and making it an effective tool supporting future NomCom recruitment cycles may require extensive community consultation and procedural fine-tuning.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>Medium: Depending on the design of the leadership development function, it may lead to establishing a larger pool of well-prepared ICANN community leaders.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion? Short: 0-10 months Medium: ≤ 20 months Long: ≤ 30 months</p>	<p>Long: ≤ 30 months</p>
<p>Please provide a high-level summary of proposed implementation steps</p>	<ul style="list-style-type: none"> <li>● Define what the leadership development function should achieve by consulting with: <ul style="list-style-type: none"> <li>○ current and former NomCom members.</li> <li>○ current and former NomCom appointees-subject to any and all confidentiality requirements.</li> <li>○ NomCom supporting staff.</li> </ul> </li>   <li>● Design leadership development function by consulting</li> </ul>



with:

- current and former NomCom members.
- current and former NomCom appointees-  
subject to any and all confidentiality  
requirements.
- NomCom supporting staff.
- other ICANN and outside resources, as  
applicable.

- Implement leadership development function by  
integrating it into the annual NomCom cycle.
- There is likely some tie-in with the leadership  
academies that the community has developed with  
ICANN support, so it would be helpful to consider if  
this is only an ICANN-driven obligation or a broader  
conversation among the community about how to  
build leadership capabilities into the ICANN  
community.

**Recommendation #27:** Provide clarity on desire for independent directors and designate three specific seats for “Independent Directors.”

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**Independent examiner finding:** The NomCom is highly dependent on ICANN Staff support. There is concern that the NomCom staff is under-resourced, which has affected the functioning of the NomCom.

IPT Consensus Level for Assessment and Implementation Details: Full IPT consensus

Feasibility Assessment	IPT Response
Does the IPT agree with the finding?	Yes
Does the IPT agree with the recommendation?	The IPT agrees with the spirit of the recommendation with some minor edits (see below).
If the IPT does not support the independent examiner’s final recommendation, please provide rationale in comments column.	Not applicable
Does the IPT suggest a revised recommendation?	Yes
If the IPT suggest a revised recommendation, please state the suggested revised recommendation along with supporting rationale in comments column.	<p>Provide clarity on desire for <b>and definition of “independent directors”</b>. <b>Upon clarification of desire and definition, determine the number of specific seats for “independent directors”</b>. <del>and designate three specific seats for “Independent Directors.”</del></p> <p><b>Rationale for change:</b> Wording changes and additions reflect the IPT’s recognition of the need to proceed thoughtfully and with community consultation.</p>
IPT comments on the implementation process.	<ol style="list-style-type: none"> <li>The implementation process should start by clearly defining the term ‘independent’ in the context of ‘independent directors’. In doing so, the following IPT suggestion shall be taken into consideration:</li> </ol>

	<ul style="list-style-type: none"> <li>a. IPT’s guidance for definition of “independent”: <ul style="list-style-type: none"> <li>i. Corporate boards/corporate governance guidelines <ul style="list-style-type: none"> <li>1. not a customer, supplier, or shareholder to the entity</li> <li>2. no financial interest</li> </ul> </li> <li>ii. Applicable ICANN community guidelines/definitions</li> <li>iii. ICANN Legal department</li> <li>iv. California law, although the definition is very narrow</li> </ul> </li> <li>b. Definition should state the difference between an independent director and a representational director, i.e. a SO/AC-appointed director who is generally a (current or former) member of the appointing SO/AC.</li> <li>c. Independent directors should have appropriate governance experience/knowledge and bring a fresh, outside perspective.</li> <li>d. Definition should address desired candidates’ prior activity level in ICANN’s policy development, membership in a constituency, relationship with the ICANN org structure, and/or a certain number of ICANN meetings attended.</li> </ul> <p>2. ICANN community should be consulted via public comment to agree on the desire for the exact number of independent directors.</p>
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Implementation Details	IPT Response
Who will implement the recommendation: ICANN community, ICANN Board, ICANN organization, other?	ICANN community, ICANN Board

<p>Anticipated resource requirements (volunteers time, FTEs, tools)</p>	<p>Volunteer time: Including members of all bodies to which the NomCom appoints members.</p>
<p>Expected budget implications once implemented (high, medium, low)</p>	<p>Low: Recommendation is expected to have minimal impact on ICANN’s annual budget.</p>
<p>How would you rate the potential ease of implementation for this recommendation? Please consider the impact on needed resources, increased budget, Bylaws changes and other dependencies (easy/medium/hard)</p>	<p>Medium: Determining a definition of and desire for “independent directors” may require intensive inter-community discussions and may require several rounds of community consultations and/or public comment.</p>
<p>How would you assess the potential benefit of the implementation of this recommendation for ICANN as a whole? Please consider: improved Board Governance, more efficient process, greater NomCom accountability and transparency, etc. (high, medium, low)</p>	<p>Low/Medium: The impact will likely depend on the exact definition of “independent directors” and how this definition will lead to different (improved) NomCom appointments compared to the status quo.</p>
<p>Activities, if any, on which implementation is dependent, or that are dependent on implementation of this recommendation</p>	<p>Not applicable</p>
<p>What is the anticipated duration of the implementation effort to completion?</p> <p>Short: 0-10 months</p> <p>Medium: ≤ 20 months</p> <p>Long: ≤ 30 months</p>	<p>Short: 0-10 months</p>

Please provide a high-level summary of proposed implementation steps

- Define “independent directors”, based on community input and/or other expertise.
- Determine community desire for “independent directors”, including how they would differ from current NomCom appointees.
- Ascertain community support for “independent directors,” as well as the number desired.
- NomCom to integrate the appointment of “independent directors” into its annual work cycle.
- A revision to the NomCom Bylaws will be required for implementation of this recommendation.

# Staff Report of Public Comment Proceeding

## Draft Final Report of the NomCom2 Review

**Publication Date:** 15 May 2018

**Prepared By:** Angie Graves

### Public Comment Proceeding

Open Date: 27 March 2018

Close Date: 7 May 2018

Staff Report Due Date: 21 May 2018

### Important Information Links

[Announcement](#)

[Public Comment Proceeding](#)

[View Comments Submitted](#)

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## Section I: General Overview and Next Steps

### General Overview

On 27 March 2018, the Independent Review of the ICANN Nominating Committee: Draft Final Report, authored by Analysis Group, the contracted independent examiner, was posted for public comment following its review of the Nominating Committee (NomCom).

This Summary and Analysis does not present the complete process, nor does it present all comments; it instead identifies sentiments broadly expressed by the community in response to the report by Analysis Group.

10 comments were submitted to [the public comment forum](#)-one from an individual and nine on behalf of organizations. Comments and feedback were also provided orally in [the public session at ICANN61](#), and in the [webinar on 10 April 2018](#).

Oral comments are not represented in this report.

### Next Steps

All comments and feedback will be considered by Analysis Group in preparing their Final Report, which is expected to be issued in early June 2018. The ICANN Board's Organizational Effectiveness Committee (OEC) will consider the Final Report along with the Feasibility Assessment and Initial Implementation Plan (FAIL), which will reflect the view of the NomCom Review Working Party on the recommendations contained in Analysis Group's Final Report. The OEC, having consulted all relevant documentation, will then issue its recommendation for action to the ICANN Board. Following Board action on the Final Report and the FAIL, planning for implementation will begin.

## Section II: Contributors

At the time this report was prepared, a total of ten (10) community submissions 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
Security and Stability Advisory Committee	<a href="#">Andrew McConachie</a>	SSAC
Internet Service Providers & Connectivity Providers	<a href="#">Chantelle Doerksen</a>	ISPCP
Registries Stakeholder Group	<a href="#">Paul Diaz</a>	RySG
At-Large Advisory Committee	<a href="#">ICANN org At-Large Staff</a>	ALAC
Registrar Stakeholder Group	<a href="#">Zoe Bonython</a>	RrSG
NonCommercial Stakeholder Group	<a href="#">Rafik Dammak</a>	NCSG
Business Constituency	<a href="#">Steve DelBianco</a>	BC
Intellectual Property Constituency	<a href="#">Brian Scarpelli</a>	IPC
Root Server System Advisory Committee	<a href="#">Carlos Reyes</a>	RSSAC

Individuals:

Name	Affiliation (if provided)	Initials
<a href="#">Nigel Roberts</a>		NR

**Section III: Summary of Comments**

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

The public comment forum received ten (10) submissions from the community on the Draft Final Report authored by Analysis Group, independent examiner of the Nominating Committee (NomCom) review. The comments generally fall into the categories listed below, each of which is detailed in Section IV.

Public comment submissions to the report containing twenty-six (26) recommendations proposed by Analysis Group broadly fall into four categories:

- Overall comment/overview statement
- Statement of agreement/support, or disagreement/opposition to a recommendation
- Modification suggestions for report recommendations
- New ideas for improvement of NomCom

Below you will find a detailed analysis of the comments, in addition to the attached table which contains a more extensive representation of all comments received.

Neither this report nor the table is a substitute for reading each complete comment in full, in its original context. These can be found here:

<https://www.icann.org/public-comments/nomcom2-review-2018-03-27-en>

## Section IV: Analysis of Comments

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

### General Overview

Analysis Group's Draft Final Report presented its findings and resulting recommendations for improvement in three categories:

- Composition and Responsibility of the NomCom and its Members
- Processes for Candidate Recruitment and Evaluation
- Additional Recommendations

### Recommendations 1 – 12: Composition and Responsibility of the NomCom and its Members

Either support or conditional support was garnered from commenters of Recommendations 1 through 8, and Recommendation 11. Recommendations 2 and 3 were strongly supported by the RrSG. Commenters offering support and conditional support for these recommendations also offered suggestions for implementation, explanations for their concerns and reservations and conditions for support.

Recommendation 9 prompted comments mainly about conducting additional analysis prior to making judgement, and also one comment about an existing situation with respect to the GAC seat on the NomCom. The BC does not support Recommendation 9.

Recommendation 10 was widely supported, with the NCSG calling for it to be implemented as soon as possible.

Recommendation 12 was supported by the majority of commenters, with the NCSG's opposition based on its assertion that the report recommendation is not the best approach.

### Recommendations 13 – 23: Processes for Candidate Recruitment and Evaluation

Commenters were in support of the majority of Analysis Group's recommendations in the Recruitment and Evaluation category. Specifically, Recommendations 14 – 16, 18, 19, and 21 saw support from commenters, with Recommendations 22 and 23 additionally earning strong support from the RrSG.

Recommendation 13 was supported by all but the NCSG, which stated that the recommendation does not go far enough.

Recommendation 17 received three comments—one in support (RySG), one opposed (ALAC), and one strongly opposed (NCSG). Opposition was based on the need for greater



recognition of diversity. This was the only recommendation in the report receiving strong opposition from commenters.

Support (RySG, NCSG) and strong support (RrSG) for Recommendation 20 was countered by opposition (ALAC) on the grounds that NomCom should perform the preliminary screen of Board candidates.

### **Recommendations 24 – 26: Additional Recommendations**

Support for Recommendation 24 was registered by the RrSG and NCSG, with the RySG agreeing in principal but having concerns about the specifics, and ALAC agreeing on the condition of individual assessments for individual appointees.

Disagreement by the ALAC to Recommendation 25 was met with support (RrSG, NCSG) and conditional/partial support by the RySG and BC—with the RySG having concerns about the resources required to implement, and the BC stating that the program should be a cross - community effort.

### **Analysis of Comments by Recommendation**

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

A total of five commenters registered an opinion, all of which communicated support, except for the NCSG, which expressed, “...this recommendation suffers from vague terms and a lack of clarity...” and that “...there is a need to be clear which purpose the language actually serves...”

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

Five commenters responded to Recommendation 2 – three with conditional support, and one with strong support—RrSG.

Those offering conditional support suggest (1) introduce systematically, accommodate volunteer time limitations (ISPCP), (2) conditional agreement provided members are not subject to a preset agenda (ALAC), (3) make some considerations for training (ALAC), and (4) members must remain independent (NCSG).

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

There were four commenters to Recommendation 3—one expressing strong support (RrSG), two in agreement (RySG, ALAC), and one suggesting that the training be introduced systematically, and that it accommodate volunteer time limitations (ISPCP).

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

Five responses for Recommendation 4 were in support or strong support, except for two, one of which noted a need to introduce the training systematically, and accommodate volunteer time limitations (ISPCP), and ALAC, which provided considerations for implementers of this recommendation.

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

Of the five commenters to Recommendation 5, three support, and two conditionally support, the recommendation. Conditions named were (1) confirmation of a free, fair process (ALAC), (2) limiting any single consultant's term to +/- two years (ALAC), (3) that the firm should submit all candidates to NomCom (BC), and (4) that NomCom should be clear about consultant processes (BC). One of the three supporters made note of the need for results to be reported as an essential part of the process (NCSG).

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

Recommendation 6's five respondents were all either in support or conditional support of the recommendation. Of the three conditional supporters, two offered some considerations and conditions for the consultant (RySG, ALAC), and one agreed, but stated that the firm should submit *all* candidates to NomCom, and that NomCom should be clear about the consultant's processes (BC).

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

Five responses to Recommendation 7 were received, with RySG and RrSG fully supporting the recommendation. The ISPCP's conditional support was based on disagreement over the lifetime term limitation, and it suggested designating a time period during which a member

who served cannot serve again. The ISPCP also suggested exploring other options to find better solutions.

The one neutral commenter did not object to the recommendation, but stated that risks pertaining to influence and collusion be taken into consideration when implementing this recommendation (NCSG).

*Recommendation 8: Maintain the current size of NomCom.*

Three comments were received for Recommendation 8, none of which expresses disagreement. But concerns were expressed about the report's analysis (RySG), and a focus on size over representation (NCSG).

"While the RySG supports maintaining the current size of NomCom based on our own understanding, the report provides no information to allow any reader to be fully informed of the risks or benefits of supporting or opposing the recommendation. We highlight this is one of the areas that is substantively weak on analysis."

"We...suggest refocusing the discussion about the size with proper consideration instead paid to representation. Otherwise, we regard such discussions as meritless." (NCSG)

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

Eight comments were received in response to Recommendation 9, with the ALAC, RrSG, and NCSG in full support. Four respondents were neutral, and one, the BC, expressed opposition. "The BC does not support this position. We recommend that the current practice be maintained such that the SSAC, RSSAC and GAC and NomCom leadership remain non-voting members of NomCom. ..."

Neutral respondents expressed concern about the existing voting structure with respect to the GAC, and that it is problematic (NR), and concern about voting rules with respect to the GAC (RySG). Others suggest that additional analysis of the recommendation is needed (SSAC), that it is still considering the recommendation (RSSAC).

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

Three of the five commenters (ISPCP, ALAC, RrSG) to Recommendation 10 support it. Of the remaining commenters, the RySG stated a need for more details, and the NCSG explained its opposition.

The RySG stated a need for more information and substantiation for the recommendation:

"The RySG supports establishing a cross-community working group to investigate how well the NomCom represents the community. Given the staggering number of projects ICANN has underway, and the likelihood that any recommendation to re-balance the NomCom is likely to be a significant effort, we do not support establishing a five-year cadence without evidence as to why that number was selected."

In opposition to the recommendation, the NCSG expressed the need to rebalance immediately, and that the solution presented in the report is unsatisfactory. "The solution for a lack of balance in representation on the NomCom is unsatisfactory..."

"We need this imbalance to be remedied immediately. We therefore ask that the revival of the academic seat on the NomCom be reconsidered," continuing with, "... Such concerns as balanced and proper representation must be addressed as soon as possible, therefore, this recommendation must be reconsidered and urgent mechanisms must be suggested to remedy the imbalance."

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

Recommendation 11's five commenters (ISPCP, RySG, ALAC, RrSG, NCSG) were in support of the recommendation, with ALAC giving only its cautious agreement:

"Given that the NomCom Chair and Chair-elect report to the BGC, their support Staff reporting to the CEO has the potential to create crossed wires, besides constraining the NomCom leadership. If such issues can be avoided and if the proposed arrangement has the potential to enhance the flexibility of the NomCom, only then it is worth implementing."

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

Recommendation 12 had four respondents, three of which offered support for the recommendation. In disagreement was the NCSG:

"While this recommendation might make sense, giving the NomCom the latitude to spend its budget in whatever way it deems appropriate is not the best approach in our opinion."

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

Of the five responses to Recommendation 13, only ALAC expressed full agreement with the recommendation. The ISPCP stated that the recommendation might be good, but that other options should be explored.

The SSAC and ISPCP's conditional support, and NCSG's opposition, were all based on some dissatisfaction with the recommendation, stating that the recommendation needs to be stronger (SSAC), that it needs to include accountability (SSAC), and that it doesn't go far enough (NCSG). From the SSAC: "...any process without some sort of accountability measure does not fit into ICANN's values."

From the NCSG: "The NCSG is of the opinion that this recommendation does not fully address the issue, as we have stated in the beginning of this comment. it is not just a matter of visualizing the process as it must be more about making its [sic] more transparent and adding safeguards."

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

All five commenters responding to Recommendation 14 (ISPCP, RySG, ALAC, RrSG, NCSG) were in support of the recommendation, with the NCSG adding a stipulation: "The NCSG agrees with this recommendation, while not giving more weight for any group inputs than others."

*Recommendation 15: The NomCom should continue the practice of publishing detailed job descriptions for the Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form the basis for recruiting and evaluation efforts.*

All five commenters to Recommendation 15 (ISPCP, RySG, ALAC, RrSG, RrSG, NCSG) were in support of the recommendation, with RrSG offering a wording change suggestion: "This recommendation states that the NomCom 'should continue the practise of publishing job descriptions...', however use of the word "continues" here may be misleading, since this practise was only just implemented by the 2018 NomCom. A reference to the process being newly implemented would be more appropriate."

*Recommendation 16: Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for re-appointment by the NomCom.*

The RySG, ALAC, RrSG, and NCSG were all in support of the recommendation, with some suggestions for adjustments from the RySG:

"The RySG supports establishing a transparent and repeatable system for providing feedback to the NomCom regarding members up for re-appointment. We look forward to participating in implementation, though some members have reservations about making information like Board 360 scorecards available as it could compromise confidentiality. We also support gathering and recording public participation metrics, for instance via the scorecard recommended by the report, that can help support a decision for re-appointment or not."

*Recommendation 17: Maintain current diversity requirements for NomCom appointees.*

Comments registered addressing Recommendation 17 came from the RySG, ALAC, and NCSG, with the RySG in support of the recommendation, and ALAC and NCSG opposed and strongly opposed, respectively. ALAC's position is that "we cannot have enough diversity." NCSG maintains that the recommendation does not recognize lack of diversity in the NomCom, or other types of diversity.

From ALAC:

"Do Not Agree: Diversity is usually something that we can never have enough of, particularly given the Multistakeholder composition of ICANN. While there may be challenges in increasing NomCom diversity, we have not yet reached a point where the diversity is sufficient (noting that even the Gender diversity requirements are not met during all years)."

From NCSG:

"... it does not recognize that the NomCom is not diverse enough. Diversity of NomCom appointees must go beyond regional diversity and include gender, skills, and perspectives.

"...the [survey] question posed had implied that diversity in candidates contradicts with appointment of highly qualified candidates. We would like this mistake to be corrected and for the diversity of the NomCom appointees to go beyond regional diversity..."

"...reviewers believe that there should be more independent, unaffiliated Directors (Recommendation 26), but they don't see a necessity to have more diversity among NomCom appointees..."

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

The RySG, ALAC, and NCSG expressed agreement with this recommendation, with no additional substantive comment.

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

The RySG, ALAC, and NCSG expressed agreement with this recommendation, with no additional substantive comment.

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

Of the four commenters to Recommendation 20 (RySG, ALAC, RrSG, NCSG), the RySG and NCSG expressed support for it, with the RrSG expressing strong support for the recommendation.

In disagreement with the recommendation, ALAC commented:

“Do Not Agree: The preliminary screening should be done by the NomCom itself (as it was done this year). Besides being fair, this would also be cost-effective. Screening by an external party has [risk] as its effectiveness is not easy to judge.”

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

The five respondents to Recommendation 21 (ISPCP, RySG, ALAC, RrSG, NCSG), were generally in agreement with the recommendation, with the RrSG in strong agreement.

Expressing neither agreement nor disagreement, the ISPCP provided a consideration:

“The ISPCP wants to point out that ICANN is a very unique organization in its mission and functioning. A standardized evaluation approach doesn't mean this recruiting evaluation approach shouldn't be adapted to ICANN specificities.”

Cautious about the actual implementation of the recommendation, ALAC offered this comment:

“It may not be practically feasible to create such a matrix, but if this can be done to the satisfaction of NomCom members, it could be tried out.”

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

Commenters to Recommendation 22 (RySG, ALAC, RrSG, NCSG) all expressed support for this recommendation, with ALAC's agreement conditioned on the presumption of feasibility of its implementation.

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

Commenters to Recommendation 23 (RySG, ALAC, RrSG, NCSG) all expressed support for this recommendation, with the RrSG expressing strong support, and ALAC's agreement “subject to GDPR Compliance at all stages of handling personal data.”

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

Commenters to Recommendation 24 (RySG, ALAC, RrSG, NCSG) all expressed support for this recommendation, with the RySG in agreement principally, but having a concern about the specifics of the implementation, and ALAC providing a stipulation for appointee assessments.

From RySG:

“While we are supportive of an ICANN Board that is critical of its own effectiveness and performance, and agree that sharing information about what competencies currently exist and what potentially need to be filled with the NomCom could be helpful in the search for candidates, some RySG members are concerned that sharing the results of a Board self-assessment outside the Board with the NomCom may be ineffective and risks breaches in confidentiality.”

From ALAC:

“Agree, assuming that the performance of the individual NomCom appointees can be assessed individually.”

The RrSG shared some additional suggestions:

"The Board's effectiveness should be assessed every year to not only improve NomCom's processes, but to also analyse what competencies currently exist and what potentially need to be filled, so that these can be kept in mind when looking for candidates."

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

Weak support and some opposition were expressed in response to Recommendation 25. On one end of the spectrum, the RrSG and NCSG solidly support the recommendation. Solid opposition on the other end of the spectrum originated from ALAC, stating “Do Not Agree: This is outside the remit of the NomCom.”

Reserved support for the recommendation, from the RySG and the BC, hinged on conditions:

From the RySG:

"The RySG theoretically supports further Leadership Development, but is also concerned that this would negatively impact ICANN's budget and believe this work should be deprioritized in light of other, more pressing options listed above that are likely to result in a greater positive impact."

From the BC:

"The BC supports this initiative to evolve the current Fellowship program to develop emerging leaders. The current ICANN board has some directors who are products of the fellowship program."

and

“A leadership development program is an important element of filling NomCom's objective to appoint high-caliber people. However, such a program should be designed through a cross-community working group and be subject to public comment.”



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

Not much support was garnered from commenters for Recommendation 26. Of the six respondents, two expressed opposition (ALAC, BC), three were neutral—all requesting clarification or more information (RySG, RrSG, NCSG), and one communicated conditional support (ISPCP), with the comment that, “The ISPCP supports this proposal but is not convinced that “hardcoding” the designation of three specific seats for ‘Independent Directors’ as proposed in recommendation 26 would help or even improve the overall quality of the Board.”

Comments in opposition to the recommendation expressed (1) observation that the current structure works well already (ALAC), and (2) no support for candidates with little prior ICANN experience (BC).

## **Other Comments**

Comments were also received during the public comment period that did not pertain to a specific recommendation. Each comment fell roughly into one of the following categories:

- reiteration of an earlier recommendation
- criticism of report
- new idea/suggestion
- request for more information
- reminders of ICANN principals, ICANN environment
- concerns about NomCom accountability, transparency
- notification of an issue not satisfactorily addressed in the review

There was one suggestion made by nearly every commenter: establishing a NomCom standing committee—for reasons including continuity across years, goal attainment, adding a strategic component to the NomCom, the potential to work with annual budgets, and others.

## **Overall Analysis Group Report**

Seven respondents made general comments about the Analysis Group Draft Final Report, all of which were in overall support of it (NR, SSAC, ISPCP, RySG, RrSG, BC, ISP). Commenters noted their general agreement with the IE’s findings and recommendations.

For comment details, including representation for all comments submitted, arranged by Recommendation, please refer to the table below.

[insert Excel spreadsheet here]

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
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Key					
Strongly Oppose	Oppose	Neutral	Partly/ Conditionally Support	Support	Strongly Support
[Red]	[Yellow]	[Light Yellow]	[Light Green]	[Green]	[Dark Green]

<b>Recommendation 1: Formalize a job description for NomCom members that emphasizes diversity and independence and provide that description to the SO/ACs.</b>			
	ISPCP	support	[Light Green]
	RySG	The RySG supports job descriptions for NomCom members. The report lays a good foundation for why this is necessary.	[Light Green]
	ALAC	Agree. ALAC has already internally started a process of drawing up job descriptions. Diversity (particularly of Gender) should be a consideration.	[Light Green]
	RrSG	The RrSG is in full support of further efforts being made to increase diversity within NomCom membership...	[Light Green]
	NCSG	...this recommendation suffers from vague terms and a lack of clarity...there is a need to be clear which purpose the language actually serves...	[Light Green]
<b>Recommendation 2: Implement and formalize training to further NomCom members' understanding of the roles and responsibilities of Board directors and the practices of high-</b>			
introduce systematically, accommodate volunteer time limitations	ISPCP	These initiatives were already put in place by the most recent committee. The ISPCP supports introducing it in a systematic way, while keeping in mind that NomCom members are volunteers fulfilling their role in addition to their day to day work.	[Light Green]
	RySG	The RySG supports training for NomCom members and leadership. The report lays a good foundation for why this is necessary.	[Light Green]
conditional agreement provided members not subject to a preset agenda	ALAC	Agree, as long as the training does not attempt to coerce members to a preset agenda. NomCom members must keep the overall interests of ICANN as well as the Global Public Interest in mind as general guiding principles.	[Light Green]
some considerations for training	ALAC	As a general point, members of NomCom should be rather guided to understand the broad ecosystem of ICANN, the challenges it faces and the leadership that it requires, rather than provide them only with specific skills. In particular, the importance of non-verbal cues such as body language, which may require specialized training.	[Light Green]
strongly supports	RrSG	The RrSG strongly supports the NomCom receiving appropriate training to better their understanding of general Board operations and the competencies required to do them, as well as the process of recruitment. ...	[Dark Green]

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
members must remain independent	NCSG	The NCSG supports this idea in principle, however regardless of the training received, NomCom members must remain independent and exercise their own judgment in making selections.	
<b>Recommendation 3: Implement and formalize training for NomCom leadership to further their understanding of their roles, authority, and responsibilities, and confirm or appoint</b>			
introduce systematically, accommodate volunteer time limitations	ISPCP	These initiatives were already put in place by the most recent committee. The ISPCP supports introducing it in a systematic way, while keeping in mind that NomCom members are volunteers fulfilling their role in addition to their day to day work.	
supports	RySG	The RySG supports training for NomCom members and leadership. The report lays a good foundation for why this is necessary.	
agree	ALAC	Agree on training. The current arrangement of Chair-elect seems to work fine, and it may be disruptive to appoint a Chair while another Chair is serving the role.	
strongly supports	RrSG	The RrSG strongly supports the NomCom receiving appropriate training to better their understanding of general Board operations and the competencies required to do them, as well as the process of recruitment. ...	
<b>Recommendation 4: Formalize training for NomCom members in the candidate evaluation process.</b>			
introduce systematically, accommodate volunteer time limitations	ISPCP	These initiatives were already put in place by the most recent committee. The ISPCP supports introducing it in a systematic way, while keeping in mind that NomCom members are volunteers fulfilling their role in addition to their day to day work.	
	RySG	The RySG supports training for NomCom members and leadership. The report lays a good foundation for why this is necessary.	
	ALAC	Agree.	
some considerations for training	ALAC	As a general point, members of NomCom should be rather guided to understand the broad ecosystem of ICANN, the challenges it faces and the leadership that it requires, rather than provide them only with specific skills. In particular, the importance of non-verbal cues such as body language, which may require specialized training.	
strongly supports	RrSG	The RrSG strongly supports the NomCom receiving appropriate training to better their understanding of general Board operations and the competencies required to do them, as well as the process of recruitment. ...	
support	NCSG	The NCSG supports this recommendation. We believe that training in interviewing and evaluating candidates is a viable proposal, and also an area where the NomCom could benefit from a professional trainer.	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
<b>Recommendation 5: A professional recruiting consultant should continue to be involved in the role of identifying potential Board candidates. The role of the recruiting consultant</b>			
support, plus support for 2016 NomCom recommendation, and review of firm's effectiveness	ISPCP RySG	support The RySG supports both the use of a professional recruiting consultant and that the role and purpose of the consultant should be published. The RySG further supports the 2016 NomCom's recommendation for a sub-committee to research alternatives to the incumbent firm. We would like to see the NomCom periodically and transparently review the firm's effectiveness using some of the metrics discussed later in the report and develop a cadence for re-bidding the contract (as a general good business practice).	
agree, so long as ID process is free, fair; limit consultant to +/- 2 years	ALAC	Agree, with the stipulations that (a) the process of identification of the consultant must be free and fair, and (b) the same consultant should not continue for a set number of years (say two years).	
support, + note of need for reporting results	NCSG	The NCSG supports this recommendation. However, we would like to emphasize the need for semi-regular reporting on recruitment success rates (i.e., how many recruits eventually are selected into leadership roles) compared to other means of recruitment.	
agree, but firm should submit all candidates to NomCom; NomCom should be clear about consultant processes	BC	The BC agrees that consultants should continue to identify and assess board candidates. But we believe that consultants should submit their assessments on all candidates to the NomCom, who then decides on candidates meriting a deep-dive. The BC agrees with the Independent Reviewer that what the consultant does, how it does it, and where in the process the handoff to the NomCom occurs are all important information for the NomCom to be clear about.	
<b>Recommendation 6: A professional evaluation consultant should continue to be involved in the evaluation process for Board candidates. The role of the evaluation consultant</b>			
some considerations, conditions for consultant	ISPCP RySG	support The RySG welcomes more transparency on the role of an evaluation consultant. We are cautiously optimistic that a consultant could provide significant assistance to the NomCom so long as the consultant makes no decisions, uses criteria defined by the NomCom, and the consultant is periodically and transparently evaluated for effectiveness. The report provides thoughtful suggestions, which the RySG supports.	
conditions for consultant	ALAC	Agree, with the stipulations that (a) the process of identification of the consultant must be free and fair, and (b) the same consultant should not continue for a set number of years (say two years).	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
	NCSG	The NCSG supports this recommendation as it provides a good tool to maintain the NomCom's independence.	
agree, but firm should submit all candidates to NomCom; NomCom should be clear about consultant processes	BC	The BC agrees that consultants should continue to identify and assess board candidates. But we believe that consultants should submit their assessments on all candidates to the NomCom, who then decides on candidates meriting a deep-dive. The BC agrees with the Independent Reviewer that what the consultant does, how it does it, and where in the process the handoff to the NomCom occurs are all important information for the NomCom to be clear about.	
<b>Recommendation 7: NomCom members, except for leadership positions, should serve two-year terms, but be limited to a maximum of two terms.</b>			
agree	ISPCP	the current system creates more difficulties than necessary... ISPCP supports the proposal to allow all members to vote with the same time limitation as other members	
agree with 2 years, but not two terms/lifetime	ISPCP	The ISPCP agrees that a two years mandate will allow for more continuity in the process. Regarding the limitation on the number of mandates, the ISPCP believes that limiting to two mandates over a life time is excessive and unnecessary. The ISPCP would prefer to insert a period (like today), where a member cannot be reappointed.	
recommendation may be good, but explore other options	ISPCP	A form of continuity through a 3 years cycle within the leadership team with the Chair elect, Chair and associate Chair is an option, but is not something at this stage that was institutionalized. Other, or additional options could also be explored without introducing too much complexity in the system.	
support for 2-year terms; strongly oppose members serving two consecutive terms; support for one-year leadership terms	RySG	The RySG stands by our comment of Nov 2014 and 'does support the recommendation for two year terms. Nomcom service is a complex responsibility and the additional year will provide necessary experience and continuity.' We maintain the strong opinion that 'no representative should serve two consecutive terms in order to avoid allowing members to be involved in selecting Board members over three consecutive cycles.' We support maintaining the one-year terms for leadership positions (Chair, Chair-Elect and Associate Chair).	
propose 2+1 years if 2+2 years recommendation is not acceptable; suggest staggering appointments	ALAC	ALAC considered the current system of 1+1 years, which we feel is somewhat short, but at the same time, several of us find 2+2 years to be too long (both from locking up a potential leader, and also from making room for others). We would like to propose 2+1 years as an alternative to 2+2 years in case the latter is not acceptable by other constituencies. Further, additional coordination between constituencies to stagger appointments for continuity will also help.	
	RrSG	The RrSG supports NomCom member terms being extended from 1 to 2 years, with the exception of the Chair and Chair-Elect roles...	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
consider risks	NCSG	The NCSG does not object to this recommendation. However, there may be some risk that a group of interested parties could gain undue long-term influence in the Nomcom by colluding in some manner. That risk should be taken into consideration if Nomcom member term lengths and limits are revised. Moreover, the perceived problem that extending terms is to remedy is that Nomcom members do not really get "up to speed" until the second year. Because of this, they are unable to leverage that experience...	
<b>Recommendation 8: Maintain the current size of NomCom.</b>			
concern about report analysis	RySG	While the RySG supports maintaining the current size of NomCom based on our own understanding, the report provides no information to allow any reader to be fully informed of the risks or benefits of supporting or opposing the recommendation. We highlight this is one of the areas that is substantively weak on analysis.	
	ALAC	Agree.	
suggest focus on representation over size	NCSG	...suggest refocusing the discussion about the size with proper consideration instead paid to representation. Otherwise, we regard such discussions as meritless.	
<b>Recommendation 9: All NomCom members should be fully participating and voting members, except for NomCom leadership.</b>			
existing voting structure is problematic with respect to the GAC	NR	Whilst the GAC currently do not participate in the Nominating Committee (H2, para 2), the structure remains in place for them so to do. This practice, if maintained, would, I submit, be problematic in any future NomCom that had GAC membership.	
needs additional analysis	SSAC	This change needs additional analysis and consideration by the SSAC and others who would be affected by this change.	
concern about voting rules with respect to the GAC	RySG	The RySG is neutral on allowing RSSAC and SSAC NomCom appointees to vote (with term limits that match other voting members), but doesn't see how the GAC appointee could vote unless the NomCom break the confidentiality rules for that member so they can get instruction from the GAC. The RySG is aware that the GAC itself has never participated on NomCom and is currently discussing if it sees any way it could participate.	
	ALAC	Agree.	
agree	RrSG	The RrSG agrees that all NomComm members should be 'fully participating and voting members, except for NomCom leadership' as there is limited benefit to having non-voting members. However, as stated in the report, this would also necessitate these members being subject the same requirements, notably being term limited.	
	NCSG	The NCSG agrees with this recommendation.	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
does not support	BC	The BC does not support this position. We recommend that the current practice be maintained such that the SSAC, RSSAC and GAC and NomCom leadership remain non-voting members of NomCom. ...	
is being considered	RSSAC	is carefully considering; the RSSAC will make a determination on the voting status of its liaison after the recommendations are more fully vetted by the NomCom, the ICANN Board and its Organizational Effectiveness Committee, the broader ICANN community, and after its own thorough review of the options for this change and the subsequent implications.	
<b>Recommendation 10: Representation on the NomCom should be reviewed every five years, and, if necessary, re-balanced.</b>			
agree	ISPCP	The ISPCP agrees that NomCom should be reflecting the current ICANN organization.	
need more information/substantiation	RySG	The RySG supports establishing a cross-community working group to investigate how well the NomCom represents the community. Given the staggering number of projects ICANN has underway, and the likelihood that any recommendation to re-balance the NomCom is likely to be a significant effort, we do not support establishing a five-year cadence without evidence as to why that number was selected.	
	ALAC	Agree.	
support for recommendation + support for immediate start to first review	RrSG	The RrSG supports a five year review of representation on the NomCom and would further support a first review to start immediately.	
support for immediate rebalancing; request for reconsideration of NomCom academic seat	NCSG	The solution for a lack of balance in representation on the NomCom is unsatisfactory... We need this imbalance to be remedied immediately. We therefore ask that the revival of the academic seat on the NomCom be reconsidered.	
address rebalancing as soon as possible	NCSG	... Such concerns as balanced and proper representation must be addressed as soon as possible, therefore, this recommendation must be reconsidered and urgent mechanisms must be suggested to remedy the imbalance.	
<b>Recommendation 11: The senior staff member supporting NomCom should be accountable to and report to the office of the CEO.</b>			
	ISPCP	support	
	RySG	...having the senior staff member supporting NomCom to be as accountable by reporting to a senior office in ICANN is a good idea. ...	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
conditions for support	ALAC	Cautiously agree: Given that the NomCom Chair and Chair-elect report to the BGC, their support Staff reporting to the CEO has the potential to create crossed wires, besides constraining the NomCom leadership. If such issues can be avoided and if the proposed arrangement has the potential to enhance the flexibility of the NomCom, only then it is worth implementing.	
	RrSG	...having the senior staff member supporting NomCom to be as accountable by reporting to a senior office in ICANN is a good idea. ...	
	NCSG	The NCSG agrees with this recommendation.	
<b>Recommendation 12: NomCom Leadership should have input on the NomCom budget and staffing resources.</b>			
	RySG	The RySG supports allowing NomCom leadership to review the budget and identify the NomCom's needs and financial priorities.	
	ALAC	Agree. Given the situation that some ICANN meetings are convened in places where some NomCom members, particularly from At-Large, find it difficult to obtain visas, the NomCom should be allowed to convene their face-to-face meetings in places where it decides and not be forced to follow the ICANN Schedules. This has budget implications. In any case, functional autonomy of the NomCom implies a degree of control over its own budget.	
report recommendation is not the best approach	NCSG	While this recommendation might make sense, giving the NomCom the latitude to spend its budget in whatever way it deems appropriate is not the best approach in our opinion.	
	BC	The BC supports the recommendation that the NomCom leadership should be involved in determining its budget and should have input on allocating resources, while management/staff should retain overall responsibility for the budget.	
<b>Recommendation 13: Publish a "Process Diagram" and codify key elements of the NomCom process. Each year, the NomCom should be required to highlight and explain changes made to its processes to the ICANN community in an open session.</b>			
recommendation needs to be stronger, needs to include accountability	SSAC	Simply "explaining" process changes does not provide the ICANN community with an accountability measure to check and balance the proposed processes that the community finds to be outside acceptable norms. We would like to see a stronger mechanism recommended that would allow the ICANN community to assert some control in this area. At a minimum, a means to block major changes that a majority of the community finds problematic and a process to reconcile them. We note that any process without some sort of accountability measure does not fit into ICANN's values.	



Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
recommendation may be good, but explore other options	ISPCP	A form of continuity through a 3 years cycle within the leadership team with the Chair elect, Chair and associate Chair is an option, but is not something at this stage that was institutionalized. Other, or additional options could also be explored without introducing too much complexity in the system.	
	RySG	The RySG supports additional transparency and codification of NomCom processes. The report lays a good foundation for why this is necessary.	
	ALAC	Agree	
recommendation does not go far enough	NCSG	We believe operating procedure changes must not happen at the whim of the NomCom itself ; moreover, the operating procedures and the long-term practices of the NomCom which have become customary must not be changed without consultation with the community.”	
recommendation does not go far enough	NCSG	The NCSG is of the opinion that this recommendation does not fully address the issue, as we have stated in the beginning of this comment. it is not just a matter of visualizing the process as it must be more about making its more transparent and adding safeguards.	
<b>Recommendation 14: Formalize communication between the NomCom and the Board, SO/ACs, and the PTI Board in order to understand needed competencies and experience.</b>			
	ISPCP	support	
	RySG	The RySG supports better communication about competencies and experiences. The report lays a good foundation for why this is necessary.	
	ALAC	Agree	
	RrSG	... The RrsG therefore supports having formalized communication between the NomCom and the Board, etc.	
support; group inputs should be given equal weight	NCSG	The NCSG agrees with this recommendation, while not giving more weight for any group inputs than others.	
<b>Recommendation 15: The NomCom should continue the practice of publishing detailed job descriptions for the Board, SO/AC, and PTI Board positions. The job descriptions, in</b>			
	ISPCP	support	
	RySG	The RySG supports the continued publication of detailed job description and additional transparency and codification of required competencies. The report lays a good foundation for why this is necessary.	
	ALAC	Agree	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
agree; wording change suggestion	RrSG	This recommendation states that the NomCom ‘should continue the practise of publishing job descriptions...’, however use of the word “continues” here may be misleading, since this practise was only just implemented by the 2018 NomCom. A reference to the process being newly implemented would be more appropriate.	
	RrSG	In general the RrSG believes publishing job descriptions is good practice to ensure NomCom is held accountable for the choices it ultimately makes.	
	NCSG	The NCSG agrees with this recommendation.	
<b>Recommendation 16: Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for re-appointment by</b>			
support + suggested adjustments	RySG	The RySG supports establishing a transparent and repeatable system for providing feedback to the NomCom regarding members up for re-appointment. We look forward to participating in implementation, though some members have reservations about making information like Board 360 scorecards available as it could compromise confidentiality. We also support gathering and recording public participation metrics, for instance via the scorecard recommended by the report, that can help support a decision for re-appointment or not.	
	ALAC	Agree	
	RrSG	The RrSG agrees that NomCom should receive feedback on the contribution and participation of members up for re-appointment to ensure that valued members are kept on the Board and SO’s councils.	
	NCSG	The NCSG supports this recommendation.	
<b>Recommendation 17: Maintain current diversity requirements for NomCom appointees.</b>			
	RySG	The RySG supports an overall goal of pushing forward with as much diversity and inclusion as possible.	
we cannot have enough diversity	ALAC	Do Not Agree: Diversity is usually something that we can never have enough of, particularly given the Multistakeholder composition of ICANN. While there may be challenges in increasing NomCom diversity, we have not yet reached a point where the diversity is sufficient (noting that even the Gender diversity requirements are not met during all years).	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
recommendation does not recognize lack of diversity in the NomCom, other types of diversity	NCSG	... it does not recognize that the NomCom is not diverse enough. Diversity of NomCom appointees must go beyond regional diversity and include gender, skills, and perspectives. ...the [survey] question posed had implied that diversity in candidates contradicts with appointment of highly qualified candidates. We would like this mistake to be corrected and for the diversity of the NomCom appointees to go beyond regional diversity... ... reviewers believe that there should be more independent, unaffiliated Directors (Recommendation 26), but they don't see a necessity to have more diversity among NomCom appointees...	
<b>Recommendation 18: Publish a candidate communication schedule and codify a communication process with candidates.</b>			
	RySG	The RySG supports establishing and publishing a communication process with candidates to improve the candidate experience. The report lays a good foundation for why this is necessary.	
	ALAC	Agree	
	NCSG	The NCSG supports this recommendation.	
<b>Recommendation 19: ICANN staff and the recruitment consultant, along with NomCom members, should leverage the detailed job description and desired competencies and</b>			
	RySG	The RySG supports better marketing for candidates. The report lays a good foundation for why this is necessary.	
	ALAC	Agree. Here is where an external professional agency can help out	
	NCSG	The NCSG supports this recommendation.	
<b>Recommendation 20: The evaluation consultant should do a preliminary screen of all Board candidates and provide blinded assessments to the NomCom to assist the NomCom</b>			
	RySG	The RySG supports the report's concrete recommendations to set out clear assessment, evaluation, and interview criteria. The report lays a good foundation for why this is necessary.	
NomCom should do preliminary screen	ALAC	Do Not Agree: The preliminary screening should be done by the NomCom itself (as it was done this year). Besides being fair, this would also be cost-effective. Screening by an external party has [risk] as its effectiveness is not easy to judge.	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
	RrSG	The RrSG strongly supports the implementation of records, matrixes and the standardisation of processes to prevent important and effective institutional memory from being lost due to the regular changeover of NomCom membership. ...	Strong
	NCSG	The NCSG supports this recommendation.	Support
<b>Recommendation 21: The NomCom should use a standardized matrix to evaluate and prioritize candidates, based on desired competencies and experience.</b>			
adapt standardized evaluation to ICANN specificities	ISPCP	The ISPCP wants to point out that ICANN is a very unique organization in its mission and functioning. A standardized evaluation approach doesn't mean this recruiting evaluation approach shouldn't be adapted to ICANN specificities.	
	RySG	The RySG supports the report's concrete recommendations to set out clear assessment, evaluation, and interview criteria. The report lays a good foundation for why this is necessary.	Support
try it, if feasible	ALAC	It may not be practically feasible to create such a matrix, but if this can be done to the satisfaction of NomCom members, it could be tried out.	Support
	RrSG	The RrSG strongly supports the implementation of records, matrixes and the standardisation of processes to prevent important and effective institutional memory from being lost due to the regular changeover of NomCom membership. ...	Strong
	NCSG	The NCSG supports this recommendation.	Support
<b>Recommendation 22: The NomCom should provide consistent interview questions and an interviewer evaluation form for the candidates interviewed during the deep-dive phase</b>			
	RySG	The RySG supports the report's concrete recommendations to set out clear assessment, evaluation, and interview criteria. The report lays a good foundation for why this is necessary.	Support
	ALAC	Agree if this is feasible.	Support
	RrSG	The RrSG strongly supports the implementation of records, matrixes and the standardisation of processes to prevent important and effective institutional memory from being lost due to the regular changeover of NomCom membership. ...	Strong
	NCSG	The NCSG supports this recommendation.	Support
<b>Recommendation 23: The NomCom should publish additional data on the candidate pool and the recruiting source of candidates.</b>			

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
	RySG	The RySG supports more transparency on NomCom processes, including aggregated metrics on the candidate pool and recruiting. The report lays a good foundation for why this is necessary.	
	ALAC	Agree, subject to GDPR Compliance at all stages of handling personal data.	
	RrSG	The RrSG strongly supports the implementation of records, matrixes and the standardisation of processes to prevent important and effective institutional memory from being lost due to the regular changeover of NomCom membership. ...	
	NCSG	The NCSG supports this recommendation.	
<b>Recommendation 24: Inform assessments of the NomCom by assessing the performance of the Board.</b>			
principally agree, concerns about specifics	RySG	While we are supportive of an ICANN Board that is critical of its own effectiveness and performance, and agree that sharing information about what competencies currently exist and what potentially need to be filled with the NomCom could be helpful in the search for candidates, some RySG members are concerned that sharing the results of a Board self-assessment outside the Board with the NomCom may be ineffective and risks breaches in confidentiality.	
	ALAC	Agree, assuming that the performance of the individual NomCom appointees can be assessed individually.	
support annual assessment + reasons why	RrSG	The Board's effectiveness should be assessed every year to not only improve NomCom's processes, but to also analyse what competencies currently exist and what potentially need to be filled so that these can be kept in mind when looking for candidates.	
	NCSG	The NCSG supports this recommendation.	
<b>Recommendation 25: ICANN should investigate advancing its nominations process into a Leadership Development function.</b>			
support with concerns	RySG	The RySG theoretically supports further Leadership Development, but is also concerned that this would negatively impact ICANN's budget and believe this work should be deprioritized in light of other, more pressing options listed above that are likely to result in a greater positive impact.	
	ALAC	Do Not Agree: This is outside the remit of the NomCom	
	RrSG	The RrSG supports making the most of individuals that, even if not chosen by the NomCom to fill a position, are still able persons who have identified themselves as interested in volunteering to work with ICANN and could potentially have a place in another role.	
	NCSG	The NCSG supports this recommendation.	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
agree to a CCWG-developed program	BC	The BC supports this initiative to evolve the current Fellowship program to develop emerging leaders. The current ICANN board has some directors who are products of the fellowship program. A leadership development program is an important element of filling NomCom’s objective to appoint high-caliber people. However, such a program should be designed through a cross-community working group and be subject to public comment.	
<b>Recommendation 26: Provide clarity on desire for independent directors and designate three specific seats for “Independent Directors.”</b>			
result of implementation may not achieve intent	ISPCP	The ISPCP supports this proposal but is not convinced that "hardcoding" the designation of three specific seats for "Independent Directors" as proposed in recommendation 26 would help or even improve the overall quality of the Board.	
too vague	RySG	This recommendation is too vague for the RySG to either support or oppose.	
works well already	ALAC	Do Not Agree: Currently the NomCom-appointed Directors are a mixture of independent directors and ICANN insiders. There is no reason to further “harden” this structure as the current system seems to be working reasonably well.	
clarify, decide about independent directors first	RrSG	The RrSG believes that it must be first decided and agreed upon as to whether the NomCom should be seeking Independent Directors, and if that is the case, then this should be added to the ICANN Bylaws.	
need more clarification	NCSG	The NCSG would like more clarification here. The premise that bringing on unaffiliated directors will foster more independence within the ICANN Board is questionable. Clear guidelines on what an independent director is in the ICANN context would help the Nomcom recruitment and selection process.	
no support for candidates with little prior ICANN experience	BC	The BC does not support the recommendation to designate 3 ICANN board seats for candidates “with limited prior ICANN experience.” In our view, board members without prior ICANN experience must typically devote the first half of their term just to build an understanding of what ICANN does and how it does its work.	
<b>OTHER/OVERALL:</b>			
overall	NR	Therefore, overall, and in general, I cordially support the Report and Conclusions, but with reservations...	
overall	SSAC	The SSAC concurs with the full set of important findings and recommendations in this report and hopes the NomCom leadership will act quickly on these.	
overall	ISPCP	Regarding the main recommendations contained in the report, the ISPCP supports these recommendations...	

Recommendation	Responding Organization	Comment / Summary of Comment	Level of Support
overall	RySG	The RySG supports the report's general themes of: more training for NomCom members about how to review, select and interview candidates; more process documentation to encourage efficient transitions and knowledge transfer; improved documentation and communication about core competencies; and standardized screenings, evaluations, and interviews (to improve consistency).	
overall	RySG	the RrSG supports the final report overall	
overall + new ideas	RrSG	In summary, the RrSG endorses the findings and recommendations of the NomCom2 Review Working Party with the addition of a Standing Committee. Once the Final Report is published, we look forward to making more contributions during the feasibility and implementation phases of the review process.	
overall	BC	The BC supports the conclusion by the Independent reviewer that there is a continuing purpose for the NomCom in the ICANN structure.	
overall	IPC	...general support for the proposed recommendations in the report...	

Recommendation	Responding Organization & Level of Support	Comment / Summary of Comment
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Key						
Strongly Oppose	Oppose	Neutral	Partly/Conditionally Support	Support	Strongly Support	New Idea/Suggestion

OTHER PUBLIC COMMENTS		
	RySG	The RySG supports the additional recommendation suggested by the RrSG to create a Standing Committee that exists in parallel to the annual NomCom comprised of ex-NomCom and/or ex-Board members and perhaps even the current NomCom Chair Elect or Associate Chair.
reiteration of earlier recommendation	RySG	The RySG wishes to reiterate its 2014 recommendation that current or former NomCom members who have served on NomCom with individuals under consideration for Chair roles should be consulted during deliberations concerning their candidacies.
criticism of report	RySG	(Rec. 8) the report provides no information to allow any reader to be fully informed of the risks or benefits of supporting or opposing the recommendation. We highlight this is one of the areas that is substantively weak on analysis.
criticism of report	RySG	(Rec. 9) The report does not articulate why the NomCom was structured this way (no voting, no term limits), what the benefits are, and what the drawbacks are. It does not include any analysis of what benefits or risks might arise from this recommended change. The report appears to rely on the argument “that’s not how other boards work.” C38
new idea = consider ICANN org staff reporting to Human Resources instead of CEO	RySG	(Rec. 11) We agree with the suggestion also made by the RrSG that given that the NomCom’s role is primarily one of recruitment, the VP of Human Resources should be considered as an alternative to the CEO office.
criticism of report	RySG	(Rec. 11) We observe an analytical disconnect between the finding that the NomCom is understaffed and the recommendation is that the senior NomCom staffer should report to the CEO. We interpreted this recommendation to mean if the NomCom budget gets higher visibility in the ICANN org, then such issues as staffing might be addressed, but it would have been helpful for the report to have made that connection.
criticism of report	RySG	(Rec. 17) We highlight that this is another example of where the report discusses what some interviewers thought, but then made a recommendation with little to no analysis. The recommendation here is unsupported by any rationale for why a goal to increase diversity will be unproductive. Diversity can be achieved through more than quotas.



Recommendation	Responding Organization & Level of Support	Comment / Summary of Comment
criticism of report	RySG	(Rec. 17) ...we observe that the findings section seems to imply that NomCom must choose EITHER highquality OR diverse candidates. We believe that the NomCom and its consultants can do better to achieve candidates that are BOTH high-quality and diverse.
Rec 1 implementation suggestion	RySG	(Rec. 19) ...the report doesn't go far enough, implying that simply notifying candidates of openings will numerically increase diversity (geographic, gender, and ICANN-experience). We suggest that, in implementing Recommendation 1, NomCom should select a vendor based on their reputation for drafting job descriptions that recognize and account for hidden bias against diverse candidates, and who have special expertise in outreach to diverse pools of candidates, thereby reducing the likelihood that they will self-select out.
request for more information	RySG	(Rec. 26) We would like more information on why the report recommends a quota of Independent Directors and where did "3" come from? Previously the benchmark was "high-quality" candidates (Recommendation 17).
new idea = use a scorecard for evidence of independence, if desired	RySG	(Rec. 26) Perhaps instead a scorecard could be used to prioritize evidence of independence in all candidates, if that is a desired outcome.
NomCom...should be much more accountable to the community	ALAC	1. As noted in the report, the ICANN NomCom is different in its function compared to most other Nominating Committees. The ICANN NomCom is more of a Selection Committee than the generic Nominating Committee (see: <a href="https://en.wikipedia.org/wiki/Committee#Nominating_committee">https://en.wikipedia.org/wiki/Committee#Nominating_committee</a> ), whose main task assigned is to identify a slate of candidates for different positions, which is then voted on by the membership. In this way the NomCom subsumes some of the membership's powers, and consequently, it should be much more accountable to the community.
It is not possible to know if the process is being 'gamed'	ALAC	2. A significant related concern is that since the NomCom is a much smaller group of people (than the membership), whether it is possible for a small group of NomCom members to 'game' the candidate selection process. In this regard, the somewhat opaque and confidential nature of NomCom processes makes it difficult for a NomCom member to refer to even her appointing constituency if in case of doubt.
Accountability and the potential for 'gaming' should be addressed now	ALAC	3. The current review has steered clear of both the above concerns. As an independent, autonomous organization, ICANN would be subject to more intense public scrutiny in future, and perhaps it's important to dispel any doubts on these important issues.

Recommendation	Responding Organization & Level of Support	Comment / Summary of Comment
The "firewall" between consecutive NomCom's is not desirable.	ALAC	4. The current practice is for each NomCom to start "on a clean slate" as far as its operations are concerned. In order to retain and re-use the best practices of previous NomComs, it is suggested that a living document on NomCom best practices be maintained by Staff with inputs reviewed by the NomCom leadership. The "firewall" between consecutive NomComs is not desirable, particularly since a number of members would be common between the two.
Adopt transparency where possible, for ICANN's best interests.	ALAC	5. Confidentiality has been an important part of NomCom's functioning. While confidentiality needs to be maintained at the core, wherever open, transparent processes can be adopted, they should be. An opaque NomCom is not in the best interests of an otherwise open, transparent, bottom-up Multistakeholder organization such as ICANN.
resume NomCom member 360 evaluations	ALAC	6. The 360-degree evaluations that used to be carried out for each NomCom member and for the leadership team have not found a place in the review recommendations. If provided in time, these may be useful for the NomCom to provide feedback to the appointing constituencies on the performance of their appointees. A single composite score aggregating individual scores may also be useful in assigning an overall evaluation for the whole NomCom. The practice should therefore be continued.
ensure GDPR compliance	ALAC	7. Since NomCom collects a great deal of personal data from individual applicants, it needs to ensure compliance with the requirements of GDPR.
training should focus on understanding of ICANN, non-verbal cues over specific skills	ALAC	As a general point, members of NomCom should be rather guided to understand the broad ecosystem of ICANN, the challenges it faces and the leadership that it requires, rather than provide them only with specific skills. In particular, the importance of non-verbal cues such as body language, which may require specialized training.
new idea = create a Standing Committee	RrSG	... the RrSG believes there is a need to create a Standing Committee that exists in parallel to the annual NomCom comprised of ex-NomCom and/or ex-Board members and perhaps even the current NomCom Chair Elect or Associate Chair...
reiteration of earlier recommendation	NCSG	Frequent changes in Operating Procedures
	NCSG	A more effective solution would be to form a standing committee to oversee NomCom.
notification of issue not satisfactorily addressed	NCSG	Imbalances in representation
notification of issue not satisfactorily addressed	NCSG	Dismissal of members of the NomCom

Recommendation	Responding Organization & Level of Support	Comment / Summary of Comment
	NCSG	if the leadership of the NomCom is allowed to carry out such dismissals it must do so based on pre-established criteria and explain on what grounds it has dismissed the member. We are wary of the NomCom being able to dismiss members on its own with no recourse to due process. There must also be an appeals mechanism in place when such dismissals occur, and greater transparency around the rationales for the actions of the NomCom leadership.
notification of issue not satisfactorily addressed	NCSG	Confidentiality used as an excuse for not being transparent and accountable
operating procedure update to clarify scope of confidentiality	NCSG	We suggest an addition to the operating procedure to make it clear that only deliberations about “candidates” are confidential and the members can freely discuss their concerns about process with the community.
establish/develop formal communications channels	NCSG	Formal communication channels between the community and the NomCom must continue to be developed or established to accomplish this.
NomCom training for leadership	NCSG	...NomCom leaders can benefit from [ICANN Chairing Skills] course if it is still in place. If not, it should be offered again in the future.
codify rules	NCSG	(Rec. 7) ... an alternative solution is to improve the situation by codifying operational rules, e.g., around decision making processes, making it easier for new members (and frankly, the broader community) to clearly understand how the Nomcom works in advance of serving.
new idea = create a Standing Committee	NCSG	(Rec. 12) An independent standing committee might be able to provide a solution to this and prevent NomCom from spending the money on matters that are not priority.
Reference to review scope/Bylaws	BC	The BC supports the conclusion by the Independent reviewer that there is a continuing purpose for the NomCom in the ICANN structure.
disagreement with IE findings re: policies, processes	BC	The Independent reviewers contend that NomCom policies and processes limit the extent to which the NomCom is able to identify competencies needed in ICANN leadership positions, recruit candidates based on those needed competencies, and identify candidates that best fulfill those needed competencies. The BC disagrees with this contention. We believe that NomCom has adequate processes and access to sufficient ICANN Org resources to achieve its mandated task.
incorporate public comment feedback into final report recommendations	IPC	[Analysis Group's final report] should provide more useful recommendations through incorporating public comment in advance of Analysis Group’s settling on recommendations.
new idea = create a Standing Committee	IPC	IPC supports the creation of a NomCom standing Committee that would operate in parallel to the NomCom which would be populated by former NomCom members as well as ex-Board Members.

# NomCom2 Implementation Planning Team

## - Presentation to the OEC

Tom Barrett, IPT Co-Chair  
Cheryl Langdon-Orr, IPT Co-Chair

Multistakeholder Strategy and Strategic Initiatives

DD January 2019 2018



# NomCom2 Implementation Planning Team (IPT) Remit – High-Level

The work of the implementation planning team is to ***assess the feasibility*** of implementing the recommendations made by the independent examiner in its final report, and to ***submit its assessment*** – the Feasibility Assessment and Initial Implementation Plan (FAIIP) document – to the Organizational Effectiveness Committee (OEC) of the ICANN Board.

# NomCom2 Implementation Planning Team (IPT) Remit - Detail

- ◎ Completion of “Feasibility Assessment and Initial Implementation Plan” (FAIIP) for submission to ICANN Board’s OEC\*
  - Assessing the feasibility of implementing the independent examiner’s (IE) 27 recommendations published in NomCom2 organizational review final report
  - Providing consensus-based comments / additions to recommendations where appropriate
  - Submitting the completed FAIIP to the ICANN Board OEC

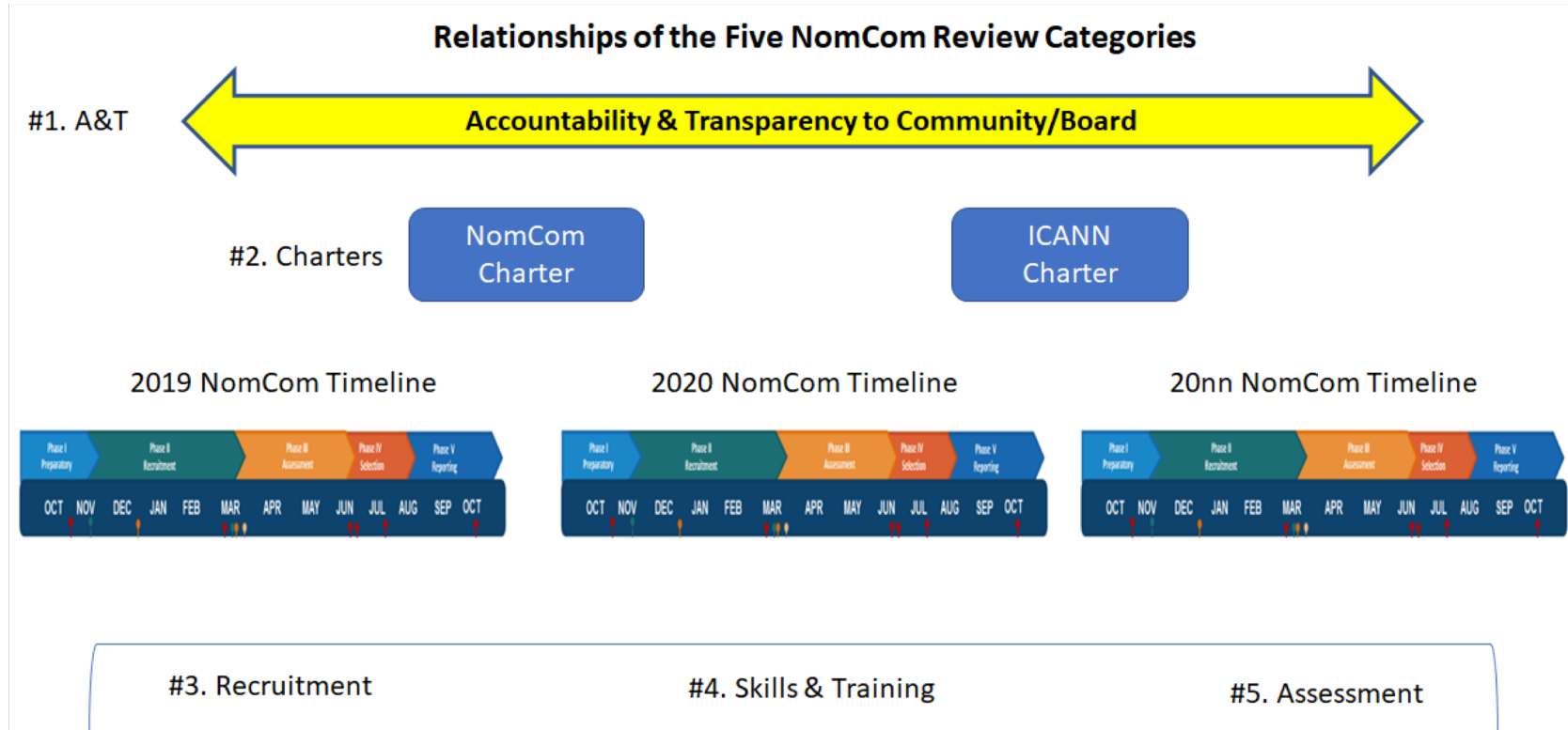
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*\*Following the IPT’s delivery of its completed FAIIP to the OEC, it is the ICANN Board that determines, via a resolution, whether the IE’s final report recommendations will be accepted for implementation. Materials submitted for consideration are: IPT FAIIP, IE final report, staff report of public comments. See MSSl Organizational Reviews Handbook for more details: <https://go.icann.org/2pX9ks5>*

# Recommendation Categories

- ⦿ Accountability & Transparency to Community, Board
- ⦿ NomCom Charter/ICANN Charter
- ⦿ Recruitment of NomCom Nominees
- ⦿ NomCom Skills & Training
- ⦿ Assessment

# Recommendation Categories - Relationships





# NomCom2 IPT Scorecard

## NomCom Review Implementation Planning Team

Progress Report as of: 10-Dec-2018

### Overview:

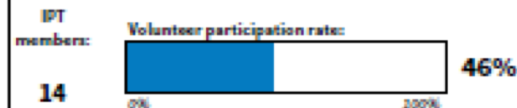
The NomCom Review Implementation Planning Team (IPT) is responsible for assessing the feasibility of the Independent examiner's recommendations, and for developing an Initial Implementation plan.

In all, twenty-seven (27) recommendations were made by the Independent examiner in its final report. It was agreed by the NomCom Review IPT that all recommendations made in the report be included for implementation consideration.

Wiki Page: [NomCom Implementation Planning Phase](#)

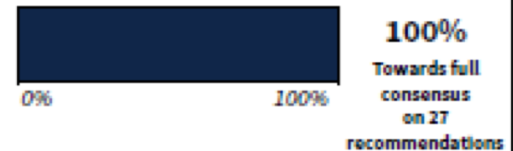
NomCom IPT Co-Chairs: Tom Barrett, Cheryl Langdon-Orr

### Section I: Participation



Plenary meetings:	13
Volunteer meeting time (hrs):	112.75

### Section II: IPT Progress (total)



### Section III: IPT Progress (breakdown by category)

#### Require community input and changes to ICANN Bylaws/NomCom Charter:

Accountability & Transparency 26% of total effort	ICANN Charter, NomCom Charter 22% of total effort
<p>0% 100%</p> <ol style="list-style-type: none"> <li>NomCom leadership should have input on the NomCom budget and staffing resources.</li> <li>Formalize communication between the NomCom and the Board, SOs/ACs, and the PTI Board in order to understand needed competencies and experience.</li> <li>The NomCom should publish detailed job descriptions for Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form the basis for recruiting and evaluation efforts.</li> <li>Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for reappointment by the NomCom.</li> <li>An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to suggest and assist in implementing changes to NomCom processes.</li> <li>Inform assessments of the NomCom by assessing the performance of the Board.</li> <li>Provide clarity on desire for independent directors and designate three specific seats for "Independent Directors."</li> </ol>	<p>0% 100%</p> <ol style="list-style-type: none"> <li>NomCom members, except for leadership positions, should serve two-year terms, and be limited to a maximum of two terms.</li> <li>Maintain the current size of NomCom.</li> <li>All NomCom members should be fully participating and voting members, except for NomCom leadership.</li> <li>Representation on the NomCom should be re-balanced immediately and then be reviewed every five years.</li> <li>The senior staff member supporting NomCom should be accountable to and report to the office of the CEO.</li> <li>Maintain current diversity requirements for NomCom appointments.</li> </ol>

#### Require NomCom actions:

NomCom Skills & Training 15% of total effort	Recruitment of NomCom Nominees 18.5% of total effort	Assessment 18.5% of total effort
<p>0% 100%</p> <ol style="list-style-type: none"> <li>Formalize a job description for NomCom members that emphasizes diversity and independence, and provide that description to SOs/ACs.</li> <li>Implement and formalize training to further NomCom members' understanding of the roles and responsibilities of Board directors and the practices of high-performing Boards at other nonprofit organizations.</li> <li>Implement and formalize training for NomCom leadership to further their understanding of their roles, authority, and responsibilities, and confirm or appoint the next Chair earlier in the cycle.</li> <li>Formalize training for NomCom members in the candidate evaluation process.</li> </ol>	<p>0% 100%</p> <ol style="list-style-type: none"> <li>A professional recruiting consultant should continue to be involved in the role of identifying potential Board candidates. The role of the recruiting consultant should be clarified and published.</li> <li>Publish a candidate communication schedule and codify a communication process with candidates.</li> <li>ICANN staff and the recruiting consultant, along with NomCom members, should leverage the detailed job description and desired competencies and experience to develop a marketing plan to better target prospective candidates.</li> <li>The NomCom should publish additional data on the candidate pool and the recruiting source of candidates.</li> <li>ICANN should investigate advancing its nominations process into a Leadership Development function.</li> </ol>	<p>0% 100%</p> <ol style="list-style-type: none"> <li>A professional evaluation consultant should continue to be involved in the evaluation process for Board candidates. The role of the evaluation consultant should be clarified and published.</li> <li>Publish a "Process Diagram" and codify key elements of the NomCom process. Each year, the NomCom should be required to highlight and explain process changes to the ICANN community in an open session.</li> <li>The evaluation consultant should undertake a preliminary screen of all Board candidates and provide blinded assessments to the NomCom to assist the NomCom with reducing the pool of candidates to the deep-dive shortlist.</li> <li>The NomCom should use a standardized tool to evaluate and prioritize candidates, based on desired competencies and experience as determined annually. This tool will not replace qualitative assessments of candidates.</li> <li>The NomCom should provide consistent interview questions and an interviewer evaluation form for the candidates interviewed during the deep-dive phase and the final face-to-face interviews.</li> </ol>

# NomCom2 Review – Implementation Planning

*Recommendations edited by the IPT*

**RECOMMENDATION #15:** *“The NomCom should publish detailed job descriptions for Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form the **a** basis for recruiting and evaluation efforts.”*

**RECOMMENDATION #24:** *“An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to ~~suggest~~ **recommend** and assist in implementing changes **improvements** to NomCom processes **operations**.”*

**RECOMMENDATION #25:** *“~~Inform assessments of the~~ **Improve** NomCom **selection decisions** by assessing the performance **and needs** of the ~~Board~~ **all bodies receiving NomCom appointees**.”*

**RECOMMENDATION #27:** *Provide clarity on desire for **and definition of** “independent directors.” ~~and designate three specific seats for~~ “~~Independent Directors~~.” **Upon clarification of desire and definition, determine the number of specific seats for “independent directors.”***

# NomCom2 Next Steps

- ⦿ IPT submits completed FAIP to OEC
- ⦿ OEC reviews submissions for consideration
  - FAIP from IPT
  - Final report from independent examiner
  - Staff report of public comments
- ⦿ OEC makes recommendation to ICANN Board about next steps, including approval of IE final report, NomCom IPT FAIP.
- ⦿ ICANN Board passes resolution
- ⦿ Subject to Board resolution, NomCom review implementation team is formed; begins drafting detailed implementation plan and starts implementation.

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*See MSSl Organizational Reviews Handbook for implementation timeline details:*  
<https://go.icann.org/2pX9ks5>

# Thank you!

# Questions?

Tom Barrett, NomCom2 Review IPT Co-Chair  
Cheryl Langdon-Orr, NomCom2 Review IPT Co-Chair



# ANNEX

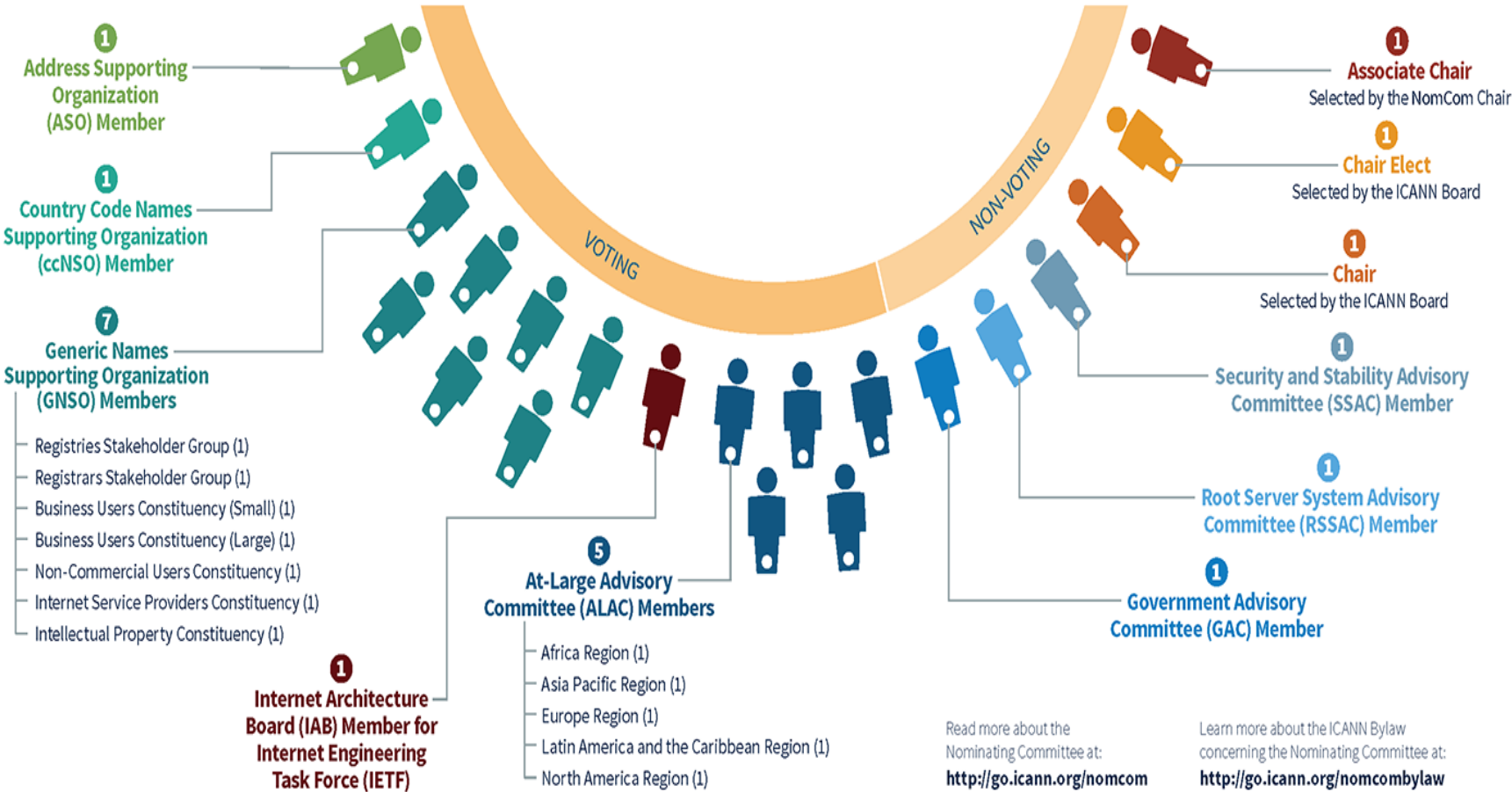
*The following slides provide additional information about the NomCom2 Review Implementation Planning Team and its work.*

## NomCom2 Review IPT – Membership and Representation

Brenden Kuerbis	GNSO/NCUC
Bruce Tonkin	GNSO/RrSG
Cheryl Langdon-Orr (co-chair)	ALAC
Jon Nevett	GNSO/RySG
Jonathan Cohen	GNSO/IPC
Ken Stubbs	GNSO/RySG
Leah Symekher	ALAC/NARALO
Manmeet Singh	GNSO/BC
Mark Seiden	SSAC
Nadira Al Araj	ALAC/APRALO
Satish Babu	APRALO
Tom Barrett (co-chair)	GNSO/RrSG
Vanda Scartezini	ALAC/LACRALO
Yrjö Länsipuro	ALAC

*Most IPT members have also served as members of the NomCom.*

# NomCom – Current (Jan 2019) Membership and Representation



# NomCom2 Review

## Independent Examiner's Final Report

- ⦿ Presented 19 findings and 27 recommendations
- ⦿ Recommendations focused on:
  - increasing transparency, accountability
  - consistency of processes
  - continuity across NomComs; introduction of strategic outlook
  - maximizing efficiency, maximizing resources
  - improvements to NomCom performance, communications, results
  - representativeness of the NomCom

Link to independent examiner's final report: [https://community.icann.org/x/jS\\_8B](https://community.icann.org/x/jS_8B)



# Roles & Responsibilities Post Submission of Final Report

## Implementation Planning Team

- ✓ Establish RWP's level of agreement with Final Report (FR)
- ✓ Assess feasibility of recommendations
- ✓ Provide proposed alternatives if there is a disagreement with the feasibility of the IE's recommendations
- ✓ Provide detailed rationale for each rejected assessment or recommendations Based on above work, compile Feasibility Assessment and Initial Implementation Plan (FA)\* – ICANN org provides template
- Present FAIIP to OEC

\*contains provisional budget implication, anticipated resources, and timeline.

## Implementation Team\*

- Draft detailed implementation plan, based on direction provided by ICANN Board
- Conduct implementation of recommendations that require community action
- Support / monitor implementation of recommendations that require ICANN organization action
- Provide OEC with semi-annual updates
- Provide OEC with final implementation report once efforts are completed

\*formed after Board action

## OEC & ICANN Board

- OEC receives Final Report and FAIIP
- IE and IPT present Final Report and FAIIP to OEC
- OEC assesses Final Report, FAIIP, all other relevant documentation; makes recommendation to Board on next steps
- Board accepts Final Report\* and FAIIP, takes decision on next steps
- OEC oversees implementation, receives semi-annual updates and final implementation report

\*resets the five-year clock until next review

## ICANN org

- ✓ Provide template for Feasibility Assessment and Initial Implementation Plan (FAIIP)
- Support work of IPT
- Facilitate IE and IPT presentations to OEC
- Support work of implementation team
- Implement recommendations that require ICANN org action.
- Support drafting of semi-annual implementation reports and final implementation report

# NomCom2 Review – Implementation Planning

*Recommendations discussed in detail by the IPT*

**INDEPENDENT EXAMINER FINDING:** There is a lack of communication between the NomCom and Board/SO/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.

**RECOMMENDATION #16:** *“Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for reappointment by the NomCom.”*

**DISCUSSION CONTENT:** feedback structure, reliability, sources; privacy concerns; potential mechanisms for feedback

# NomCom2 Review – Implementation Planning

*Recommendations discussed in detail by the IPT*

**INDEPENDENT EXAMINER FINDING:** The NomCom does not always evaluate candidates in a consistent manner.

**RECOMMENDATION #20:** *“The evaluation consultant should undertake a preliminary screen of all Board candidates and provide blinded assessments to the NomCom to assist the NomCom with reducing the pool of candidates to the deep-dive shortlist.”*

**DISCUSSION CONTENT:** consultant remit – limitations, annual adjustments; context of consultant assessments in NomCom selection processes; NomCom oversight across years

# NomCom2 Review – Implementation Planning

*Recommendations discussed in detail by the IPT*

**INDEPENDENT EXAMINER FINDING:** The NomCom does not always evaluate candidates in a consistent manner.

**RECOMMENDATION #21:** *“The NomCom should use a standardized tool to evaluate and prioritize candidates, based on desired competencies and experience as determined annually. This tool will not replace qualitative assessments of candidates.”*

**DISCUSSION CONTENT:** ways to optimize implementation, ensure balance of structure and flexibility; consultation for NomCom evaluation skills improvement

# NomCom2 Review – Implementation Planning

*Recommendations discussed in detail by the IPT*

**INDEPENDENT EXAMINER FINDING:** *The NomCom has made significant progress in becoming more transparent, but transparency of its processes is still a concern within parts of the ICANN community.*

**RECOMMENDATION #23:** *“The NomCom should publish additional data on the candidate pool and the recruiting source of candidates.”*

**DISCUSSION CONTENT:** balance transparency and confidentiality; examples of acceptable data for publication; potential for reference to ATRT2; need for community and Board input; benefits of implementation

# NomCom2 Review – Implementation Planning

*Recommendations discussed in detail by the IPT*

**INDEPENDENT EXAMINER FINDING:** *The extent to which NomCom appointees are independent and prioritize the interests of the global Internet community in their decision-making is an area of concern within ICANN.*

**RECOMMENDATION #27:** *“Provide clarity on desire for independent directors and designate three specific seats for ‘Independent Directors.’”*

**DISCUSSION CONTENT:** Bylaws changes; consultation and research needed; definition of “independent”; evaluate number of seats; benefit of independent directors

# NomCom2 Review – Implementation Planning

*Recommendations with lengthy IPT implementation notes*

**INDEPENDENT EXAMINER FINDING:** There is a lack of understanding around the role of, and consensus regarding, the effectiveness of the professional recruitment firm OB Brussels.

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

**IMPLEMENTATION NOTES – HIGHLIGHTS:** measure consultant cost/benefit; consider year-round recruiting; evaluate consultant performance against defined role; consider contracting more than one consultant; post-implementation NomCom oversight

# NomCom2 Review – Implementation Planning

*Recommendations with lengthy IPT implementation notes*

**INDEPENDENT EXAMINER FINDING:** There is a lack of communication between the NomCom and Board/SO/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.

**RECOMMENDATION #14:** *“Formalize communication between the NomCom and the Board, SOs/ACs, and the PTI Board in order to understand needed competencies and experience.”*

**IMPLEMENTATION NOTES – HIGHLIGHTS:** guidelines, methodology, elements, process, timing, NomCom accountability; designation of NomCom party to implement, maintain



# NomCom2 Review – Implementation Planning

*Recommendations with lengthy IPT implementation notes*

**INDEPENDENT EXAMINER FINDING:** There is a lack of communication between the NomCom and Board/SO/ACs regarding the desired skills and competencies of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.

**RECOMMENDATION #16:** *“Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for reappointment by the NomCom.”*

**IMPLEMENTATION NOTES – HIGHLIGHTS:** guidelines, structure, reliability, context, weighting of feedback; best practices, consultation with receiving bodies

# NomCom2 Review – Implementation Planning

*Recommendations with lengthy IPT implementation notes*

**INDEPENDENT EXAMINER FINDING:** The NomCom does not always evaluate candidates in a consistent manner.

**RECOMMENDATION #21:** *“The NomCom should use a standardized tool to evaluate and prioritize candidates, based on desired competencies and experience as determined annually. This tool will not replace qualitative assessments of candidates.”*

**IMPLEMENTATION NOTES – HIGHLIGHTS:** balance of structure and flexibility; best practices consultation for implementation; NomCom party ownership for tool implementation, reviews, improvements

# NomCom2 Review – Implementation Planning

*Recommendations with lengthy IPT implementation notes*

**INDEPENDENT EXAMINER FINDING: N/A**

**RECOMMENDATION #24:** *“An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to suggest and assist in implementing changes to NomCom processes.”*

**IMPLEMENTATION NOTES – HIGHLIGHTS:** scope of responsibilities, authority, limitations, guidelines for operating; size and composition; community consultation for implementation; benefit

# NomCom2 Review

## *Organizational Reviews – Process Overview*

- ⦿ Seven phases:
  - Pre-Planning
  - Planning
  - Selection of the Independent Examiner
  - Conducting the Review
  - Feasibility Assessment
  - Board Consideration
  - Implementation

*See the MSSI Organizational Reviews Handbook for process details:*

<https://go.icann.org/2pX9ks5>

# NomCom2 Review

## *Reference Links*

- ⦿ **NomCom2 Review:**  
<https://community.icann.org/x/2wBpBQ>  
<https://www.icann.org/resources/reviews/org/nomcom>
- ⦿ **NomCom2 Review Implementation Planning Phase:**  
<https://community.icann.org/x/3wBpBQ>
- ⦿ **Independent examiner's final report:**  
[https://community.icann.org/x/jS\\_8B](https://community.icann.org/x/jS_8B)
- ⦿ **List of IE final report recommendations:**  
<https://community.icann.org/x/GgFdBQ>
- ⦿ **Public comments to draft final report:**  
<https://mm.icann.org/pipermail/comments-nomcom2-review-27mar18/2018q2/thread.html>
- ⦿ **Staff report of public comments to draft final report:**  
<https://www.icann.org/en/system/files/files/report-comments-nomcom2-review-15may18-en.pdf>
- ⦿ **NomCom2 IPT Work Progress and Scorecard:**  
<https://community.icann.org/x/jgJpBQ>
- ⦿ **NomCom2 Implementation - Announcements & Blogs**  
<https://community.icann.org/x/OAerBQ>
- ⦿ **MSSI Organizational Reviews Handbook:**  
<https://go.icann.org/2pX9ks5>

# Category 1: Accountability & Transparency to Community, Board

- ⦿ Recommendation 12: NomCom leadership should have input on the NomCom budget and staffing resources.
- ⦿ Recommendation 14: Formalize communication between the NomCom and the Board, SOs/ACs, and the PTI Board in order to understand needed competencies and experience.
- ⦿ Recommendation 15: The NomCom should publish detailed job descriptions for Board, SO/AC, and PTI Board positions. The job descriptions, in combination with specific needed competencies identified each year by the NomCom, should form ~~a the~~ basis for recruiting and evaluation efforts.
- ⦿ Recommendation 16: Implement and codify a system for providing feedback to the NomCom regarding the contributions and participation of members up for reappointment by the NomCom.
- ⦿ Recommendation 24: An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomComs, and in particular, to ~~suggest~~ **recommend** and assist in implementing ~~changes~~ **improvements** to NomCom ~~processes~~ **operations**.
- ⦿ Recommendation 25: Improve ~~inform assessments of the~~ NomCom **selection decisions** by assessing the performance ~~and needs of the Board~~ **all bodies receiving NomCom appointees**.
- ⦿ Recommendation 27: Provide clarity on desire ~~and definition of~~ **for “independent directors”**. **Upon clarification of desire and definition, determine the number of** ~~and designate three~~ specific seats for “Independent Directors.”

# Category 2: NomCom Charter/ICANN Charter

- ⦿ Recommendation 7: NomCom members, except for leadership positions, should serve two-year terms, and be limited to a maximum of two terms.
- ⦿ Recommendation 8: Maintain the current size of NomCom.
- ⦿ Recommendation 9: All NomCom members should be fully participating and voting members, except for NomCom leadership.
- ⦿ Recommendation 10: Representation on the NomCom should be re-balanced immediately and then be reviewed every five years.
- ⦿ Recommendation 11: The senior staff member supporting NomCom should be accountable to and report to the office of the CEO.
- ⦿ Recommendation 17: Maintain current diversity requirements for NomCom appointees.

# Category 3: Recruitment of NomCom Nominees

- ⦿ Recommendation 5: A professional recruiting consultant should continue to be involved in the role of identifying potential Board candidates. The role of the recruiting consultant should be clarified and published.
- ⦿ Recommendation 18: Publish a candidate communication schedule and codify a communication process with candidates.
- ⦿ Recommendation 19: ICANN staff and the recruiting consultant, along with NomCom members, should leverage the detailed job description and desired competencies and experience to develop a marketing plan to better target prospective candidates.
- ⦿ Recommendation 23: The NomCom should publish additional data on the candidate pool and the recruiting source of candidates.
- ⦿ Recommendation 26: ICANN should investigate advancing its nominations process into a Leadership Development function.



# Category 4: NomCom Skills & Training

- ⦿ Recommendation 1: Formalize a job description for NomCom members that emphasizes diversity and independence, and provide that description to the SOs/ACs.
- ⦿ Recommendation 2: Implement and formalize training to further NomCom members' understanding of the roles and responsibilities of Board directors and the practices of high-performing Boards at other nonprofit organizations.
- ⦿ Recommendation 3: Implement and formalize training for NomCom leadership to further their understanding of their roles, authority, and responsibilities, and confirm or appoint the next Chair earlier in the cycle.
- ⦿ Recommendation 4: Formalize training for NomCom members in the candidate evaluation process.

# Category 5: Assessment

- ⦿ Recommendation 6: A professional evaluation consultant should continue to be involved in the evaluation process for Board candidates. The role of the evaluation consultant should be clarified and published.
- ⦿ Recommendation 13: Publish a “Process Diagram” and codify key elements of the NomCom process. Each year, the NomCom should be required to highlight and explain process changes to the ICANN community in an open session.
- ⦿ Recommendation 20: The evaluation consultant should undertake a preliminary screen of all Board candidates and provide blinded assessments to the NomCom to assist the NomCom with reducing the pool of candidates to the deep-dive shortlist.
- ⦿ Recommendation 21: The NomCom should use a standardized tool to evaluate and prioritize candidates, based on desired competencies and experience as determined annually. This tool will not replace qualitative assessments of candidates.
- ⦿ Recommendation 22: The NomCom should provide consistent interview questions and an interviewer evaluation form for the candidates interviewed during the deepdive phase and the final face-to-face interviews.

# ICANN NomCom Assessment and Recommendations

Prepared for: Organizational Effectiveness Committee of the ICANN Board

By: Drs. Brown, Engle, and Rafert

January 2019

# Agenda

Introduction to the Independent Examiner

Scope and Design of the Review

Interviews and Survey

ICANN Meetings

Assessment and Recommendations

# Introduction

- We were retained as the Independent Examiner to conduct an independent review of the NomCom, as mandated by ICANN's Bylaws.
- The team has deep practical and research experience in analyzing non-profit (including volunteer-based organization) governance structures and in determining how organizations can develop more effective boards of directors.
- Relevant experiences includes past work with ICANN and knowledge of, and contributions to, the non-profit management literature.
- Our team is led by Drs. Will Brown, Mark Engle, and Greg Rafert.

# Agenda

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Introduction to the Independent Examiner

Scope and Design of the Review

Interviews and Survey

ICANN Meetings

Assessment and Recommendations

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# Project Scope

- **The goal of our review was to provide an assessment of:**
  - Whether the NomCom has a continuing purpose within the ICANN structure.
  - How effectively the NomCom fulfills its purpose and whether any change in structure, process, or operations is needed to improve effectiveness.
  - The extent to which the NomCom is accountable to the wider ICANN community, its organizations, committees, constituencies, and stakeholder groups.

## Project Scope (continued)

- **The criteria examined during the review included, but were not limited to:**
  - Fulfilment of mission and adherence to policies and procedures.
  - Accountability and transparency to the public.
  - Composition, membership processes, and participation.
  - Communication among the NomCom’s members and with the ICANN community.
  - Effectiveness of execution, including governance and management.
  - Evaluation and measurement of outcomes, such as whether NomCom processes identify skills needed by the bodies to which they are appointed.



# Project Design

- **Our project was designed as a two-step process.**
- **Phase 1: Assessment**
  - Review of bylaws, policies, and other written materials.
  - 60 people interviewed during and after ICANN59, ICANN60, and ICANN61.
  - 85 responses to an online survey open to the entire community.
  - Assessment report submitted for feedback from the ICANN community. Public webinars were held on January 18 and 25, and feedback was incorporated into draft final report.
- **Phase 2: Recommendations**
  - Final report was submitted in June 2018.

## Project Design (continued)

- **In the course of our project, we coordinated with ICANN staff and the NomCom Review Working Party (RWP). They:**
  - Assisted in outreach efforts.
  - Ensured our understanding of ICANN and NomCom policies and procedures is comprehensive and accurate, which provides the foundation necessary to provide specific, actionable recommendations.
- **This coordination did not affect our independence.**

# Agenda

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Introduction to the Independent Examiner

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Scope and Design of the Review

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Interviews and Survey

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ICANN Meetings

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Assessment and Recommendations

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# Interviews and Survey

## ■ Interviews

- Spoke to more than 60 people during interviews at ICANN59, ICANN60, ICANN61, or remotely.
- Interviewees were identified based on knowledge of NomCom processes, interest in providing feedback, diversity of perspectives, and recommendations from interviewees, RWP members, and ICANN staff.

## ■ Survey

- Designed to elicit feedback from the wider community – it has not been analyzed in a statistical manner.
- Informed by our interviews and promoted by ICANN.
- 85 completed responses.

# Agenda

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Introduction to the Independent Examiner

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Scope and Design of the Review

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Interviews and Survey

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ICANN Meetings

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Assessment and Recommendations

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# ICANN Meetings

- Independent Examiner audited most of the NomCom meetings at ICANN60 and ICANN61.
  - Confirmed that our findings and recommendations are appropriate.
  - At ICANN 61, we learned that 2018 NomCom had already implemented several of our recommendations.
- At ICANN61, we also participated in a productive session in which we presented our findings and draft recommendations to interested members of the ICANN community.

# Agenda

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Introduction to the Independent Examiner

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Scope and Design of the Review

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Interviews and Survey

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ICANN Meetings

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Assessment and Recommendations

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## Summary of Findings

- The NomCom is generally seen as performing its role effectively, but there is room to improve the functioning of the NomCom.
- NomCom members have exerted, and continue to exert, tremendous effort and time to the activities of the committee.
- NomCom members have significant technical and policy-related experience in their fields.
- The NomCom's interactions with candidates have improved significantly over the past five years and are generally viewed positively.
- The NomCom has made significant progress in becoming more transparent.
- Diversity requirements for NomCom appointees are currently appropriate.
- The leadership structure of the NomCom generally works well.
- The current size of the NomCom is sufficient.



# Summary of Recommendations

## Three Sections:

1. Composition and responsibility of the NomCom and its members.
2. Recruitment and evaluation processes.
3. Additional recommendations.

# Composition and Responsibility of the NomCom and its Members

## Findings

- SO/ACs not always familiar with roles and responsibilities of NomCom members
- There is concern about the NomCom's independence and diversity

## Recommendations

- Formalize and communicate the job description for NomCom members that emphasizes independence and diversity considerations

# Composition and Responsibility of the NomCom and its Members

## Findings

- NomCom lacks understanding of Board member's role and the skills and attributes needed to be a successful Board member

## Recommendations

- Training to improve understanding of director responsibilities

# Composition and Responsibility of the NomCom and its Members

## Findings

- NomCom performance highly dependent on the effectiveness of the Chair
- NomCom lacks recruiting and selection experience

## Recommendations

- Train NomCom leaders regarding responsibilities and authorities and appoint chair earlier
- Training in how to interview and assess candidates

# Composition and Responsibility of the NomCom and its Members

## Findings

- NomCom not always clear on roles of professional recruiting and evaluation firms

## Recommendations

- Retain professional recruiting consultant and codify role
- Retain professional evaluation consultant and codify role

# Composition and Responsibility of the NomCom and its Members

## Findings

- Term length of 1 year insufficient for learning and engagement
- Concern over role and participation of non-voting members
- NomCom may not accurately represent constituencies

## Recommendations

- 2 year terms, maximum of 2 terms
- All NomCom members should be fully participating and voting (except leadership)
- Review NomCom composition every 5 years

# Composition and Responsibility of the NomCom and its Members

## Findings

- NomCom is under-resourced and lacks integration with ICANN staff and strategy

## Recommendations

- NomCom senior staff should be accountable to and report to CEO office
- NomCom leadership should have input on budget and resources

# Recruitment and Evaluation Processes

## Findings

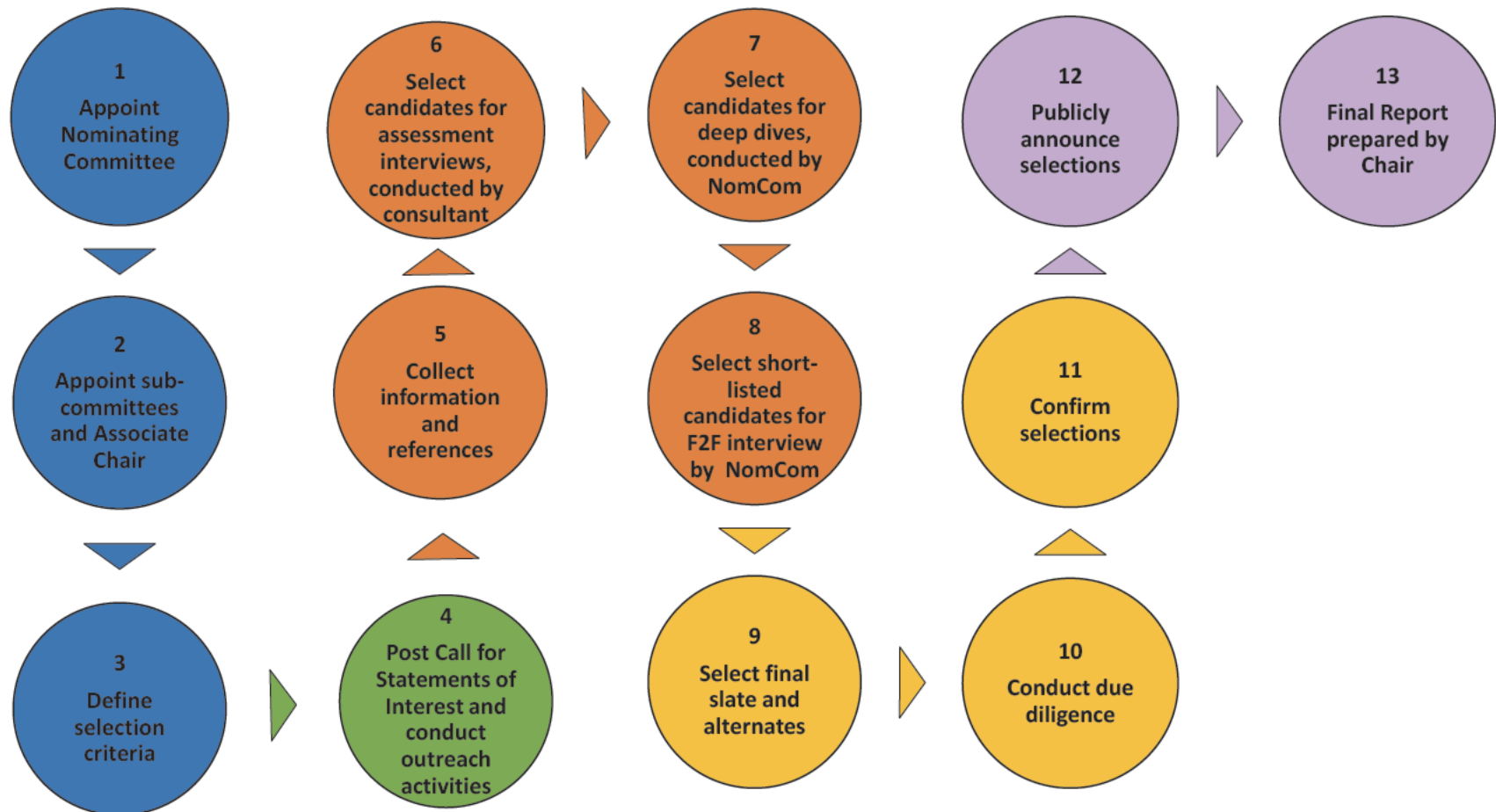
- Recruitment and evaluation processes generally effective, yet “reinvented” each year; lack of continuity

## Recommendations

- Publish process diagram and codify key elements of NomCom process; explain annual changes



## Example NomCom Process Diagram (based on 2017 process)



# Example Process Table (based on current process)

	Step	Who does it?	Comments
1	Appoint Nominating Committee	Board, SO/ACs	Board: Non-voting Chair, Non-voting Chair-Elect One non-voting liaison appointed from each of the following groups: <ul style="list-style-type: none"> <li>• Root Server System Advisory Committee</li> <li>• Security and Stability Advisory Committee</li> <li>• Government Advisory Committee</li> </ul>

# Recruitment and Evaluation Processes

## Findings

- Lack of clarity on desired competencies and experience for appointees
- Lack of clarity on responsibilities of SO/AC leadership positions

## Recommendations

- Formalize communication between NomCom and Board, SO/ACs, and PTI board in regards to competencies
- Publish job description for open positions

# Recruitment and Evaluation Processes

## Findings

- No way for Board, SO/ACs to communicate if members should be reappointed

## Recommendations

- Feedback regarding members up for reappointment

# Recruitment and Evaluation Processes

## Findings

- While improved, NomCom interactions with candidates still a topic of concern
- NomCom should increase diversity of candidate pool

## Recommendations

- Publish and codify a candidate communication schedule
- Develop marketing plan to better reach prospective candidates

# Recruitment and Evaluation Processes

## Findings

- Lack of consistency in how candidates are evaluated

## Recommendations

- Evaluation consultant does preliminary screening
- Use standardized matrix to evaluate and prioritize based on competencies and experience
- Consistency in interview questions

### Current Board Members: Skills and Experience

	Appointed By	Gender	Age	Region	Employment Status	Marketing	Advocacy / Govt. Relations	Financial / Audit	Regulatory / Compliance	Technical Expertise (gTLD, ccTLD, etc.)
<b>Departing Directors</b>										
Director 1	NomCom	F	55	NA	Full-Time					X
Director 2	NomCom	M	60	Europe	Full-Time	X				
Director 3	NomCom	M	52	Africa	Part-Time				X	
Director 4	ccNSO	M	73	Africa	Retired		X			
Director 5	NomCom	F	64	NA	Retired			X	X	
<b>Up for Reappointment</b>										
Director 6	NomCom	F	70	Europe	Part-Time		X			
<b>Remaining Directors</b>										
Director 7	NomCom	M	75	LA	Retired			X		X
Director 8	NomCom	M	68	Africa	Retired				X	
Director 9	NomCom	M	58	NA	Part-Time		X			
Director 10	ASO	M	55	NA	Full-Time				X	
Director 11	ASO	M	52	AAP	Full-Time	X				
Director 12	GNSO	F	61	NA	Full-Time	X	X			
Director 13	GNSO	M	70	Europe	Part-Time		X	X		
Director 14	ccNSO	M	69	AAP	Retired					X
Director 15	ALAC	M	63	LA	Full-Time			X		

### Board Candidates

	Source	Gender	Age	Region	Employment Status	Skills and Experience					Personal Qualities			Total (out of 40)	Notes
						Marketing	Advocacy / Govt. Relations	Financial / Audit	Regulatory / Compliance	Technical Expertise (gTLD, ccTLD, etc.)	Leadership	Skills	Unbiased		
Candidate 1	Open Call	F	48	Europe	Full-Time	4	0	0	0	2	5	5	4	20	HR experience
Candidate 2	OB	M	60	LA	Full-Time	0	3	2	5	1	5	4	5	25	
Candidate 3	Referral	F	55	AAP	Part-Time	2	0	1	4	5	4	5	5	26	Good references

Note: Skills, Experience, and Personal Qualities are scored from 0 (worst) to 5 (best).

# Recruitment and Evaluation Processes

## Findings

- NomCom significantly more transparent in recent years, but transparency still a concern

## Recommendations

- Publish data on composition of candidate pool and sources of candidates



# Additional Recommendations

## Findings

- The NomCom may be too busy to implement some of our recommendations
- Without appreciation of the performance of the board, as a whole, limited ability to determine performance of NomCom

## Recommendations

- Form empowered body of current/former NomCom members to implement recommendations
- Inform assessments of NomCom by evaluating performance of the Board

# Additional Recommendations

## Findings

- Lack of clear path to leadership opportunities in ICANN
- Confusion on the definition of an independent director, if they are desired, and how many should be allocated

## Recommendations

- Investigate evolution of NomCom into Leadership Development function
- Clarify definition and desire for independent directors
- Designate 3 seats for independent directors

## Exhibit A

### Reference Materials: Proposed OEC Charter Amendments

#### Organizational Effectiveness Committee Charter | As approved by the ICANN Board of Directors on [DATE]

##### I. Purpose

- A. The Organizational Effectiveness Committee (“OEC” or “Committee”) of the ICANN Board is responsible for the following areas related to Organizational and Specific Reviews:
  - i. The review and oversight of all organizational reviews mandated by Article 4, Section 4.4 of ICANN's Bylaws or any replacement or revisions to that Section of the Bylaws (Organizational Reviews), which are aimed at enhancing ICANN's overall effectiveness, and achieving specific organizational objectives, structural relevance and effectiveness.
  - ii. The review and oversight of all Specific Reviews mandated by Section 4.6 of ICANN Bylaws or any replacement or revisions to that section of the Bylaws, which are aimed at reviewing ICANN's execution of commitments relating to: Accountability and Transparency; Security, Stability and Resiliency; Competition, Consumer Trust and Consumer Choice; and Registration Directory Service.
  - iii. The review and oversight of policies, processes, and procedures relating to the Organizational and Specific Reviews.
  - iv. The development and maintenance of a Review Framework for Organizational and Specific Reviews, which is subject to Board approval that encapsulates the policies, processes and procedures applicable to the conduct of the Organizational and Specific Reviews.
- B. The OEC shall use the Organizational and Specific Reviews to help assess whether ICANN has made progress in achieving key organizational objectives and commitments and whether its organizational structure is effective and relevant to its mission. The OEC shall issue recommendations towards enhancing ICANN's overall organizational effectiveness.

- C. The OEC is also responsible for the review and oversight of the Periodic or Special IANA Naming Function Reviews (IFRs) mandated by Article 18 of ICANN Bylaws or any replacement or revisions to that article of the Bylaws, which are aimed at reviewing PTI's performance under the IANA Naming Function Contract and the IANA Naming Function Statement of Work.

## **II. Scope of Responsibilities**

The following activities are set forth as a guide for fulfilling the OEC's responsibilities. The OEC is authorized to carry out these activities and other actions reasonably related to the OEC 's purposes or as assigned by the Board from time to time:

- A. Review, and recommend changes as warranted to streamline and standardize, where possible, ICANN's policies, processes and procedures governing the Organizational and Specific Reviews;
- B. Oversee the conduct of the Organizational and Specific Reviews as described in the Review Framework;
- C. Oversee work of the independent consulting firm/s engaged for the Organizational Reviews, including the quality and content of the independent consulting firm's work product and all necessary follow-up;
- D. Create and populate Working Groups for ICANN Board directed Ad Hoc Reviews, if and when deemed necessary. The members of the Working Groups are chosen among present and past Board Directors and Liaisons;
- E. Coordinate the work of the Working Groups for ICANN Board-directed Ad Hoc Reviews, and evaluate the recommendations coming from the review process;
- F. Regularly report to the full Board with respect to the Committee's activities; and,
- G. Oversee the conduct of the IFRs as described in the ICANN Bylaws, and, where necessary, coordinating and convening a Board Caucus Group for any substantive discussions and Board input into those IFRs.
- H. Oversee the implementation of review recommendations resulting from the Organizational, Specific and IFR Reviews and regularly report to the full Board on the implementation status.

### **III. Relationships with Other ICANN Structures**

There shall be a designated ICANN staff member responsible for support of all functions of the Committee. In carrying out its responsibilities, the Committee shall consult with all relevant and affected parties regarding all pertinent aspects of the Reviews specified herein.

### **IV. Composition**

The Committee shall be comprised of at least three but not more than seven Board members, as determined and appointed annually by the Board, each of whom shall comply with the Conflicts of Interest Policy. The voting Directors on the Committee shall be the voting members of the Committee, and the majority of the Committee members must be voting Directors. The members of the Committee shall serve at the discretion of the Board.

Unless a Committee Chair is appointed by the full Board, the members of the Committee may designate its Chair from among the members of the Committee by majority vote of the full Committee membership.

The Committee may choose to organize itself into subcommittees to facilitate the accomplishment of its work. The Committee may seek approval and budget from the Board for the appointment of consultants and advisers to assist in its work as deemed necessary, and such appointees may attend the relevant parts of the Committee meetings.

### **V. Meetings**

#### **A. Regularly Scheduled Meetings.**

The Committee shall meet at least three times per year, or more frequently as it deems necessary to carry out its responsibilities. The schedule of these meetings will be established at the beginning of the calendar year. The Committee's meetings may be held by telephone and/or other remote meeting technologies. Regularly scheduled meetings shall be noticed at least one week in advance, unless impracticable, in which case the notice shall be as soon as practicable.

#### **B. Special/Extraordinary Meetings.**

Special/Extraordinary meetings may be called upon no less than forty-eight (48) hours' notice by either (i) the Chair of the Committee or (ii) any two members of the Committee acting together. The purpose of the meeting must be included with the call for the meeting.

C. Action Without a Meeting.

i. Making a Motion:

The Committee may take an action without a meeting for an individual item by using electronic means such as email. An action without a meeting shall only be taken if a motion is proposed by a member of the Committee and seconded by another voting member of the Committee. All voting members of the Committee must vote electronically and in favor of the motion for it to be considered approved. The members proposing and seconding the motion will be assumed to have voted in the affirmative. The action without a meeting and its results will be noted in the next regularly scheduled Committee meeting and will be included in the minutes of that meeting.

ii. Timing:

- a. Any motion for an action without a meeting must be seconded by another Committee member within 48 hours of its proposal.
- b. The period of voting on any motion for an action without a meeting will be seven days unless the Chair changes that time period. However, the period must be a minimum of two days and a maximum of seven days.

## **VI. Voting and Quorum**

A majority of the voting members of the Committee shall constitute a quorum. Voting on Committee matters shall be on a one vote per voting member basis. When a quorum is present, the vote of a majority of the voting Committee members present shall constitute the action or decision of the Committee.

## **VII. Records of Proceedings**

A preliminary report with respect to actions taken at each meeting (telephonic or in-person) of the Committee shall be recorded and distributed to committee members within two working days, and meeting minutes shall be posted promptly following approval by the Committee.

A report of the activities of the Committee shall be prepared and published semiannually.

## **VIII. Succession Plan**

The Committee shall maintain a succession plan for the Committee which includes identifying the experience, competencies and personal characteristics required to meet the leadership needs of the Committee. The Committee shall annually review the succession plan to ensure that it meets the needs of the Committee.

## **IX. Review**

The performance of the Committee shall be reviewed annually and informally by the Board Governance Committee. The Board Governance Committee shall recommend to the full Board changes in membership, procedures, or responsibilities and authorities of the Committee if and when deemed appropriate. Performance of the Committee shall also be formally reviewed as part of the periodic independent review of the Board and its Committees.

## Exhibit A

### Reference Materials: Proposed OEC Charter Amendments

#### Organizational Effectiveness Committee Charter | As approved by the ICANN Board of Directors on [DATE]

##### I. Purpose

- A. The Organizational Effectiveness Committee (“OEC” or “Committee”) of the ICANN Board is responsible for the following areas related to Organizational and Specific Reviews:
  - i. The review and oversight of all organizational reviews mandated by Article 4, Section 4.4 of ICANN's Bylaws or any replacement or revisions to that Section of the Bylaws (Organizational Reviews), which are aimed at enhancing ICANN's overall effectiveness, and achieving specific organizational objectives, structural relevance and effectiveness.
  - ii. The review and oversight of all Specific Reviews mandated by Section 4.6 of ICANN Bylaws or any replacement or revisions to that section of the Bylaws, which are aimed at reviewing ICANN's execution of commitments relating to: Accountability and Transparency; Security, Stability and Resiliency; Competition, Consumer Trust and Consumer Choice; and Registration Directory Service.
  - iii. The review and oversight of policies, processes, and procedures relating to the Organizational and Specific Reviews.
  - iv. The development and maintenance of a Review Framework for Organizational and Specific Reviews, which is subject to Board approval that encapsulates the policies, processes and procedures applicable to the conduct of the Organizational and Specific Reviews.
- B. The OEC shall use the Organizational and Specific Reviews to help assess whether ICANN has made progress in achieving key organizational objectives and commitments and whether its organizational structure is effective and relevant to its mission. The OEC shall issue recommendations towards enhancing ICANN's overall organizational effectiveness.



- C. The OEC is also responsible for the review and oversight of the Periodic or Special IANA Naming Function Reviews (IFRs) mandated by Article 18 of ICANN Bylaws or any replacement or revisions to that article of the Bylaws, which are aimed at reviewing PTI's performance under the IANA Naming Function Contract and the IANA Naming Function Statement of Work.

## **II. Scope of Responsibilities**

The following activities are set forth as a guide for fulfilling the OEC's responsibilities. The OEC is authorized to carry out these activities and other actions reasonably related to the OEC 's purposes or as assigned by the Board from time to time:

- A. Review, and recommend changes as warranted to streamline and standardize, where possible, ICANN's policies, processes and procedures governing the Organizational and Specific Reviews;
- B. Oversee the conduct of the Organizational and Specific Reviews as described in the Review Framework;
- C. Oversee work of the independent consulting firm/s engaged for the Organizational Reviews, including the quality and content of the independent consulting firm's work product and all necessary follow-up;
- D. Create and populate Working Groups for ICANN Board directed Ad Hoc Reviews, if and when deemed necessary. The members of the Working Groups are chosen among present and past Board Directors and Liaisons;
- E. Coordinate the work of the Working Groups for ICANN Board-directed Ad Hoc Reviews, and evaluate the recommendations coming from the review process;
- F. Regularly report to the full Board with respect to the Committee's activities; and,
- G. Oversee the conduct of the IFRs as described in the ICANN Bylaws, and, where necessary, coordinating and convening a Board Caucus Group for any substantive discussions and Board input into those IFRs.
- H. Oversee the implementation of review recommendations resulting from the Organizational, Specific and IFR Reviews and regularly report to the full Board on the implementation status.

### **III. Relationships with Other ICANN Structures**

There shall be a designated ICANN staff member responsible for support of all functions of the Committee. In carrying out its responsibilities, the Committee shall consult with all relevant and affected parties regarding all pertinent aspects of the Reviews specified herein.

### **IV. Composition**

The Committee shall be comprised of at least three but not more than seven Board members, as determined and appointed annually by the Board, each of whom shall comply with the Conflicts of Interest Policy. The voting Directors on the Committee shall be the voting members of the Committee, and the majority of the Committee members must be voting Directors. The members of the Committee shall serve at the discretion of the Board.

Unless a Committee Chair is appointed by the full Board, the members of the Committee may designate its Chair from among the members of the Committee by majority vote of the full Committee membership.

The Committee may choose to organize itself into subcommittees to facilitate the accomplishment of its work. The Committee may seek approval and budget from the Board for the appointment of consultants and advisers to assist in its work as deemed necessary, and such appointees may attend the relevant parts of the Committee meetings.

### **V. Meetings**

#### **A. Regularly Scheduled Meetings.**

The Committee shall meet at least three times per year, or more frequently as it deems necessary to carry out its responsibilities. The schedule of these meetings will be established at the beginning of the calendar year. The Committee's meetings may be held by telephone and/or other remote meeting technologies. Regularly scheduled meetings shall be noticed at least one week in advance, unless impracticable, in which case the notice shall be as soon as practicable.

#### **B. Special/Extraordinary Meetings.**

Special/Extraordinary meetings may be called upon no less than forty-eight (48) hours' notice by either (i) the Chair of the Committee or (ii) any two members of the Committee acting together. The purpose of the meeting must be included with the call for the meeting.

C. Action Without a Meeting.

i. Making a Motion:

The Committee may take an action without a meeting for an individual item by using electronic means such as email. An action without a meeting shall only be taken if a motion is proposed by a member of the Committee and seconded by another voting member of the Committee. All voting members of the Committee must vote electronically and in favor of the motion for it to be considered approved. The members proposing and seconding the motion will be assumed to have voted in the affirmative. The action without a meeting and its results will be noted in the next regularly scheduled Committee meeting and will be included in the minutes of that meeting.

ii. Timing:

- a. Any motion for an action without a meeting must be seconded by another Committee member within 48 hours of its proposal.
- b. The period of voting on any motion for an action without a meeting will be seven days unless the Chair changes that time period. However, the period must be a minimum of two days and a maximum of seven days.

## **VI. Voting and Quorum**

A majority of the voting members of the Committee shall constitute a quorum. Voting on Committee matters shall be on a one vote per voting member basis. When a quorum is present, the vote of a majority of the voting Committee members present shall constitute the action or decision of the Committee.

## **VII. Records of Proceedings**

A preliminary report with respect to actions taken at each meeting (telephonic or in-person) of the Committee shall be recorded and distributed to committee members within two working days, and meeting minutes shall be posted promptly following approval by the Committee.

A report of the activities of the Committee shall be prepared and published semiannually.

## **VIII. Succession Plan**

The Committee shall maintain a succession plan for the Committee which includes identifying the experience, competencies and personal characteristics required to meet the leadership needs of the Committee. The Committee shall annually review the succession plan to ensure that it meets the needs of the Committee.

## **IX. Review**

The performance of the Committee shall be reviewed annually and informally by the Board Governance Committee. The Board Governance Committee shall recommend to the full Board changes in membership, procedures, or responsibilities and authorities of the Committee if and when deemed appropriate. Performance of the Committee shall also be formally reviewed as part of the periodic independent review of the Board and its Committees.

## AMENDMENT NO. 1 TO IANA NAMING FUNCTION CONTRACT

This Amendment No. 1 to IANA Naming Function Contract, dated as of [●] (“**Amendment**”), by and between The Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“**ICANN**”), and Public Technical Identifiers, a California nonprofit public benefit corporation (“**Contractor**” and together with ICANN, the “**Parties**”), hereby amends, effective as of the date hereof, that certain IANA Naming Function Contract, dated 30 September 2016, by and between ICANN and Contractor (the “**Contract**”). All capitalized terms not defined will have the meaning given to them in the Contract.

1. The Parties hereby agree that subsections (c) through (g) of Section 2 of the SOW (Annex A of the Agreement) are deleted and replaced with the following:

“c. Service Levels.

i. Contractor will perform all services relating to Root Zone Management in accordance with the requirements and “Service Levels” specified at [link to icann.org page] (the “SLAs”), as such [services and] SLAs may be amended from time to time in accordance with the procedures specified at [link to icann.org page].

ii. The fields for the SLAs are as follows:

1. Process. The business process that Contractor is requested to perform.

2. Metric. The individual metric that will be measured as part of the completion of the business process.

3. Threshold. The specified target for each individual change request.

4. Type. Whether the threshold specified is a minimum target (compliance must not be less than the target) or a maximum target (compliance must not be more than the target).

5. Compliance. The percentage that the target goal in aggregate must be met or exceeded within the specified time period for all requests in the specified category.

6. Period. The time over which compliance is measured. (The period of collecting measurements to meet the Service Level Agreement (SLA)).

d. Process Performance. Total Contractor transaction time for emergency changes should be completed within a target of 12 hours until reviewed by the CSC with Contractor.

e. These elements reflect activity areas that should be instrumented by Contractor, and reported pursuant to ARTICLE VII of the Contract and Section 3 of this SOW.”

2. The Parties agree that, except as set forth in this Amendment, the current terms and conditions of the Contract will remain unchanged and in full force and effect and, to the extent applicable, such and conditions terms shall apply to this Amendment as if it formed part of the Contract.

3. This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement.

4. Any signature page delivered pursuant to this Amendment via facsimile, email or other electronic means shall be binding to the same extent as an original signature. Any Party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

*[signature page follows]*

WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the date first written above.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
Name:  
Title:

**PUBLIC TECHNICAL IDENTIFIERS**

By: \_\_\_\_\_  
Name:  
Title:

# **Process for Amending the IANA Naming Service Level Agreements**

Including Procedure for Modifying the Process For Amending  
the IANA Naming SLAS

17 December 2018





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## CONTENTS

1	PROCESS FOR AMENDING THE IANA NAMING SERVICE LEVEL AGREEMENTS	3
2	PROCEDURE FOR MODIFYING THE PROCESS FOR AMENDING THE IANA NAMING SLAS	6

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# 1 Process for Amending the IANA Naming Service Level Agreements

The following process for amending IANA Naming Service Level Agreements (SLAs) has been developed and agreed to by the Customer Standing Committee (CSC), ICANN and PTI. This process was developed to enable timely amendments to service levels that fall into a number of defined categories.

The SLAs are enforceable by ICANN through the IANA Naming Functions Contract it holds with PTI. None of the requirements in the process for amending IANA Naming SLAs override any obligations within the IANA Naming Functions Contract. Pursuant to that agreement, PTI's obligations to consult or notify ICANN are not modified through this process for amending IANA Naming SLAs.

## I. Procedure for determining that a SLA needs amending

1. An IANA Naming Function SLA change request may come from the CSC or PTI\*. The change request, along with reasoning for the change, must be distributed to the parties.
2. The CSC and PTI should meet to discuss the change request; this may be done during the CSC's regular monthly meeting or during a separate conference call.

To determine the merit of the change request, the CSC and PTI should consider:

- a. Which category applies to the SLA change request, as this will determine if community consultation is required. (see Appendix A):
    - i. New SLA Item
    - ii. Remove SLA Item
    - iii. Change SLA Item definition and target/threshold
    - iv. Change SLA Item target/threshold only
  - b. The benefit it would provide the community
  - c. Determine the change's feasibility such as: can it be achieved? What changes will be required to achieve it including but not limited to system changes, operational changes and an estimated implementation plan?
  - d. Estimate the cost of the change, based on the implementation requirements mentioned above.
3. The end results of the discussions between the CSC and PTI regarding the SLA change should be submitted in writing by PTI to the CSC or from the CSC to PTI.

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a. If a mutual decision is to change the SLA, continue with the IANA Naming SLA Amendment procedure.

b. If a mutual decision is to not change the SLA, after communicating that to each other in writing, the process ends.

## II. IANA Naming SLA Amendment Procedure

1. If the CSC and PTI reach a mutual decision to proceed with the SLA change, PTI should draft a change recommendation, which includes an impact analysis that expands with further detail based on their earlier discussions during the “procedure for determining that a SLA needs amending” stage. The analysis should review such items as the impact on potential resources, budget requirements following the PTI and ICANN budgetary processes, and an implementation plan per the PTI and/or ICANN implementation process, should the SLA changes be approved. Prior to moving forward with the recommendation, the CSC and PTI should agree on how PTI can support the implementation of the draft SLA change recommendation. PTI and/or ICANN shall publicly post the draft SLA change recommendation including the data it will be based on, and its impact on the community following the completion of this analysis.

2. Naming Customer Consultation: All four (4) categories of SLA changes require the CSC to present the change request to inform their stakeholders (i.e. Naming Customers) of the draft SLA recommendation.

3. Community Consultation: However, three (3) SLA change categories require further community consultation: (i.) new SLA, (ii.) remove SLA and (iii.) change SLA item definition and target/threshold. Community Consultation includes:

a. A Public Comment Period complying with ICANN’s designated practice for public comment periods, per the CSC Charter 17.3.d.

b. Based on the potential degree of impact if the draft SLA change recommendation is approved, the CSC may decide to perform community consultations such as, but not limited to, open sessions at ICANN meetings, etc.

c. Upon completion, community feedback should be taken into consideration in the final SLA change recommendation. If community feedback results in significant changes to the SLA change recommendation, then the CSC and PTI should mutually agree to the revisions.

d. When final draft SLA change recommendation is agreed upon between the CSC and PTI, the CSC should seek approval from the GNSO and ccNSO Councils with these potential outcomes:

i. Both the GNSO and ccNSO Councils do not approve. Process ENDS.

ii. One Supporting Organization Council approves, but the other Supporting Organization Council does not approve. Process ENDS.

iii. Both the GNSO and ccNSO Councils approve. Proceed to implementation.

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4. After approval from the GNSO and ccNSO Councils, or in the case of Procedure (iv): change SLA target/threshold only, which does not require the Councils' approval, the implementation process for the SLA change\*\* is initiated. PTI implements the SLA changes in accordance with the implementation plan provided earlier in the process for the final SLA change recommendation.

5. ICANN and PTI will update the SLA webpage. Upon the effective date of the SLA change, the previous SLA will be archived on the SLA webpage.

1 ICANN can direct PTI to initiate a SLA change request.

\*\*If the implementation requires ICANN or PTI Board approval, this must take place before implementation begins.

**1 Procedure for Modifying the Process for Amending the IANA Naming Service Level Agreements, November 2018**

## **2 Procedure for Modifying the Process for Amending the IANA Naming SLAs**

The Process for Amending the IANA Naming Service Level Agreements represents the mechanism through which PTI and ICANN have agreed to define the service levels to which PTI will be contractually held. Any modification to this Process must be agreeable to ICANN and PTI as a proper mechanism through which PTI and its customers can develop, modify or delete contractually required SLAs. The Process may only be modified through the following procedure:

1. The Process for Amending the IANA Naming Service Level Agreements (SLAs) may be reviewed at the request of the CSC, ccNSO Council, RySG, PTI or ICANN. The review will be conducted by the CSC, PTI and ICANN\*.
  2. The CSC, PTI, and ICANN\* should meet to discuss the proposed need to modify the Process and mutually consider if it is advisable to continue to explore a potential modification, as well as identify the portions of the Process requiring modification.
  3. Unless otherwise appropriate, PTI or ICANN\* shall draft the proposed modification for consideration by CSC, PTI and ICANN\* to determine if the modification achieves the desired impact. Once there is agreement on proposed text, PTI and/or ICANN\* will publicly post the draft change recommendation for public comment through ICANN's Public Comment process.
  4. Customer and Community Consultation: During the Public Comment process, the CSC must present the proposed modification to the ccNSO and RySG, and any other community consultation the CSC deems necessary.
  5. Customer and community feedback should be taken into consideration prior to finalizing any modified language for the Process. CSC, PTI, and ICANN\* should mutually agree to any revisions to the language that was previously posted for Public Comment.
- Once the final change recommendation is agreed to by the CSC, PTI, and ICANN\*, PTI and/or ICANN will publicly post on the CSC webpage, the modified Procedure for Amending the IANA Naming Service Level Agreement and such revised Process will become effective.
6. For avoidance of doubt, any modifications to the Process must take into account the proper levels of notice and consultation as appropriate for the significance of the SLA at issue.

\*ICANN MAY DELEGATE ITS ROLE AT ANY POINT IN THIS PROCESS TO PTI. SIMILARLY, PTI MAY DELEGATE ITS ROLE TO ICANN.

# Staff Report of Public Comment Proceeding

TITLE																			
<b>Publication Date:</b>																			
<b>Prepared By:</b>	Amy Creamer																		
<table border="1"> <thead> <tr> <th colspan="2">Public Comment Proceeding</th> </tr> </thead> <tbody> <tr> <td>Open Date:</td> <td>02-January-2019</td> </tr> <tr> <td>Close Date:</td> <td>10-February-2019</td> </tr> <tr> <td>Staff Report Due Date:</td> <td>04-March-2019</td> </tr> </tbody> </table>		Public Comment Proceeding		Open Date:	02-January-2019	Close Date:	10-February-2019	Staff Report Due Date:	04-March-2019	<table border="1"> <thead> <tr> <th colspan="2">Important Information Links</th> </tr> </thead> <tbody> <tr> <td colspan="2">Announcement</td> </tr> <tr> <td colspan="2">Public Comment Proceeding</td> </tr> <tr> <td colspan="2">View Comments Submitted</td> </tr> </tbody> </table>		Important Information Links		Announcement		Public Comment Proceeding		View Comments Submitted	
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<b>Staff Contact:</b>	Amy Creamer	<b>Email:</b>	Amy.creamer@icann.org																
Section I: General Overview and Next Steps																			
<p><b>Purpose:</b> The purpose of this public comment proceeding was to obtain community input on a proposed Amendment to the IANA Naming Function Contract between ICANN and <a href="#">Public Technical Identifiers (PTI)</a>. If approved, the Amendment would allow the Customer Standing Committee (CSC) and PTI/ICANN to change the IANA Naming Function’s Service Level Agreements (SLAs) without the need to do a contract amendment every time a SLA change is needed. Instead, the SLA change would follow a <a href="#">SLA Change Process</a> that provides a process to achieve amendments to the SLAs in a timely fashion while requiring consultations with the naming customers and broader ICANN community as appropriate. The SLAs would reside in a SLA table on PTI’s webpage.</p>																			
<p><b>NEXT STEPS:</b></p> <p>The ICANN and PTI Boards will consider the Amendment for adoption at ICANN65.</p>																			
Section II: Contributors																			

At the time this report was prepared, a total of one (1) community submissions had been posted to the forum. The contributor is listed below.

Organizations and Groups:

Name	Submitted by	Initials
RySG	Samantha Demetriou  RySG Vice Chair, Policy	18 February 2019

Individuals:

Name	Affiliation (if provided)	Initials

**Section III: Summary of Comments**

Only one comment was submitted.

The Registries Stakeholder Group supported the Amendment: “This amendment to the IANA Naming Functions Contract adopts an SLA Change Process that was cooperatively developed and agreed to by the CSC, PTI, and ICANN org. The SLA Change Process will allow the CSC and PTI to a) modify SLAs where appropriate b) add new SLAs as new services come on-line and, c) remove SLAs not warranted anymore. The RySG supports the Amendment and requests the ICANN Board to approve the Amendment so that SLAs that currently need to be modified or added or removed may be accomplished as soon as possible.” The Registries Stakeholder Group also supported the SLA Change Process, stating: “The Service Level Agreement (SLA) Change Process is an elegant, efficient solution to the need for modifying the IANA Naming Functions SLAs.”

**Section IV: Analysis of Comments**

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

In its comment, the Registries Stakeholder Group stated that “The DTA and inaugural Customer Standing Committee (CSC) fully expected the SLAs to be modified as services and demands changed.” The Registries Stakeholder Group therefore supports the Amendment and “requests the ICNAN Board to approve the Amendment so that SLAs that currently need to be modified or added or removed may be accomplished as soon as possible.”





# **Report on the Transfer of the .VU (Vanuatu) top-level domain to the Telecommunications Radiocommunications and Broadcasting Regulator (TRBR)**

25 February 2019

This report is a summary of the materials reviewed as part of the process for the transfer of the .VU (Vanuatu) top-level domain. It includes details regarding the proposed transfer, evaluation of the documentation pertinent to the request, and actions undertaken in connection with processing the transfer.

## **FACTUAL INFORMATION**

### **Country**

The “VU” ISO 3166-1 code from which the application’s eligibility derives, is designated for use to represent Vanuatu.

### **Chronology of events**

The .VU top-level domain was initially delegated to Telecom Vanuatu Limited (TVL) in the mid 1990’s. The exact delegation date is not clear as some delegation information predates the existence of ICANN and as such records are not available to verify the delegation date.

In 2009, the Government of the Republic of Vanuatu passed into law the “Telecommunications and Radiocommunications Regulations Act No. 30 of 2009”. The Act established the Telecommunications and Radiocommunications Regulator (TRR) and gives it the power to facilitate the development of the telecommunications and broadcasting sector and manage radio-frequency spectrum in order to promote national, social and economic development. In 2018, the Act was amended under “Amendment 22 of 2018” to become the “Telecommunications, Radiocommunications and Broadcasting Regulations Act 2018” and changed the name of TRR to the Telecommunications and Radiocommunications and Broadcasting Regulator (TRBR).

On 13 December 2016, the Government passed regulations pertaining to the .VU domain name under “The Vanuatu Domain Name Management and Administration Regulation Order No 206 of 2016”. Part 3 of this order outlines the functions of the regulator, which includes requesting a transfer of the .VU ccTLD, selecting and designating the registry operator, and ensuring that the management and administration of the .VU ccTLD and its sub-domains is responsive to the needs of the Vanuatu Internet community.

On 26 April 2017 a formal MOU was signed between TRBR and the Domain Name Commission (DNC), a subsidiary operation of InternetNZ that performs the regulatory functions for .NZ (New Zealand) country-code top-level domain. InternetNZ has provided assistance to TRBR for a little over ten years and, under the MOU, agreed to provide further assistance relating to ccTLD regulatory functions.

On 13 October 2017, a public consultation on the .VU ccTLD draft principles commenced and the deadline for submissions was extended until 15 December 2017. The principles were developed to provide operating procedures in managing the .VU country-code top-level domain. The consultation document was sent to the heads of organizations representing various stakeholders. It was also publicly advertised on the daily post and TRBR's website.

On 28 November 2017, during the TRR Regulatory Internet Forum, there was also a consultation on the ".VU Operations and Procedures" as explained by the applicant.

Following the transfer of the .VU (Vanuatu) top-level domain to TRBR as the TLD Manager, TRBR will select a new registry services operator. TRBR is holding an RFP and have submitted supporting documentation for the RFP and criteria that will be used to select the new operator. Telecom Vanuatu Limited will continue to serve as the technical contact and registry services operator until a new operator has been selected.

On 21 December 2018, TRBR commenced a request for the transfer of .VU top-level domain.

### **Proposed Manager and Contacts**

The proposed manager is Telecommunications Radiocommunications and Broadcasting Regulator (TRBR). It is based in Vanuatu.

The proposed administrative contact is John Obed Alilee, Regulator, TRBR.

The administrative contact is understood to be based in Vanuatu.

The technical contact will remain Robertson Sarki, TVL IANA Contact, Telecom Vanuatu Limited, until a new registry services operator is selected by TRBR through an RFP process.

## **EVALUATION OF THE REQUEST**

### **String Eligibility**

The top-level domain is eligible for transfer as the string for Vanuatu is presently listed in the ISO 3166-1 standard.

### **Incumbent Consent**

The incumbent manager is Telecom Vanuatu Limited. Informed consent for the transfer of .VU top-level domain to Telecommunications Radiocommunications and Broadcasting Regulator (TRBR) was provided by Barlen Lutcmoodoo, Acting Chief Executive Officer, Telecom Vanuatu Limited.

### **Public Interest**

Government support was provided by:

- Dr. Gregoire Nimbtik, Acting Director General, Prime Minister's Office, Republic of Vanuatu.

Additional support letters were provided by the following:

- Vanuatu IT Users Society, a collaborative user group of ICT and Internet specialists from Vanuatu.
- WanTok Networks Ltd, an ISP in Vanuatu.
- Digicel Vanuatu Ltd, one of the largest telecommunications operators in Vanuatu.

The application is consistent with known applicable laws in Vanuatu. The proposed manager undertakes the responsibility to operate the domain in a fair and equitable manner.

### **Based in country**

The proposed manager is constituted in Vanuatu. The administrative contact is understood to be a resident of Vanuatu. The registry is to be operated in Vanuatu.

### **Stability**

The transition does not involve a transfer of domain operations from an existing domain registry, and therefore stability aspects relating to registry transfer are not relevant. TRBR is holding an RFP and have submitted supporting documentation for the RFP and criteria that will be used to select the new operator. Telecom Vanuatu Limited will continue to operate the registry until the new operator has been selected.

The application is not known to be contested.

### **Competency**

The application has provided information on the technical and operational infrastructures and expertise that will be used to operate the domain.

Proposed policies for management of the domain have also been tendered.

## **EVALUATION PROCEDURE**

PTI is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with ICANN. This includes accepting and evaluating requests for delegation and transfer of top-level domains.

A subset of top-level domains is designated for the significantly interested parties in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned to responsible managers that meet a number of public-interest criteria for eligibility. These criteria largely relate to the level of support the manager has from its local Internet community, its capacity to ensure stable operation of the domain, and its applicability under any relevant local laws.

Through the IANA Services performed by PTI, requests are received for delegating new ccTLDs, and transferring or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and, the requests are implemented where they are found to meet the criteria.

### **Purpose of evaluations**

The evaluation of eligibility for ccTLDs, and of evaluating responsible managers charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet's unique identifier systems.

In considering requests to delegate or transfer ccTLDs, input is sought regarding the proposed new manager, as well as from persons and organizations that may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed manager to meet the following criteria:

- The domain should be operated within the country, including having its manager and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.

- Significantly interested parties in the domain should agree that the prospective manager is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.
- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

### **Method of evaluation**

To assess these criteria, information is requested from the applicant regarding the proposed manager and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the manager to operate the domain; the legal authenticity, status and character of the proposed manager; and the nature of government support for the proposal.

After receiving this documentation and input, it is analyzed in relation to existing root zone management procedures, seeking input from parties both related to as well as independent of the proposed manager should the information provided in the original application be deficient. The applicant is given the opportunity to cure any deficiencies before a final assessment is made.

Once all the documentation has been received, various technical checks are performed on the proposed manager's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, PTI will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed manager and its suitability to operate the relevant top-level domain.

## REFERENCE MATERIALS – BOARD PAPER NO. 2019.03.14.2d

**TITLE:** **Consideration of Reconsideration Request 16-5**

### **Documents**

The following attachments are relevant to the Board’s consideration of Reconsideration Request 16-5.

Attachment A is [Reconsideration Request 16-5](#), submitted on 24 February 2016.

Attachment B is the [BAMC Recommendation on Request 16-5](#), issued 25 January 2019.

Attachment C is [Attachment 1 to the BAMC Recommendation on Request 16-5](#), issued 25 January 2019.

Attachment D is [Appendix 1 to Attachment 1 to the BAMC Recommendation on Request 16-5](#), issued 25 January 2019.

Attachment E is [Appendix 2 Attachment 1 to the BAMC Recommendation on Request 16-5](#), issued 25 January 2019.

Attachment F is the [Requestors’ Rebuttal to the BAMC Recommendation on Request 16-5](#), submitted on 12 February 2019.

### **Background Links**

The following links are relevant to the Board’s consideration of Reconsideration Request 16-5.

In accordance with the [Transition Process of Reconsideration Responsibilities from the Board Governance Committee to the BAMC](#) document, a folder has been created within the Board Google Drive “Team – ICANN Board Shared” space, entitled “Repository of Documents re Pending Reconsideration Requests on CPE”. A sub-folder within this repository titled “Request 16-5: DotMusic Limited (.MUSIC)” has been populated with all relevant materials related to Request 16-5 to date. The subfolder can be accessed at the following link:

<https://drive.google.com/drive/u/2/folders/1p9Rcv3pW9f8sr64D1LMaZoCjCN1mOPhI>.

Submitted By: Amy Stathos, Deputy General Counsel  
Date Noted: 22 February 2019  
Email: amy.stathos@icann.org

# DotMusic Reconsideration Request (“RR”)

## 1. Requester Information

**Name:** DotMusic Limited (“DotMusic”)<sup>1</sup>

**Address:** Contact Information Redacted

**Email:** Constantine Roussos, Contact Information Redacted

**Counsel:** Jason Schaeffer, Contact Information Redacted

**Name:** International Federation of Musicians<sup>2</sup> (“FIM”)

**Email:** Benoît Machuel, Contact Information Redacted

**Name:** International Federation of Arts Councils and Culture Agencies<sup>3</sup> (“IFACCA”)

**Email:** Sarah Gardner, Contact Information Redacted

**Name:** Worldwide Independent Network<sup>4</sup> (“WIN”)

**Email:** Alison Wenham, Contact Information Redacted

**Name:** Merlin Network<sup>5</sup> (“Merlin”)

**Email:** Charles Caldas, Contact Information Redacted

**Name:** Independent Music Companies Association<sup>6</sup> (“IMPALA”)

**Email:** Helen Smith, Contact Information Redacted

**Name:** American Association of Independent Music<sup>7</sup> (“A2IM”)

**Email:** Dr. Richard James Burgess, Contact Information Redacted

**Name:** Association of Independent Music<sup>8</sup> (“AIM”)

**Email:** Charlie Phillips, Contact Information Redacted

**Name:** Content Creators Coalition<sup>9</sup> (“C3”)

**Email:** Jeffrey Boxer, Contact Information Redacted

**Name:** Nashville Songwriters Association International<sup>10</sup> (“NSAI”)

**Email:** Barton Herbison, Contact Information Redacted

**Name:** ReverbNation<sup>11</sup>

**Email:** Jean Michel, Contact Information Redacted

## 2. Request for Reconsideration of: X Board action/inaction

<sup>1</sup> <http://music.us>; Also see Supporting Organizations at: <http://music.us/supporters>

<sup>2</sup> <http://fim-musicians.org/about-fim/history>

<sup>3</sup> [http://ifacca.org/membership/current\\_members](http://ifacca.org/membership/current_members) and [http://ifacca.org/membership/current\\_members](http://ifacca.org/membership/current_members)

<sup>4</sup> <http://winformusic.org/win-members>

<sup>5</sup> <http://merlinnetwork.org/what-we-do>

<sup>6</sup> <http://impalamusic.org/node/16>

<sup>7</sup> <http://a2im.org/groups/tag/associate+members> and <http://a2im.org/groups/tag/label+members>

<sup>8</sup> <http://musicindie.com/about/aimmembers>

<sup>9</sup> <http://c3action.org>

<sup>10</sup> <https://nashvillesongwriters.com/about-nsai>

<sup>11</sup> <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues), and <https://reverbnation.com/fan-promotion> (Fans)



**3. Description of specific action you are seeking to have reconsidered.**

The above-referenced requesters request to have the .MUSIC Community Priority Evaluation (“CPE”) Report for Application ID. 1-1115-14110 (“Report”)<sup>12</sup> corrected and properly graded to accurately reflect the true nature of DotMusic’s *community establishment, community definition, support* and *nexus* based on established Applicant Guidebook (“AGB”) policies and processes.<sup>13</sup>

The Report provided a total score of ten (10) points, resulting in a failing grade for the Application’s request for Community Status. The result unfairly denied Music Community recognition and necessary intellectual property protection. A review of the Report evidences multiple prejudicial errors that ICANN, both directly and as extension of the Economist Intelligence Unit (“EIU”) Panel, either incorrectly applied ICANN-approved processes and policies, or completely failed to apply ICANN established processes and policies. Such material errors resulted in the incorrect evaluation of the Application, an improper scoring of points when compared to over forty-three (43) independent expert testimony letters (*See* Expert Chart, Exhibit A40)<sup>14</sup> and inconsistent, disparate treatment when compared to prevailing CPE Applicants (*See* CPE Comparison Chart, Exhibit A41).<sup>15</sup> Each error, when corrected and overturned, would result to a total Application score of sixteen (16) points. Despite a materially improper evaluation by the EIU, and the disclaimer contained in the Report that “[...] *these Community Priority Evaluation results do not necessarily determine the final result of the application,*” ICANN accepted the Report’s inaccurate results and changed the “*Contention Resolution Result*” to “*Into Contention.*”<sup>16</sup> Accordingly, DotMusic and other affected global organizations identified above (collectively referenced as the “Requesters”) seek to overturn the “*Contention Resolution Result*” to “*Prevailed Contention.*”

**4. Date of action/inaction:** February 10th, 2016 PST

**5. On what date did you became aware of action or that action would not be taken?**

February 10th, 2016 PST

**6. Describe how you believe you are materially affected by the action or inaction:**

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<sup>12</sup> DotMusic CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>, Ex.A1

<sup>13</sup> *See* AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, §4.2.3

<sup>14</sup> *See* Independent Expert Testimony Letters Scoring Chart, Ex.A40

<sup>15</sup> *See* linear CPE Comparison Chart, Ex.A41

<sup>16</sup> DotMusic community application, Application ID: 1-1115-14110, Prioritization Number: 448; *See* <https://gtdresult.icann.org/applicationstatus/applicationdetails/1392>, Ex. A2

DotMusic is adversely affected by ICANN's actions and inactions. If DotMusic is not awarded .MUSIC, DotMusic, will suffer material brand dilution<sup>17</sup> and be subject to expensive auctions which (as agreed upon by the EU<sup>18</sup>) were designed to favor deep pocketed Applicants - such as Amazon and Google (who also have a prior history with the piracy of music: Google as a provider of ad networks to pirate sites and Amazon as a leading advertiser on pirate sites).<sup>19</sup> As set forth in the Application, DotMusic has an all-inclusive tent that is united by its core principles consistent with its articulated community-based purpose:

- Creating a trusted, safe online haven for music consumption and licensing
- Establishing a safe home on the Internet for Music Community (“Community”) members regardless of locale or size
- Protecting intellectual property & fighting piracy
- Supporting Musicians’ welfare, rights & fair compensation
- Promoting music and the arts, cultural diversity & music education
- Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional Advisory Committee Board working in the Community’s best interest. The global Music Community includes both reaching commercial and non-commercial stakeholders.<sup>20</sup>

Per DotMusic’s Application and Public Interest Commitments (“PIC”),<sup>21</sup> .MUSIC will be launched as a safe haven for legal music consumption that ensures that .MUSIC domains are trusted and authenticated to benefit the interests of the Internet community and the global music community. DotMusic, its current and future music members and supporters will be adversely affected if the Report stands and DotMusic is awarded to any of the competing non-community applicants<sup>22</sup> (which will also be a disservice to the Internet user community in general) because competing applicants either: (i) lack the music community multi-stakeholder governance model to represent the community’s interests; and/or (ii) lack the extensive music-tailored safeguard policies that DotMusic has.<sup>23</sup>

Allowing the Report to stand would turn .MUSIC into an unsafe, unreliable and untrusted string governed by non-community interests that will create material harm to the legitimate interests

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<sup>17</sup> DotMusic holds the European community trademarks for “*DotMusic*” and “*MUSIC*.” Ex.A35, A37 and A38

<sup>18</sup> <http://forum.icann.org/lists/comments-new-gtld-auction-rules-16dec13/msg00016.html>

<sup>19</sup> <http://billboard.com/biz/articles/news/digital-and-mobile/6106454/online-pirates-thrive-on-legitimate-ad-dollars>, <http://venturebeat.com/2014/02/18/the-average-piracy-site-makes-4-4m-each-year-on-ads-from-amazon-lego-etc>

<sup>20</sup> Application, 18A. Also see 20C

<sup>21</sup> PIC, <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, Ex.A3

<sup>22</sup> All of the competing non-community applicants in DotMusic’s contention set are existing gTLD portfolio registries (Google, Amazon, Donuts/Rightside, Radix, Minds & Machines and Famous Four Media).

<sup>23</sup> See Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27; Also see .MUSIC Applicant Comparison Chart, <https://www.icann.org/en/system/files/correspondence/schaeffer-to-crocker-et-al-2-redacted-12aug15-en.pdf>, Appendix C, pp.43-45, Ex.A32

of the Music Community by increasing intellectual property infringement and other types of malicious abuse. Music is a sensitive string driven by content and copyright protection that must be operated responsibly within its regulated sector as outlined in the Application. The Music Community is one of the Internet's most vulnerable communities given the adverse effects of mass piracy, intellectual property infringement and malicious abuse on the web and the inefficiencies of the outdated 1998 DMCA Law to provide adequate music copyright protection online.<sup>24</sup> By not awarding .MUSIC to DotMusic, the Music Community will lose the only opportunity to offer assurance to Internet users that all .MUSIC sites are indeed trusted, safe and licensed, which will also help search engines provide a better user experience by replacing unsafe, insecure pirate sites (that dominate music-themed web search results today) with relevant and higher quality .MUSIC sites.<sup>25</sup>

By virtue of ICANN's actions and inactions, the public interest is harmed and the multi-stakeholder music community will not be able to ensure trust and reliability in the DNS for Internet users because the music community will not be able to govern the last remaining music-themed gTLD,<sup>26</sup> in violation of ICANN's "*key responsibilities is introducing and promoting competition*"<sup>27</sup> in the registration of domain names, while ensuring the security and stability of the domain name system (DNS)."<sup>28</sup> Further, ICANN disregards its own 2007 Recommendations and Principles that stated "*where an applicant lays any claim that the TLD is intended to support a particular community...that claim will be taken on trust*."<sup>29</sup>

Without a reserved, safe and reliable zone on the Internet dedicated to the Music Community, the community and the public will be harmed because the music community will be unable to promote a trusted and secure sector through enhanced safeguards. The Music Community (the

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<sup>24</sup> <https://www.google.com/transparencyreport/removals/copyright/?hl=en> e.g. One single DotMusic supporter, BPI, filed over 2 million URL takedown requests to Google for the week of February 15, 2016, *see*

<https://google.com/transparencyreport/removals/copyright/reporters/1847/BPI-British-Recorded-Music-Industry-Ltd>  
<sup>25</sup> *See* <http://theverge.com/2015/11/23/9781752/google-takedown-requests-2015> and <http://billboard.com/biz/articles/news/1083146/business-matters-legal-mp3-sites-are-still-buried-by-google-search-results>

<sup>26</sup> No community applicant has been awarded a music-themed string in the New gTLD Program.

<sup>27</sup> ICANN has awarded Amazon the .SONG and .TUNES music-themed strings. Amazon is also a competing applicant for .MUSIC. Allowing Amazon to possibly be awarded the three most relevant music-themed strings violates ICANN's Bylaws with respect to "promoting competition."

<sup>28</sup> <https://newgtlds.icann.org/en/about/program>

<sup>29</sup> <http://gnso.icann.org/en/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>, Implementation Guidelines (IG H), Mission and Core Values (CV 7-10), p.6, Ex.A4; Also *see* <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>. Ex.A5

defined “*logical alliance*” with members representing over 95% of music consumed globally) has been negatively affected by the Report.

**7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.**

See Answer to Question 6 above.

**8. Detail of Board Action/Inaction – Required Information**

In this section, DotMusic presents the evidence required for ICANN to approve the request in this RR: **(8.1)** The relationship and contractual obligations between ICANN and the Economist with respect to the CPE process; **(8.2)** the AGB process and relevance of ICANN-approved GAC Category 1 and 2 Advice; **(8.3)** Comparisons to other CPE-prevailing community applications, demonstrating quality control deficiencies, unpredictability, inconsistencies, process failures, fairness issues and disparate treatment; and **(8.4)** Facts and procedural violations demonstrating that ICANN did not follow established processes in the evaluation of the Application in its grading as set forth in the .MUSIC Report, including material errors and omissions in determining the critical areas of *community establishment, nexus and support*. As a result of the material process, procedural errors and omissions set forth below, the Application was prevented from scoring the full 16 points and improperly did not receive a passing CPE grade.

**(8.1) The relationship and contractual obligations between ICANN and the EIU.**

Ultimately, ICANN makes the final decision on CPE results. The ICANN Board is responsible for the acts of its Staff and the EIU with respect to the CPE process because it is within ICANN’s sole discretion whether an applicant passes or fails. Pursuant to its contract with ICANN, the EIU provides “*recommended scores to ICANN for final review and approval*” and ICANN is “*free in its complete discretion to decide whether to follow [the EIU]’s determination and to issue a decision on that basis or not.*”<sup>30</sup> ICANN and the EIU specifically acknowledge that: “*each decision and all associated materials must be issued by ICANN in its own name only;*” that CPE results are “*ICANN’s final decision;*” and that “*ICANN will be solely responsible to applicants and other interested parties for the decisions it decides to issue.*”<sup>31</sup> In a declaration, the EIU confirmed that:

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<sup>30</sup> <https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, New gTLD Program Consulting Agreement, Statement of Work No.: 2, ICANN New gTLD Program, Application Evaluation Services – Community Priority Evaluation and Geographic Names p.6, § 10(b) (ii) (12 Mar. 2012) [Ex. C-40]), Ex.A7

<sup>31</sup> *Id.*, § 10(b) (iii)-(iv), (vii)

[t]he EIU is a privately held company working as a vendor to ICANN. We are not a gTLD decision-maker but simply a consultant to ICANN.<sup>32</sup>

Moreover, ICANN is the gatekeeper of all information exchanged between applicants and the EIU, including alerting the EIU of relevant GAC Advice pertaining to the existence of a “*cohesive*” regulated sector for the string evaluated to ensure scoring predictability and scoring consistency. ICANN and the EIU “*agreed that [the] EIU, while performing its contracted functions, would operate largely in the background, and that ICANN would be solely responsible for all legal matters pertaining to the application process.*”<sup>33</sup> Furthermore, the Report includes a disclaimer representing that ICANN is ultimately responsible for determining whether or not to implement the EIU evaluators’ conclusions.<sup>34</sup> While the Board may not be responsible for its Staff’s day-to-day operations, the Board is responsible for final CPE determinations, process, evaluations, and acceptance or rejection of the .MUSIC Report.

#### **(8.2) The AGB process and the relevance of ICANN-approved GAC Category 1 and 2 Advice.**

Per the AGB, Board decisions on certain strings are not merely a “box-ticking” administrative exercise by staff or consultants. The Board has accepted GAC Advice on many occasions to determine the fate of certain strings (e.g. .AMAZON and .AFRICA); and even superseding the determinations of Panels if deemed necessary by ICANN to serve the public interest (e.g. the Community Objections for .ISLAM and .HALAL). In relation to .MUSIC, the ICANN Board accepted GAC Advice with respect to Category 1 and Category 2 Safeguards,<sup>35</sup> but the Board took no action pertaining to GAC’s Advice to give “*preferential treatment for all applications which have demonstrable community support*” such as DotMusic’s. At the Singapore ICANN meeting in

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<sup>32</sup> EIU Declaration <https://icann.org/en/system/files/files/eiu-declaration-13apr15-en.pdf>, Pg.2, Ex.A8

<sup>33</sup> New gTLD Program Consulting Agreement, Statement of Work No.: 2, ICANN New gTLD Program, Application Evaluation Services – Community Priority Evaluation and Geographic Names p.6, § 10(b)(ii) (12 Mar. 2012) [<https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, Ex. C-40].), § 10(b)(iii)-(iv), (vii), Ex.A7

<sup>34</sup> See Report, p.9. Each CPE report states that “these Community Priority Evaluation results do not necessarily determine the final result of the application. *In limited cases the results might be subject to change.*” New gTLD Program, Report; see also New gTLD Program Consulting Agreement, p. 2 (26 July 2011) (“ICANN retains the right to inspect, to stop work, to prescribe alterations, and generally supervise the Contractor’s work to insure its conformity with the . . . Statement of Work”) [<https://www.icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, Ex. C-41], Ex.A9

<sup>35</sup> DotMusic’s Application was a community application with music-tailored enhanced safeguards that extended beyond the minimum GAC Advice requirements. To serve the public interest, the Internet community and the entire global music community, DotMusic also filed a PIC to reflect its accountability and to clarify its Application’s specifications, which also pertained to its *community definition, community establishment, nexus, registration policies* and *support*. See PIC

March 2014, GAC reiterated that advice to ICANN “to protect the public interest and improve outcomes for communities”<sup>36</sup> and to take “better account of community views and improving outcomes for communities”<sup>37</sup> (i.e. giving community applicants the benefit of the doubt). Throughout the process, ICANN has allowed non-community applicants to materially alter their applications to follow GAC Advice to either remain in contention or be awarded sensitive strings (such as .GMBH<sup>38</sup>). Because such change requests for non-community applicants were allowed and accepted (in response to GAC Advice), it is equally and reasonably fair to allow DotMusic to be awarded .MUSIC based on trust, GAC’s Advice favoring community applicants with demonstrable support and ICANN’s own acceptance that the music string has cohesion under an ICANN-approved regulated sector. It is also reasonable to award DotMusic this sensitive string, because the Application responsibly and conscientiously already had the requisite music-tailored enhanced safeguards that served a higher purpose when it filed its Application in 2012 (notably, DotMusic’s safeguards exceed GAC Category 1 Safeguard Advice). Further, it should have been clear to ICANN and the EIU that the Application exceeds the CPE criteria and serves the public interest, Internet community and music community, as outlined in the Application and confirmed in more detail throughout its PIC. For these reasons alone the .MUSIC Report should be overturned and a passing grade awarded to Applicant.

**(8.3) Comparisons to other CPE-prevailing community applications, demonstrate inconsistencies, unpredictability, process failures, fairness issues and disparate treatment.**

ICANN did not follow established procedures in the *community establishment, nexus* and *support* evaluation process, which resulted in a failing CPE grade. For example, the criterion concerning “*organization*” (that relates to having support from a “*recognized*” organization), the Report specifically failed to consider many globally-recognized organizations that are *mainly* dedicated to the music community addressed (“*logical alliance of communities that relate to music*”).

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<sup>36</sup> <https://gacweb.icann.org/download/attachments/27132037/Final%20Communique%20-%20Singapore%202014.pdf?version=2&modificationDate=1396429776778&api=v2> Section 3, 1a, p.4, ExA10

<sup>37</sup> <http://icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>, Register #18, Ex.A11

<sup>38</sup> Donuts was allowed to make material changes to their application to proceed with the delegation of .GMBH based on GAC advice and Donuts’ Public Interest Commitments (PIC), *See* <https://www.icann.org/en/system/files/correspondence/willett-to-metzger-28jan16-en.pdf>. ICANN rejected a similar change request by the .CPA community applicants. ICANN “deferred consideration of AICPA’s December 2014 Change Request, including changes made to reflect the principles of the Beijing Communiqué,” *See* <https://www.icann.org/en/system/files/files/reconsideration-request-15-17-aicpa-redacted-19sep15-en.pdf>, p.4

The FIM, an “*international federation of national communities of similar nature*”<sup>39</sup> representing the “*voice of musicians worldwide*” (musicians represent the overwhelming majority of the Music Community). This is contrary to the unsubstantiated, indefensible and undocumented opinion of ICANN that the FIM is not a “*recognized community institution(s)/member organization(s)*.”<sup>40</sup>

The IFPI, another globally recognized supporting organization, also exceeds the same criteria under *community establishment* and *support*. The IFPI is only associated with music and it is the globally-recognized organization that administers the International Standard Recording Code (ISRC), an international standard code for uniquely identifying sound recordings and music video recordings, which is reciprocally recognized across all segments of the Music Community. The code was developed with the ISO technical committee 46, subcommittee 9 (TC 46/SC 9), which codified the standard as ISO 3901 in 1986.<sup>41</sup> The IFPI’s ISRC is “intentionally standardised under ISO,” globally structured<sup>42</sup> and “well established, widely accepted internationally”<sup>43</sup> Furthermore, it relates to the addressed music community defined by DotMusic, an “*organized and delineated logical alliance of communities that relate to music*.” The IFPI does not restrict ISRC codes to solely its members. In fact, ISRC eligibility is available and dedicated to the entire global music community, irrespective of whether they are members of organizations or not, are professionals or amateurs, are independent or non-independent, commercial or non-commercial:

Owners of recordings may for example be independent artists, record labels or recorded music groups. ISRC is available to all owners of recordings regardless of their membership<sup>44</sup> (or not) with any industry association.<sup>45</sup>

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<sup>39</sup> CPE Guidelines: “With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities,” <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.4, Ex.A12-1; Also see AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, 4-12, Ex.A13 and “Descriptions should include: How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required,” Notes, 20A, A-14, Ex.A13

<sup>40</sup> The FIM is a globally-recognized music community organization with documented official relations with the United Nations Economic and Social Council (“ECOSOC”) (Ros C); the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Consultative Status); the World Intellectual Property Organization (“WIPO”) (Permanent Observer Status); and the Organisation Internationale de la Francophonie (“OIF”). The FIM is also consulted by the Council of Europe, the European Commission and the European Parliament. FIM is also a member of the International Music Council (“IMC”).

<sup>41</sup> [http://www.iso.org/iso/home/store/catalogue\\_tc/catalogue\\_detail.htm?csnumber=23401](http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=23401)

<sup>42</sup> <http://isrc.ifpi.org/en/isrc-standard/structure>

<sup>43</sup> <http://isrc.ifpi.org/en/why-use/benefits>

<sup>44</sup> DotMusic’s community application defines the community as “a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature,” that relate to music: the art of combining sounds rhythmically, melodically or harmonically.” The IFPI’s ISRC codes do not restrict eligibility to members of select music organizations but are available to the entire music community as defined.

In fact, without the IFPI's ISRC codes there would not be legal music consumption because there would be no way to appropriately and efficiently attribute music to music community members.<sup>46</sup>

In the case of .HOTEL's CPE Report, the prevailing applicant received a full grade for "Organization" **because** the Panel found "*recognized community institution(s)/member organization(s)*,"<sup>47</sup> the International Hotel & Restaurant Association (IH&RA) and HOTREC:

the community as defined in the application has at least one entity mainly dedicated to the community. In fact there are several entities that are mainly dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA)...<sup>48</sup>

...The applicant possesses documented support from the recognized community institution(s)/member organization(s).<sup>49</sup>

In awarding .HOTEL the full two (2) points for *support*, the Panel concluded that the .HOTEL applicant fulfilled two options (either option was acceptable under the CPE Guidelines):

[t]hese groups constitute the recognized institutions to represent the community, and a majority of the overall community as described by the applicant.<sup>50</sup>

The .HOTEL community applicant passed with full scores for *community establishment* and *support* where several entities were found to be *mainly dedicated to the community* and *recognized*, despite those organizations also representing other interests or sectors such as "restaurants" (or some being geographically focused like the AH&LA and the CHA). Conversely, the .MUSIC Report failed to provide full scoring to DotMusic stating that "[t]here is no single such organization recognized by all of the defined community's members as representative of the defined community in its entirety."<sup>51</sup> This finding is improper because there is no policy or rule that requires an organization to represent a community *in its entirety* in order to score the full two points under *support*. While there is an option requiring the "*authority to represent the community*," the Guidelines provided other alternative options available to score the full two points under "*support*." The CPE Guidelines define

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<sup>45</sup> <http://isrc.ifpi.org/en/using-isrc>

<sup>46</sup> Without the IFPI's ISRC codes, YouTube Music (which is consumed by over 1 billion YouTube users) would be unable to effectively credit the corresponding music copyright owner related to each music video, *see* <https://support.google.com/youtube/answer/6007080> and; For the same reason, nearly all digital music retailers rely on and require ISRC codes, including Apple iTunes<sup>46</sup> (the world's largest music retailer with over 43 million music tracks<sup>46</sup>, *see* <http://apple.com/itunes/working-itunes/sell-content/music-faq.html> and <http://apple.com/itunes/music> and <http://www.digitalmusicnews.com/2014/04/24/itunes800m>

<sup>47</sup> .HOTEL CPE, <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, p.6, Ex.A14

<sup>48</sup> Ibid, *community establishment*, p.2

<sup>49</sup> Ibid, *support*, p.6

<sup>50</sup> Ibid

<sup>51</sup> Report, p.3 and p.8



“recognized” as “*institution(s)/organization(s) that are clearly recognized by the community members as representative of that community*” i.e. not in their “*entirety*” but merely “*representative*.” According to the Oxford dictionary, the primary definition of “*recognize*” is to “identify.”<sup>52</sup> According to the Oxford dictionary, the definition of the adjective “*representative*” is “typical of a class, group, or body of opinion” or “containing typical examples of many or all types” or “to act and speak on behalf of a wider group.”<sup>53</sup>

Even if an “*entirety*” criterion (not specifically mentioned in the AGB or CPE Guidelines) is assessed, both the International Federation of Arts Councils and Culture Agencies (“IFACCA”) (the only international federation representing government culture agencies and arts councils globally covering all of the Application’s music categories and subsets in their entirety<sup>54</sup>) and ReverbNation (the world’s largest music-dedicated community covering nearly 4 million musicians and industry individuals and organizations in over 100 countries and across all of the Application’s music categories and subsets in their entirety<sup>55</sup>) qualify because they represent all the music categories and music subsets delineated in their entirety without discrimination globally. Based on the foregoing, it is clear that both co-requesters IFACCA and ReverbNation are “typical of a group” that is representative of the “music” community defined in its entirety. Therefore, it is clear that the Application had demonstrable support from multiple globally-recognized organizations mainly dedicated to the Music Community. ICANN’s and the EIU’s failure to properly evaluate the application and find support for the community is apparent when the .MUSIC Report is compared to other prevailing CPE Determinations. Thus, the rationale ICANN used to find that the International Hotel & Restaurant Association (IH&RA) is representative of “hotel” community should apply to IFACCA and ReverbNation in the case of Music Community. That is, if the IH&RA is found to be “recognized” and “representative” entity of the “hotel” community, then the IFACCA and ReverbNation are “representative” [of the music community] too because they share similar characteristics as the IH&RA and other entities found to have satisfy CPE in other determinations. Per the Guidelines:

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<sup>52</sup> [http://www.oxforddictionaries.com/us/definition/american\\_english/recognize](http://www.oxforddictionaries.com/us/definition/american_english/recognize)

<sup>53</sup> [http://www.oxforddictionaries.com/us/definition/american\\_english/representative](http://www.oxforddictionaries.com/us/definition/american_english/representative)

<sup>54</sup> [http://ifacca.org/membership/current\\_members](http://ifacca.org/membership/current_members) and [http://ifacca.org/membership/current\\_members](http://ifacca.org/membership/current_members)

<sup>55</sup> <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues), and <https://reverbnation.com/fan-promotion> (Fans)

*Consistency of approach in scoring Applications will be of particular importance...<sup>56</sup> and “[t]he panel must be able to exercise **consistent** and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible...<sup>57</sup>*

According to the CPE Guidelines, the contextual interpretation of community particularities requires in-depth knowledge and expertise of the community.<sup>58</sup> All the Music Community categories and Music Community subsets that DotMusic delineated as members are essential for the global music sector to operate. Further, the “*logical alliance of communities that related to music*” (or “*alliance of groups*”) functions with cohesion as a whole in a regulated sector to protect music under agreed-upon structures governed by copyright law and international treaties. Without this cohesion, there would be no regulated music sector, and more importantly, music would not exist as we know it.

There are other clear examples of error relating to: consistency, fairness, predictability, equal treatment and procedural violations pertaining to DotMusic’s CPE process in comparison to community applicants that have prevailed CPE for whom ICANN applied the right threshold to pass. For example, ICANN’s scoring of the prevailing .RADIO applicant, in which ICANN assessed the “*majority*” support criterion (thereby granting .RADIO full points), while in contrast for DotMusic’s Application ICANN did not assess the “*majority*” criterion as outlined earlier in this RR:

However, the [.RADIO] applicant possesses documented support from institutions/organizations representing a majority of the community addressed.<sup>59</sup>

The EIU also determined that all .RADIO, .HOTEL, .OSAKA, .ECO, .GAY and .SPA community applicants had “*cohesion*” for *community establishment*:

(i) The EIU established that the .RADIO had *cohesion* solely on the basis of being “*participants in this...[radio] industry*.”<sup>60</sup>

(ii) The EIU awarded .HOTEL full points for *community establishment* for a “*cohesive*” community definition that is comprised of “*categories [that] are a logical alliance of members*.”<sup>61</sup>

Even though DotMusic similarly presents music community based on “*logical alliance*” definition that is delineated by “music categories” and “music subsets,” its Application received no points. Failure to recognize the alliance that encompasses the music community is improper;

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<sup>56</sup> CPE Guidelines, p.22

<sup>57</sup> Ibid

<sup>58</sup> The CPE Guidelines mandate that “[t]he panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined...community plays an important role,” CPE Guidelines, p.22

<sup>59</sup> .RADIO CPE, <https://icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>, p.7, Ex.A15-1

<sup>60</sup> Ibid, p.2

<sup>61</sup> .HOTEL CPE, p.2, Ex.A14

(iii) The EIU awarded full points to .OSAKA determining there was “*cohesion*” for its community because members self identify as having a tie to Osaka, or with the culture of Osaka;<sup>62</sup> Similarly, DotMusic’s “*logical alliance*” is “*related to music*” (i.e. has a tie) but its Application was penalized;

(iv) The EIU awarded .ECO full points, stating that “*cohesion and awareness is founded in their demonstrable involvement in environmental activities*” which “*may vary among member categories*.”<sup>63</sup> Conversely, the EIU penalized DotMusic with a grade of zero based on similar category variance and members that also have demonstrable involvement in music-related activities;

(v) The improper grading and evaluation in the .MUSIC Report is even more apparent considering the recent CPE decision providing .GAY a full score under *community establishment* establishing that there is stronger *cohesion* than DotMusic based on “*an implicit recognition and awareness of belonging to a community of others who have come out as having non-normative sexual orientations or gender identities, or as their allies*”<sup>64</sup> (emphasis added). In contradiction, the EIU determined DotMusic’s “*logical alliance*” operating under a regulated sector that is united by copyright lacked any “*cohesion*” of belonging to a community; and

(vi) The EIU awarded .SPA the full points under *community establishment* and *nexus*, while DotMusic scored zero points and three respectively. A perfunctory comparison between DotMusic’s application and the prevailing .SPA application reveals substantial bias and contradictions. Similarly, based on ICANN’s rationale for the .SPA CPE, it is evident that the .MUSIC application should have consistently and fairly received maximum points as well. According to the .SPA application:

The spa community primarily includes:

- Spa operators, professionals and practitioners
- Spa associations and their members around the world
- Spa products and services manufacturers and distributors

...The secondary community generally also includes holistic and personal wellness centers and organizations. While these secondary community organizations do not relate directly to the operation of spas, they nevertheless often overlap with and participate in the spa community and may share certain benefits for the utilization of the .spa domain.<sup>65</sup>

Yet, the .MUSIC Report penalized the Application under *community establishment* to the fullest extent possible (grading zero points) for lacking “*cohesion*” while the .SPA community applicant

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<sup>62</sup> .OSAKA CPE, p.2, Ex.A18

<sup>63</sup> .ECO CPE, p.2, Ex.A17

<sup>64</sup> .GAY CPE, p.2, Ex.A15-2

<sup>65</sup> .SPA Community Application, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/123?t:ac=123>, 20A, Ex.A16-2

was given full points even though their definition of the spa community included a “secondary community” that “do[es] not relate directly” to the string. Contrary to the .MUSIC Report, DotMusic’s application is delineated and restricted to music categories and music subsets that only relate to music, yet it received no points for *community establishment*. ICANN assessed that the .SPA application’s defined community had the requisite awareness among its members because members of all the categories recognize themselves as part of the spa community by their *inclusion* in industry organizations and *participation* in their events:

Members...recognize themselves as part of the spa community as evidenced...by their inclusion in industry organizations and participation in their events.<sup>66</sup>

In contrast, ICANN rejected DotMusic’s membership music categories and music subsets as not having the requisite awareness even though, similar to the spa community, all Music Community members also “*participate*” in music-related events and are included in music groups or music subsets as evidenced by DotMusic’s *majority* music (*logical alliance*) community support of organizations with members representing the overwhelming *majority* of music consumed globally.

Moreover, despite a general definition of the *spa community* that included entities with a non-essential, tangential relationship with the spa community and a *secondary community* that did *not relate directly* to the string, the .SPA applicant was also awarded a full score under *nexus*. In contrast DotMusic’s community *name*, the “*Music Community*,” which matches string, lost 1 point for *nexus*.

As illustrated, when compared to other CPE determinations (*See Exhibit A41*), had policies been followed and a consistent evaluation been applied, then the Application should have received maximum points that would have resulted in a passing CPE grade, a conclusion that is also supported by forty-three (43) separate independent experts (*See Exhibit A40*).

**(8.4) Facts and procedural violations show that ICANN did not follow its own processes in the determination of the .MUSIC Report, including critical areas relating to *community establishment, nexus and support*. ICANN is the party responsible for ensuring quality control and a predictable, consistent and fair CPE process.**

According to ICANN, “all applicants for a new gTLD registry should be evaluated against transparent and predictable criteria.”<sup>67</sup> There were multiple prejudicial errors and improper procedural issues with ICANN not following the AGB guidelines and requirements, including:

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<sup>66</sup> .SPA CPE Report, Community Establishment, p.2, Ex.A16-1

<sup>67</sup> According to the Oxford dictionary, the word “fully” is defined as “completely or entirely; to the furthest extent” or “without lacking or omitting anything,” [http://www.oxforddictionaries.com/us/definition/american\\_english/fully](http://www.oxforddictionaries.com/us/definition/american_english/fully)

(i) **Policy misapplication of ICANN-accepted GAC Advice adopted by ICANN before the CPE process began is a procedural error.** Contrary to the .MUSIC CPE Report, the ICANN Board accepted GAC Category 1 Advice that music is a cohesive “regulated sector.” This means that the ICANN Board also agrees that the music community has cohesion. By accepting GAC Advice and rendering a decision that music is: (i) a “*string likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm;*” and (ii) that it is a “*string that is linked to [a] regulated sector*” that “*should operate in a way that is consistent with applicable laws,*”<sup>68</sup> there is reasonable expectation that ICANN would apply this policy acceptance in all evaluations that are processed to ensure transparency, predictability and consistency. This misapplication of a policy adopted by ICANN before the CPE process began is a procedural error. As such, the New gTLD Program procedural process for DotMusic’s evaluation was unpredictable, lacking both transparency and consistency.

(ii) **Not properly identifying the community definition required in 20A** that was labeled as a defined term in the Application in reference to the AGB (“**Community**”):

The Community is a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature (“**Community**”)", that relate to music: the art of combining sounds rhythmically, melodically or harmonically (Application, 20A)

According to the AGB, the Question section for 20A explicitly states:

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to **this** question.<sup>69</sup>

ICANN not only disregarded DotMusic’s definition from 20A, the Report does not mention or properly reference DotMusic’s definition. Instead ICANN construed its own general definition from 20D contravening the AGB’s instructions that “*community priority evaluation*” for DotMusic “*will be scored based on the community identified in response to **this** question*” (i.e. the definition identified in the Application answer to 20A not 20D). According to the .MUSIC Report:

[T]he applicant also includes in its application a more general definition of its community: “all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission” (**Application, 20D**).

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<sup>68</sup> <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2, An.5, p.8, Ex.A34

<sup>69</sup> AGB, Attachment to Module 2, Evaluation Questions and Criteria, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>, Question, 20A, A-14

In other words, ICANN scored DotMusic’s application relying on critically incorrect variables and parameters. In assessing DotMusic’s definition of the Music Community, ICANN misapplied material policy and permitted material procedural defects and inconsistencies in CPE evaluations to occur, resulting in an improper conclusion that DotMusic did not prevail CPE.

(iii) **Not properly identifying the name of the community to address nexus** that was labeled as a defined term in the Application in reference to the AGB (“**Name**”). While the *name* of the community “*Music Community*” was acknowledged by the EIU, it was not applied under its scoring for *nexus*:

The name of the community served is the “Music Community” (“**Community**”) <sup>70</sup>

*The “MUSIC” string matches the name (“Name”) of the Community and is the established name by which the Community is commonly known by others.*<sup>71</sup> (See Application 20)

According to the Report:

The community as defined in the application is of considerable size, both in terms of geographical reach and number of members. According to the applicant:

The Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries... with a Community of considerable size with millions of constituents (Application, 20A)<sup>72</sup>

As evidenced, under *nexus*, ICANN misapplied the wrong “*name*” definition by not applying the Application’s *established name* (the “*Music Community*”) inaccurately determining that the “*there is no “established name” for the applied-for string to match...for a full score on Nexus.*”<sup>73</sup> It is beyond shadow of a doubt that the established name that the Application defines and identifies, the “*Music Community*,” exactly matches the string .MUSIC.

(iv) **Not applying the alternate criterion to earn maximum points for support** that corresponds “*documented support...from institutions/organizations representing a majority of the overall community addressed.*”<sup>74</sup> CPE Guidelines provide that if an applicant lacks “documented authority to represent the community”<sup>75</sup> then the Panel should consider alternative options as follows: First, the Panel should decide whether the applicant has “documented support from the

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<sup>70</sup> Application, 20A

<sup>71</sup> Ibid

<sup>72</sup> Report, p.4

<sup>73</sup> Report, *Nexus*, p.5

<sup>74</sup> AGB, *Support*, “Also with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2,” 4-18

<sup>75</sup> CPE Guidelines, pp.16-18

recognized community institution(s)/member organization(s) to represent the community?”<sup>76</sup> If the applicant meets this criterion then the full two (2) points are awarded. If not, the Panel should then consider whether:

[t]here are multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?<sup>77</sup>

The Application meets this “*majority*” criterion, but this option was not applied to the .MUSIC CPE process. The Application is a global music community initiative supported by organizations with members representing over ninety-five percent (95%) of music consumed globally (an overwhelming majority),<sup>78</sup> yet the “majority” criterion was not assessed by ICANN in the grading of *Support*. If one excluded all the music related to DotMusic’s supporting organizations and their members, then music as we know it today would not exist. In fact the majority of music would not be available for consumption or enjoyment (**emphasis added**). The absurdity of the findings of the .MUSIC Report is further shown by another key supporter of DotMusic, NAMM, the trade association that represents nearly all the major music instrument and products’ manufacturers.<sup>79</sup> Without NAMM’s members’ instruments and music products, music cannot be created. Therefore, it is clear that the Application has the support of the “*majority*” of the community addressed.

In summary of (i), (ii), (iii) and (iv), the evidence supports that there is prejudicial pattern of behavior by ICANN not to follow established process and instructions. No other applicant in the New gTLD Program has provided more evidence, correspondence and research to assist ICANN with the CPE process than DotMusic has to ensure a consistent, predictable and fair evaluation in comparison to other community applicants that have prevailed. Judging from the Report’s inconsistent and contradictory rationale and ICANN’s failure to follow due process, it appears that the objective was to find ways to reject DotMusic’s Application by relying on inaccurate facts and not giving DotMusic the same benefit of the doubt given to the CPE applicants that prevailed. At ICANN’s request, DotMusic also provided detailed answers to Clarifying Questions<sup>80</sup> (“CQ Answers”), including significant credible and reputable evidence substantiating DotMusic’s

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<sup>76</sup> CPE Guidelines, pp.17-18

<sup>77</sup> Ibid

<sup>78</sup> <http://music.us/supporters> and <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>; See over two-thousand (2,000) Support Letters at Ex.A19-1, A19-2, A19-3, and A19-4; and <https://gtldcomment.icann.org/applicationcomment/viewcomments>

<sup>79</sup> <https://www.namm.org/about>

<sup>80</sup> See Clarifying Questions (“CQ”), Ex.A20 and Answers to Clarifying Questions (“CQ Answers”), Ex.A21

Application's position with respect to the *community definition, community establishment* (including "cohesion"), *nexus* and *support*. A cursory review of the CQ Answers would find support to overturn all the points deducted from the Application.

If the EIU carefully reviewed the CQ Answers then it would be clear what the *community definition (community establishment)* and the *name* of the community (*nexus*) were because it was explicitly identified multiple times.<sup>81</sup> As explicitly outlined in the CPE Guidelines, DotMusic's "logical alliance" community definition explicitly meets criteria: "*With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities.*" This is also substantiated by the AGB, which explicitly states that in the case of a community of an "*alliance of groups*" (such as DotMusic's Application), "*details about the constituent parts are required.*"<sup>82</sup> DotMusic's community definition is a "*strictly delineated and organized logical alliance of communities that relate to music*" (Application, 20A) which unequivocally meets this criterion. Contradicting established procedure, the EIU improperly found that the "logical alliance" definition has no cohesion. Moreover, while DotMusic followed the AGB and CPE Guidelines and provided details on each of the delineated music categories and music subsets (i.e. the *constituent parts*) demonstrating how they form the "logical alliance" community definition, the Application was penalized to the maximum extent under the Report's *community establishment* for doing so. Further, dictionary definitions for "logical"<sup>83</sup> and "alliance"<sup>84</sup> establish that these definitions require cohesion and the *requisite awareness*.

The degree of multitude of direct and indirect evidence make it beyond reasonable doubt that overlooking the Application's *community definition* and *name* of the community identified was

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<sup>81</sup> See CQ Answers: The *community definition* of "logical alliance" is referred to and explicitly defined in seven (7) separate pages of the CQ Answers provided to the EIU at p.6, p.8, p.9, p.12, p.14, p.16 and p.17. Also see CQ Answers, *Community Establishment & Definition Rationale and Methodology*, Annex A (pp-22-43) defining the community as "a delineated and organized logical alliance of communities of similar nature related to music" at p.22, p.25, p.38. Also see *Annexes'* table of contents (p.20), which include *Annex D Venn Diagram for Community Definition and Nexus* that explicitly defines and identifies the *community definition* relating to *community establishment* (See Application, 20A) and the *name* of the community "*music community*" relating to *nexus*.

<sup>82</sup> AGB, Attachment to Module 2, Evaluation Questions and Criteria: "*Descriptions should include: How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required,*" Notes, 20A, A-14

<sup>83</sup> Oxford Dictionaries "**logical**" definition: (i) *1. Of or according to the rules of logic or formal argument;* (ii) *1.1 Characterized by or capable of clear, sound reasoning;* (iii) *1.2 (Of an action, development, decision, etc.) natural or sensible given the circumstances, see [http://oxforddictionaries.com/us/definition/american\\_english/logical](http://oxforddictionaries.com/us/definition/american_english/logical)*

<sup>84</sup> Oxford Dictionaries "**alliance**" definition: (i) *1. A union or association formed for mutual benefit, especially between organizations;* (ii) *1.1 A relationship based on an affinity in interests, nature, or qualities;* (iii) *1.2 A state of being joined or associated, see [http://oxforddictionaries.com/us/definition/american\\_english/alliance](http://oxforddictionaries.com/us/definition/american_english/alliance)*



grossly negligent resulting in a failing grade for the Application. The omission of the Application's *community definition* and *name* from the .MUSIC Report was a gross error because it would have been impossible to ignore them given that they were explicitly mentioned and identified a significantly number of times as evidenced in:

1. The Application, Q20A;
2. The Public Interest Commitments;
3. Nearly *two-thousand correspondence letters* to ICANN and the EIU;<sup>85</sup>
4. Public comments from supporters in ICANN's microsite relating to the Application;
5. Answers to Clarifying Questions that the EIU requested (emphasis added);
6. Testimonies from over 40 independent experts submitted to ICANN and the EIU;
7. An independent Nielsen poll identifying the *community definition*;

As set forth above, ICANN and the EIU contravened the established vital CPE Guidelines and EIU Panel Process procedures.

**(v) ICANN and the EIU contravened established CPE Guidelines and EIU Panel Process procedures.**

As the Board should be aware, CPE requires:

Consistency of approach in scoring Applications will be of particular importance...<sup>86 87</sup>

The EIU will fully cooperate with ICANN's quality control process...<sup>88</sup>

The Panel Firm exercises consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case.<sup>89</sup>

Furthermore, ICANN affirmed in correspondence with DotMusic that "*in accordance with the CPE Panel's process document to help assure independence of the process, ICANN (either Board or staff) is not involved with the CPE Panel's evaluation of criteria, scoring decisions, or underlying analyses. The coordination of the CPE Panel, as explained in the CPE Panel Process Document, is entirely within the work of the EIU's team.*"<sup>90</sup> Contrary to this correspondence and the procedures outlined in the ICANN's EIU Panel Process document, ICANN also appears to play a critical role in instructing and subjectively guiding the EIU to reach certain determinations by providing the EIU

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<sup>85</sup> See Ex.A.19-4

<sup>86</sup> CPE Guidelines, p.22

<sup>87</sup> In an email exchange between ICANN and the EIU, there is evidence of a "quality control process" for "consistency of approach in scoring across applications" (in this case the CPE process for .LLP, .LLC and GMBH), comparing them for consistency purposes with the .MLS CPE Report: "*Can we have an example (such as was provided in MLS) as to what other meanings might exist?*" See C44, ICANN\_DR-00458, p.3, Ex.A27

<sup>88</sup> Ibid, pp.22-23

<sup>89</sup> EIU Panel Process, <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>, p.3, Ex.A12-2

<sup>90</sup> See Ex.A23

with rationale, subjective redline edits, comments, presentations and other forms of communication before the final CPE determinations are released publicly.

Public documents disclosed to Dot Registry (the community applicant for .INC, .LLC, and .LLP) and its legal counsel Arif Ali, in an Independent Review Proceeding (“IRP”) against ICANN, present clear evidence that ICANN edited and materially redlined the CPE draft Determinations for .INC, .GMBH, .LLC and .LLC on the EIU’s behalf before their final release, providing substantive and subjective rationale, making substantive redlines as well as suggested edits, which is a serious violation of established procedure and puts ICANN Staff at the heart of CPE decision-making in violation of CPE established procedure.<sup>91</sup> For example, in an email from EIU to ICANN on June 2, 2014 the EIU makes ICANN suggested changes and even asks permission from ICANN to make the same changes to a different application:

From: EIU to ICANN  
Email Subject: Re: Updated draft results (4)

...I've made the suggested changes... Quick question: is there a reason why you didn't send back .INC? Should we make the same changes for that evaluation?<sup>92</sup>

On June 3<sup>rd</sup>, 2014, the most revealing email shows that ICANN is involved in the decision-making process for determining CPE results, including providing subjective feedback, discussing rationale and providing presentations to the EIU:

From: ICANN to EIU  
Email Subject: Re: Updated draft results (4)

...On my initial review they looked really good. We will discuss the rationale in the presentation tomorrow. I would ask we make one change to all of the reports prior to final version...<sup>93</sup>

Aside from the procedural, policy and quality control process violations by both ICANN and the EIU, it appears from the hands-on instructions, discussions, guidance and more importantly subjective decision-making rationale provided by ICANN to the EIU, that the EIU clearly lacked the necessary training and expertise to make consistent judgment even though the EIU Panel Process document required that:<sup>94</sup>

All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process

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<sup>91</sup> See <https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, C042 – C044; Also see Ex.A25, Ex.A26 and Ex.A27

<sup>92</sup> See Ex.27, C044, ICANN\_DR\_00457, p. 2

<sup>93</sup> Ibid, C044, p. ICANN\_DR\_00456, p.1

<sup>94</sup> EIU Panel Process, p.2

included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.

EIU evaluators are highly qualified... and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.

ICANN and the EIU relied on false and inaccurate material information and refused to take the clearly identified and relevant information into consideration in their rationale and decision-making process, which contradicted established ICANN policies. ICANN's and the EIU's disregard of the *community definition, name* of the community and failure to apply the majority *support* criterion is quite worrisome given the time allotted to determine the Report (July 27, 2015 to February 10, 2016). In an IRP final declaration concerning the .ECO and .HOTEL community applications,<sup>95</sup> the IRP Panelists agreed and also echoed DotMusic's serious concerns and glaring problems with the CPE Process in general:

[A]t the hearing, ICANN confirmed that...the EIU has no process for comparing the outcome of one CPE evaluation with another in order to ensure consistency. It further confirmed that ICANN itself has no quality review or control process, which compares the determinations of the EIU on CPE applications. Much was made in this IRP of the inconsistencies, or at least apparent inconsistencies, between the outcomes of different CPE evaluations by the EIU, some of which, on the basis solely of the arguments provided by the Claimants, have some merit.<sup>96</sup> ...[T]he Panel feels strongly that there needs to be a consistency of approach in making CPE evaluations and if different applications are being evaluated by different individual evaluators, some form of outcome comparison, quality review or quality control procedure needs to be in place to ensure consistency, both of approach and marking, by evaluators. As was seen in the .eco evaluation, where a single mark is the difference between prevailing at CPE and not, there needs to be a system in place that ensures that marks are allocated on a consistent and predictable basis by different individual evaluators.<sup>97</sup> ...ICANN confirmed that the EIU's determinations are presumptively final, and the Board's review on reconsideration is not substantive, but rather is limited to whether the EIU followed established policy or procedure...ICANN confirmed that the core values, which apply to ICANN by virtue of its Bylaws, have not been imposed contractually on the EIU, and the EIU are not, in consequence, subject to them.<sup>98</sup> The combination of these statements gives cause for concern to the Panel.<sup>99</sup> The Panel fails to see why the EIU is not mandated to apply ICANN's core values in making its determinations whilst, obviously, taking into account the limits on direct application of all the core values as reflected in that paragraph of the Bylaws. Accordingly, the Panel suggests that the ICANN Board should ensure that there is a flow through of the application of ICANN's core values to entities such as the EIU.<sup>100</sup> In conclusion,...the Claimants in this IRP have raised a number of serious issues which give cause for concern and which the Panel considers the Board need to address.<sup>101</sup>

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<sup>95</sup> Little Birch and Minds + Machines v. ICANN (.ECO) & Despegar Online SRL, Donuts, Famous Four Media, Registry, and Radix v. ICANN (.HOTEL) Independent Review Proceeding final Declaration, (the “.HOTEL/.ECO IRP”) <https://icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf>

<sup>96</sup> .HOTEL/.ECO IRP, ¶ 146, p.37, Ex.A28

<sup>97</sup> Ibid, ¶ 147, pp.37-38

<sup>98</sup> Ibid, ¶ 148, p.38

<sup>99</sup> Ibid, ¶ 149, p.38

<sup>100</sup> Ibid, ¶ 150, p.38

<sup>101</sup> Ibid, ¶ 158, p.39

(vi) **Google conflict of interest.** Finally, it bears noting that the multiple process violations evidenced in this RR are further exacerbated by the conflict of interest with Google, another .MUSIC applicant.<sup>102</sup> According to ICANN’s Panel Process document,<sup>103</sup> “*the following principles characterize the EIU evaluation process for gTLD applications: All EIU evaluators, including the core team, have ensured that no conflicts of interest exist.*” However, Eric Schmidt, the chairman of Google, was a spokesperson,<sup>104</sup> a trustee<sup>105</sup> and on the board of Economist from November, 2013<sup>106</sup> to December, 2015.<sup>107</sup> DotMusic’s CPE process for .MUSIC conducted by the Economist began in July, 2015.<sup>108</sup> That means for about 5 months during DotMusic’s CPE evaluation the EIU had conflict of interest in its role of managing the CPE Process on behalf of ICANN. This potential conflict of interest supported by what appears to be a strong correlation in success and failure rates in CPE based on whether a community applicant was in Google’s contention set or not. As of February 10<sup>th</sup>, 2016, there were 22 community applicants that have gone through CPE.<sup>109</sup> Out of the 22 community applicants, 10 were in a contention set with Google. **None of the applicants in contention with Google prevailed CPE. The success rate to prevail CPE without Google in the contention set was approximately 42%** (i.e. 5 out of 12 applications). The EIU passed nearly half the community applications if they were not in a contention set with Google, while failing all applicants competing with Google (including DotMusic). This statistically significant difference is a substantial discrepancy following a strong correlative pattern. ICANN CEO Fadi Chehade and the Board acknowledged the significance and sensitivity of this conflict of interest at the Singapore ICANN Meeting *Public Forum* in February 2015,<sup>110</sup> yet nothing was done to ensure the Economist had no conflict of interest when CPE began in July 2015.

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<sup>102</sup> This is not the first time DotMusic reports a conflict of issue relating to .MUSIC. Doug Isenberg represented .MUSIC competitor Amazon in Community Objections (“CO”) filed by DotMusic, while also serving as a New gTLD Program Legal Rights Objection (“LRO”) panelist.

<sup>103</sup> EIU Panel Process, p.2

<sup>104</sup> <https://www.youtube.com/watch?v=kHSwRHeeCqg>, see Ex.A29, p.1; Also see Ex.A29, p.2

<sup>105</sup> See [http://www.economistgroup.com/pdfs/Annual\\_Report\\_2015\\_FINAL.pdf](http://www.economistgroup.com/pdfs/Annual_Report_2015_FINAL.pdf), p.18, Ex.A30-2

<sup>106</sup> Ibid, p.29; Also see The Economist Board retrieved on September 30, 2015:

[https://web.archive.org/web/20150930040432/http://www.economistgroup.com/results\\_and\\_governance/board.html](https://web.archive.org/web/20150930040432/http://www.economistgroup.com/results_and_governance/board.html)

<sup>107</sup> See <http://www.theguardian.com/media/2015/dec/10/economist-appoints-tessa-jowell-to-board-as-googles-eric-schmidt-departs>, Ex.A31

<sup>108</sup> See <https://newgtlds.icann.org/en/applicants/cpe#invitations>

<sup>109</sup> See, <https://newgtlds.icann.org/en/applicants/cpe#invitations>

<sup>110</sup> See <https://singapore52.icann.org/en/schedule/thu-public-forum/transcript-public-forum-12feb15-en.pdf>, February 12<sup>th</sup>, 2015, p.61, Ex.A30-1

## 9. What are you asking ICANN to do now?

Requesters ask that the result of the .MUSIC Report be overturned by ICANN, by awarding DotMusic an additional six (6) points (or a passing grade). These are the total points that were deducted by ICANN as a result of ICANN not consistently following the CPE process and not applying the proper scoring guidelines to DotMusic’s Application in accordance with the policies and procedures defined in the AGB. In fact, ICANN engaged in numerous procedural and policy violations (including material omissions and oversights), which lead to substantial flaws in its rationale methodology and scoring process. Additionally a linear comparative analysis between DotMusic’s application and the prevailing CPE applications for .SPA, .RADIO, .ECO, .OSAKA, and .HOTEL leads to the conclusion ICANN contravened the CPE Process and did not employ “consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, document[ing] the way in which it has done so in each of the above mentioned community application cases.”<sup>111</sup>

DotMusic’s community Application clearly meets the **trust** claim (*See* ICANN’s 2007 Recommendations and Principles to launch the New gTLD Program, IGH CV-10) given its demonstrable global music community majority support, multi-stakeholder governance structure and music-tailored policies that serve a higher purpose, as outlined in its Application that .MUSIC:

1. Is exclusive only to legitimate members of the entire global music community;
2. Is governed and controlled by the global music community. Each music constituent community type has a governance seat on the multi-stakeholder .MUSIC Board (PAB);<sup>112</sup>
3. Is supported by organizations with members representing over 95% of music consumed globally (i.e. a majority);
4. Has enhanced safeguards to protect intellectual property, prevent cybersquatting and eliminate copyright infringement;
5. Has incorporated all IFPI intellectual property protection provisions that include policies to stop domain hopping, takedown policies in the case of piracy, authorization provisions, permanent blocks, privacy/proxy provision, true name/address mandates and trusted sender complaint policies amongst others;
6. Requires registrant validation via a mandatory two-step phone/email authentication process;
7. Protects names of famous music artists and brands by giving registration priority to those entities during a priority-based launch phase. .MUSIC also gives registration priority to community members belonging to legitimate Music Community Member Organizations to spur adoption, trust and safety;
8. Has domain naming conditions that eliminate cybersquatting and famous music brand trademark infringement. Registrants are only allowed to register their own name, acronym or “Doing Business As;”
9. Only allows legal music content and legal music usage; and
10. Will take down any domain infringing on any of its enhanced safeguards.

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<sup>111</sup> EIU Panel Process, p.3

<sup>112</sup> *See* Expanding multi-stakeholder Board at <http://music.us/board>

Aligned with its community-based mission, policies and PIC,<sup>113</sup> DotMusic's Application is the only applicant with music-tailored enhanced copyright protection safeguards that include:

- **Stopping Domain Hopping**: All domains that trusted senders...have sent over 10K notices against will be on the block domain list, which will continually be updated, unless there is evidence that the domain has been authorized by most of the applicable rights holders to use the content in question...
- **Take Down Policies**: DotMusic will require all registrants on music to have and implement policies that include the following: (i) upon receipt of a facially valid copyright take down notice, the registrant must search for all copies or links to access the noticed content on the site, and remove all such copies or links from its site; and (ii) it must implement a strong repeat infringer policy.... DotMusic will suspend the domain if the registrant fails to have or enforce such policies.
- **Stay Down and Repeat Offender**: DotMusic will suspend the domain if the registrant fails to have or enforce DotMusic takedown policies.Repeat offenders will be disallowed from registering.
- **Authorization**: Confirmation that "content that they otherwise have the right to post" means that the poster has express authorization to post the content.
- **Permanent Block**: Blocked domains will not be made available for registration by any third party unless there is a two third (2/3) vote by the Advisory Committee...
- **Privacy / Proxy**: Requirement that privacy/proxy services will be compliant with DotMusic's Name Selection policy (mandating that the domain is the name of the registrant, their acronym, "doing business as," description of their mission or activities) and discloses the beneficial registrant as per DotMusic's Registration Policies. If such disclosure is not made then the registrant will not be allowed to proceed with registration.
- **True name and address**: If a .MUSIC domain makes available any music owned or posted by a third party...(directly or indirectly), the domain must prominently post on the site the true name of the website operator, a contact person...phone number, physical address, and email address at which the contact person may be contacted.
- **Trusted Sender Complaint**: If .MUSIC receives a complaint from a trusted sender...then DotMusic will investigate the complaint and suspend the domain, giving the registrant reasonable time to fix compliance matter. The domain will be terminated if registrant does not fix the compliance matter or fails to respond to the complaint.<sup>114</sup>

The Board should note the level of support for DotMusic's Application and the Application's maximum score under its *Registration Policies* that are aligned with its community-based purpose (*Eligibility, Name Selection, Content and Use and Enforcement*<sup>115</sup>) as evidence that it is "in the best interest of the Internet community" for DotMusic to be awarded .MUSIC. ICANN Board/NGPC member George Sadowsky<sup>116</sup> hit the nail on the head on the *only* goal that matters: "*ensuring user trust in using the DNS*" and "*to strengthen user trust*:"

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process...it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the...community and/or Internet users in general."...We are

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<sup>113</sup> Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27

<sup>114</sup> Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27

<sup>115</sup> Report, *Registration Policies*, pp.6-7

<sup>116</sup> <https://www.icann.org/profiles/george-sadowsky>, <https://www.icann.org/resources/pages/board-of-directors> and <https://www.icann.org/resources/pages/new-gtld-program-committee-2014-03-21-en>

unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.<sup>117</sup>

In a statement the week after the release of the .MUSIC Report, ICANN CEO Fadi Chehade agreed that with respect to intellectual property infringement (which is at the heart of the Application’s enhanced safeguards), “*ICANN, where necessary and appropriate, shape the discussion and commit to be part of a solution. [ICANN] cannot simply put [its] head in the sand and say these issues are not of [ICANN’s] concern:*”

As issues such as intellectual property infringement...are addressed in other fora, ICANN ...where necessary and appropriate, shape the discussion and debate and commit to be part of a solution in keeping with our values and mission. We cannot simply put our head in the sand and say that these issues are outside of the logical infrastructure layer in which we operate and thus not of our concern. Some solutions within the economic and societal layers of digital governance require distributed, innovative and collaborative issue-specific networks, of which the technical community depending on the issue sometimes must be a key part. We must remain part of the global conversations on digital governance, aware and ready to act when necessary.<sup>118</sup>

Aligned with ICANN’s CEO’s own statements to protect the public interest and the music community’s intellectual property rights, **we request ICANN to overturn the .MUSIC CPE Report and approve DotMusic’s community application** because (i) of the preponderance of evidence and support that DotMusic’s application exceeds the criteria established for community priority evaluation in comparison to other prevailing CPE applicants;<sup>119</sup> (ii) ICANN inaction led to multiple CPE process violations, prejudicial errors and an unfair and inconsistent quality control process when evaluating DotMusic’s application (in itself and in comparison to others); and (iii) more importantly “it would be in the best interest of the Internet community” for ICANN to do so given the community application’s demonstrable support that represents over 95% of music consumed globally and DotMusic’s Public Interest Commitments and music-tailored *Registration Policies* (taken from a “holistic perspective” as required by ICANN Guidelines<sup>120</sup>) that scored

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<sup>117</sup> Booking.com B.V. v. ICANN, ICDR Case No. 50-2014-000247 (March 3, 2015) Final Declaration at <https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf>, ¶ 119, Ex.A6

<sup>118</sup> Fadi Chehade (ICANN CEO), <https://icann.org/en/system/files/correspondence/chehade-to-icann-board-19feb16-en.pdf>, p.6, February 19, 2016, Ex.A33

<sup>119</sup> ICANN ignored DotMusic’s answers to Clarifying Questions, over 40 testimonies filed by independent experts (See Appendix A, p.36, Ex.A32), an independent Nielsen poll conducted with over 2,000 participants (See Appendix B, p.38, Ex.A32), and nearly 2,000 letters of support (See Ex.A19-1, A19-2, A19-3, A19-4 and A-19-5 and <https://gtldcomment.icann.org/applicationcomment/viewcomments>), which provide clear evidence that substantiates scoring maximum points under *Community Establishment, Nexus and Support*.

<sup>120</sup> The scoring of the *Registration Policies* section related to *Name Selection, Content and Use and Enforcement* is the only criterion to be graded from a “holistic perspective.” See CPE Guidelines, pp.12-14

maximum points. DotMusic also requests: (i) to meet with individual Board members; (ii) a meeting with the ICANN Board; and (iii) a hearing to clarify the positions expressed in this RR.

**10. Please state specifically grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.**

DotMusic is a community applicant for .MUSIC. The justifications under which DotMusic has standing and the right to assert this RR are:

- i) Predictability: [gTLDs] must be introduced in an orderly, timely and predictable way.<sup>121</sup>
- ii) Breach of Fundamental Fairness: Basic principles of due process to proceeding were violated and lacked accountability by ICANN, including adequate quality control;<sup>122</sup>
- iii) Conflict of Interest Issues;
- iv) Failure to Consider Evidence filed; and
- v) Violation of ICANN Articles of Incorporation/Bylaws:
  1. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.<sup>123</sup>
  2. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.<sup>124</sup>
  3. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.<sup>125</sup>
  4. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.<sup>126</sup>
  5. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.<sup>127</sup>
  6. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.<sup>128</sup>
  7. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy [e.g. copyright law and setting certain royalty rates for music's regulated sector] and duly taking into account governments' or public authorities' recommendations.<sup>129</sup>

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<sup>121</sup> Final Issue Report on New gTLD Subsequent Procedures, <https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf>, at pp.23-24

<sup>122</sup> JAS established that “*the existence of a visible and well-publicized proactive quality program properly incented all evaluation panel vendors to be appropriately cognizant of evaluation consistency, accuracy, and process fidelity, and perform accordingly.*” The .MUSIC CPE lacked a “*proactive quality control process*” deficient of the Initial Evaluation “*unified approach,*” which “*substantially mitigated the risk of isolation and inconsistent or divergent evaluations,*” ICANN Initial Evaluation Quality Control Program Report, <https://newgtlds.icann.org/en/program-status/application-results/ie-quality-program-26aug14-en.pdf>, p.16. Also see Ex.A38 and Ex.A39

<sup>123</sup> ICANN Bylaws, Art. I, § 2.6

<sup>124</sup> ICANN Bylaws, Art. I, § 2.1

<sup>125</sup> ICANN Bylaws, Art. I, § 2.7

<sup>126</sup> ICANN Bylaws, Art. I, § 2.8

<sup>127</sup> ICANN Bylaws, Art. I, § 2.9

<sup>128</sup> ICANN Bylaws, Art. I, § 2.10

<sup>129</sup> ICANN Bylaws, Art. I, § 2.11



8. Non-discriminatory treatment: ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.<sup>130</sup>
9. Transparency: ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.<sup>131</sup>

**11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities?**

Yes

**11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Yes.**

**Do you have any documents you want to provide to ICANN? Yes, see Exhibits**

**Terms and Conditions for Submission of Reconsideration Requests:**

*The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar. The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious. Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC. The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.*

Respectfully Submitted,

Constantinos Roussos  
DotMusic Founder

Tina Dam  
DotMusic Chief Operating Officer

Cc: Jason Schaeffer  
DotMusic Legal Counsel

February 24, 2016

DotMusic Website: <http://music.us>

DotMusic Board: <http://music.us/board>

DotMusic Supporting Organizations: <http://music.us/supporters>

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<sup>130</sup> ICANN Bylaws, Art. II, § 3

<sup>131</sup> ICANN Bylaws, Art. III, § 1

**RECOMMENDATION  
OF THE BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)  
RECONSIDERATION REQUEST 16-5  
25 JANUARY 2019**

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The Requestors<sup>1</sup> seek reconsideration of the Community Priority Evaluation (CPE) report (CPE Report), of DotMusic Limited's (DotMusic) community-based application for the .MUSIC generic top-level domain (gTLD), and ICANN organization's acceptance of that Report.<sup>2</sup> The Requestors claim that the independent provider that conducted the CPE (CPE Provider) violated established CPE procedures in its evaluation of DotMusic's application (Application), and that the Board should have either conducted an investigation of the CPE process as a whole or revised the CPE Report in response to certain Independent Review Process (IRP) findings.

The issues relevant to the BAMC's Recommendation concerning Request 16-5 are numerous and lengthy. The Requestors submitted 41 exhibits to Request 16-5, and they have made at least 11 additional submissions in support of Request 16-5 since it was submitted. Additionally, in that time ICANN org undertook a review of certain aspects of the CPE process (CPE Process Review), during which Request 16-5 was placed on hold, and the Requestors submitted several additional Reconsideration and document requests relating to the CPE and the CPE Process Review. The BAMC has considered all the arguments and materials submitted to date relating to Request 16-5 and Attachment 1 to this Recommendation sets forth the BAMC's comprehensive evaluation of each of the arguments raised in the many submissions to date. To assist with the BAMC's discussions and deliberations, this document addresses, at a high level,

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<sup>1</sup> dotMusic Limited (DotMusic), the International Federation of Musicians, the International Federation of Arts Councils and Culture Agencies, the Worldwide Independent Network, the Merlin Network, the Independent Music Companies Association, the American Association of Independent Music, the Association of Independent Music, the Content Creators Coalition, the Nashville Songwriters Association International, and ReverbNation (collectively, Requestors).

<sup>2</sup> Request 16-5, <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-request-redacted-24feb16-en.pdf>.

the relevant issues and findings, but leaves the detailed rationale to Attachment 1, which is incorporated herein by reference.

## **I. Brief Factual Background.**

DotMusic submitted a community-based application for .MUSIC (Application), which was placed in a contention set with seven other .MUSIC applications.<sup>3</sup> DotMusic participated in CPE, but did not prevail. The Requestors then submitted Request 16-5, challenging the CPE Provider's Report, and ICANN org's acceptance of that Report, and arguing that the Board should have intervened in or overturned the CPE Report in light of the IRP Panel Declaration (Despegar IRP Declaration) in the *Little Birch LLC et al. v. ICANN* and *Despegar Online SRL et al. v. ICANN* (Despegar IRP).<sup>4</sup>

While Request 16-5 was pending, the ICANN Board and Board Governance Committee (BGC) directed ICANN org to undertake a review of certain aspects of the CPE process (CPE Process Review). The CPE Process Review: (i) evaluated the process by which ICANN org interacted with the CPE Provider; (ii) evaluated whether the CPE criteria were applied consistently throughout and across each CPE report; and (iii) compiled the research relied upon by the CPE Provider for the evaluations which are the subject of pending Reconsideration Requests.<sup>5</sup> The BGC determined that the pending Reconsideration Requests relating to CPEs, including Request 16-5, would be placed on hold until the CPE Process Review was completed.<sup>6</sup>

FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice and Technology Practice were retained to conduct the CPE Process Review. On 13 December 2017, ICANN org

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<sup>3</sup> See <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>.

<sup>4</sup> Request 16-5.

<sup>5</sup> <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>;  
<https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

<sup>6</sup> <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

published FTI's reports issued in connection with the CPE Process Review (CPE Process Review Reports).<sup>7</sup> With respect to Scope 1, FTI concluded that "there is no evidence that ICANN org[] had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process."<sup>8</sup>

For Scope 2, "FTI found no evidence that the CPE Provider's evaluation process or reports deviated in any way from the applicable guidelines; nor did FTI observe any instances where the CPE Provider applied the CPE criteria in an inconsistent manner."<sup>9</sup>

For Scope 3, FTI observed that all eight of the relevant CPE reports (which are the ones at issue in the Reconsideration Requests placed on hold) referenced research conducted by the CPE Provider.<sup>10</sup> In one case<sup>11</sup> (for which two CPE reports were completed), FTI did not find citations to each reference to research in the working papers underlying the Second CPE Report. FTI concluded that it is possible that the research referenced without citation in the Second CPE was research cited in the working papers associated with the First CPE.<sup>12</sup>

On 15 March 2018, the Board passed Resolutions 2018.03.15.08 through 2018.03.15.11 (2018 Resolutions), which accepted the findings in the CPE Process Review Reports; declared the CPE Process Review complete; concluded that there would be no overhaul or change to the CPE process for this current round of the New gTLD Program; and directed the BAMC to move

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<sup>7</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.

<sup>8</sup> Scope 1 Report, at Pg. 2 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf>).

<sup>9</sup> Scope 2 Report, at Pg. 2 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>).

<sup>10</sup> Scope 3 Report, at Pg. 3-4 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf>).

<sup>11</sup> That case did not involve the Application. See *id.* at Pg. 36.

<sup>12</sup> *Id.* at Pg. 36.

forward with consideration of the remaining Reconsideration Requests relating to CPEs that had been placed on hold.<sup>13</sup>

Subsequently, the BAMC invited the Requestors to provide a telephonic presentation to the BAMC in support of Request 16-5 and to submit additional written materials in response to the CPE Process Review Reports.<sup>14</sup> DotMusic rejected both invitations from the BAMC.<sup>15</sup>

In issuing this recommendation, the BAMC carefully evaluated the claims raised in Request 16-5, in the Requestors' 17 September 2016 presentation to the BGC, in the materials that the Requestors submitted to the Board between 14 February 2016 and 5 April 2018, and the findings in the CPE Process Review Reports. Based on its extensive review of all relevant materials, the BAMC finds that ICANN org complied with established policies, Bylaws, and Articles of Incorporation when it accepted the CPE Report, because the CPE Provider did not violate any established policies or procedure in conducting the CPE. The BAMC further finds that the Requestors do not identify any misapplication of policy or procedure by the CPE Provider that materially or adversely affected the Requestors. Accordingly, the BAMC recommends that the Board deny Request 16-5.

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<sup>13</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

<sup>14</sup> Attachment 1 to BAMC Recommendation on Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-1-14jun18-en.pdf>).

<sup>15</sup> Attachment 2 to BAMC Recommendation on Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>); 23 March 2018 letter from A. Ali to ICANN Board (<https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>).

## **II. Relief Requested.**

As set out in full in Attachment 1 and incorporated herein by reference, the Requestors ask the Board to determine that the Application satisfies the requirements for Community Priority.<sup>16</sup>

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<sup>16</sup> Request 16-5, § 9, Pg. 21.

### **III. The Relevant Standards for Reconsideration Requests and CPE.**

#### **A. The Relevant Reconsideration Request Standards.**

Article IV, Section 2.1 and 2.2 of ICANN's Bylaws<sup>17</sup> provide in relevant part that any entity may submit a request "for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) One or more Staff actions or inactions that contradict established ICANN policy(ies);
- (b) One or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.<sup>18</sup>

Where, as here, the reconsideration request challenges both Board and staff action or inaction, the operative version of the Bylaws direct the BAMC to review the request and provide a recommendation to the Board.<sup>19</sup> Denial of a reconsideration request is appropriate if the BAMC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.<sup>20</sup>

#### **B. The CPE Criteria and Procedures.**

As discussed in further detail in Attachment 1 to this Recommendation, CPE is a contention resolution mechanism available to applicants that self-designated their applications as community applications.<sup>21</sup> The standards and CPE process are defined in Module 4, § 4.2 of the

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<sup>17</sup> The BAMC has considered Request 16-5 under the 11 February 2016 version of the Bylaws (the version in effect when the Requestors submitted Request 16-5).

<sup>18</sup> ICANN Bylaws, 11 February 2016, Art. IV, §§ 2.1, 2.2.

<sup>19</sup> See ICANN Bylaws, 11 February 2016, Art. IV, §§ 2.3, 2.10, 2.15.

<sup>20</sup> *Id.*

<sup>21</sup> See Guidebook, Module 4, § 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>). See also <https://newgtlds.icann.org/en/applicants/cpe>.

Guidebook. Community-based applications that undergo CPE are evaluated by the following criteria: Criterion 1: Community Establishment; Criterion 2: Nexus Between the Proposed String and Community; Criterion 3: Registration Policies; and Criterion 4: Community Endorsement.<sup>22</sup> To prevail in CPE, an applicant must receive at least 14 out of 16 points on the scoring of the foregoing four criteria, each of which is worth a maximum of four points. An application that prevails in CPE “eliminates all directly contending standard applications, regardless of how well qualified the latter may be.”<sup>23</sup>

The CPE process does not determine the existence, adequacy, or validity of a community. It merely evaluates whether a community-based application satisfies the CPE criteria for community priority. As the Guidebook notes, “a finding by the [CPE Provider] that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.”<sup>24</sup>

#### **IV. Analysis and Rationale.**

##### **A. Request 16-5 Does Not Comply With The Applicable Bylaws.**

As a preliminary matter, the BAMC notes Request 16-5 exceeds the Bylaws’ length restrictions and uses smaller font than is required for Reconsideration Requests.<sup>25</sup> Despite this procedural violation, the BAMC has considered the merits of Request 16-5 and all other relevant materials and finds, for the reasons discussed below and in Attachment 1, that reconsideration is not warranted.

##### **B. The Despegar IRP Declaration Does Not Support Reconsideration.**

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<sup>22</sup> *Id.* at Module 4, § 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

<sup>23</sup> *Id.* at Module 4, § 4.2.3, Pg. 4-9.

<sup>24</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-9.

<sup>25</sup> See Section VI.A of Attachment 1, incorporated herein by reference.



The Requestors claim that reconsideration is appropriate because the CPE process is purportedly fundamentally flawed. In support, the Requestors rely on the Despegar IRP Declaration.<sup>26</sup> The Requestors seem to assert that the Despegar IRP Declaration requires the Board to either conduct a review of the CPE Process as a whole—which the Board did in the CPE Process Review—or to reject the CPE Report here based on the purported flaws<sup>27</sup>—but for the reasons set forth in Section VI.B of Attachment 1 and incorporated herein by reference, nothing in the Despegar IRP Declaration or ICANN’s acceptance of it mandates the Requestors’ suggested result. Specifically, nothing about the Despegar IRP Declaration or the Board’s acceptance of the Despegar IRP Declaration requires the BAMC to take any action in response to Request 16-5 beyond determining whether ICANN staff and the CPE Provider followed established policy and procedure with respect to the CPE Report, which is what the BAMC and the Board are doing in their consideration of Request 16-5 and what the Board has done in initiating the CPE Process Review.

**C. The Board’s Acceptance of Advice from ICANN’s Governmental Advice Committee Advice Has No Bearing on DotMusic’s Claim to Community Priority.**

ICANN’s Governmental Advisory Committee (GAC) provided advice to ICANN regarding certain proposed gTLD strings, including .MUSIC. The GAC’s advice included, among other things, that .MUSIC should be subject to additional safeguards,<sup>28</sup> and that it should not be operated as an exclusive access registry unless doing so would “serve a public interest goal.”<sup>29</sup> The Board, via the New gTLD Program Committee (NGPC), accepted the GAC’s

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<sup>26</sup> Request 16-5, § 6, Pg. 19; *Despegar IRP Final Declaration ¶¶ 66-67, available at* <https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf>.

<sup>27</sup> Request 16-5, § 6, Pg. 19.

<sup>28</sup> See Beijing Communiqué, Annex I, Pg. 9 <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>; see also <https://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>.

<sup>29</sup> See *id.*, Pg. 11.

advice, and directed ICANN org to defer contracting with applicants for certain of the stings, including .MUSIC “pending a dialogue with the GAC” regarding an appropriate definition of “public interest goal.”<sup>30</sup> The NGPC subsequently approved revisions to the New gTLD Registry Agreement in furtherance of the GAC’s advice.<sup>31</sup>

As discussed in Section VI.C of Attachment 1 and incorporated herein by reference, nothing in the NGPC’s acceptance of and response to the GAC’s advice required ICANN to give “preferential treatment” to community applicants for .MUSIC. The advice did not even discuss community versus standard applications, and, contrary to the Requestors’ assertion, nothing about the GAC’s advice implied that .MUSIC involved a community with “cohesion.”<sup>32</sup>

**D. Nothing in the GNSO’s Recommendations Required that Claims of Community Priority be “Taken on Trust.”**

The Requestors claim that CPE should not have been required at all because, according to the Requestors, ICANN’s Generic Names Supporting Organization (GNSO) recommended that an application’s assertions of community representation should be “taken on trust.”<sup>33</sup> As explained in Section VI.D of Attachment 1 and incorporated herein by reference, the Requestors misread the language of the GNSO’s recommendations, which in fact clearly required CPE. In accordance with the GNSO’s recommendation, the Guidebook provides that “[e]valuation of an applicant’s designation as community-based will occur only in the event of a contention situation

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<sup>30</sup> See <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>. See <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm>; see also ICANN NGPC Paper No. 2013-06-25-2b: GAC Advice in Beijing Communiqué regarding Safeguard Advice Applicable to Category 2 Strings, Briefing Materials 1, Pgs. 25-31 (<http://www.icann.org/en/groups/board/documents/briefing-materials-1-25jun13-en.pdf>).

<sup>31</sup> <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en-htm#1.d>; see also <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-item-1d-02jul13-en.pdf>, Annex I, New gTLD Agreement.)

<sup>32</sup> Request 16-5, § 8, Pg. 10; see also Blomqvist Opinion, ¶ 52, at pg. 41.

<sup>33</sup> *Id.*, § 6, Pg. 3, 6.

that results in a community priority evaluation.”<sup>34</sup> Because the Requestors have not demonstrated that ICANN violated any established policy or procedure in declining to take DotMusic’s claim of community priority “on trust,” the Requestors’ argument does not support reconsideration.

**E. The Requestors Have Not Demonstrated Any Conflict of Interest on the Part of the CPE Provider.**

The Requestors contend that the CPE Provider had a conflict of interest with respect to the Application because Eric Schmidt, the executive Chairman of Google from 2001 to 2017, was a member of the Board of Directors of the Economist Group, the CPE Provider’s parent company, from November 2013 through December 2015,<sup>35</sup> and Vint Cerf, Vice President of Google since 2003, “chaired an ICANN strategy Panel in 2013 (when applications were being evaluated),” and Google also submitted an application for the .MUSIC string.<sup>36</sup>

Pursuant to the Guidebook, the CPE Panel Process Document and the CPE Guidelines, the CPE Provider was required to confirm that none of the evaluation panelists or core team members had any conflicts with respect to the community-based applications.<sup>37</sup> The Requestors present no evidence that the CPE Provider failed to do so. The Requestors do not allege that Eric Schmidt—a high level executive—was an evaluation panelist or member of the CPE Provider’s core team (he was not), or that he had any influence over, or knowledge of, the CPE Report (or even had any involvement whatsoever with the CPE Provider, which is a single division within

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<sup>34</sup> Guidebook Module § 1.2.3.2, at Pg. 1-27.

<sup>35</sup> Request 16-5, § 6, Pg. 20. *See also* DotMusic CPE Process Review Letter, at ¶¶ 26(c), 67b, at Pg. 28, 47 (also arguing that Sir Robin Jacob, a Panelist selected by the ICC in the Community Objection proceedings for .MUSIC and .BAND, represented Samsung, “one of Google’s multi-billion dollar partners,” in a legal case (for additional detail, see Reconsideration Request 16-7, § 8, at Pg. 18 (marked 17) n.68, <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-request-redacted-30may16-en.pdf>).

<sup>36</sup> DotMusic CPE Process Review Letter, at ¶ 26(c), at Pg. 28.

<sup>37</sup> Guidebook § 2.4.3.1, at Pg. 2-33; CPE Panel Process Document at Pg. 2, <https://newgtlds.icann.org/en/applicants/cpe>; CPE Guidelines at Pg. 22, <https://newgtlds.icann.org/en/applicants/cpe>.

the Economist Group). In fact, the CPE Report was issued *after* Mr. Schmidt ceased to be a board member.<sup>38</sup> Likewise, DotMusic has not explained how Vint Cerf’s position on an ICANN Strategy Panel concerning the Internet Governance Ecosystem<sup>39</sup> in 2013, *three years before* the CPE Report was issued, had any effect on the CPE of the Application. For these reasons and the additional reasons discussed in Section VI.E of Attachment 1 and incorporated herein by reference, the Requestors’ argument does not support reconsideration.

**F. ICANN Org Is Not Involved in Scoring CPE Criteria.**

The Requestors argue that certain communications between ICANN org and the CPE Provider that were disclosed as part of the *Dot Registry v. ICANN* independent review proceedings (CPE Communications) demonstrate that ICANN “materially” revised the CPE Report in violation of established policy and procedure.<sup>40</sup> Contrary to the Requestors’ assertions, nothing in the CPE Communications supports the Requestors’ view that ICANN org revised the CPE Provider’s *scoring* on the Application. As discussed in Section VI.F of Attachment 1 and incorporated herein by reference, the CPE Process Review’s Scope 1 Report confirms that “there is no evidence that ICANN org had any undue influence on the CPE Provider . . . or engaged in any impropriety in the CPE process,” including with respect to the Application.<sup>41</sup> FTI observed that “ICANN organization did not suggest that the CPE Provider make changes in the final scoring or adjust the rationale set forth in the CPE report[s].”<sup>42</sup> For this and the other reasons

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<sup>38</sup> Mr. Schmidt stepped down in about December 2015 (<https://www.theguardian.com/media/2015/dec/10/economist-appoints-tessa-jowell-to-board-as-googles-eric-schmidt-departs>). The CPE Report was issued on 10 February 2016. (<https://newgtlds.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>.)

<sup>39</sup> See Strategy Panel: ICANN’s Role in the Internet Governance Ecosystem, *available at* <https://www.icann.org/en/system/files/files/report-23feb14-en.pdf>.

<sup>40</sup> Request 16-5, § 6, Pg. 18.

<sup>41</sup> FTI Scope 1 Report at Pg. 3, *available at* <https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf>.

<sup>42</sup> *Id.* at Pg. 12.

discussed in Section VI.F of Attachment 1 and incorporated herein by reference, this argument does not support reconsideration.

**G. The CPE Report did not Implicate Due Process Rights.**

The Requestors assert that the CPE Provider and ICANN org failed to “follow due process” in the DotMusic CPE Report.<sup>43</sup> This argument does not warrant reconsideration. For the reasons discussed in Section VI.G of Attachment 1 and incorporated herein by reference, the Requestors have not demonstrated any failure by the CPE Provider to follow the established policy and procedures for CPE as set forth in the Guidebook.

**H. DotMusic’s Argument Concerning Revenues from Auctions Does Not Support Reconsideration.**

DotMusic asserts that ICANN org’s acceptance of the CPE Report was motivated by some sort of financial incentive.<sup>44</sup> For the reasons discussed in Section VI.H of Attachment 1 and incorporated herein by reference, DotMusic has not shown that the CPE Provider or any ICANN staff or Board member acted with improper motive with respect to the Application, nor that any applicable ICANN policy or procedure was violated. This argument does not support reconsideration.

**I. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of the CPE Criteria.**

The Requestors object to the CPE Provider’s decision to award only 10 of the possible 16 points to the Application. For the reasons set forth in Section VI.I of Attachment 1, which is incorporated herein by reference, the Requestors do not demonstrate that the CPE Provider violated any established policy or procedure in scoring the Application.

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<sup>43</sup> Request 16-5, § 8, at Pg. 16 (marked 15).

<sup>44</sup> 15 December 2016 letter from Ali to ICANN, at Pg. 6.

1. The CPE Provider’s Application of Criterion 1 was Consistent with Applicable Policies and Procedures.

The Application received zero points for Criterion 1. Criterion 1 evaluates “the community as explicitly identified and defined according to statements in the application.”<sup>45</sup> It is measured by two sub-criterion: Sub-criterion 1-A-Delineation; and Sub-criterion 1-B-Extension.<sup>46</sup> Sub-criterion 1-A-Delineation; and Sub-criterion 1-B-Extension are each worth a maximum of two points, for a total of four points. The Requestors challenge the CPE Provider’s analysis of both sub-criteria.

(a) The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 1-A-Delineation.

The Guidebook explains that “community” implies “more of cohesion than a mere commonality of interest,” and requires, among other things, “an awareness and recognition of a community of its members.”<sup>47</sup> In order for the CPE Provider to award points for sub-criterion 1-A, it must conclude, among other things, that there is at least one entity mainly dedicated to the community.<sup>48</sup> The Guidebook directs that “a community can consist of . . . a logical alliance of communities,” but the applicant must demonstrate “the requisite awareness and recognition of the community . . . among the members.”<sup>49</sup> “Otherwise the application would be seen as not relating to a real community and score 0 on both ‘Delineation’ and ‘Extension.’”<sup>50</sup>

As discussed in Section VI.I.1.a of Attachment 1 and incorporated herein by reference, the CPE Provider determined that the community described in the Application lacked awareness and recognition of a community among its members.”<sup>51</sup> The CPE Provider also found

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<sup>45</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-10, 4-11.

<sup>46</sup> *Id.* at Pg. 4-11.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, at Pg. 4-12

<sup>50</sup> *Id.*

<sup>51</sup> CPE Report, at Pg. 2.

that there was “no entity mainly dedicated to the entire community as defined by the applicant in all its geographic reach and range of categories.”<sup>52</sup>

The Requestors argue that the CPE Provider erred in finding that the community defined in the Application did not demonstrate the requisite cohesion.<sup>53</sup> Ultimately, the Requestors’ arguments amount to disagreement with the CPE Provider’s determination that a community including individuals and entities as varied as musicians, libraries, lawyers, public relations agencies, accountants, and those who consume music<sup>54</sup> does not demonstrate the requisite cohesion, even if all participate in music-related activities or have some connection to the music industry. For the reasons set forth in Section VI.I.1.a of Attachment 1 and incorporated herein by reference, this substantive disagreement is not a basis for reconsideration.

The Requestors also argue that the CPE Provider relied on the incorrect community definition—i.e., not the community definition DotMusic provided in response to Question 20A of the Application.<sup>55</sup> As set forth more fully in Section VI.I.1.a of Attachment 1 and incorporated herein by reference, the CPE Provider expressly relied on DotMusic’s response to Question 20A,<sup>56</sup> and this argument does not support reconsideration.

DotMusic asserts that because it used “similar . . . language” in its definition of the community to the language in the Guidebook, the CPE Provider should have determined that the Application satisfied Criterion 1.<sup>57</sup> This argument does not support reconsideration because: (1) the Guidebook notes that “a logical alliance of communities” is only “viable” as a community if “*the requisite awareness and recognition of the community is at hand among the members,*”<sup>58</sup>

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<sup>52</sup> *Id.*, Pg. 3.

<sup>53</sup> Request 16-5, § 6, Pgs. 10-11 (.OSAKA, .ECO, .SPA); DotMusic CPE Process Review Letter, ¶ 52, at Pg. 41-42.

<sup>54</sup> CPE Report, Pg. 2 (quoting community definition provided by the Requestors in response to Question 20A).

<sup>55</sup> Request 16-5, § 6, Pg. 13; DotMusic CPE Process Review Letter, ¶ 42, Pg. 38.

<sup>56</sup> *See* CPE Report, Pg. 2.

<sup>57</sup> DotMusic CPE Process Review Letter, ¶ 44, at Pg. 39.

<sup>58</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12 (emphasis added).

which was not the case here; and (2) it rests on the assumption that the CPE Provider should have awarded full points on Criterion 1 because the Application stated that it satisfied the requirements for Criterion 1, which is incorrect. Accordingly, for the reasons set forth above and more fully in Section VI.I.1.a of Attachment 1 and incorporated herein by reference, these arguments do not support reconsideration.

The Requestors compare DotMusic's CPE Report to the CPE reports for other applications, arguing that because the CPE Provider found that the communities as defined in those applications did have the requisite cohesion, a similar result should have been reached with respect to the Application.<sup>59</sup> As explained more fully in Section VI.I.1.a of Attachment 1 and incorporated herein by reference, the CPE results for other applications do not demonstrate that the CPE Provider failed to properly establish the first CPE criterion with respect to the community as defined in the Application,<sup>60</sup> and the CPE Provider applied the same, correct, standard for analyzing awareness and recognition to the Application and the other referenced applications.

DotMusic's additional arguments concerning sub-criterion 1-A, which are set forth and discussed in detail in Section VI.I.1.a of Attachment 1 and incorporated herein by reference, do not support reconsideration for the reasons provided in Attachment 1.

- (b) The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 1-B: Extension.

DotMusic asserts that the CPE Provider should have awarded two points for sub-criterion

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<sup>59</sup> *Id.*, § 6, Pgs. 10-12.

<sup>60</sup> The Requestors also refer the BGC to "expert" letters DotMusic submitted to the CPE Provider, which purport to explain why the Application meets the requirements for community priority. Request, § 3, Pg. 1; *see also id.*, Ex. 40. However, these letters simply demonstrate the views of those individuals regarding the scoring of the Application. They do not constitute evidence that the CPE Provider failed to adhere to established policy and procedure in scoring the Application.



1-B, Extension.<sup>61</sup> To obtain two points for Extension, the community must be of considerable size and longevity. For a score of 1, the community must *either* be of considerable size *or* have longevity, but not both.<sup>62</sup> The Guidebook notes that Extension “relates to the dimensions of the community,” and that if the community lacks the requisite awareness and recognition, “the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”<sup>63</sup>

The CPE Provider determined that the Application did not satisfy the one- or two-points test for sub-criterion 1-B because, while the community defined in the Application was “of considerable size,” it, again, did not “show evidence of ‘cohesion’ among its members.”<sup>64</sup> The CPE Provider also found that the relevant community as defined in the Application did not demonstrate longevity because the proposed community was “construed to obtain a sought-after generic word as a gTLD.”<sup>65</sup>

DotMusic asserts that the CPE Provider should have concluded that the community defined in the Application met the size and longevity requirements because the community includes “millions of constituents” and certain organizations dedicated to musicians and the recording industry were founded well before 2007.<sup>66</sup> The Guidebook, however, states that an application should receive 0 points on “Extension” if the community defined in the application lacks “the requisite awareness and recognition of the community . . . among the members.”<sup>67</sup> As noted above and in Section VI.I.1.b of Attachment 1 and incorporated by reference here, because the CPE Provider concluded that the community defined in the application lacked awareness and

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<sup>61</sup> DotMusic CPE Process Review Letter, ¶ 50, at Pg. 40-41.

<sup>62</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-10.

<sup>63</sup> *Id.*

<sup>64</sup> CPE Report, Pg. 4.

<sup>65</sup> *Id.*

<sup>66</sup> DotMusic CPE Process Review Letter, ¶ 50, at Pg. 40-41.

<sup>67</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12.

recognition among the identified members, it was required to award zero points for sub-criterion 1-B, Extension. Accordingly, the CPE Provider acted consistent with the Guidebook and the Requestors' argument does not support reconsideration.

(c) The CPE Process Does Not Double-Count and Has Not Substantively Changed Since the Publication of the Guidebook

DotMusic argues that the CPE Provider “appears to double count awareness and recognition of the community amongst its members twice.”<sup>68</sup> The CPE Provider counts awareness and recognition once in sub-criterion 1-A “Delineation,” and once in sub-criterion 1-B, “Extension.”<sup>69</sup> This practice is consistent with the Guidebook, which states that in developing the CPE criteria, the “utmost care has been taken to avoid any ‘double-counting’ – any negative aspect found in assessing an application for one *criterion* should only be counted there and should not affect the assessment for other *criteria*.”<sup>70</sup> Accordingly, as set forth in Section VI.I.1.c of Attachment 1 and incorporated herein by reference, double counting did not occur here.

2. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 2-A-Nexus.

The Application received three points for Criterion 2. Criterion 2 evaluates “the relevance of the string to the specific community that it claims to represent,” and is measured by two sub-criterion: 2-A-Nexus; and 2-B-Uniqueness.<sup>71</sup> Sub-criterion 2-A is worth a maximum of three points and sub-criterion 2-B is worth a maximum of one point, for a total of four points.

To obtain three points for sub-criterion 2-A, the applied-for string must “match the name

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<sup>68</sup> 15 December 2016 letter from Ali to ICANN at Pg. 2-3, available at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>.

<sup>69</sup> CoE Report, at Pg. 49.

<sup>70</sup> Guidebook, Module 4, § 4.2.3, at Pgs. 4-9, 4-10 (emphasis added).

<sup>71</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12, 4-13.

of the community or be a well-known short form or abbreviation of the community.”<sup>72</sup> For a score of two, the applied-for string should closely describe the community or the community members, without overreaching substantially beyond the community.<sup>73</sup> Zero points are awarded if the string “does not fulfill the requirements for a score of 2.”<sup>74</sup>

The Requestors challenge the CPE Provider’s analysis of sub-criterion 2-A-Nexus, for which DotMusic received two of three possible points.<sup>75</sup> As discussed in more detail in Section VI.I.2 of Attachment 1, and incorporated herein by reference, the Requestors have provided no evidence demonstrating that the CPE Provider failed to comply with the applicable CPE procedures when it evaluated sub-criterion 2-A.

The Requestors disagree with the CPE Provider’s determination that there is no “established name” for the community identified in the Application.<sup>76</sup> However, as discussed in Section VI.I.2 of Attachment 1 and incorporated herein by reference, this reflects a substantive disagreement with the determination of the CPE Provider, and is not evidence that the CPE Provider misapplied the second CPE criterion. As such, it is not a basis for reconsideration.

DotMusic also argues that the CPE Provider’s application of sub-criterion 2-A in the CPE Report is inconsistent with its application of the same sub-criterion in the .SPA CPE.<sup>77</sup> For the reasons explained in Section VI.I.2 of Attachment 1 and incorporated herein by reference, DotMusic has not identified any inconsistency in the CPE Provider’s application of sub-criterion 2-A. Further, the Scope 2 Report confirmed that the CPE Provider applied sub-criterion 2-A

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Request 16-5.

<sup>76</sup> Request 16-5, § 6, Pg. 15. *See also* Blomqvist Opinion, ¶¶ 65-68 at Pg. 46-47; Burgess Opinion, ¶¶ 26-29, at Pg. 24-26.

<sup>77</sup> DotMusic CPE Process Review Letter, ¶¶ 56-57, at Pg. 43-44.

consistently in all CPEs, including the DotMusic and the .SPA CPEs.<sup>78</sup> Accordingly, reconsideration is not warranted.

3. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 4-A-Support.

The Application received three points for Criterion 4. Criterion 4 evaluates support for and/or opposition to an application.<sup>79</sup> It is measured by two sub-criterion: sub-criterion 4-A-Support; and sub-criterion 4-B-Opposition.<sup>80</sup> Sub-criterion 4-A and sub-criterion 4-B are each worth a maximum of two points, for a total of four points.<sup>81</sup>

To obtain two points for sub-criterion 4-A-Support, an applicant must be the recognized community institution/member organization or have documented support from the recognized community institution(s)/member organization(s), or have otherwise documented authority to represent the community.<sup>82</sup> “Recognized” community institutions are those institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.<sup>83</sup> Consideration of support is not based merely on the number of comments or expressions of support received.<sup>84</sup>

The Requestors challenge the CPE Provider’s application of sub-criterion 4-A-Support.<sup>85</sup> The CPE Provider determined that DotMusic did not satisfy the two points test for sub-criterion 4-A because it was “not the recognized community institution(s)/ member organization(s), nor did it have documented authority to represent the community.”<sup>86</sup> Additionally, the CPE Provider

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<sup>78</sup> Scope 2 Report, Pg. 36-41 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>).

<sup>79</sup> Guidebook, § 4.2.3; *see also* Request, § 6, Pgs. 14-15.

<sup>80</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-17.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at Pgs. 4-17-4-18.

<sup>84</sup> *Id.*

<sup>85</sup> Request 16-5.

<sup>86</sup> CPE Report, at Pg. 8.

concluded that, although DotMusic had “documented support from many groups with relevance,” none were the “recognized community institution” because the CPE Provider had “not found evidence that such organization exists.”<sup>87</sup>

As discussed in detail in Section VI.I.3 of Attachment 1, which is incorporated herein by reference, ultimately, the Requestors disagree with the CPE Provider’s determination that the institutions supporting the Application, while relevant, were not the “recognized community institutions” under sub-criterion 4-A because none represented the whole of the community as defined by DotMusic. These arguments represent a substantive disagreement with the CPE Provider and do not support reconsideration.

For this and the additional reasons set forth in Section VI.I.3 of Attachment 1, which is incorporated herein by reference, the Requestors’ arguments concerning sub-criterion 4-A do not support reconsideration.

**J. The Board’s Conclusion of the CPE Process Review was Consistent with Applicable Policies and Procedures.**

The Requestors’ criticisms of the conclusion of the CPE Process Review focus on the transparency, methodology, and scope of the CPE Process Review. None support reconsideration. The BAMC notes that it addressed many of the Requestors’ concerns in its Recommendation on Request 18-5,<sup>88</sup> which the Board adopted on 18 July 2018.<sup>89</sup> The rationales set forth by the BAMC, and the Board in its determination on Request 18-5, are incorporated herein by reference.

**K. DotMusic’s Procedural Demands are Outside the Scope of Request 16-5.**

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<sup>87</sup> *Id.*

<sup>88</sup> Recommendation on Request 18-5, <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-14jun18-en.pdf>.

<sup>89</sup> Board action on request 18-5, <https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.f>.

DotMusic's demand that ICANN org disclose all documents related to the CPE Process Review is not required by the 2018 Resolutions or otherwise,<sup>90</sup> and the Board addressed DotMusic's demand for the same documents when it denied DotMusic's reconsideration request challenging ICANN org's response to DIDP Request 20180110-1.<sup>91</sup> Nor is ICANN org obligated to provide DotMusic with a list of specific concerns about Request 16-5 following DotMusic's supplemental submission and to schedule an in person presentation to address them (once the above-described conditions are met).<sup>92</sup> The additional reasoning in Section VI.K of Attachment 1 is incorporated herein by reference.

With respect to DotMusic's extraordinary demand that ICANN org bear DotMusic's costs and expenses for reviewing any documents ICANN produces and preparing supplemental submissions to the BAMC concerning those documents, the BAMC rejects this demand, as discussed in Section VI.K of Attachment 1 and incorporated herein by reference.

## **V. Recommendation.**

The BAMC has considered the merits of Request 16-5 and, based on the foregoing, concludes that ICANN org acted consistent with the Guidebook and did not violate ICANN's Mission, Commitments and Core Values when it accepted the CPE Report, and the Board's response to the Despegar IRP Determination does not warrant reconsideration. Accordingly, for the reasons set forth in Attachment 1 and incorporated herein by reference, the BAMC recommends that the Board deny Request 16-5.

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<sup>90</sup> Transition Process (<https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>).

<sup>91</sup> Board Action on Request 18-1 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.b>).

<sup>92</sup> <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>.

In terms of the timing of this decision, Section 2.16 of Article IV of the Bylaws applicable to Request 16-5 provides that the BAMC shall make a final determination or recommendation with respect to a reconsideration request within thirty days, unless impractical. To satisfy the thirty-day deadline, the BAMC would have to have acted by 26 March 2016. However, Request 16-5 was placed on hold pending completion of the CPE Process Review. The Requestors were then provided an opportunity to supplement their arguments in light of the CPE Process Review results, and to make a telephonic presentation to the BAMC prior to its recommendation. The Requestors rejected both invitations. Accordingly, the first opportunity that the BAMC has to consider Request 16-5 is 25 January 2019.

**ATTACHMENT 1 IN SUPPORT OF RECOMMENDATION  
OF THE BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)  
RECONSIDERATION REQUEST 16-5  
25 JANUARY 2019**

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The Requestors, DotMusic Limited (DotMusic), the International Federation of Musicians, the International Federation of Arts Councils and Culture Agencies, the Worldwide Independent Network, the Merlin Network, the Independent Music Companies Association, the American Association of Independent Music, the Association of Independent Music, the Content Creators Coalition, the Nashville Songwriters Association International, and ReverbNation (collectively, Requestors), seek reconsideration of the Community Priority Evaluation (CPE) report (CPE Report), of DotMusic’s community-based application for the .MUSIC generic top-level domain (gTLD), and ICANN organization’s acceptance of that Report.<sup>1</sup> Specifically, the Requestors claim that the independent provider that conducted the CPE (CPE Provider) violated established CPE procedures in its evaluation of DotMusic’s application, and that the Board should have either conducted an investigation of the CPE process as a whole or revised the CPE Report in response to certain Independent Review Process (IRP) findings.

**I. Brief Summary.**

DotMusic submitted a community-based application for .MUSIC (Application), which was placed in a contention set with seven other .MUSIC applications.<sup>2</sup> DotMusic participated in CPE, but did not prevail.

The Requestors submitted Request 16-5 on 24 February 2016, challenging the CPE Provider’s Report, ICANN org’s acceptance of that Report, and arguing that the Board should

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<sup>1</sup> Request 16-5, <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-request-redacted-24feb16-en.pdf>.

<sup>2</sup> See <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>.



have intervened in or overturned the CPE Report in light of the IRP Panel Declaration in the *Little Birch LLC et al. v. ICANN* and *Despegar Online SRL et al. v. ICANN* (Despegar IRP).<sup>3</sup>

While Request 16-5 was pending, the ICANN Board and Board Governance Committee (BGC) directed ICANN org to undertake a review of certain aspects of the CPE process (CPE Process Review). As discussed in further detail in the Facts section below, the CPE Process Review: (i) evaluated the process by which ICANN org interacted with the CPE Provider; (ii) evaluated whether the CPE criteria were applied consistently throughout and across each CPE report; and (iii) compiled the research relied upon by the CPE Provider for the evaluations which are the subject of pending Reconsideration Requests.<sup>4</sup> The BGC determined that the pending Reconsideration Requests relating to CPEs, including Request 16-5, would be placed on hold until the CPE Process Review was completed.<sup>5</sup>

On 13 December 2017, ICANN org published three reports on the CPE Process Review (CPE Process Review Reports).<sup>6</sup>

On 15 March 2018, the Board passed Resolutions 2018.03.15.08 through 2018.03.15.11 (2018 Resolutions), which accepted the findings in the CPE Process Review Reports; declared the CPE Process Review complete; concluded that there would be no overhaul or change to the CPE process for this current round of the New gTLD Program; and directed the BAMC to move

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<sup>3</sup> Request 16-5.

<sup>4</sup> <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>;  
<https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

<sup>5</sup> <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>. Prior to 22 July 2017, the BGC was tasked with reviewing reconsideration requests. See ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e) (<https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article4>). Since 22 July 2017, the Board Accountability Mechanisms Committee (BAMC) is tasked with initial review of reconsideration requests. See ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(e) (<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>).

<sup>6</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.

forward with consideration of the remaining Reconsideration Requests relating to CPEs that had been placed on hold.<sup>7</sup>

Subsequently, the BAMC invited the Requestors to provide a telephonic presentation to the BAMC in support of Request 16-5 and to submit additional written materials in response to the CPE Process Review Reports as it related to Request 16-5.<sup>8</sup> The Requestors rejected both invitations from the BAMC.<sup>9</sup>

The BAMC carefully evaluated the claims raised in Request 16-5, in the Requestors' 17 September 2016 presentation to the BGC, in the materials that the Requestors submitted to the Board between 14 February 2016 and 5 April 2018, and the findings in the CPE Process Review Reports.<sup>10</sup> Based on its extensive review of all relevant materials, the BAMC finds that the CPE Provider did not violate any established policies or procedure in conducting the CPE. The BAMC further finds that ICANN org did not violate any established policies, Bylaws, and Articles of Incorporation when it accepted the CPE Report. Moreover, the BAMC finds that the Requestors do not identify any misapplication of policy or procedure by the CPE Provider or ICANN org that materially or adversely affected the Requestors. The BAMC also finds that the Requestors have not shown that the Board relied on any false or inaccurate information or disregarded any material information when it responded to the IRP Panel Declaration in the

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<sup>7</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

<sup>8</sup> Attachment 1 to BAMC Recommendation on Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-1-14jun18-en.pdf>).

<sup>9</sup> Attachment 2 to BAMC Recommendation on Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>); 23 March 2018 letter from A. Ali to ICANN Board (<https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>).

<sup>10</sup> Appendix 2 to this Recommendation identifies the materials submitted by the Requestor that were reviewed by the BAMC, and are incorporated herein by reference. The materials that the BAMC considered include, but are not limited to, the documents listed in Appendix 2.

Despegar IRP (Despegar IRP Declaration). Accordingly, the BAMC recommends that the Board deny Request 16-5.

## **II. Facts.<sup>11</sup>**

### **A. The CPE Provider's Evaluation of the Application.**

#### 1. The CPE Report.

DotMusic submitted a community-based application for .MUSIC, which was placed in a contention set with seven other applications for .MUSIC.<sup>12</sup> As a community-based applicant, DotMusic participated in CPE.<sup>13</sup> CPE is a method of resolving string contention,<sup>14</sup> described in section 4.2 of the gTLD Applicant Guidebook (Guidebook). To prevail in CPE, an application must receive at least 14 out of 16 points. The Application received 10 points, and therefore did not prevail. As discussed in further detail below, DotMusic received zero out of four possible points for Criterion 1: Community Establishment, three out of four possible points for Criterion 2: Nexus between Proposed String and Community, four out of four possible points for Criterion 3: Registration Policies, and three out of four possible points for Criterion 4: Community Endorsement.<sup>15</sup>

#### 2. Request 16-5.

The Requestors submitted Request 16-5 on 24 February 2016.<sup>16</sup> The Requestors asserted that: (1) the CPE Provider should have relied on ICANN org's Governmental Advisory

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<sup>11</sup> Appendix 1 to the BAMC's Recommendation is a timeline that includes dates and summaries of some of the events relevant to the BAMC's Recommendation on Request 16-5 and this Attachment 1.

<sup>12</sup> <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>;  
<https://gtldresult.icann.org/applicationstatus/contentionsetdiagram/29>.

<sup>13</sup> One other applicant for .MUSIC, music LLC, applied for Community Priority. See <https://newgtlds.icann.org/en/applicants/cpe>. music LLC did not prevail in CPE. See <https://newgtlds.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>.

<sup>14</sup> "String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings." Guidebook § 1.1.2.10.

<sup>15</sup> CPE Report, at Pg. 1.

<sup>16</sup> Request 16-5, <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-request-redacted-24feb16-en.pdf>.

Committee (GAC) Category 1 and Category 2 Advice to conclude that DotMusic satisfied the CPE criteria; (2) ICANN org should have granted DotMusic community priority because ICANN’s Generic Names Supporting Organization (GNSO) recommended that an application’s assertions of community representation should be “taken on trust”<sup>17</sup>; (3) the CPE Provider had a conflict of interest with respect to the Application; (4) ICANN org revised the CPE Report in violation of established policy and procedure;<sup>18</sup> (5) the CPE Report violates principles of due process;<sup>19</sup> (6) ICANN org denied community priority on applications to force more gTLD string contentions to be resolved via ICANN auction at a higher price than a successful community-based applicant would have paid to resolve string contention;<sup>20</sup> and (7) the CPE Provider erred in its applications of CPE criterion 1: Community Establishment, sub-criterion 2-A-Nexus, and sub-criterion 4-A-Support.

The Requestors sought an opportunity to make a presentation to the BGC regarding Request 16-5. In response, pursuant to Article IV, Section 2.12 of ICANN’s Bylaws, the BGC invited the Requestors to make a presentation at the 17 September 2016 BGC meeting.<sup>21</sup> DotMusic’s counsel, Arif Ali, and two consultants, made a presentation to the BGC on behalf of DotMusic<sup>22</sup> on 17 September 2016 (2016 Presentation).<sup>23</sup> On 19 September 2016 and 6

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<sup>17</sup> *Id.*, § 6, Pg. 3, 6.

<sup>18</sup> Request 16-5, § 6, Pg. 18.

<sup>19</sup> Request 16-5, § 8, at Pg. 16 (marked 15).

<sup>20</sup> 15 December 2016 letter from Ali to ICANN, at Pg. 6.

<sup>21</sup> <https://www.icann.org/resources/board-material/agenda-bgc-2016-09-17-en>.

<sup>22</sup> The BAMC has been careful to distinguish, throughout its Recommendation on Request 16-5 and this Attachment 1, between submissions and arguments made by or on behalf of DotMusic, such as the presentation materials, which include DotMusic’s logo and do not reference the other Requestors, and submissions made by or on behalf of all Requestors, such as Request 16-5. Many of the submissions made in support of Request 16-5 were submitted by DotMusic and do not appear to have been made on behalf of the other Requestors. *See, e.g.*, 15 December 2016 letter from Ali to ICANN BGC (“We are writing on behalf of our client, DotMusic Limited”),

<https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>; DotMusic’s Analysis of .MUSIC Community Priority Evaluation Process & FTI Reports,

<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-cpe-fti-to-icann-board-02feb18-en.pdf>.

<sup>23</sup> *See* <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17sep16-en.pdf>.

December 2016, DotMusic submitted Additional Responses to a question that the BGC raised during the 17 September 2016 presentation.<sup>24</sup>

**B. The CPE Process Review.**

On 17 September 2016, the Board directed ICANN org to undertake a review of the “process by which ICANN [org] interacted with the CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider” as part of the Board’s oversight of the New gTLD Program (Scope 1).<sup>25</sup> The Board’s action was part of the ongoing discussions regarding various aspects of the CPE process, including some issues that were identified in the Final Declaration from the IRP proceeding initiated by Dot Registry, LLC.

The BGC later determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).<sup>26</sup> Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. The BGC determined that the pending Requests relating to the CPE process, including Request 16-5, would be on hold until the CPE Process Review was completed.<sup>27</sup>

FTI Consulting, Inc.’s (FTI) Global Risk and Investigations Practice and Technology Practice were retained to conduct the CPE Process Review. On 13 December 2017, ICANN org published the CPE Process Review Reports issued by FTI in connection with the CPE Process

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<sup>24</sup> See <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-19sep16-en.pdf>; <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-06dec16-en.pdf>.

<sup>25</sup> ICANN Board Rationale for Resolution 2016.09.17.01 (<https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>).

<sup>26</sup> <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

<sup>27</sup> <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

Review.<sup>28</sup>

With respect to Scope 1, FTI concluded:

there is no evidence that ICANN org[] had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process.<sup>29</sup>

FTI also concluded that “ICANN org[] had no role in the evaluation process and no role in writing the initial draft CPE report,” and reported that the “CPE Provider stated that it never changed the scoring or the results [of a CPE report] based on ICANN org[]’s comments.”<sup>30</sup>

For Scope 2, “FTI found no evidence that the CPE Provider’s evaluation process or reports deviated in any way from the applicable guidelines; nor did FTI observe any instances where the CPE Provider applied the CPE criteria in an inconsistent manner.”<sup>31</sup>

For Scope 3, “FTI identified and compiled all reference material cited in each final report, as well as any additional reference material cited in the CPE Provider’s working papers to the extent that such material was not otherwise cited in the final CPE report.”<sup>32</sup> In one case<sup>33</sup> (for which two CPE reports were completed), FTI did not find citations to each reference to research in the working papers underlying the Second CPE Report. FTI concluded that it is possible that the research being referenced in the second CPE report was research cited in the working papers underlying the first CPE Report.<sup>34</sup> In all other cases, including in this case, FTI

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<sup>28</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.

<sup>29</sup> Scope 1 Report, at Pg. 2 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf>).

<sup>30</sup> *Id.*, at Pg. 9, 15.

<sup>31</sup> Scope 2 Report, at Pg. 2 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>).

<sup>32</sup> Scope 3 Report, at Pg. 3-4 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf>).

<sup>33</sup> That case did not involve the Application. See *id.* at Pg. 36.

<sup>34</sup> *Id.* at Pg. 34.

found citations to, or the materials that corresponded with, all research referenced in the CPE reports, in the reports themselves or in the working papers underlying the reports.

On 15 March 2018, the Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with consideration of the remaining Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review (the 2018 Resolutions).<sup>35</sup> In adopting to the 2018 Resolutions, the Board acknowledged and considered submissions from the Requestors and community stakeholders concerning the CPE Process Review Reports (discussed below).<sup>36</sup> In its rationale for the 2018 Resolutions, the Board acknowledged the Requestors' submissions.<sup>37</sup> The Board noted that the requestors with pending reconsideration requests relating to CPE

each will have an opportunity to submit supplemental materials and make a presentation to the BAMC to address how the CPE Process Review is relevant to their pending Reconsideration Requests. Any specific claims they might have related to the FTI Reports with respect to their particular applications can be addressed then, and ultimately will be considered in connection with the determination on their own Reconsideration Requests.<sup>38</sup>

Accordingly, the Board instructed the BAMC to consider the remaining Requests in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC (Transition Process),<sup>39</sup> and with a Roadmap for the review of the pending

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<sup>35</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

<sup>36</sup> See <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a.rationale>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Available at <https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>.

Reconsideration Requests (Roadmap).<sup>40</sup> As part of the Transition Process, the BAMC invited the Requestor to “submit additional information relating to Request 16-5, provided the submission is limited to any new information/argument based upon the CPE Process Review Reports” by 2 April 2018. The BAMC also invited the Requestor to “make a telephonic oral presentation to the BAMC in support of” Request 16-5. The BAMC requested “that any such presentation be limited to providing additional information that is relevant to the evaluation of Request 16-5 and that is not already covered by the written materials.”<sup>41</sup>

DotMusic “reject[ed] BAMC’s invitation to make a telephonic presentation limited to 30 minutes” and “reject[ed] ICANN’s attempt to impose an artificial two weeks deadline” for supplemental briefing.<sup>42</sup> Instead, DotMusic demanded that the BAMC first disclose the documents requested in DIDP Request 20180110-1 concerning the CPE Process Review, and allow DotMusic to submit additional materials in support of Request 16-5 after reviewing those documents.<sup>43</sup> Additionally, DotMusic demanded that the BAMC undertake a substantive review of the CPE Report, taking into consideration all materials that have been submitted in support of the Application.<sup>44</sup>

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<sup>40</sup> 2018 Resolutions. *See also* Roadmap, available at <https://www.icann.org/en/system/files/files/roadmap-reconsideration-requests-cpe-15feb18-en.pdf>.

<sup>41</sup> *See* Attachments 1 and 2 to BAMC Recommendation on Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-1-14jun18-en.pdf>; <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>).

<sup>42</sup> Attachment 2 to BAMC Recommendation on Request 18-4 (<https://www.icann.org/en/system/files/files/reconsideration-18-4-dotgay-bamc-recommendation-attachment-2-14jun18-en.pdf>).

<sup>43</sup> ICANN org responded to DIDP Request 20180115-1 on 14 February 2018. (<https://www.icann.org/en/system/files/files/didp-20180115-1-ali-response-redacted-14feb18-en.pdf>). The Requestor challenged ICANN org’s response to the DIDP Request in Reconsideration Request 18-2 (<https://www.icann.org/en/system/files/files/reconsideration-18-2-dotgay-request-redacted-15mar18-en.pdf>). The Board denied Reconsideration Request 18-2 on 18 July 2018 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.c>).

<sup>44</sup> 23 March 2018 letter from A. Ali to ICANN Board (<https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>); 5 April 2018 email from R. Wong to ICANN organization (<https://www.icann.org/en/system/files/files/reconsideration-18-4-dotgay-bamc-recommendation-attachment-2-14jun18-en.pdf>).



## **B. DotMusic’s Response to the CPE Process Review.**

On 2 February 2018, DotMusic submitted a 66-page letter to the Board and the BAMC, challenging the results of the CPE Process Review Reports.<sup>45</sup> DotMusic argued that FTI did not “substantive[ly] engage[] with” DotMusic’s concerns about the CPE Report, and that the CPE Process Review lacked transparency or independence, and was not sufficiently thorough.<sup>46</sup>

On 14 April 2018, DotMusic submitted Request 18-5, challenging the 2018 Resolutions.<sup>47</sup> The Board denied Request 18-5 (consistent with the BAMC’s recommendation) on 18 July 2018.<sup>48</sup>

## **III. Relief Requested.**

The Requestors ask that the CPE Report be overturned by ICANN org, by awarding DotMusic an additional six (6) points (or a passing grade).<sup>49</sup>

## **IV. Issues Presented.**

The issues are as follows:

1. Whether the Despegar IRP Declaration requires the Board to reconsider the CPE Report;
2. Whether the Board’s acceptance of GAC Advice required the CPE Provider to grant the Application community priority;
3. Whether the CPE Provider had a conflict of interest with respect to the Application;

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<sup>45</sup> See 2 February 2018 email from C. Roussos to ICANN Board attaching “Analysis of .MUSIC Community Priority Evaluation Process & FTI Reports” (DotMusic CPE Process Review Letter) (<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-cpe-fti-to-icann-board-02feb18-en.pdf>).

<sup>46</sup> <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15jan18-en.pdf>; <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-20jan18-en.pdf>.

<sup>47</sup> Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-request-redacted-14apr18-en.pdf>).

<sup>48</sup> <https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.f>.

<sup>49</sup> Request 16-5, § 9, Pg. 21 (emphasis in original).

4. Whether ICANN org made any revisions to the CPE Report, and if so, whether those revisions adhered to established policies or procedures;
5. Whether the CPE Provider adhered to applicable policies and procedures in its application of criterion 1: Community Establishment;
6. Whether the CPE Provider adhered to applicable policies and procedures in its application of sub-criterion 2-A-Nexus; and
7. Whether the CPE Provider adhered to applicable policies and procedures in its application of sub-criterion 4-A-Support.

**V. The Relevant Standards for Reconsideration Requests and CPE.**

**A. Reconsideration Requests.**

Article IV, Section 2.1 and 2.2 of ICANN’s Bylaws<sup>50</sup> provide, in relevant part, that any entity may submit a request “for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) One or more Staff actions or inactions that contradict established ICANN policy(ies);
- (b) One or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on false or inaccurate material information.<sup>51</sup>

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<sup>50</sup> The BAMC has considered Request 16-5 under the 11 February 2016 version of the Bylaws (the version in effect when the Requestor submitted Request 16-5). Although the Bylaws have since changed (*see* the Bylaws archive, (<https://www.icann.org/resources/pages/governance/bylaws-archive-en>) and 22 July 2017 Bylaws (<https://www.icann.org/resources/pages/governance/bylaws-en>)), the operative version of the Bylaws is the one in effect when Request 16-5 was submitted.

<sup>51</sup> ICANN Bylaws, 11 February 2016, Art. IV, §§ 2.1, 2.2.

Where, as here, the reconsideration request challenges both Board and staff action or inaction, the operative version of the Bylaws directs the BAMC<sup>52</sup> to review the request and provide a recommendation to the Board.<sup>53</sup> Denial of a request for reconsideration of ICANN org action or inaction is appropriate if the BAMC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.<sup>54</sup>

## **B. The CPE Criteria and Procedures.**

CPE is a contention resolution mechanism available to applicants that self-designated their applications as community applications.<sup>55</sup> The standards and CPE process are defined in Module 4, Section 4.2.3 of the Guidebook. Community-based applications that elect to participate in CPE are evaluated by the following criteria: Criterion 1: Community Establishment; Criterion 2: Nexus Between the Proposed String and Community; Criterion 3: Registration Policies; and Criterion 3: Community Endorsement.<sup>56</sup> To prevail in CPE, an application must receive at least 14 out of 16 points on the scoring of the foregoing four criteria, each of which is worth a maximum of four points. An application that prevails in CPE “eliminates all directly contending standard applications, regardless of how well qualified the latter may be.”<sup>57</sup>

CPE will occur only if a community-based applicant elects to participate in CPE and after all applications in the contention set have completed all previous stages of the gTLD evaluation

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<sup>52</sup> As noted above, *supra* n.5, the BAMC is currently tasked with reviewing and making recommendations to the Board on reconsideration requests. See ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(e), available at <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>.

<sup>53</sup> See ICANN Bylaws, 11 February 2016, Art. IV, §§ 2.3, 2.10, 2.15.

<sup>54</sup> *Id.*

<sup>55</sup> See Guidebook, Module 4, § 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>). See also <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>56</sup> *Id.* at Module 4, § 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

<sup>57</sup> *Id.* at Module 4, § 4.2.3, Pg. 4-9.

process.<sup>58</sup> CPE is performed by an independent panel composed of two evaluators who are appointed by the CPE Provider.<sup>59</sup> The CPE Provider’s role is to determine whether the community-based application fulfills the four community priority criteria set forth in Module 4, Section 4.2.3 of the Guidebook.<sup>60</sup>

The CPE process does not determine the existence, adequacy, or validity of a community. It merely evaluates whether a community-based application satisfies the CPE criteria for community priority. As the Guidebook notes, “a finding by the [CPE Provider] that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.”<sup>61</sup>

In addition to the Guidebook, the CPE Provider’s supplementary guidelines (CPE Guidelines) provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.<sup>62</sup> The CPE Guidelines accompany the Guidebook and do not alter the CPE criteria established by the Guidebook.<sup>63</sup> Rather, the CPE Guidelines were intended to increase transparency, fairness, and predictability around the assessment process by explaining the methodology that the CPE Provider undertook to evaluate each criterion.<sup>64</sup> The CPE Provider also published the CPE Panel Process Document explaining that the CPE Provider was selected to implement the Guidebook’s CPE process.<sup>65</sup>

## **VI. Analysis and Rationale.**

### **A. Request 16-5 Does Not Comply With The Applicable Bylaws.**

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<sup>58</sup> Guidebook, Module 4, § 4.2.

<sup>59</sup> *Id.* Module 4, § 4.2.2.

<sup>60</sup> *Id.* at Modules 4, §§ 4.2.2 and 4.2.3. at Pgs. 4-8 and 4-9, available at <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>.

<sup>61</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-9.

<sup>62</sup> See CPE Guidelines, available at <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>.

<sup>63</sup> *Id.* at Pg. 2.

<sup>64</sup> See *id.*

<sup>65</sup> See CPE Panel Process Document (<http://newgtlds.icann.org/en/applicant/cpe/panel-process-07aug14-en.pdf>).

As a preliminary matter, the BAMC notes that Requestors have not complied with the Bylaws' length and format requirements for Reconsideration Requests. The relevant Bylaws direct that "Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request."<sup>66</sup> Request 16-5 includes 25 pages of argument in eleven-point font, with block quotes and certain arguments in ten-point font, contrary to the 12-point font requirement.<sup>67</sup> Despite this procedural violation, the BAMC has considered the merits of Request 16-5 and all other relevant materials and finds, for the reasons discussed below, that reconsideration is not warranted.

**B. The Despegar IRP Declaration Does Not Support Reconsideration.**

The Requestors claim that reconsideration is appropriate because the CPE process is purportedly fundamentally flawed. In support, the Requestors rely on the Despegar IRP Declaration,<sup>68</sup> which the Requestors argue points out issues and concerns that the Panel had with the CPE process. The Requestors contend that the concerns expressed by the Despegar IRP Panel demonstrate that the CPE Provider and ICANN org violated established policies and procedures relating to the evaluation of the Application.<sup>69</sup> The Requestors seem to assert that the Despegar IRP Declaration requires the Board to either conduct a review of the CPE Process as a whole—which the Board did in the CPE Process Review—or to reject the CPE Report here based on the purported flaws<sup>70</sup>—but as explained below, nothing in the Despegar IRP Declaration or ICANN org's acceptance of it mandates that result.

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<sup>66</sup> ICANN Bylaws, 11 February 2016, Art. IV, § 4.2.7.

<sup>67</sup> See Request 16-5.

<sup>68</sup> Request 16-5, § 6, Pg. 19; Despegar IRP Declaration ¶¶ 66-67 (<https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf>).

<sup>69</sup> Request 16-5, § 6, Pg. 19.

<sup>70</sup> Request 16-5, § 6, Pg. 19.

The claimants in the Despegar IRP challenged two BGC<sup>71</sup> determinations denying reconsideration requests relating to the CPE reports for .ECO and .HOTEL. The Despegar Panel, however, found that the BGC had acted in accordance with ICANN’s Articles of Incorporation (Articles) and Bylaws in denying the reconsideration requests at issue in that IRP, and confirmed that the BGC’s review of CPE reports in the reconsideration process is “a procedural review of the [reports], not a substantive review.”<sup>72</sup> In addition, recognizing that the current round of the New gTLD Program was near its end “and there is little or nothing that ICANN can do now,”<sup>73</sup> the Despegar Panel recommended that, in the future, a system be put in place to ensure that CPE evaluations are conducted “on a consistent and predictable basis by different individual evaluators” and that ICANN org’s core values “flow through . . . to entities such as the [CPE Provider].”<sup>74</sup>

On 10 March 2016, the Board accepted the Despegar IRP Declaration (2016 Resolution).<sup>75</sup> The Board “note[d] the [IRP] Panel’s suggestions” and directed ICANN org to “ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider evaluations.”<sup>76</sup> The policy development work for subsequent rounds of the New gTLD Program and other New gTLD Program reviews will “enable ICANN to capture multiple stakeholder experiences in the launch and operation of the Program and apply those lessons

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<sup>71</sup> As noted above, *see supra* n.5, prior to 22 July 2017, the BGC was tasked with reviewing reconsideration requests. See ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e) (<https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article4>).

<sup>72</sup> Despegar IRP Declaration ¶¶ 66-67.

<sup>73</sup> *Id.* ¶ 147

<sup>74</sup> *Id.* ¶¶ 147, 150 (emphasis added).

<sup>75</sup> Board Resolutions 2016.03.10.10-11 (<https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>).

<sup>76</sup> *Id.*

learned as the Program moves forward.”<sup>77</sup> Separately, the CPE Process Review provided additional careful review of the CPE process, with special consideration of the CPE Provider’s evaluations of community applications and ICANN org’s relationship with the CPE Provider.<sup>78</sup>

The issues that have been raised regarding the CPE process in the current new gTLD round are being considered in advance of the next round of new gTLD applications (through the New gTLD Program Reviews). However, nothing about the Despegar IRP Declaration or the Board’s acceptance of it mandates that the CPE process be modified for the Application,<sup>79</sup> or that the BAMC change its standard of review for reconsideration requests challenging CPE reports. Accordingly, nothing about the Despegar IRP Declaration or the 2016 Resolution requires the BAMC to take any action with respect to the CPE Report beyond determining whether ICANN org and the CPE Provider followed established policy and procedure with respect to that report. As discussed further below, the Requestors identify no violations of established policy or procedure with respect to the CPE Report.

Moreover, to the extent the Requestors are arguing that the Despegar IRP Declaration mandates that the Board undertake a review of the CPE Process as a whole, as described above, the Board *did* undertake such a review: the CPE Process Review. DotMusic challenged the outcome of the CPE Process Review in Request 18-5,<sup>80</sup> which the Board denied.<sup>81</sup> The Requestors have not identified any material information that the Board failed to consider, or any false or misleading information on which the Board relied, in declining to overturn the CPE Report in light of the Despegar IRP Declaration or otherwise responding to it.

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<sup>77</sup> <https://newgtlds.icann.org/en/reviews>.

<sup>78</sup> See <https://newgtlds.icann.org/en/applicants/cpe#process-review>.

<sup>79</sup> Request 16-5, § 8, Pg. 17, 18.

<sup>80</sup> Request 18-5, <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-request-redacted-14apr18-en.pdf>.

<sup>81</sup> Board Action on Request 18-5, <https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.f>.

**C. The Board’s Acceptance of the GAC’s Category 1 and Category 2 Advice Has No Bearing on DotMusic’s Claim for Community Priority.**

The Requestors assert that ICANN org should have given “preferential treatment” to the Application in response to the GAC’s Category 1 and 2 Advice.<sup>82</sup>

On 11 April 2013, the GAC provided its Category 1 and Category 2 Advice regarding certain proposed new gTLD strings. The GAC’s Category 1 Advice suggested that certain types of strings should be subject to additional safeguards. These types of strings included: (a) strings that involve regulated sectors; (b) strings that raise consumer protection concerns; and (c) other sensitive strings. .MUSIC was one of the new gTLDs subject to the GAC’s Category 1 Advice as a string that raises consumer protection concerns – namely, intellectual property concerns.<sup>83</sup> The GAC’s Category 2 Advice suggested, among other things, that strings representing generic terms (Generic Term Strings) should not be operated as exclusive access registries unless doing so would “serve a public interest goal.”<sup>84</sup> .MUSIC also was one of the Generic Term Strings subject to the GAC’s Category 2 Advice.

On 5 February 2014, the Board, via the New gTLD Program Committee (NGPC) accepted the GAC’s Category 1 Advice, requiring additional safeguards for certain strings (including .MUSIC) that raised intellectual property concerns.<sup>85</sup> On 25 June 2013, the NGPC accepted the GAC’s Category 2 Advice, including the advice regarding Generic Term Strings, and directed ICANN org to defer contracting with applicants for Generic Term Strings “pending a dialogue with the GAC” regarding an appropriate definition of “public interest goal.”<sup>86</sup> On 2

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<sup>82</sup> Request 16-5, § 8, Pg. 5.

<sup>83</sup> See Beijing Communiqué, Annex I, Pg. 9 <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>; see also <https://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>.

<sup>84</sup> See *id.*, Pg. 11.

<sup>85</sup> See <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>.

<sup>86</sup> See <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm>; see also ICANN NGPC Paper No. 2013-06-25-2b: GAC Advice in Beijing Communiqué regarding Safeguard Advice Applicable to



July 2013, the NGPC approved revisions to the New gTLD Registry Agreement, including a provision prohibiting registry operators from limiting registrations in the Generic Term Strings exclusively to “a single person or entity and/or that person’s or entity’s ‘Affiliates.’”<sup>87</sup>

Nothing in the NGPC’s acceptance of and response to the GAC’s Category 1 and 2 Advice required ICANN org to give “preferential treatment” to community applications for .MUSIC. The Category 1 and 2 Advice did not even discuss community versus standard applications. Moreover, contrary to what the Requestors assert, .MUSIC was subject to Category 1 Advice because it raised intellectual property concerns, not because it involved a regulated sector.<sup>88</sup> As such, nothing about the GAC’s Category 1 Advice implied that .MUSIC involved a community with “cohesion.”<sup>89</sup>

Regarding the Category 2 Advice, the GAC stated that the Generic Term Strings, such as .MUSIC, represented generic terms for which exclusive registry access was not appropriate. The GAC’s advice and ICANN org’s acceptance of the Category 2 Advice has no bearing or relationship to community priority.

As provided in the Guidebook and in accordance with established policy and procedure, community priority is established if and only if the community-based application prevails in CPE. Nothing about the GAC’s Category 1 or Category 2 Advice altered this requirement. The Requestors’ argument is not a basis for reconsideration.

**D. Nothing in the GNSO’s Recommendations Required that Claims of Community Priority be “Taken on Trust.”**

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Category 2 Strings, Briefing Materials 1, Pgs. 25-31 (<http://www.icann.org/en/groups/board/documents/briefing-materials-1-25jun13-en.pdf>).

<sup>87</sup> <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en-htm#1.d>; *see also* <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-item-1d-02jul13-en.pdf>, Annex I, New gTLD Agreement.)

<sup>88</sup> Request 16-5, § 8, Pg. 5.

<sup>89</sup> *Id.*; *see also* Blomqvist Opinion, ¶ 52, at pg. 41.

The Requestors claim that CPE should not have been required at all because, according to the Requestors, ICANN org’s GNSO recommended that an application’s assertions of community representation should be “taken on trust.”<sup>90</sup> The Requestors misread the language of the GNSO’s recommendations, which in fact clearly required CPE. Specifically, the GNSO recommended:

Where an applicant lays any claim that the TLD is intended to support a particular community such as a *sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:*

*(i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and*

*(ii) a formal objection process is initiated.*<sup>91</sup>

In accordance with this recommendation, the Guidebook provides that “[e]valuation of an applicant’s designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation.”<sup>92</sup> An applicant for a community-based application must elect to undergo CPE; such applicants choose to do so because only via CPE can they gain priority over other competing applications for the same string.<sup>93</sup> Because the Requestors have not demonstrated that ICANN org violated any established policy or procedure in declining to take DotMusic’s claim of community priority “on trust,” the Requestors’ argument does not support reconsideration.

**E. The Requestors Have Not Demonstrated Any Conflict of Interest on the Part of the CPE Provider.**

The Requestors contend that the CPE Provider had a conflict of interest with respect to

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<sup>90</sup> *Id.*, § 6, Pg. 3, 6.

<sup>91</sup> GNSO Final Report on the Introduction on New Generic Top Level Domains, Recommendation IG H (emphasis added) (<http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07 htm>).

<sup>92</sup> Guidebook Module § 1.2.3.2, at Pg. 1-27.

<sup>93</sup> *Id.*

the Application because Eric Schmidt, the executive Chairman of Google from 2001 to 2017, was a member of the Board of Directors of the Economist Group, the CPE Provider's parent company, from November 2013 through December 2015,<sup>94</sup> and Vint Cerf, Vice President of Google since 2003, "chaired an ICANN strategy Panel in 2013 (when applications were being evaluated)," and Google also submitted an application for .MUSIC.<sup>95</sup> Section 2.4.3.1 of the Guidebook sets forth the "Conflict of Interest Guidelines for Panelists," which detail the procedures that evaluation panelists must follow to ensure that no conflicts of interest exist.<sup>96</sup> An "evaluation panelist" is defined as "any individual associated with the review of an application."<sup>97</sup> The CPE Guidelines specifies that "[a]ll [CPE Provider] evaluators must ensure that no conflicts of interest exist."<sup>98</sup> Similarly, the CPE Panel Process Document published by the CPE Provider confirms that "[a]ll [CPE Provider] evaluators, including the core team, have ensured that no conflicts of interest exist."<sup>99</sup> The core team "comprises a Project Manager, who oversees the Community Priority Evaluation project, a Project Coordinator, who is in charge of the day-to-day management of the project and provides guidance to the independent evaluators, and other senior staff members, including The Economist Intelligence Unit's Executive Editor and Global Director of Public Policy."<sup>100</sup>

In other words, pursuant to the Guidebook, the CPE Panel Process Document and the CPE Guidelines, the CPE Provider was required to confirm that none of the evaluation panelists

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<sup>94</sup> Request 16-5, § 6, Pg. 20. *See also* DotMusic CPE Process Review Letter, at ¶¶ 26(c), 67b, at Pg. 28, 47 (also arguing that Sir Robin Jacob, a Panelist selected by the ICC in the Community Objection proceedings for .MUSIC and .BAND, represented Samsung, "one of Google's multi-billion dollar partners," in a legal case (for additional detail, see Reconsideration Request 16-7, § 8, at Pg. 18 (marked 17) n.68, <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-request-redacted-30may16-en.pdf>).

<sup>95</sup> DotMusic CPE Process Review Letter, at ¶ 26(c), at Pg. 28.

<sup>96</sup> Guidebook § 2.4.3.1, at Pg. 2-33.

<sup>97</sup> *Id.*

<sup>98</sup> CPE Guidelines at Pg. 22, <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>99</sup> CPE Panel Process Document at Pg. 2, <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>100</sup> *Id.*

or core team members had any conflicts with respect to the community-based applications.<sup>101</sup> The Requestors present no evidence that the CPE Provider failed to do so. The Requestors do not allege that Eric Schmidt—a high level executive—was an evaluation panelist or a core team member (he was not), or that he had any influence over, or knowledge of, the CPE Report (or even had any involvement whatsoever with the CPE Provider, which is a single division within the Economist Group). In fact, the CPE Report was issued two months *after* Mr. Schmidt ceased to be a board member.<sup>102</sup> Likewise, DotMusic has not explained how Vint Cerf’s position on an ICANN Strategy Panel concerning the Internet Governance Ecosystem<sup>103</sup> in 2013, *three years before* the CPE Report was issued, had any effect on the Application.

Furthermore, the sole basis for the Requestors’ bias argument is their contention (based on a sample set of 22 CPE reports) that community applications that were in contention with Google were more likely to fail CPE.<sup>104</sup> That many applications did not prevail in CPE fails to show any procedural violation, however. Any application that prevails in CPE is awarded priority over all other applications therefore, the CPE process intentionally sets a high bar for an application to prevail.<sup>105</sup> As such, that numerous applications did not prevail in CPE does not in any way demonstrate that the CPE Provider failed to follow established procedure and policy in ensuring that the members of the CPE Provider had no conflicts with respect to the

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<sup>101</sup> Guidebook § 2.4.3.1, at Pg. 2-33; CPE Panel Process Document at Pg. 2, <https://newgtlds.icann.org/en/applicants/cpe>; CPE Guidelines at Pg. 22, <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>102</sup> Mr. Schmidt stepped down in about December 2015 (<https://www.theguardian.com/media/2015/dec/10/economist-appoints-tessa-jowell-to-board-as-googles-eric-schmidt-departs>). The CPE Report was issued on 10 February 2016. (<https://newgtlds.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>.)

<sup>103</sup> See Strategy Panel: ICANN’s Role in the Internet Governance Ecosystem (<https://www.icann.org/en/system/files/files/report-23feb14-en.pdf>).

<sup>104</sup> Request 16-5, § 6, Pg. 20.

<sup>105</sup> See Guidebook Module 4, § 4.2.3, at Pg. 4-9 (“a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.”).

Application.<sup>106</sup> What is more, the CoE Report on which DotMusic relies for these arguments concluded that “there is no evidence that Google in any way influenced the decisions taken on CPEs.”<sup>107</sup> The Requestors’ argument does not support reconsideration.

**F. ICANN Org Is Not Involved in Scoring CPE Criteria.**

The Requestors argue that certain communications between ICANN org and the CPE Provider that were disclosed as part of the *Dot Registry v. ICANN* IRP (CPE Communications) demonstrate that ICANN org “materially” revised the CPE Report in violation of established policy and procedure.<sup>108</sup> Contrary to the Requestors’ assertions, nothing in the CPE Communications supports the Requestors’ view that ICANN org revised the CPE Provider’s *scoring* on the Application. The CPE Process Review’s Scope 1 Report confirms that “there is no evidence that ICANN org had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process,” including with respect to the Application.<sup>109</sup> When ICANN org provided input to the CPE Provider, that input did *not* involve challenging the CPE Provider’s conclusions (including scoring determinations), but rather ensuring that the CPE Reports were clear and “that the CPE Provider had engaged in a robust discussion on each CPE criterion in the CPE report.”<sup>110</sup> FTI observed that “ICANN organization did not suggest that the CPE Provider make changes in the final scoring or adjust the rational set forth in the CPE report[s].”<sup>111</sup>

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<sup>106</sup> The Requestors refer to an exchange with Fadi Chehadé at the public forum. *See* <https://singapore52.icann.org/en/schedule/thu-public-forum/transcript-public-forum-12feb15-en.pdf>, Pgs. 61-62. During that exchange, Mr. Chehadé thanked DotMusic for its comments and asked DotMusic to send ICANN a letter explaining DotMusic’s concerns. DotMusic never did. Nothing about this exchange comprises an “acknowledgement” of any conflict of interest, as the Requestors imply. *See* Request 16-5, § 6, Pg. 20.

<sup>107</sup> CoE Report, at Pg. 47, *cited in* DotMusic CPE Process Review Letter, ¶ 26(c), at Pg. 28.

<sup>108</sup> Request 16-5, § 6, Pg. 18.

<sup>109</sup> FTI Scope 1 Report at Pg. 3 <https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf>.

<sup>110</sup> *Id.* at Pg. 12.

<sup>111</sup> *Id.*

The Requestors identify no established policy or procedure (because there is none) preventing ICANN org from communicating with the CPE Provider regarding the language in CPE reports. Nor does anything in the CPE Communications demonstrate, as the Requestors argue, that the CPE Provider lacked the necessary expertise to conduct CPEs. As such, the Requestors have not stated a basis for reconsideration in this regard.

**G. The CPE Report did not Implicate Due Process Rights.**

The Requestors assert that the CPE Provider and ICANN org failed to “follow due process” in the DotMusic CPE Report.<sup>112</sup> This argument does not warrant reconsideration. For the reasons discussed below, the Requestors have not demonstrated any failure by the CPE Provider to follow the established policy and procedures for CPE as set forth in the Guidebook.

The BAMC notes that the Bylaws in effect when the Requestors filed Request 16-5 do not reference due process.<sup>113</sup>

At bottom, the Requestors are suggesting that there should have been a formal appeal process for decisions by ICANN org’s third party service providers, including the CPE Provider, Legal Rights Objection Panel, and String Confusion Panels. The methods for challenging determinations in the course of the gTLD contention resolution process are set forth in the Guidebook, which was developed after more than 18 months of extensive discussions with a wide variety of stakeholder groups, including governments, individuals, civil society, business and intellectual property constituencies, and the technology community, culminating in the Board’s June 2008 decision to adopt the community-developed New gTLD policy.<sup>114</sup> Numerous

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<sup>112</sup> Request 16-5, § 8, at Pg. 16 (marked 15).

<sup>113</sup> See ICANN Bylaws, 11 February 2016.

<sup>114</sup> Guidebook, Preamble.

drafts of the Guidebook itself were released for public comment, and revised in light of meaningful community input.<sup>115</sup> The time for challenging the Guidebook has long passed.<sup>116</sup>

Moreover, the Guidebook provides a path for challenging the results of the CPE process: Module 6 of the Guidebook states that applicants, including DotMusic, “may utilize any accountability mechanism set forth in ICANN’s Bylaws for purposes of challenging any final decision made by ICANN with respect to the application.”<sup>117</sup> The Requestors have exercised this right by invoking the Reconsideration process repeatedly,<sup>118</sup> including with Request 16-5.

Because the CPE Provider’s application of the CPE criteria to the Application was consistent with the Guidebook, ICANN org’s acceptance of the CPE Report was also consistent with applicable policies and procedures, and did not implicate any “due process” violation. Nor does the fact that there was no option to appeal the substance of evaluation results implicate any due process violation.

#### **H. DotMusic’s Claim Concerning Revenues from Auctions Does Not Support Reconsideration.**

Relying on the CoE Report, DotMusic argues that there is a “fundamental conflict between ICANN’s stated policy on community priority and the potential revenues that can be earned through the auction process.”<sup>119</sup> DotMusic has not provided any evidence (because none

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<sup>115</sup> *Id.*

<sup>116</sup> See <https://newgtlds.icann.org/en/applicants/agb>, indicating current version of guidebook is dated 4 June 2012. Under the Guidelines in effect in June 2012, Reconsideration Requests were due within thirty days after publication of Board actions or within thirty days after a Requestor became aware of or should reasonably have become aware of challenged Staff action. ICANN Bylaws, 16 March 2012, Art. IV, § 2.5 (<https://www.icann.org/resources/pages/bylaws-2012-12-21-en#IV>).

<sup>117</sup> Guidebook, Module 6, § 6, at Pg. 6-4.

<sup>118</sup> See Request 14-28, <https://www.icann.org/en/system/files/files/request-dotmusic-07jun14-en.pdf>; Request 16-7, <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-request-redacted-30may16-en.pdf>; Request 17-2, <https://www.icann.org/en/system/files/files/reconsideration-17-2-dotmusic-request-redacted-18jun17-en.pdf>; Request 17-4, <https://www.icann.org/en/system/files/files/reconsideration-17-4-dotmusic-dotgay-request-redacted-25jul17-en.pdf>; Request 18-1, <https://www.icann.org/en/system/files/files/reconsideration-18-1-dotmusic-request-redacted-10mar18-en.pdf>; Request 18-5, <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-request-redacted-14apr18-en.pdf>.

<sup>119</sup> 15 December 2016 letter from Ali to ICANN, at Pg. 6.

exists) to support the accusation that ICANN org’s acceptance of the CPE Report was motivated by some sort of financial incentive. Further, DotMusic has not shown that any applicable ICANN policy or procedure was violated. This argument does not support reconsideration.

**I. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of the CPE Criteria.**

The Requestors object to the CPE Provider’s decision to award only 10 of the possible 16 points to the Application. However, the Requestors do not demonstrate that the CPE Provider violated any established policy or procedure in scoring the Application.

1. The CPE Provider’s Application of Criterion 1 was Consistent with Applicable Policies and Procedures.

The Application received zero points for Criterion 1. Criterion 1 evaluates “the community as explicitly identified and defined according to statements in the application.”<sup>120</sup> It is measured by two sub-criterion: Sub-criterion 1-A-Delineation; and Sub-criterion 1-B-Extension.<sup>121</sup> Sub-criterion 1-A-Delineation; and Sub-criterion 1-B-Extension are each worth a maximum of two points, for a total of four points. The Requestors challenge the CPE Provider’s analysis of both sub-criteria.

a. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 1-A-Delineation.

The Application received zero out of two points for sub-criterion 1-A. To obtain two points for Delineation, the community as defined in the Application must be clearly delineated, organized, and pre-existing.<sup>122</sup> For a score of 1, the community must still be clearly delineated and pre-existing, but it is not organized.<sup>123</sup> A clear and straight-forward membership definition

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<sup>120</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-10, 4-11.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at Pg. 4-10.

<sup>123</sup> *Id.*



will score higher than an unclear, dispersed, or unbound definition.<sup>124</sup> The Guidebook explains that “community” implies “more of cohesion than a mere commonality of interest,” and instructs that

there should be: (a) an awareness and recognition of a community of its members; (b) some understanding of the community’s existence prior to September 2007 [pre-existence] . . .; and (c) extended tenure or longevity—no transience—into the future.<sup>125</sup>

In order for a community to satisfy the clearly delineated test, two conditions must be fulfilled: (i) there must be a clear, straightforward membership definition; and (ii) there must be awareness and recognition of a community (as defined by the applicant) among its members.<sup>126</sup>

The CPE Provider found that the Application satisfied the first requirement by setting forth a clear and straightforward membership definition. The CPE Provider determined:

The applicant thereby bounds community membership by way of well-defined categories. Therefore the Panel has determined that the applicant provides a clear and straightforward membership definition. The various categories relating to the creation, production, and distribution of music as well as the several other related entities that contribute to these music-related operations are clearly delineated as per AGB guidelines for the first criterion of Delineation.<sup>127</sup>

However, the CPE Provider found that second requirement was not satisfied because the community as defined did not have awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate an awareness and recognition among its members. The application materials and further research provide no substantive evidence of what the [Guidebook] calls “cohesion” – that is, that the various members of the community as defined by the application are “united or form a whole” (Oxford Dictionaries). While the Panel

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<sup>124</sup> *Id.* at Pg. 4-11.

<sup>125</sup> *Id.*

<sup>126</sup> CPE Report, at Pgs. 1-2.

<sup>127</sup> *Id.* at Pg. 3.

acknowledges that many of these individuals would share a “commonality of interest” in music, according to the [Guidebook] this is not sufficient to demonstrate the requisite awareness and recognition of a community among its members. While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion is considerable enough that the community defined as a whole cannot be said to have the cohesion required by the [Guidebook]. The Panel therefore determined that there is insufficient awareness and recognition of a community among the proposed community members, and that they do not therefore cohere as a community as required by the [Guidebook]. The defined community as a whole, in all its member categories, does not meet the [Guidebook’s] requirement for community awareness and recognition. Therefore, the Panel determined that the community as defined in the application satisfies one of the two conditions to fulfill the requirements for delineation, and therefore does not receive credit for delineation.<sup>128</sup>

In order for the CPE Provider to find that the community is organized, it must conclude that there is at least one entity mainly dedicated to the community and there must be documented evidence of community activities.<sup>129</sup> The CPE Provider found that the Application did not satisfy either of the requirements for organized because

the community as defined in application is dispersed geographically and across a wide array of music-related activities including all the categories listed in the previous section, such as creation, production, and distribution, among others. The applicant has made reference to, and has documented support from, several organizations that are a dedicated subset of the defined community. However, based on the Panel’s research, there is no entity mainly dedicated to the entire community as defined by the applicant in all its geographic reach and range of categories. Research showed that those organizations that do exist represent members of the defined community only in a limited geographic area or only in certain fields within the community.... According to the [Guidebook], "organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.” An “organized” community, according to

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<sup>128</sup> *Id.*

<sup>129</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-11.

the [Guidebook], is one that is represented by at least one entity that encompasses the entire community as defined by the applicant. There should, therefore, be at least one entity that encompasses and organizes individuals and organizations in all of the more than 40 member categories included by the application. Based on information provided in the application materials and the Panel’s research, there is no entity that organizes the community defined in the application in all the breadth of categories explicitly defined.<sup>130</sup>

With respect to the pre-existence requirement, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed) and must display an awareness and recognition of a community among its members. The CPE Provider found that “since the [musical] organizations [identified by DotMusic] and their members do not themselves form a cohesive community as defined in the [Guidebook], they cannot be considered to be a community that was active as such prior to 2007.”<sup>131</sup>

i. The CPE Provider Adhered to Applicable Policies and Procedures in its Consideration of Community Definition.

The Requestors first argue that the CPE Provider relied on the incorrect community definition—i.e., not the community definition DotMusic provided in response to Question 20A of the Application.<sup>132</sup> In fact, in describing the “community as defined in the application,” the CPE Report specifically quotes from DotMusic’s response to Question 20A:

The community defined in the application is “delineated using established NAICS codes[, codes used to classify business establishments,] that align with the (i) characteristics of the globally recognized, organized Community, and (ii) .MUSIC global rotating multistakeholder Advisory Board model of fair representation, irrespective of locale, size or commercial/noncommercial status.”<sup>133</sup>

The CPE Provider thus expressly relied on DotMusic’s response to Question 20A, and the

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<sup>130</sup> CPE Report, at Pg. 3.

<sup>131</sup> *Id.*

<sup>132</sup> Request 16-5, § 6, Pg. 13; DotMusic CPE Process Review Letter, ¶ 42, Pg. 38.

<sup>133</sup> CPE Report, Pg. 2 (quoting Application, Response to Question 20A).

Application was plainly “scored based on the community identified in response to this question.”

The CPE Report does refer to the DotMusic’s response to Question 20D of the Application, but this does not support reconsideration. In particular, after citing DotMusic’s response to Question 20A, the CPE Report further noted that:

the applicant also includes in its application a more general definition of its community: “all constituents involved in music creation, production, and distribution, including government culture agencies and arts councils and other complement[a]r[y] organizations involved in support activities that are involved with the .MUSIC mission.”<sup>134</sup>

The Requestors identify no policy or procedure (because there is none) that would prevent the CPE Provider from considering all statements made in the Application. And, in any event, the CPE Provider’s consideration of DotMusic’s response to Question 20D did not adversely affect the score that the Application received on the first criterion—immediately following its reference to Question 20D the CPE Provider notes that DotMusic “thereby bounds community membership by way of well-defined categories” and “provides a clear and straightforward membership definition.”<sup>135</sup>

DotMusic also argues that because the CPE Report did not explicitly reference the portion of DotMusic’s definition, in Question 20A, which states that the “Community is a strictly delineated and organized community of individuals, organizations, and business[es], a ‘logical alliance[’] of communities of a similar nature . . . that relate to music,”<sup>136</sup> the CPE Provider did not consider the correct community definition.<sup>137</sup> DotMusic asserts that because it “explicitly us[ed] similar . . . language” to the language in the Guidebook, which states that “a community

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<sup>134</sup> *Id.*, Pg. 3 (quoting Application, Response to Question 20D).

<sup>135</sup> *Id.*

<sup>136</sup> DotMusic gTLD Application, Question 20A, *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>.

<sup>137</sup> DotMusic CPE Process Review Letter, ¶ 42, at Pg. 38.

can consist of . . . a logical alliance of communities,”<sup>138</sup> the CPE Provider should have determined that the Application satisfied Criterion 1.<sup>139</sup> This argument fails for two reasons.

First, the Guidebook notes that “a logical alliance of communities” is “viable” as a community, “*provided the requisite awareness and recognition of the community is at hand among the members.*”<sup>140</sup> As discussed above, here the CPE Provider *did not* find the requisite awareness and recognition among the members of the overarching community. Accordingly, as the Guidebook directs, it awarded zero points on both “Delineation” and “Extension.”<sup>141</sup>

Second, DotMusic’s argument rests on the assumption that the CPE Provider should have awarded full points on Criterion 1 because the Application stated that it satisfied the requirements for Criterion 1. This is incorrect. If DotMusic’s argument were correct, then every entity seeking community priority could simply state that it had satisfied each of the four criteria, and the CPE Provider would be required to award a passing score to every applicant, eliminating the entire purpose of the CPE process.<sup>142</sup> This argument does not support reconsideration.

- ii. The CPE Provider Adhered to Applicable Policies and Procedures in its Consideration of the Community’s Cohesion.

The Requestors argue that the CPE Provider erred in finding that the community defined in the Application did not demonstrate the requisite cohesion.<sup>143</sup> Ultimately, the Requestors disagree with the CPE Provider’s determination that a community including individuals and entities as varied as musicians, libraries, lawyers, public relations agencies, accountants, and

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<sup>138</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12.

<sup>139</sup> DotMusic CPE Process Review Letter, ¶ 44, at Pg. 39.

<sup>140</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12 (emphasis added).

<sup>141</sup> *Id.*

<sup>142</sup> See Guidebook, Module 4, § 4.2.3, at Pg. 4-9 (CPE was designed with “very stringent requirements” because “a qualified community application eliminates all directly contending standard applications, regardless of how qualified the latter may be.”).

<sup>143</sup> Request 16-5, § 6, Pgs. 10-11 (.OSAKA, .ECO, .SPA); DotMusic CPE Process Review Letter, ¶ 52, at Pg. 41-42.

those who consume music<sup>144</sup> does not demonstrate the requisite cohesion, even if all participate in music-related activities or have some connection to the music industry. This substantive disagreement is not a basis for reconsideration.

The Requestors also compare the CPE Report to CPE reports for the .OSAKA, .ECO, .SPA, .RADIO, .HOTEL, and .GAY applications that underwent CPE, arguing that because the CPE Provider found that the communities as defined in those applications did have the requisite cohesion, a similar result should have been reached with respect to the Application.<sup>145</sup> Relatedly, DotMusic argued in its presentation to the BGC that the CPE Provider “[i]ntroduced a new ‘cohesion plus’ test for establishing ‘awareness and recognition’ among members” in the CPE Report, which it did not apply to the applications for .HOTEL, .OSAKA, and .RADIO.<sup>146</sup> As an initial matter, the CPE results for other, entirely unrelated applications (for entirely different strings, and involving entirely different community definitions), do not demonstrate that the CPE Provider failed to properly establish the first CPE criterion with respect to the community as defined in the Application.<sup>147</sup>

Moreover, the CPE Provider applied the same, correct, standard for analyzing awareness and recognition to the Application and the other referenced applications. DotMusic does not agree with the CPE Provider’s conclusion that cohesion within “some of the member categories,” does “not show [that] such cohesion is considerable enough that the community defined as a whole can[] be said to have the cohesion required by the [Guidebook].”<sup>148</sup> Contrary to

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<sup>144</sup> CPE Report, Pg. 2 (quoting community definition provided by the Requestors in response to Question 20A).

<sup>145</sup> *Id.*, § 6, Pgs. 10-12.

<sup>146</sup> 17 September 2016 DotMusic presentation to BGC, at slide 4.

<sup>147</sup> The Requestors also refer the BGC to “expert” letters DotMusic submitted to the CPE Provider, which purport to explain why the Application meets the requirements for community priority. Request, § 3, Pg. 1; *see also id.*, Ex. 40. However, these letters simply demonstrate the views of those individuals regarding the scoring of the Application. They do not constitute evidence that the CPE Provider failed to adhere to established policy and procedure in scoring the Application.

<sup>148</sup> 17 September 2016 DotMusic presentation to BGC, at slide 4.

DotMusic’s assertion, the CPE Provider did not find cohesion among the defined *community’s* “members.”<sup>149</sup> Instead, the CPE Provider noted that certain of the more than 40 categories of community members that DotMusic identified in its definition of the community “may show cohesion within a category or across a subset of the member categories,” but that cohesion *did not extend to* the entire community or enough of the community to satisfy the cohesion requirement.<sup>150</sup> Accordingly, the CPE Provider did not require *more than* cohesion as DotMusic suggests; it instead required, consistent with the Guidebook, that the Applicant demonstrate in its Application cohesion across the community as a whole—including across a logical alliance of communities such as the one presented in the Application.<sup>151</sup>

This is the same standard used in the CPE applications that the Requestors and DotMusic cite. In the .OSAKA CPE Report, the CPE Provider concluded that the community defined in the application had awareness and recognition among its members “because of the clear association with the Osaka geographical area.”<sup>152</sup> The CPE Provider did not find that the cohesion or awareness and recognition in the .OSAKA application was limited to certain subgroups within the community defined in the application, unlike the CPE Provider’s finding in the DotMusic CPE Report.<sup>153</sup> DotMusic argues that the community definition in the .OSAKA application, i.e., individuals “who are within the Osaka geographical area as well as those who self[-]identify as having a tie to Osaka, or the culture of Osaka,”<sup>154</sup> is comparable to DotMusic’s definition of its community, i.e., a “logical alliance” of individuals “related to music (i.e. has a

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<sup>149</sup> *Id.*

<sup>150</sup> CPE Report, at Pg. 3.

<sup>151</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12.

<sup>152</sup> .OSAKA CPE Report, at Pg. 2 (<https://newgtlds.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>).

<sup>153</sup> *Compare* .OSAKA CPE Report, at Pg. 2, with CPE Report, at Pg. 2.

<sup>154</sup> .OSAKA CPE Report, at Pg. 2.

tie).”<sup>155</sup> This argument ignores the geographic bounds of the .OSAKA community, which the CPE Provider found determinative in that application. Accordingly, the arguments do not support reconsideration here.

In the .ECO CPE Report, the CPE Provider concluded that the community defined in the application included “four types of members, whose cohesion and awareness is founded in their demonstrable involvement in environmental activities and who ‘demonstrate active commitment, practice and reporting.’”<sup>156</sup> The CPE Provider went on to note that although the involvement might vary among the four categories, “each individual or entity has a clear, public and demonstrable involvement in environmental activities,” and the “interdependence and active commitment to shared goals among the various membership types are indicative of the ‘cohesion’ that the [Guidebook] requires.”<sup>157</sup> By contrast, the CPE Provider did not find evidence of a similar “demonstrable involvement” in activities across all or even the majority of the more than 40 member categories listed in the Application.<sup>158</sup>

In the .SPA CPE Report, the CPE Provider determined that the community defined in the application had “awareness and recognition among its members” because the community “consists of entities that are in the spa industry, and as participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community.”<sup>159</sup> DotMusic argues that the Spa community included a “secondary community that does not relate directly to the string,” but the CPE Provider nonetheless found cohesion among the overarching community’s members.<sup>160</sup> The CPE Provider made no reference to a “secondary community” in

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<sup>155</sup> DotMusic CPE Process Review Letter, ¶ 52, at Pg. 42.

<sup>156</sup> .ECO CPE Report, at Pg. 2 (<https://newgtlds.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>).

<sup>157</sup> *Id.* at Pg. 2-3.

<sup>158</sup> CPE Report, at Pg. 2.

<sup>159</sup> .SPA CPE Report, at Pg. 2 (<https://newgtlds.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>).

<sup>160</sup> DotMusic CPE Process Review Letter, ¶ 52, at Pg. 42.



the .SPA CPE Report, although the CPE Provider noted, in its consideration of sub-criterion 2-A “Nexus,” that the “community as defined by the application also includes entities which are not spas or spa associations, such as distributors and providers of spa-related products and services.”<sup>161</sup> As noted above, the community defined in the .SPA application consisted of entities *in the spa industry*. DotMusic does not argue that distributors and providers of spa-related products are not in the spa industry, or would not have awareness and recognition of its inclusion in the spa industry.<sup>162</sup> Accordingly, the inclusion of this subgroup in the Spa community definition does not undermine the CPE Provider’s finding of cohesion. Further, unlike the definition in the .SPA application, DotMusic’s definition of its community was not limited to members of the music industry. Instead, DotMusic defined its community to include members of the music industry *plus* other subgroups, such as “music fans.”<sup>163</sup> This comparison does not support reconsideration.

In the CPE reports for .RADIO and .HOTEL, the CPE Provider concluded (similar to its conclusion in the CPE report for .SPA), that members of the community of “individuals and entities that are in the radio industry” or “associate[ed] with the hotel industry and the provision of specific hotel services” had awareness and recognition (i.e., cohesion).<sup>164</sup> As noted above, DotMusic’s community is not limited to members of the music industry, rendering the .RADIO and .HOTEL CPE reports distinguishable from the DotMusic CPE Report. These comparisons do not support reconsideration.

In the CPE report for .GAY, the CPE Provider found awareness and recognition among

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<sup>161</sup> .SPA CPE Report at Pd. 4-5.

<sup>162</sup> See DotMusic CPE Process Review Letter, ¶ 52, at Pg. 42.

<sup>163</sup> CPE Report, Pg. 2 (quoting community definition provided by the Requestors in response to Question 20A).

<sup>164</sup> .RADIO CPE Report at Pg. 2, available at <https://newgtlds.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>; .HOTEL CPE Report at Pg. 2, available at <https://newgtlds.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>.

the members of the community defined in the application because of “an implicit recognition and awareness of belonging to a community of others who have come out as having non-normative sexual orientations or gender identities, or as their allies,” and additionally, many members of the communities make their awareness and recognition of the community “more explicit, such as by membership in organizations, participation in events, and advocacy for the rights of [other members of the community].”<sup>165</sup> DotMusic argues that, “[i]n contradiction . . . the [CPE Provider] determined DotMusic’s ‘logical alliance’ operating under a regulated sector that is united by copyright lacked any ‘cohesion’ of belonging to a community.”<sup>166</sup> Assuming DotMusic is correct that its community is “united by copyright,” DotMusic provides no explanation as to how an alliance of groups “united by copyright” (a legal concept designed to protect intellectual and commercial interests) is analogous to the community of individuals “who have come out as having non-normative sexual orientations or gender identities, or as their allies,” especially in light of the cohesion of members of the community defined in the .GAY CPE application “around areas of discrimination, whether in the workplace, marketplace, the media, or other areas” (an issue touching on intimate personal identity and human rights).<sup>167</sup> DotMusic’s attempt to compare its Application to the .GAY CPE application does not support reconsideration.

DotMusic argues that because each of the community’s member organizations wrote a letter endorsing the Application, “it cannot be debated that they had no awareness of the community defined and that they unite under the mission and purpose of the string that was

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<sup>165</sup> .GAY CPE Report (re-evaluation), Pg. 2, available at <https://newgtlds.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>.

<sup>166</sup> DotMusic CPE Process Review Letter, ¶ 52, at Pg. 41-42.

<sup>167</sup> See .GAY CPE Report (re-evaluation), Pg. 2.

described in DotMusic’s application.”<sup>168</sup> This assertion does not support reconsideration; the letters of endorsement relate to, and the CPE Provider took them into consideration in, sub-criterion 4-A, “Support.” They do not relate to community members’ actual cohesion *across* all of the member organizations.

DotMusic also argues that the CPE Provider “applied the ‘commonality of interest’ test, not the ‘cohesion’ test in .HOTEL, .OSAKA, and .RADIO,” to determine “awareness and recognition,” but “conceded that there is a ‘commonality of interest’ among members” of DotMusic’s community and required more cohesion there.<sup>169</sup> First, as explained above, the CPE reports that DotMusic identifies are distinguishable from the DotMusic CPE Report, and the CPE Provider did not conclude in any of those reports that the community defined in the application lacked cohesion but had awareness and recognition. By contrast, the CPE Provider *did* find in DotMusic’s case that the community lacked cohesion, and therefore the CPE Provider concluded that it lacked awareness and recognition. Further, the Guidebook explicitly requires “more . . . than a mere commonality of interest” to demonstrate awareness and recognition.<sup>170</sup> Accordingly, the CPE Provider appropriately required, in all of these CPE applications, that the applicants demonstrate that the communities defined in the applications had more than “a mere commonality of interest” before it found awareness and recognition. The Scope 2 Report further confirms this conclusion, as FTI that the CPE Provider applied sub-criterion 1-A, Delineation, consistently in all CPEs, including the DotMusic CPE and the .HOTEL, .OSAKA, .GAY, .ECO, .SPA and .RADIO CPEs.<sup>171</sup> DotMusic’s argument does not support reconsideration.

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<sup>168</sup> DotMusic CPE Process Review Letter, ¶ 44, at Pg. 39.

<sup>169</sup> 17 September 2016 DotMusic presentation to BGC, at slides 5-6.

<sup>170</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-11.

<sup>171</sup> Scope 2 Report, Pg. 22-31 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>).

Finally, DotMusic argues that the CPE Provider did not “explain how DotMusic’s evidence was insufficient to show cohesion.”<sup>172</sup> DotMusic asserts that this contravenes ICANN org’s commitment to “Act Fairly and Openly.”<sup>173</sup> The CPE Provider explained why the evidence did not show cohesion when it explained that the only evidence DotMusic offered concerning cohesion reflected cohesion within a single category or “a subset of the member categories,” the evidence did not show cohesion across the full community.<sup>174</sup> This argument does not support reconsideration.

iii. The CPE Provider Adhered to Applicable Policies and Procedures in its Consideration of Organizations Connected to the Community.

The Requestors argue that the Panel “failed to consider many globally-recognized organizations that are mainly dedicated to the music community.”<sup>175</sup> The Requestors specifically point to the International Federation of Musicians (FIM), which represents musicians, and the International Federation of the Phonographic Industry (IFPI), an organization that represents the recording industry worldwide.<sup>176</sup> In fact, the CPE Provider specifically noted that while the Application had “made reference to . . . several organizations that are a dedicated subset of the defined community,” there was not an “entity that encompasses and organizes individuals and organizations in all of the more than 40 member categories included by the application.”<sup>177</sup> As discussed, these categories included musicians and members of the recording industry, but also lawyers, accountants, public relations agencies, and music fans. The Requestors’ disagreement with the CPE Provider’s determination does not demonstrate that the CPE Provider misapplied

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<sup>172</sup> 17 September 2016 DotMusic presentation to BGC, at slide 7.

<sup>173</sup> *Id.*

<sup>174</sup> CPE Report, at Pg. 3.

<sup>175</sup> Request 16-5, § 6, Pg. 6. *See also* DotMusic CPE Process Review Letter, ¶ 45, at Pg. 39.

<sup>176</sup> *Id.*, § 6, Pgs. 6-7.

<sup>177</sup> CPE Report, Pg. 3.

the CPE criterion and is not a basis for reconsideration.

DotMusic also argues that because the CPE Provider concluded that at least one entity was dedicated to the community defined in the .HOTEL application, the CPE Provider should have concluded that at least one entity was dedicated to the community defined in DotMusic's application.<sup>178</sup> In the .HOTEL CPE Report, the CPE Provider concluded that there were "several entities that are mainly dedicated to the community," including the International Hotel & Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA), and China Hotel Association (CHA), "among others."<sup>179</sup> The CPE Provider then cited evidence from the .HOTEL application indicating that the IH&RA represents "the hotel industry worldwide," is "recognized by the United Nations as the voice of the private sector globally," and its "members represent more than 300,000 hotels and thereby the majority of hotels worldwide."<sup>180</sup>

DotMusic asserts that because the CPE Provider also listed HOTREC, the AH&LA, and the CHA in its discussion of entities mainly dedicated to the community, and those entities are geographically limited (and the community defined in the .HOTEL application is not), the CPE Provider determined that, with respect to the .HOTEL application, it was not necessary that the entities represent the *entire* community.<sup>181</sup> Therefore, the argument goes, the CPE Provider should have concluded that the FIM and IFPI were mainly dedicated to DotMusic's community even though they were not dedicated to the entire community.<sup>182</sup> This argument overlooks the CPE Provider's focus on the IH&RA in its discussion of entities mainly dedicated to the

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<sup>178</sup> DotMusic CPE Process Review Letter, ¶ 49, at Pg. 40.

<sup>179</sup> .HOTEL CPE Report, at Pg. 2.

<sup>180</sup> *Id.*, quoting .HOTEL application.

<sup>181</sup> DotMusic CPE Process Review Letter, ¶ 49, at Pg. 40.

<sup>182</sup> *Id.*

.HOTEL community—DotMusic has not shown or even argued that the CPE Provider would have reached the same conclusion in the .HOTEL CPE report in the absence of the IH&RA, which the CPE Provider concluded was mainly dedicated to the entire community defined in the .HOTEL application. Nor has DotMusic identified an equivalent entity that represents the global music community as defined, including all of the member categories in the Application. Accordingly, DotMusic has not shown that the CPE Provider applied a different standard for the Organization requirement in the .HOTEL CPE report than it applied in the DotMusic CPE Report. The Scope 2 Report also confirms this conclusion, as FTI found that the CPE Provider applied the “Organization” element of sub-criterion 1-A, Delineation, consistently in all CPEs, including the DotMusic CPE and the .HOTEL CPE.<sup>183</sup> Reconsideration is not warranted.

DotMusic has also argued that the CPE Provider did not disclose the research it relied on to conclude that “there is no entity mainly dedicated to the community as defined by the applicant in all its geographic reach and range of categories,”<sup>184</sup> in violation of its obligation to “Act Fairly and Openly,” and “to provide ‘conclusions that are compelling and defensible’ and ‘to document the way in which it has done so in each case.’”<sup>185</sup> Nothing in the Guidebook specifically required the CPE Provider to disclose every resource it considered in the course of its evaluation of the Application. Moreover, the Scope 3 Report *did* disclose the information DotMusic seeks. That report lists all of the references concerning sub-criterion 1-A, Delineation, that were not otherwise cited in the CPE Report.<sup>186</sup>

- b. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 1-B-Extension.

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<sup>183</sup> Scope 2 Report, Pg. 27-29 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>).

<sup>184</sup> CPE Report, Pg. 3

<sup>185</sup> 17 September 2016 DotMusic presentation to BGC, at slide 7 (citation not provided for internal quotations).

<sup>186</sup> Scope 3 Report, at Pg. 50-51 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf>).

The Application received zero out of a possible two points for sub-criterion 1-B. The Requestors assert that the CPE Provider should have awarded the Application two points for sub-criterion 1-B.<sup>187</sup> To obtain two points for Extension, the community must be of considerable size and longevity. For a score of 1, the community must *either* be of considerable size *or* have longevity, but not both.<sup>188</sup> The Guidebook notes that Extension “relates to the dimensions of the community,” and that with

respect to . . . “Extension,” it should be noted that a community can consist of . . . a logical alliance of communities . . . provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”<sup>189</sup>

The CPE Provider determined that the Application did not satisfy either the one- or two-points test for sub-criterion 1-B because, while the community defined in the Application was “of considerable size,” it, again, did not “show evidence of ‘cohesion’ among its members.”<sup>190</sup> The CPE Provider also found that the relevant community as defined in the Application did not demonstrate longevity because the proposed community was “construed to obtain a sought-after generic word as a gTLD.”<sup>191</sup>

DotMusic asserts that the CPE Provider should have concluded that the community defined in the Application met the size and longevity requirements because the community includes “millions of constituents” and FIM and the IFPI were founded in 1948 and 1933, respectively.<sup>192</sup> The Guidebook, however, states that an application should receive 0 points on “Extension” if the community defined in the application lacks “the requisite awareness and

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<sup>187</sup> DotMusic CPE Process Review Letter, ¶ 50, at Pg. 40-41.

<sup>188</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-10.

<sup>189</sup> *Id.*

<sup>190</sup> CPE Report, Pg. 4.

<sup>191</sup> *Id.*

<sup>192</sup> DotMusic CPE Process Review Letter, ¶ 50, at Pg. 40-41.

recognition of the community . . . among the members.”<sup>193</sup> Because the CPE Provider concluded that the community defined in the Application lacked awareness and recognition, it was required to award zero points for sub-criterion 1-B, Extension. Accordingly, the CPE Provider acted consistent with the Guidebook and the Requestors’ argument does not support reconsideration.

c. The CPE Process Does Not Double-Count and Has Not Substantively Changed Since the Publication of the Guidebook

Citing the CoE Report, DotMusic argues that the CPE Provider “appears to double count awareness and recognition of the community amongst its members twice.”<sup>194</sup> The CoE Report clarifies that the CPE Provider counts awareness and recognition once in sub-criterion 1-A “Delineation,” and once in sub-criterion 1-B, “Extension.”<sup>195</sup> This practice is consistent with the Guidebook, which states that in developing the CPE criteria, the “utmost care has been taken to avoid any ‘double-counting’ – any negative aspect found in assessing an application for one *criterion* should only be counted there and should not affect the assessment for other *criteria*.”<sup>196</sup>

Double counting did not occur here. There are only four criteria set out for CPE (Community Establishment; Nexus between Proposed String and Community; Registration Policies; and Community Endorsement). Double counting only occurs when a single negative aspect is used to determine scores in more than one of the four criteria. Thus, the Guidebook does *not* prohibit counting a negative aspect more than once *within* one criterion. Accordingly, because sub-criterion 1-A and sub-criterion 1-B are both contained in criterion 1, “Community

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<sup>193</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12.

<sup>194</sup> 15 December 2016 letter from Ali to ICANN at Pg. 2-3

(<https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>).

<sup>195</sup> CoE Report, at Pg. 49.

<sup>196</sup> Guidebook, Module 4, § 4.2.3, at Pgs. 4-9, 4-10 (emphasis added).



Establishment,” counting awareness and recognition once in each sub-criterion does not violate the Guidebook’s prohibition on double-counting.

DotMusic also cites the CoE Report for the assertion that the CPE Provider “changed its own process as it went along.”<sup>197</sup> But in the next sentence, the CoE Report states that this information “was confirmed to us by ICANN staff who said that the panels did work to improve their process over time, *but that this did not affect the process as described in the [Guidebook].*”<sup>198</sup> Accordingly, DotMusic’s own source material indicates that any changes to the CPE Provider’s process did not affect the CPE Provider’s faithful application of the Guidebook process, and do not support reconsideration.

2. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 2-A-Nexus.

The Application received three out of a possible four points for Criterion 2. Criterion 2 evaluates “the relevance of the string to the specific community that it claims to represent,” and is measured by two sub-criterion: 2-A-Nexus; and 2-B-Uniqueness.<sup>199</sup> Sub-criterion 2-A is worth a maximum of three points and sub-criterion 2-B is worth a maximum of one point, for a total of four points.

To obtain three points for sub-criterion 2-A, the applied-for string must “match the name of the community or be a well-known short form or abbreviation of the community.”<sup>200</sup> For a score of two, the applied-for string should closely describe the community or the community members, without overreaching substantially beyond the community.<sup>201</sup> Zero points are awarded if the string “does not fulfill the requirements for a score of 2.”<sup>202</sup> It is not possible to obtain a

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<sup>197</sup> 15 December 2016 letter from Ali to ICANN at Pg. 4-5.

<sup>198</sup> CoE Report, at Pg. 51 (emphasis added).

<sup>199</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-12, 4-13.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

score of one for this sub-criterion.

To obtain one point for sub-criterion 2-B, the applied-for string must have no other significant meaning beyond identifying the community described in the application.<sup>203</sup> An application that does not qualify for two or three points for sub-criterion 2-A will not qualify for a score of one for sub-criterion 2-B.<sup>204</sup>

The Requestors challenge the CPE Provider's analysis of sub-criterion 2-A-Nexus, for which DotMusic received two of three possible points. DotMusic received one out of one point under sub-criterion 2-B-Uniqueness, and the Requestors do not challenge the CPE Provider's findings concerning that sub-criterion.<sup>205</sup> The Requestors have provided no evidence demonstrating that the CPE Provider failed to comply with the applicable CPE procedures when it evaluated sub-criterion 2-A.

- a. The CPE Provider Adhered to Applicable Policies and Procedures in its Consideration of Entities Serving the Community As Defined in the Application.

The community as defined in the Application is "delineated using established [North American Industry Classification System (NAICS)] codes" relating to music.<sup>206</sup> The CPE Provider determined that this community "include[d] some entities that are only tangentially related to music, such as accountants and lawyers," but had "limited the subset of such professionals included in the community."<sup>207</sup> As such, the CPE Provider determined that the applied-for string, .MUSIC, "d[id] identify the individuals and organizations included in the applicant's defined community member categories."<sup>208</sup> However, the CPE Provider also

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<sup>203</sup> *Id.* at Pg. 4-13.

<sup>204</sup> *Id.* at Pg. 4-14.

<sup>205</sup> Request 16-5.

<sup>206</sup> CPE Report, Pg. 2.

<sup>207</sup> CPE Report, Pg. 5.

<sup>208</sup> *Id.*

determined that

the community defined in the application is a collection of many categories of individuals and organizations, and because there is no single entity that serves all of these categories in all their geographic breadth, there is no ‘established name’ for the applied-for string, as required by the [Guidebook] for a full score on [sub-criterion 2-A].<sup>209</sup>

Therefore, the CPE Provider awarded the Application two out of three points, as appropriate where a string “identifies the community,” but does not qualify for full points.<sup>210</sup>

The Requestors disagree the CPE Provider’s determination that there is no “established name” for the community identified in the Application.<sup>211</sup> However, reading the CPE Provider’s statement in its entirety, it is clear that the CPE Provider was of the view that because of the diffuse nature of the community as defined in the Application, that community did not entirely “match” the name “music,” as would be required for a full score on the nexus element. In the Requestors’ view, its defined community does in fact “match” the name “music.” This reflects a substantive disagreement with the determination of the CPE Provider, and is not evidence that the CPE Provider misapplied the second CPE criterion. As such, it is not a basis for reconsideration.

- b. The CPE Provider’s Application of Sub-Criterion 2-A in the Application is Consistent With its Application of sub-criterion 2-A in Other CPE Applications.

DotMusic also argues that the CPE Provider’s application of sub-criterion 2-A in the CPE Report is inconsistent with its application of the same sub-criterion in the .SPA CPE, because the CPE Provider awarded three of three possible points for sub-criterion 2-A-Nexus, to the

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<sup>209</sup> *Id.*

<sup>210</sup> CPE Guidelines, Pg. 7.

<sup>211</sup> Request 16-5, § 6, Pg. 15. *See also* Blomqvist Opinion, ¶¶ 65-68 at Pg. 46-47; Burgess Opinion, ¶¶ 26-29, at Pg. 24-26.

applicant for .SPA, even though “the .SPA community admits that they did not completely represent the entire community” and the community included “a secondary community that was not directly related to spas.”<sup>212</sup> In the .SPA CPE Report, the CPE Provider determined that

the associations of spas, including those cited by the application, as well as the individual establishments that are operated by members of the community as defined by the application, are also “commonly known by others” both in and outside of the community by the applied-for string “SPA”, as required by the [Guidebook]. . . . This common usage of the applied-for string closely aligns with the community as defined in the application. The community as defined by the application also includes entities which are not spas or spa associations, such as distributors and providers of spa-related products and services. As described by the applicant, these affiliated services align closely with core spa services, and nothing in the application suggests that these entities are a non-essential component of the spa community. Furthermore, this category of the spa community is also included in the membership of organizations such as the International Spa Association. This subset of the community, along with the principal spa community, therefore, meets the requirement for “match” with regard to Nexus.<sup>213</sup>

Reading the .SPA CPE Provider’s statement as a whole, it is clear that the CPE Provider did not conclude that the community defined in the .SPA application included “a secondary community that was not directly related to spas,” as DotMusic asserts. Instead, the CPE Provider determined that the community “includes entities which are not spas or spa associations,” but *are* directly related to spas, as they are “distributors and providers of spa-related products and services,” which were “*essential component[s]* of the spa community.”<sup>214</sup> By contrast, the CPE Provider concluded that the community defined in the Application included groups that were “only tangentially related to music.”<sup>215</sup> The .SPA CPE Report does not support reconsideration.

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<sup>212</sup> DotMusic CPE Process Review Letter, ¶¶ 56-57, at Pg. 43-44.

<sup>213</sup> .SPA CPE Report at Pg. 4-5, available at <https://newgtlds.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf> (internal citations omitted).

<sup>214</sup> *Id.* (emphasis added).

<sup>215</sup> CPE Report, at Pg. 5.

DotMusic has therefore not identified any inconsistency in the CPE Provider's application of sub-criterion 2-A. Further, the Scope 2 Report confirmed that the CPE Provider applied sub-criterion 2-A, Nexus, consistently in all CPEs, including the DotMusic CPE and the .SPA CPE.<sup>216</sup> Accordingly, reconsideration is not warranted.

3. The CPE Provider Adhered to Applicable Policies and Procedures in its Application of Sub-Criterion 4-A-Support.

The Application received three points for Criterion 4. Criterion 4 evaluates support for and/or opposition to an application.<sup>217</sup> It measured by two sub-criterion: sub-criterion 4-A-Support; and sub-criterion 4-B-Opposition.<sup>218</sup> Sub-criterion 4-A and sub-criterion 2-B are each worth a maximum of two points, for a total of four points.<sup>219</sup>

To obtain two points for sub-criterion 4-A-Support, an applicant must be the recognized community institution/member organization or have documented support from the recognized community institution(s)/member organization(s), or have otherwise documented authority to represent the community.<sup>220</sup> "Recognized" community institutions are those institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.<sup>221</sup> In cases of multiple institutions/organizations, there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score two points.<sup>222</sup> To be taken into account as relevant support, such documentation must contain a description of the

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<sup>216</sup> Scope 2 Report, Pg. 36-41, *available at* <https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>.

<sup>217</sup> Guidebook, § 4.2.3; *see also* Request, § 6, Pgs. 14-15.

<sup>218</sup> Guidebook, Module 4, § 4.2.3, at Pg. 4-17.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at Pgs. 4-17-4-18.

<sup>222</sup> *Id.* at Pg. 4-18.

process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.<sup>223</sup>

To obtain two points for sub-criterion 4-B-Opposition, there must be “no opposition of relevance” to the application.<sup>224</sup> One point is awarded if there is “relevant opposition from one group of non-negligible size.”<sup>225</sup> Zero points are awarded if there is “relevant opposition from two or more groups of non-negligible size.”<sup>226</sup>

The Requestors challenge the CPE Provider’s application of sub-criterion 4-A-Support. The Requestors do not challenge the CPE Provider’s findings concerning sub-criterion 4-B-Opposition.<sup>227</sup>

The CPE Provider determined that the Application did not satisfy the two points test for sub-criterion 4-A because it was “not the recognized community institution(s)/ member organization(s), nor did it have documented authority to represent the community.”<sup>228</sup> Additionally, the CPE Provider concluded that, although DotMusic had “documented support from many groups with relevance,” none were the “recognized community institution” because the CPE Provider had “not found evidence that such organization exists.”<sup>229</sup>

The Requestors object to the fact that in explaining its scoring, the CPE Provider described a “recognized community institution” as one that is “recognized by all of the defined community’s members as representative of the defined community in its *entirety*.”<sup>230</sup> The Requestors claim that the .HOTEL and .RADIO CPE Reports applied a lower standard, because

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<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at Pg. 4-17.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Request 16-5.

<sup>228</sup> CPE Report, at Pg. 8.

<sup>229</sup> *Id.*

<sup>230</sup> Request 16-5, § 6, Pgs. 8-9 (emphasis added).

the CPE Provider there referred to the organizations that supported that applicants as “representing a *majority* of the overall community as defined by the applicant.”<sup>231</sup> Relatedly, DotMusic argues that in the .HOTEL CPE Report, the CPE Provider concluded that the AH&LA and CHA “constitute the recognized institutions to represent the community.”<sup>232</sup> DotMusic believes that “[i]f the [AH&LA and CHA] would suffice as recognized organizations mainly dedicated to hotels,” then the CPE Provider should have concluded that the FIM and IFPI are recognized organizations mainly dedicated to the community defined in DotMusic’s application.<sup>233</sup> These arguments do not support reconsideration.

Ultimately, the Requestors disagree with the CPE Provider’s determination that the institutions supporting the Application, while relevant, were not the “recognized community institutions” under sub-criterion 4-A because none represented the whole of the community as defined by DotMusic. As discussed above with reference to the first criterion, this argument represents a substantive disagreement with the CPE Provider and is not a basis for reconsideration.

The fact that the CPE Provider chose to describe a “recognized community institution” in slightly different but substantively identical terms in other CPEs does not demonstrate that the CPE Provider here deviated from established policy and procedure in scoring this criterion. In fact, the CPE Provider in both instances defined a “recognized community institution” as one that is “clearly recognized by the community as representative of that community”—the definition used in the CPE Guidelines.<sup>234</sup> Indeed, the Requestors argue the Oxford dictionary

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<sup>231</sup> *Id.*, § 8, Pgs. 8-9 citing .HOTEL CPE Report at 6 (emphasis added). *See also* DotMusic CPE Process Review Letter, ¶¶ 61-62, at Pg. 44-45.

<sup>232</sup> DotMusic CPE Process Review Letter, ¶ 61, at Pg. 45.

<sup>233</sup> *Id.* ¶ 62, at Pg. 45.

<sup>234</sup> CPE Guidelines at 17; CPE Report at Pg. 8; .HOTEL CPE Report at Pg. 6, <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>.

defines “representative” as meaning “typical,” and suitable to “speak on behalf of a wider group”<sup>235</sup> but the CPE Provider here essentially applied that definition in determining that no organization among the applicant’s supporters “demonstrates the *kind of structure* required to be a ‘recognized’ organization, per the [Guidebook] guidelines.”<sup>236</sup> Moreover, the .HOTEL CPE panel’s determination to award the applicant two points for the support criterion was not based merely on a finding that the “majority” of the community was represented, but instead its determination that the organizations that supported the applicant “constitute[d] the recognized institutions to represent the community.”<sup>237</sup>

DotMusic also asserts that the CPE Provider should have awarded it full points for support because the CPE Provider awarded full points to the .RADIO community applicant even though it only had support from “organizations representing a majority of the community,” including “support from a broad range of recognized community institutions/member organizations, which represented different segments of the community.”<sup>238</sup> DotMusic believes that it also had support from “recognized community organizations that represented a majority of the overall community defined by DotMusic.”<sup>239</sup>

In the cases of .HOTEL and .RADIO, the CPE Provider determined that the community applicants for both .HOTEL and .RADIO *did* have documented support from institutions and/or organizations representing “a majority of the community.”<sup>240</sup> Accordingly, consistent with the Guidebook, the CPE Provider awarded those applicants two points each under this sub-criterion. By contrast, the CPE Provider *did not* conclude that the Requestor had documented support from

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<sup>235</sup> Request 16-5, § 6, Pg. 9.

<sup>236</sup> CPE Report at Pg. 8.

<sup>237</sup> .HOTEL CPE Report at Pg. 6.

<sup>238</sup> DotMusic CPE Process Review Letter, ¶ 63, at Pg. 45.

<sup>239</sup> *Id.*

<sup>240</sup> 15 Nov. 2016 letter from A. Ali to ICANN Board at 7, quoting CoE Report, at Pg. 51.



institutions or organizations representing “a majority of the community”—finding only that the Requestor had documented support from “many groups with relevance,” representing “a wide array” of support.<sup>241</sup> Consistent with the Guidebook, because it had determined that: (1) there was no single organization recognized by all members of the defined community as representative of the defined community in its entirety; and (2) DotMusic’s documented support did not reflect support from a “majority of the community,” the CPE Provider did not award two points for this sub-criterion. Further, the Scope 2 Report confirms that the CPE Provider complied with applicable policies and procedures, as FTI found that the CPE Provider applied sub-criterion 4-A, Support, consistently in all CPEs, including the DotMusic CPE and the .HOTEL and .RADIO CPEs.<sup>242</sup> Accordingly, these arguments do not support reconsideration.

Additionally, DotMusic is incorrect in its assertion that the CPE Provider concluded that the AH&LA (an American association) and CHA (a Chinese association) “constitute the recognized institutions to represent the [Hotel] community” with respect to sub-criterion 4-A. In its discussion of sub-criterion 4-A, the CPE Provider stated that “the applicant possesses documented support from the recognized community institution(s)/ member organizations(s). . . . These groups constitute the recognized institutions to represent the community, and represent a majority of the overall community as defined by the applicant.”<sup>243</sup> The CPE Provider did not identify the AH&LA or the CHA as the organizations it was referencing. DotMusic has set forth no evidence that the CPE Provider was referring to the geographically-limited organizations that DotMusic focuses on in the .HOTEL CPE Report.

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<sup>241</sup> CPE Report, at Pg. 8.

<sup>242</sup> Scope 2 Report, Pg. 51-54 (<https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>).

<sup>243</sup> *Id.*

In short, the CPE Provider here applied the very definition the Requestors point to in the CPE Guidelines, namely whether the organizations supporting the application are “clearly recognized by the community members as representative of that community.”<sup>244</sup>

Finally, DotMusic argues that the “CPE [Provider] should have investigated all of DotMusic’s supporters to determine whether the criteria set forth in the [Guidebook] was fulfilled. Support letters were sent by thousands of entities,” but “the CPE panel only researched a few of these organisations according to the findings of the FTI Report.”<sup>245</sup> DotMusic identifies no requirement in the Guidebook—as there is none—that requires the CPE Provider to “investigate” each supporter. The CPE Provider acknowledged the “wide array” of supporters for the Application, and noted that DotMusic had “documented support from many groups with relevance,” awarding one of two points.<sup>246</sup> The Scope 3 Report confirms that the CPE Provider sent verification emails to all of the entities that submitted letters of support, consistent with the CPE Panel Process Document.<sup>247</sup> In the course of that verification process, the CPE Provider “assesse[d] . . . the relevance of [each] organization” that submitted a letter of support.<sup>248</sup> Accordingly, the CPE Provider *did* investigate each of DotMusic’s supporters, consistent with CPE procedures, and DotMusic’s argument does not support reconsideration.

**J. The Board’s Conclusion of the CPE Process Review was Consistent with Applicable Policies and Procedures.**

The Requestors’ criticisms of the conclusion of the CPE Process Review focus on the transparency, methodology, and scope of the CPE Process Review. None support reconsideration. The BAMC notes that it addressed many of the Requestors’ concerns in its

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<sup>244</sup> Request 16-5, § 8, Pgs. 8-9; *see* CPE Guidelines at Pg. 17.

<sup>245</sup> DotMusic CPE Process Review Letter, ¶¶ 101-02, at Pg. 60-61.

<sup>246</sup> CPE Report, at Pg. 8.

<sup>247</sup> Scope 3 Report, at Pg. 51 n.185; CPE Panel Process Document, at Pg. 5 (<https://newgtlds.icann.org/en/applicants/cpe>).

<sup>248</sup> CPE Panel Process Document, at Pg. 5.

Recommendation on Request 18-5,<sup>249</sup> which the Board adopted on 18 July 2018.<sup>250</sup> The rationales set forth by the BAMC, and the Board in its determination on Request 18-5, are incorporated herein by reference.

**K. DotMusic’s Procedural Demands are Outside the Scope of Request 16-5.**

DotMusic’s rejection of the BAMC’s invitations to submit additional materials and to make a telephonic oral presentation, and its demands that ICANN org disclose all documents related to the CPE Process Reviews are not required by the 2018 Resolutions and the Transition Process.<sup>251</sup> First, the 2018 Resolutions did not direct ICANN org to disclose all the documents related that CPE Process Review requested by DotMusic in DIDP Request 20180110-1. The Board resolved that issue when it denied DotMusic’s reconsideration request challenging ICANN org’s response to DIDP Request 20180110-1.<sup>252</sup> Rather, the 2018 Resolutions directed the BAMC to move forward with the consideration of the pending Reconsideration Request on CPE in accordance with the Transition Process.<sup>253</sup>

Second, the Transition Process document was developed to reduce the impact on any requestors of pending Reconsideration Requests that were submitted prior to the transfer of the Reconsideration responsibilities to the BAMC.<sup>254</sup> In that regard, the Transition Process ensures the complete transfer of documentation that was submitted to the BGC to the BAMC, which has been completed. Further, the Transition Process document states that the BAMC should allow all requestors with pending Reconsideration Requests relating to the CPE Process to make an

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<sup>249</sup> Recommendation on Request 18-5, <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-14jun18-en.pdf>.

<sup>250</sup> Board action on request 18-5, <https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.f>.

<sup>251</sup> Transition Process (<https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>).

<sup>252</sup> Board Action on Request 18-1 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.b>).

<sup>253</sup> 2018 Resolutions (<https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>).

<sup>254</sup> Transition Process, Pg. 1 (<https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>).

oral presentation to the BAMC, including those requestors that previously presented to the BGC, such as the Requestor, which the BAMC has done.<sup>255</sup> There is nothing in the Bylaws or Articles of Incorporation requiring the Board or the BAMC to do more.

For the same reasons stated above, DotMusic’s demand that the BAMC “must” provide DotMusic with a list of specific concerns about Request 16-5 following the Requestor’s supplemental submission and to schedule an in person presentation to address them (once the above-described conditions are met)<sup>256</sup> is inconsistent with the 2018 Resolutions and the Transition Process.<sup>257</sup> Consistent with the Bylaws, which permit the BAMC to “request additional information or clarifications from the requestor,”<sup>258</sup> the BAMC *has* offered the Requestors the opportunity to make a telephonic presentation to it concerning Request 16-5 and the CPE Process Review, during which the BAMC could have asked questions or raised concerns, if it had any.<sup>259</sup> DotMusic “reject[ed]” the BAMC’s offer, and the other requestors did not respond to the BAMC’s invitation.<sup>260</sup>

With respect to DotMusic’s extraordinary demand that ICANN org bear DotMusic’s costs and expenses for reviewing any documents ICANN produces and preparing supplemental submissions to the BAMC concerning those documents, the BAMC rejects this demand for the same reasons discussed above. Further, such an unprecedented request is beyond the scope of Reconsideration process. While the Bylaws provide that ICANN org shall bear “the normal

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<sup>255</sup> *See id.*

<sup>256</sup> <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>.

<sup>257</sup> 2018 Resolutions (<https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>); Transition Process (<https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>)

<sup>258</sup> ICANN Bylaws, 11 February 2016, Art. IV § 2.12.

<sup>259</sup> 19 March 2018 email from ICANN organization to the Requestors

<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-1-14jun18-en.pdf> f.

<sup>260</sup> 23 March 2018 letter from A. Ali to ICANN Board, at Pg. 4-5,

administrative costs of the reconsideration process,”<sup>261</sup> DotMusic’s costs for reviewing documents and preparing a submission to the BAMC is not a normal administrative cost. If it were, ICANN org would have to bear every requestor’s costs for preparing their reconsideration requests, which simply is not contemplated in the Bylaws, nor is it tenable.

Finally, the BAMC notes that it has carefully reviewed and considered all of the materials that the Requestors have submitted since 2016. Its evaluation of these materials is incorporated in the extensive discussion on the preceding pages of this Recommendation. The BAMC has also provided the Requestors an opportunity to “be heard [concerning the CPE Process Review Reports] as it relates to [the] pending reconsideration requests,” which DotMusic sought on 16 January 2018,<sup>262</sup> but declined to accept the opportunity when offered in March 2018.<sup>263</sup>

For all of the reasons discussed above, reconsideration is not warranted.

## **II. Recommendation.**

The BAMC has considered the merits of Request 16-5 and, based on the foregoing, concludes that ICANN org acted consistent with the Guidebook and did not violate ICANN’s Mission, Commitments and Core Values when it accepted the CPE Report, and the Board’s response to the Despegar IRP Determination does not merit reconsideration. Accordingly, the BAMC recommends that the Board deny Request 16-5.

In terms of the timing of this decision, Section 2.16 of Article IV of the Bylaws applicable to Request 16-5 provides that the BAMC shall make a final determination or recommendation with respect to a reconsideration request within thirty days, unless impractical.

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<sup>261</sup> ICANN Bylaws, 11 February 2016, Art. IV § 2.4.

<sup>262</sup> <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>.

<sup>263</sup> 23 March 2018 Letter from Ali on behalf of dotgay LLC and DotMusic to ICANN (<https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>).

To satisfy the thirty-day deadline, the BAMC would have to have acted by 26 March 2016. However, Request 16-5 was placed on hold pending completion of the CPE Process Review. The Requestors were then provided an opportunity to supplement their arguments in light of the CPE Process Review results, and to make a telephonic presentation to the BAMC prior to its recommendation. The Requestors rejected both invitations. Accordingly, the first opportunity that the BAMC has to consider Request 16-5 is 25 January 2019.

## **APPENDIX 1: Timeline of Relevant Events (Reconsideration Request 16-5)**

### **10 February 2016**

- The CPE Provider issued its report on the Application (CPE Report), awarding the application 10 out of 16 points and finding that the Application did not meet the CPE requirements for community priority.<sup>1</sup>

### **24 February 2016**

- The Requestors submitted Request 16-5, seeking reconsideration of the CPE Report and ICANN organization's acceptance of that Report.<sup>2</sup>

### **17 March 2016**

- DotMusic sent a letter to the Board “to remind [them] of the consensus GAC Category 1 Advice Resolutions that were accepted by the ICANN Board and [New gTLD Program Committee (NGPC)] in 2014.”<sup>3</sup> DotMusic argued that because ICANN org had accepted the GAC Category 1 Advice, “the ICANN Board and NGPC have accepted that the music community, in its entirety, has cohesion based on international law.”<sup>4</sup>

### **22 March 2016**

- Far Further/.Music LLC (Far Further), another community-based applicant for the .MUSIC gTLD who participated in CPE and did not succeed, sent a letter to the Board, asking it to “act consistently and apply the same standards to all parties as it considers [DotMusic's] reconsideration request.” The BGC had previously denied Far Further's request for reconsideration of the results of its CPE application (Request 14-45).<sup>5</sup>

### **28 March 2018**

- DotMusic responded to Far Further's letter to the BGC, asserting that Far Further engaged in a “repeated pattern of behavior of filing spurious letters and abuse of accountability mechanisms” and calling it “misguided and anti-competitive.”<sup>6</sup>
- The National Music Council sent a letter to the BGC in support of the Application and Request 16-5.<sup>7</sup>

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<sup>1</sup> <https://newgtlds.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>.

<sup>2</sup> <https://www.icann.org/resources/pages/14-44-2014-10-22-en>.

<sup>3</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17mar16-en.pdf> (emphasis in original).

*Id.*

<sup>4</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-music-llc-to-icann-22mar16-en.pdf>.

<sup>5</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-28mar16-en.pdf>.

<sup>7</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-28mar16-en.pdf>.

## 29 April 2016

- DotMusic submitted a request pursuant to ICANN’s Documentary Information Disclosure Policy (DIDP) seeking documents relating to the CPE Report (2016 DIDP Request),<sup>8</sup> and asked ICANN to postpone its review of Request 16-5 pending ICANN’s response to the DIDP Request. ICANN agreed.

## 15 May 2016

- ICANN org responded to the 2016 DIDP Request.<sup>9</sup>

## 30 May 2016

- The Requestors filed Request 16-7, challenging ICANN org’s response to the 2016 DIDP Request.<sup>10</sup>

## 17 June 2016

- DotMusic submitted the “Expert Legal Opinion” of Dr. Jørgen Blomqvist, Honorary Professor in International Copyright (Blomqvist Opinion),<sup>11</sup> reiterating the arguments raised in Request 16-5.<sup>12</sup>

## 26 June 2016

- The BGC denied Request 16-7.<sup>13</sup>

## 19 July 2016

- The National Music Council sent a clarifying letter to the BGC, “rescind[ing] as error” its prior “endorsement of DotMusic.” The National Music Council explained that it intended to support Far Further’s application for the .MUSIC gTLD rather than DotMusic’s application for the same string.<sup>14</sup>

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<sup>8</sup> <https://www.icann.org/en/system/files/files/didp-20160429-1-dotmusic-request-29apr16-en.pdf>.

<sup>9</sup> <https://www.icann.org/en/system/files/files/didp-20160429-1-dotmusic-response-supporting-docs-15may16-en.pdf>.

<sup>10</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-request-redacted-30may16-en.pdf>.

<sup>11</sup> Blomqvist Opinion, available at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>.

<sup>12</sup> See *id.*

<sup>13</sup> BGC Determination on Request 16-7, <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-bgc-determination-26jun16-en.pdf>. The Requestor has now filed six reconsideration requests: the instant Request 16-5 (challenging the CPE report), Request 16-7 (challenging the response to the 2016 DIDP Request), Request 17-2 (challenging the response to the Requestor’s 2017 DIDP Request), Request 17-5 (challenging ICANN organization’s response to a second 2017 DIDP request, filed jointly with dotgay LLC), Request 18-1 (challenging ICANN organization’s response to a 2018 DIDP Request), and Request 18-5 (challenging the Board’s resolution acknowledging and accepting the CPE Process Review Reports).

<sup>14</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-19jul16-en.pdf>.



## 12 September 2016

- DotMusic submitted the “Expert Ethnomusicologist Opinion” of Dr. Richard James Burgess, Doctor of Philosophy in Ethnomusicology (Burgess Opinion).<sup>15</sup> The Burgess Opinion asserted that the Requestors had satisfied the CPE Criteria for Community Establishment, Nexus between Proposed String and Community, and Community Endorsement.<sup>16</sup>

## 17 September 2016

- DotMusic made an oral presentation to the BGC regarding request 16-5 (2016 Presentation) and submitted the slides used in the 2016 Presentation.<sup>17</sup>

## 19 September 2016

- DotMusic submitted a 3-page letter responding to the BGC’s question, raised during DotMusic’s 17 September 2016 presentation, about how the defined community would be affected if the .MUSIC gTLD is not delegated to DotMusic.

## 11 October 2016

- DotMusic submitted a “Joint Organisation Experts’ Opinion” in support of Request 16-5, by Dr. Noah Askin (Ph.D.) and Dr. Joeri Mol (Ph.D.) (Joint Opinion).<sup>18</sup> The Joint Opinion asserted that the Requestors had satisfied the CPE Criteria for Community Establishment, Nexus between Proposed String and Community, and Community Endorsement.<sup>19</sup>

## 6 December 2016

- DotMusic submitted a 57-page letter (including Appendices) supplementing its 19 September 2016 response to the BGC’s inquiry.<sup>20</sup>

## 15 December 2016

- DotMusic asked the BGC to consider the Council of Europe’s 4 November 2016 Report on “Applications to ICANN for Community-Based New Generic Top-Level Domains (gTLDs): Opportunities and challenges from a human rights perspective” (CoE Report) in connection with Request 16-5.<sup>21</sup>

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<sup>15</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-ethnomusicologist-opinion-burgess-redacted-12sep16-en.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17sep16-en.pdf>.

<sup>18</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-joint-organisation-opinion-redacted-11oct16-en.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-06dec16-en.pdf>.

<sup>21</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>.

## 17 September 2016

- ICANN’s Board directed ICANN organization to undertake a review of the process by which ICANN organization interacted with the CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider as part of the New gTLD Program.<sup>22</sup>

## 18 October 2016

- The BGC discussed potential next steps regarding the review of pending reconsideration requests relating to the CPE process.<sup>23</sup> The BGC determined that, in addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for evaluations that are the subject of pending reconsideration requests (Scope 3).<sup>24</sup> Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. FTI Consulting, Inc.’s (FTI) Global Risk and Investigations Practice and Technology Practice were retained to conduct the CPE Process Review. The BGC determined that the then eight pending Reconsideration Requests relating to the CPE process, including Request 16-3, would be on hold until the CPE Process Review was completed.<sup>25</sup>

## 5 May 2017

- DotMusic submitted a DIDP Request (2017 DIDP Request), seeking 10 categories of documents and information relating to the CPE Process Review.<sup>26</sup>

## 4 June 2017

- ICANN org responded to the 2017 DIDP Request (2017 DIDP Response) and explained that, with the exception of certain documents that were subject to DIDP Defined

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<sup>22</sup> <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

<sup>23</sup> <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

<sup>24</sup> *Id.*

<sup>25</sup> <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

<sup>26</sup> <https://www.icann.org/en/system/files/files/didp-20170505-1-ali-request-05may17-en.pdf>. The 2017 DIDP Request sought the same documents, in verbatim requests, as those requested in Items No. 4-13 in a DIDP Request filed by dotgay LLC in May 2017. *Compare* DIDP Request No. 20170518-1, <https://www.icann.org/en/system/files/files/didp-20170518-1-ali-request-18may17-en.pdf>, with the 2017 DIDP Request. dotgay LLC and the Requestor are represented by the same law firm, and that firm filed both DIDP Requests and filed Reconsideration Requests challenging both DIDP Requests. *See* Reconsideration Request 17-2; Request 17-3. Reconsideration Request 17-3 raises many of the same arguments that the Requestor raised in Request 17-2. *Compare* Reconsideration Request 17-2, with Request 17-3.

Conditions for Nondisclosure (Nondisclosure Conditions), all the remaining responsive documents had already been published.<sup>27</sup>

### **10 June 2017**

- DotMusic submitted a joint DIDP Request with dotgay LLC, seeking four categories of documents and information relating to the CPE Process Review (Joint DIDP Request).<sup>28</sup>

### **18 June 2017**

- DotMusic filed Reconsideration Request 17-2 (Request 17-2), which challenged certain portions of the 2017 DIDP Response.<sup>29</sup>

### **10 July 2017**

- ICANN org responded to the Joint DIDP Request.<sup>30</sup>

### **25 July 2017**

- DotMusic and dotgay LLC filed Request 17-4, challenging certain portions of the Joint DIDP Request.<sup>31</sup>

### **23 September 2017**

- The Board denied Request 17-2, consistent with the BAMC's recommendation.<sup>32</sup>

### **29 October 2017**

- The Board denied Request 17-4, consistent with the BAMC's recommendation.<sup>33</sup> DotMusic subsequently initiated Cooperative Engagement Process proceedings concerning Requests 17-2 and 17-4.<sup>34</sup>

### **13 December 2017**

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<sup>27</sup> <https://www.icann.org/en/system/files/files/didp-20170505-1-ali-response-04jun17-en.pdf>.

<sup>28</sup> DIDP Request No. 20170610-1 (<https://www.icann.org/en/system/files/files/didp-20170610-1-ali-obo-dotgay-et-al-request-redacted-10jun17-en.pdf>).

<sup>29</sup> Request 17-2 (<https://www.icann.org/en/system/files/files/reconsideration-17-2-dotmusic-request-redacted-18jun17-en.pdf>).

<sup>30</sup> ICANN org response to DIDP Request No. 20170610-1 (<https://www.icann.org/en/system/files/files/didp-20170610-1-ali-obo-dotgay-et-al-response-10jul17-en.pdf>).

<sup>31</sup> Request 17-4 (<https://www.icann.org/en/system/files/files/reconsideration-17-4-dotmusic-dotgay-request-redacted-25jul17-en.pdf>).

<sup>32</sup> <https://www.icann.org/resources/board-material/resolutions-2017-09-23-en#2.a>.

<sup>33</sup> Board Action Regarding Request 17-4 (<https://www.icann.org/resources/board-material/resolutions-2017-10-29-en#1.a>).

<sup>34</sup> See Cooperative Engagement and Independent Review Processes Status Update, 29 March 2018 (<https://www.icann.org/en/system/files/files/irp-cep-status-29mar18-en.pdf>).

- ICANN organization published FTI’s reports issued in connection with the CPE Process Review.<sup>35</sup>

## 10 January 2018

- DotMusic filed another DIDP Request, seeking 19 categories of documents and information relating to the CPE Process Review (2018 DIDP Request).<sup>36</sup>

## 16 January 2018

- DotMusic submitted a letter to the Board, claiming that the CPE Process Review lacked transparency or independence, and was not sufficiently thorough.<sup>37</sup> DotMusic asked the Board to take no action with respect to the conclusions reached by FTI until the parties have had an opportunity to respond to the FTI Report and to be heard as it relates to their pending reconsideration requests.<sup>38</sup>

## 2 February 2018

- DotMusic submitted a 66-page letter to the Board and the BAMC, challenging the results of the CPE Process Review Reports.<sup>39</sup> DotMusic argued that FTI did not “substantive[ly] engage[] with” DotMusic’s concerns about the CPE Report because:

## 9 February 2018

- ICANN org responded to the 2018 DIDP Request.<sup>40</sup> ICANN org provided links to all the responsive, publicly available documents. With respect to those requested materials that were in ICANN org’s possession and not already publicly available, ICANN org explained that those documents would not be produced because they were subject to certain Defined Conditions of Nondisclosure (Nondisclosure Conditions) set forth in the DIDP. Notwithstanding the Nondisclosure Conditions, ICANN org “also evaluated the documents subject to these conditions . . . [and] determined that there are no circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.”<sup>41</sup> Additionally, in response to two of the requested items, ICANN org explained that the requested documentary information did not exist.<sup>42</sup>

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<sup>35</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.

<sup>36</sup> DIDP Request No. 20180110-1 (<https://www.icann.org/en/system/files/files/didp-20180110-1-ali-request-redacted-10jan18-en.pdf>).

<sup>37</sup> See <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>.

<sup>38</sup> <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>.

<sup>39</sup> See 2 February 2018 email from C. Roussos to ICANN Board attaching “Analysis of .MUSIC Community Priority Evaluation Process & FTI Reports” (DotMusic CPE Process Review Letter)

(<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-cpe-fti-to-icann-board-02feb18-en.pdf>).

<sup>40</sup> 2018 DIDP Response (<https://www.icann.org/en/system/files/files/didp-20180110-1-ali-response-redacted-09feb18-en.pdf>).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

## 10 March 2018

- DotMusic filed Request 18-1, challenging certain portions of the 2018 DIDP Response.<sup>43</sup>

## 15 March 2018

- The Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review (the 2018 Resolutions).<sup>44</sup> The Board instructed the BAMC to consider the remaining Requests in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC (Transition Process),<sup>45</sup> and with a Roadmap for the review of the pending Reconsideration Requests (Roadmap).<sup>46</sup>

## 19 March 2018

- The BAMC invited the Requestors to “submit additional information relating to Request 16-3, provided the submission is limited to any new information/argument based upon the CPE Process Review Reports” by 2 April 2018. The BAMC also invited the Requestors to “make a telephonic oral presentation to the BAMC in support of” Request 16-5. The BAMC requested “that any such presentation be limited to providing additional information that is relevant to the evaluation of Request 16-5 and that is not already covered by the written materials.”<sup>47</sup>

## 23 March 2018

- DotMusic responded to the BAMC’s 19 March 2018 invitation to submit supplemental briefing and/or make a telephonic presentation concerning Request 16-3.<sup>48</sup> DotMusic “reject[ed] BAMC’s invitation to make a telephonic presentation limited to 30 minutes”

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<sup>3</sup> <https://www.icann.org/en/system/files/files/reconsideration-18-1-dotmusic-request-redacted-10mar18-en.pdf>.  
<https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>. One Board member, Avri Doria, abstained from voting on the 2018 Resolutions due to concerns “about the rigor of the study and some of its conclusions.” San Juan ICANN Board Meeting, 15 March 2018, at Pg. 12-13  
(<https://static.ptbl.co/static/attachments/170857/1522187137.pdf?1522187137>) However, Ms. Doria nonetheless

“accept[ed] the path forward” that the Board was setting. *Id.*

<sup>5</sup> <https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>.

<sup>6</sup> 2018 Resolutions. *See also* Roadmap (<https://www.icann.org/en/system/files/files/roadmap-reconsideration-requests-cpe-15feb18-en.pdf>).

<sup>7</sup> <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-1-14jun18-en.pdf>.

<sup>8</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>.

and “reject[ed] ICANN’s attempt to impose an artificial two weeks deadline” for supplemental briefing.<sup>49</sup>

### **5 April 2018**

- DotMusic reiterated to the BAMC that, “[i]n order to provide ICANN with further substantive comments on the CPE Process Review,” DotMusic “must have” certain of the items it sought in its 23 March 2018 letter.<sup>50</sup>

### **14 April 2018**

- DotMusic submitted a new Reconsideration Request (Request 18-5) seeking reconsideration of the 2018 Resolutions.<sup>51</sup>

### **18 July 2018**

- The Board denied Requests 18-1 and 18-5, consistent with the BAMC’s recommendations.<sup>52</sup>

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*Id.* at Pg. 4-5.

<sup>50</sup> 5 April 2018 email from R. Wong to ICANN organization (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>).

<sup>51</sup> Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-request-redacted-14apr18-en.pdf>).

<sup>52</sup> Board Action on Request 18-1 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.b>); Board Action on Request 18-5 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.f>).

**APPENDIX 2: Materials and Arguments Submitted by the Requestor/ Its Supporters in Support of Request 16-5**

SUBMISSION	ARGUMENT(S)
Request 16-5 and exhibits thereto <sup>1</sup>	<ul style="list-style-type: none"> <li>• See BAMC Recommendation</li> <li>• Attached 41 exhibits, including, among other things:</li> <li>• 43 letters (each apparently substantially identical in content<sup>2</sup>) from individuals the Requestors asserted were independent experts “that agreed unanimously that DotMusic met the Community Establishment, Nexus and Support criteria.”<sup>3</sup></li> <li>• The results of an “Independent Nielsen/Harris Poll” which they claimed supported the same conclusions.<sup>4</sup></li> </ul>
17 March 2016 letter from DotMusic to the Board	<ul style="list-style-type: none"> <li>• “[R]emind[ed]” the Board “of the <u>consensus</u> GAC Category 1 Advice Resolutions that were accepted by the ICANN Board and [New gTLD Program Committee (NGPC)] in 2014.”<sup>5</sup></li> <li>• Argued that because ICANN org had accepted the GAC Category 1 Advice, “the ICANN Board and NGPC have accepted that the music community, in its entirety, has cohesion based on international law.”<sup>6</sup></li> </ul>
“Expert Legal Opinion” of Dr. Jørgen Blomqvist, Honorary Professor in International Copyright	<ul style="list-style-type: none"> <li>• Reiterated the arguments raised in Request 16-5.<sup>7</sup></li> </ul>

<sup>1</sup> Request 16-5 (<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-request-redacted-24feb16-en.pdf>).

<sup>2</sup> Compare, e.g., letter of Dr. Argiro Vatakis ([http://music.us/expert/letters/Music\\_Expert\\_Letter\\_Dr\\_Argiro\\_Vatakis.pdf](http://music.us/expert/letters/Music_Expert_Letter_Dr_Argiro_Vatakis.pdf)) with letter of Professor Bobby Borg, ([http://music.us/expert/letters/Music\\_Expert\\_Letter\\_Professor\\_Author\\_Bobby\\_Borg.pdf](http://music.us/expert/letters/Music_Expert_Letter_Professor_Author_Bobby_Borg.pdf)).

<sup>3</sup> See <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-ethnomusicologist-opinion-burgess-redacted-12sep16-en.pdf>. See also Request 16-5, Ex. A40 (<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-exhibits-a25-redacted-24feb16-en.pdf> (hyperlinks to each letter are available at page 308)).

Request 16-5, Ex. A32 at Pg. 38 (<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-exhibits-a25-redacted-24feb16-en.pdf>).

<sup>5</sup> 17 March 2016 letter from Ali to ICANN Board (emphasis in original) (<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17mar16-en.pdf>).

<sup>6</sup> *Id.*

<sup>7</sup> See *id.*

SUBMISSION	ARGUMENT(S)
(Blomqvist Opinion). <sup>7</sup>	
“Expert Ethnomusicologist Opinion” of Dr. Richard James Burgess (Burgess Opinion). <sup>8</sup>	<ul style="list-style-type: none"> <li>• Asserted that the Requestors satisfied the CPE Criteria for Community Establishment, Nexus between Proposed String and Community, and Community Endorsement.<sup>10</sup></li> </ul>
DotMusic’s Presentation to the BGC <sup>11</sup>	<ul style="list-style-type: none"> <li>• Presentation by Arif Ali: <ul style="list-style-type: none"> <li>• The CPE Provider “singled out DotMusic for disparate treatment”</li> <li>• The CPE Provider did not act “fairly and openly.”</li> </ul> </li> <li>• Presentation by Dr. Blomqvist.</li> <li>• Statement of Dr. Burgess.</li> </ul>
DotMusic’s Response to BGC Question Posed at 17 September 2016 Presentation <sup>12</sup>	<ul style="list-style-type: none"> <li>• Among other arguments:</li> <li>• “A safe, authenticated and trusted .MUSIC can change this and generate billions of dollars worth of lost traffic and revenues to the global music community by merely replacing millions of pirated web results with .MUSIC official and trusted websites. A verified .MUSIC for music community members will also prevent impersonation and counterfeiting (e.g. unlicensed merchandising or ticketing).”</li> <li>• “Apart from increasing competition and consumer trust, another benefit under DotMusic’s approach is raising awareness for ICANN’s New gTLD Program as well as increasing adoption.”</li> <li>• “Awarding .MUSIC to a non-community applicant would negatively and significantly impact the global music community’s business model into the future because the opportunities of creating a safe haven for global music</li> </ul>

<sup>7</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>.

<sup>8</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-ethnomusicologist-opinion-burgess-redacted-12sep16-en.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17sep16-en.pdf>.

<sup>12</sup>



SUBMISSION	ARGUMENT(S)
	consumption and a legitimate global music and song database (which does not exist today), will entirely be lost.”
11 October 2016 “Joint Organisation Experts’ Opinion” <sup>13</sup>	<ul style="list-style-type: none"> <li>• The Application met the criteria for Community Priority.<sup>14</sup></li> </ul>
6 December 2016 Supplement to DotMusic’s Response to BGC Question Posed at 17 September 2016 Presentation <sup>15</sup>	<ul style="list-style-type: none"> <li>• “DotMusic’s Community-Based Approach Protects the Music Community from the Economic and Non-Economic Harm Associated with Abusive Registrations of .MUSIC.”<sup>16</sup></li> <li>• “DotMusic’s Community-Based Approach to .MUSIC Serves the Global Public Interest by Preventing DNS Abuse.”<sup>17</sup></li> <li>• “DotMusic’s Community-Based Approach Addresses Copyright Infringement, Trust, and the High Risk of Consumer Harm in Music-Themed gTLDs”<sup>18</sup></li> <li>• “The BGC Must Accept DotMusic’s Reconsideration Request 16-5”<sup>19</sup></li> </ul>
15 December 2016 letter from DotMusic <sup>20</sup>	<ul style="list-style-type: none"> <li>• The Board should consider the Council of Europe’s 4 November 2016 Report on “Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective” (CoE Report)<sup>21</sup> in its analysis of Request 16-5, including the CoE Report’s conclusions that: <ul style="list-style-type: none"> <li>• The CPE Provider counts awareness and recognition of the community amongst its member twice in violation of the Guidebook’s commitment to avoid double-counting;<sup>22</sup></li> </ul> </li> </ul>

<sup>13</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-joint-organisation-opinion-redacted-11oct16-en.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-06dec16-en.pdf>.

<sup>16</sup> *Id.* at Pg. 2.

<sup>17</sup> *Id.* at Pg. 4.

<sup>18</sup> *Id.* at Pg. 6.

<sup>19</sup> *Id.* at Pg. 8.

<sup>20</sup> 15 December 2016 letter from Ali to ICANN <https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>.

<sup>21</sup> The CoE Report is available at <https://rm.coe.int/16806b5a14>.

<sup>22</sup> 15 December 2016 letter from Ali to ICANN, at Pg. 2-3 <https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>.

SUBMISSION	ARGUMENT(S)
	<ul style="list-style-type: none"> <li>• The CPE Provider interpreted sub-criterion 4-A, Support, inconsistently across applications;<sup>23</sup></li> <li>• The [CPE Provider] changed its own process as it went along;<sup>24</sup></li> <li>• The CPE Provider had a conflict of interest in its consideration of the Application;<sup>25</sup></li> <li>• There is a “fundamental conflict between ICANN’s stated policy on community priority and the potential revenues that can be earned through the auction process”;<sup>26</sup></li> <li>• The CPE process lacks transparency;<sup>27</sup></li> <li>• DotMusic’s arguments in support of the Application “appear to be legitimate to protect the intellectual property rights of the music industry as well as the consumer against crime”;<sup>28</sup> and</li> <li>• DotMusic will “promote the right to freedom of expression through the .MUSIC TLD,” which “serve[s] the public interest and protect[s] vulnerable groups (such as the music community) and consumer from harm (such as from malicious abuse).”<sup>29</sup></li> </ul>
2 February 2018 letter <sup>30</sup>	<ul style="list-style-type: none"> <li>• Attached an “Analysis of .MUSIC Community Priority Evaluation Process &amp; FTI Reports” which argued that FTI did</li> </ul>

<sup>23</sup> *Id.* at Pg. 4.

<sup>24</sup> *Id.* at Pg. 4-5.

<sup>25</sup> *Id.* at Pg. 5.

<sup>26</sup> *Id.* at Pg. 6.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at Pg. 9-10, quoting CoE Report at Pg. 20.

<sup>29</sup> *Id.* at Pg. 11.

<sup>30</sup> <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-cpe-fti-to-icann-board-02feb18-en.pdf>.

The Board responded to DotMusic’s 2 February 2018 letter through counsel on 5 March 2018, noting that the Board was “in the process of considering the issues raised in your letter and the accompanying analysis,” but that the Requestor’s accusations that “the FTI ‘compliance-focused investigation methodology’ was constructed in part to exonerate ICANN of any accountability and responsibility” were “as offensive as they are baseless,” and “insulting,” and concluded that “ICANN reject[ed] them unequivocally.” 5 March 2018 Letter from K. Wallace to A. Ali, at Pg. 1-2 (<https://www.icann.org/en/system/files/correspondence/wallace-to-roussos-schaeffer-05mar18-en.pdf>). On 7 March 2018, DotMusic responded to counsel that the 5 March 2018 letter “selectively misrepresent[ed]” DotMusic’s arguments and “chose to reference items entirely out of context and in bad faith.” 7 March 2018 letter from A. Ali to K. Wallace (<https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-jones-day-07mar18-en.pdf>).

SUBMISSION	ARGUMENT(S)
	<p>not “substantive[ly] engage[] with” DotMusic’s concerns about the CPE Report because:</p> <ul style="list-style-type: none"> <li>• FTI did not acknowledge perceived errors in the CPE Report;<sup>31</sup></li> <li>• FTI improperly decided not to expand the scope of the investigation beyond the scope set by the Board;<sup>32</sup></li> <li>• FTI’s methodology “was constructed in part to exonerate ICANN of any accountability”;<sup>33</sup></li> <li>• FTI did not consider whether the CPE Provider had expertise and understanding of the CPE Process or whether the CPE Panel that evaluated the Application “were indeed music experts”;<sup>34</sup></li> <li>• FTI did not re-evaluate the CPE applications, interview the CPE applicants, or consider other reports that “cast[] serious doubts on [FTI’s] findings”;<sup>35</sup></li> <li>• The documents that FTI reviewed were “carefully tailored” by ICANN, to “narrow [the] scope of the investigation and cherry-pick[] documents and information to share with the FTI to protect itself.”<sup>36</sup></li> <li>• FTI’s findings were not credible or consistent with other reports and opinions.<sup>37</sup></li> </ul>
<p>23 March 2018 letter from DotMusic to ICANN<sup>38</sup></p>	<ul style="list-style-type: none"> <li>• “[R]eject[ed] BAMC’s invitation to make a telephonic presentation limited to 30 minutes” and “reject[ed] ICANN’s attempt to impose an artificial two weeks deadline” for supplemental briefing. Instead, the Requestor asserted that “[i]f transparency and accountability are indeed the Board’s objectives, then” ICANN organization should:</li> </ul>

<sup>31</sup> See, e.g., DotMusic CPE Process Review Letter, at ¶¶ 38, 44.

<sup>32</sup> See, e.g. *id.*, ¶ 75, at Pg. 49; *id.* ¶¶ 67g, 67i, 67j, 67k, at Pg. 47; *id.* at ¶ 69c-d, at Pg. 48.

<sup>33</sup> *Id.*, ¶ 69, at Pg. 48.

<sup>34</sup> *Id.*, ¶ 67c-d, at Pg. 47.

<sup>35</sup> *Id.*, ¶ 69a, 69e, 73, at Pg. 48-49.

<sup>36</sup> *Id.*, ¶ 77, at Pg. 49.

<sup>37</sup> *Id.*, ¶¶ 76-77, 79, at Pg. 49-50.

<sup>38</sup> 23 March 2018 letter from A. Ali to ICANN Board, at Pg. 4-5

<https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>.

SUBMISSION	ARGUMENT(S)
	<ul style="list-style-type: none"> <li>(i) Disclose all documents requested in DIDP Requests No. 20180115-1 and 20180110-1;</li> <li>(ii) Provide the Requestor at least 3 months to review the documents;</li> <li>(iii) Allow the Requestor “a meaningful opportunity to submit additional materials in support” of its application, “without artificial constraints (e.g., a 10-page limit);</li> <li>(iv) “[I]dentify specific concerns in writing that it may have regarding the applications” after the Requestor submits its supplemental submission;</li> <li>(v) Provide the Requestor the opportunity for an in-person oral presentation to the BAMC;</li> <li>(vi) Bear the costs and expenses for the Requestor to review the requested documents and prepare its additional submissions;</li> <li>(vii) Undertake a substantive review of the merits of the Application.<sup>39</sup></li> </ul> <ul style="list-style-type: none"> <li>• The Requestor asserted that if ICANN organization does not agree to all of the above conditions, “the Board cannot claim to have discharged its duty to promote and protect transparency and accountability in good faith.”<sup>40</sup></li> </ul>
5 April 2018 email from Requestor to BAMC <sup>41</sup>	<ul style="list-style-type: none"> <li>• “In order to provide ICANN with further substantive comments on the CPE Process Review,” DotMusic “must have” certain of the items it sought in its 23 March 2018 letter.</li> </ul>
Request 18-5 <sup>42</sup>	<ul style="list-style-type: none"> <li>• Challenged the 2018 Resolutions, arguing that: <ul style="list-style-type: none"> <li>• The CPE [Process R]eview is procedurally and methodologically deficient;</li> </ul> </li> </ul>

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at Pg. 5.

<sup>41</sup> 5 April 2018 email from R. Wong to ICANN organization

(<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>).

<sup>42</sup> Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-request-redacted-14apr18-en.pdf>).

SUBMISSION	ARGUMENT(S)
	<ul style="list-style-type: none"><li data-bbox="630 233 1279 310">• The CPE [Process] Review failed to perform a substantive analysis of the CPE process; and</li><li data-bbox="537 342 1390 417">• The [2018] Resolutions were adopted in violation of ICANN's Bylaws."<sup>4</sup></li></ul>

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<sup>4</sup> *Id.*, § 6, at Pg. 3.

## **Rebuttal to the BAMC’s Recommendation on Reconsideration Request 16-5**

Requestor submits this rebuttal to the BAMC’s Recommendation on Reconsideration Request 16-5 (the “**Recommendation**”).<sup>1</sup>

### **1. Requestor’s Position Regarding the BAMC’s Lack of Proper Invitation**

The Recommendation misconstrues Requestor’s position regarding the BAMC’s invitation to make additional submissions on Reconsideration Request 16-5 (“**Request 16-5**”). It states that Requestor rejected the BAMC’s invitation.<sup>2</sup> This is inaccurate. The BAMC’s invitation imposed significant constraints on Requestor’s ability to fully address Request 16-5 in light of FTI Consulting, Inc.’s Community Priority Evaluation Process Review (the “**FTI Reports**”). Requestor sought to make unconstrained written submissions and an in-person presentation<sup>3</sup> as opposed to a limited written ten-page submission and a telephonic presentation to the BAMC.<sup>4</sup> Neither ICANN nor the BAMC responded to Requestor until the Recommendation.

### **2. The BAMC Failed to Comply with the ICANN Bylaws**

Pursuant to the ICANN Bylaws, ICANN must (1) “[e]mploy open, transparent and bottom-up, multistakeholder policy development processes that ... [shall] seek input from the public, for whose benefit ICANN in all events shall act;”<sup>5</sup> (2) “promote well-informed decisions based on expert advice;”<sup>6</sup> (3) “[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly without singling out any particular party for discriminatory treatment;”<sup>7</sup> and

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<sup>1</sup> See Recommendation of the BAMC Reconsideration Request 16-5 (25 January 2019).

<sup>2</sup> *Id.* at p. 4.

<sup>3</sup> *Id.*; see Reconsideration Request 18-5 Exhibit 36, Letter from A. Ali to C. Chalaby and C. Disspain (23 Mar. 2018), pp. 4-5 (making several requests in response to the BAMC’s invitation); Reconsideration Request 18-5 (14 Apr. 2018).

<sup>4</sup> See Reconsideration Request 18-5 Exhibit 34, Roadmap for Consideration of Pending Reconsideration Requests Relating to Community Priority Evaluation (CPE) Process that Were Placed On Hold Pending Completion of the CPE Process Review (15 Feb. 2018); Reconsideration Request 18-5 Exhibit 35, Email from R.M. Wong to ICANN Board (5 Apr. 2018).

<sup>5</sup> ICANN Bylaws (18 June 2018), Article 1, Section 1.2(a)(iv).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at Article 1, Section, 1.2(a)(v).

(4) operate “with efficiency and excellence.”<sup>8</sup> The Bylaws further require that ICANN carry “out its activities in conformity with relevant principles of international law and international conventions.”<sup>9</sup> The Recommendation violates these obligations and, in doing so, makes several misstatements that Requestor corrects below.

**A. Requestor Presented Significant Evidence that ICANN Violated Its Bylaws**

Request 16-5 provides sufficient evidence to show that ICANN failed to comply with the ICANN Bylaws. The Recommendation contends that:

Based on its extensive review of all relevant materials, the BAMC finds that ICANN org complied with established policies, Bylaws, and Articles of Incorporation when it accepted the CPE Report, because the CPE Provider did not violate any established policies or procedure in conducting the CPE. The BAMC further finds that the Requestors do not identify any misapplication of policy or procedure by the CPE Provider that materially or adversely affected the Requestors. Accordingly, the BAMC recommends that the Board deny Request 16-5.<sup>10</sup>

Requestor gave ICANN evidence to support its claims, such as expert opinions and the Council of Europe’s Report.<sup>11</sup> These documents provide evidence supporting Request 16-5 and concerns about the FTI Reports.<sup>12</sup>

Additionally, ICANN has thwarted Requestor from obtaining additional evidence by refusing to disclose documents related to the FTI Reports. This stonewalling by ICANN and refusal to provide documentation is in direct contravention to its commitment to transparency.

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<sup>8</sup> *Id.* at Article 1, Section 1.2(a)(iv).

<sup>9</sup> *Id.* at Article 1, Section 1.2(a).

<sup>10</sup> *See* Recommendation of the BAMC Reconsideration Request 16-5 (25 January 2019), p. 4.

<sup>11</sup> *See, e.g.*, Request for Reconsideration 18-5 Exhibit 5, Letter from Flip Petillion to the BAMC (1 Feb. 2018); Request for Reconsideration 18-5 Exhibit 11, Letter from A. Ali on behalf of dotgay to the ICAN Board, attaching the Second Expert Opinion of Professor William N. Eskridge, Jr. (31 Jan. 2018); Request for Reconsideration 18-5 Exhibit 12, Expert Legal Opinion by Honorary Professor in International Copyright Dr. Jørgen Blomqvist (18 June 2016); Request for Reconsideration 18-5 Exhibit 13, Even Salomon and Kinanya Pijl, “Applications to ICANN for Community-based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective,” Council of Europe Report DGI(2016)17 (Nov. 2017).

<sup>12</sup> *See* Request for Reconsideration 18-5 Exhibit 33, Recommendation of the BAMC Reconsideration Request 18-5 (14 June 2018), p. 19 (describing Requestor’s submissions as “Evidence”).

ICANN is required to operate “through open and transparent processes.”<sup>13</sup> ICANN has continually refused to disclose relevant documents that would likely provide additional evidence in support of Requestor’s concerns.<sup>14</sup> Requestor has already shown that ICANN has failed to comply with its commitment to act with transparency in its prior submissions to ICANN.<sup>15</sup>

**B. The Community Priority Evaluation Provider Misapplied the Evaluation Criteria for Requestor’s .MUSIC Community Application**

There are many examples of misapplication of process and established procedures by the Community Priority Evaluation (“CPE”) Provider.

*First*, the CPE Provider ignored the gTLD Applicant Guidebook’s (“AGB”) procedures in relation to the Community definition, which resulted in consequential errors in CPE grading. These errors alone could have resulted in Requestor passing the CPE. As Figure 1 shows, the CPE is “scored on the community identified in response to *this* question” i.e. Question 20A.

#	Question	Included in public posting	Notes
20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	Descriptions should include: <ul style="list-style-type: none"> <li>• How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language.</li> <li>• How the community is structured and organized. For a community consisting of an <u>alliance of groups</u>, <u>details about the constituent parts are required.</u></li> </ul>

Figure 1: gTLD Applicant Guidebook (4 June 2012), p. A-14.

<sup>13</sup> ICANN Bylaws (18 June 2018), Article 1, Sections 1.2(a), 1.2(b)(ii) (ICANN must “seek[] and support[] broad, informed participation . . . to ensure that the bottom-up multistakeholder policy development process is used to ascertain the global public interest and that those processes are countable and transparent.”).

<sup>14</sup> See, e.g., Request for Reconsideration 18-5 Exhibit 18, Request No. 20180110-1 (10 Jan. 2018); Request for Reconsideration 18-5 Exhibit 25, Request No. 20170505-1 (5 May 2017); Request for Reconsideration 18-5 Exhibit 28, Request No. 20170610-1 (19 June 2017).

<sup>15</sup> See Request for Reconsideration 18-5 Exhibit 38, Reconsideration Request 18-1 (10 Mar. 2018); Request for Reconsideration 18-5 Exhibit 39, Reconsideration Request 17-4 (25 July 2017); Request for Reconsideration 18-5 Exhibit 40, Reconsideration Request 17-2 (18 June 2017).



As Figure 2 shows, the CPE Provider identified the community in response to Question 20D—*not* Question 20A:

In addition to the above-named member categories, the applicant also includes in its application a more general definition of its community: “all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission” (Application, 20D).

Figure 2: DotMusic Limited Community Priority Evaluation Report (10 Feb. 2016), p.3.

This is a significant procedural error because the CPE Provider proceeded to grade the rest of the CPE based on an *incorrect* community definition resulting in consequential errors, double counting and inappropriately penalizing Requestor’s score.

*Second*, as Figure 2 illustrates, the CPE Provider incorporated its own “general definition” derived from Question 20D, when clearly, as Figure 1 shows, the definition must be defined and identified by Question 20A. If this misapplication was not enough, the CPE Provider compounded the error further, replacing the “Community” definition with the “Eligibility” criterion’s NAICS classification categories, as illustrated in Figure 3:

The community defined in the application is “delineated using established NAICS codes that align with the (i) characteristics of the globally recognized, organized Community, and (ii) .MUSIC global rotating multi-stakeholder Advisory Board model of fair representation, irrespective of locale, size or commercial/non-commercial status” (Application, 20A).

Figure 3: DotMusic Limited Community Priority Evaluation Report (10 Feb. 2016), p.2.

*Third*, Requestor’s key definitions—identified using “parentheses” to assist the CPE Provider in locating key definitions as shown in Figure 4 below—were ignored and replaced by the CPE Provider with incorrect definitions.

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.

**Name of the Community is the Music Community**

The name of the community served is the “Music Community” (“Community”). The parentheses below reflect ICANN’s Applicant Guidebook 4.2.3 Criterion Definitions; Delineation; Extension; Nexus; Uniqueness; Eligibility; Name Selection; Content and Use; Enforcement; Support; Opposition. DotMusic will use clear, organized, consistent and interrelated criteria to demonstrate Community Establishment beyond reasonable doubt and incorporate safeguards in membership criteria “aligned with the community-based Purpose” and mitigate anti-trust and confidentiality/privacy concerns by protecting the Community of considerable size-extension while ensuring there is no material detriment to Community rights/legitimate interests. Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” without discrimination, conflict of interest or “likelihood of material detriment to the rights and legitimate interests” of the Community: (i) Qualification criteria as delineated by recognized NAICS codes corresponding to Community member classification music entity types. This classification-based delineation will also be consistent with registrant Premium Channel membership criteria (“ELIGIBILITY”) (ii) Domain naming conditions (“NAME SELECTION”) (iii) Restrictions relating to domain usage and content (“CONTENT & USE”) (iv) Enforcement mechanisms to uphold Community Establishment and meet Nexus Criteria, consistent with our clear, organized delineation of the Community (“ENFORCEMENT”).

**Community Establishment refers to “clear, organized and interrelated criteria to demonstrate Community Establishment aligned with the community-based Purpose”**

**NAICS codes refer to Eligibility NOT Community Definition**

The “COMMUNITY” definition is an (i) an “organized community” and (ii) a “logical alliance” with cohesion “aligned with the community-based Purpose”

The Community is a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature (“COMMUNITY”)”, that relate to music: the art of combining sounds rhythmically, melodically or harmonically.

Figure 4: DotMusic Limited’s .MUSIC Application.

Requestor’s definition of the “Community” is an “organized community of individuals, organizations and business, a logical alliance of communities that relate to music” that uses “clear, organized and interrelated criteria to demonstrate Community Establishment ... aligned with the community-based Purpose” (as green underlined in [Figure 4](#)). Requestor also identifies the criteria that relate explicitly to “Eligibility” (as red underlined in [Figure 4](#)). The CPE Provider never acknowledged that Requestor met the precise community definition of a “logical alliance” that possesses “awareness and recognition” among its members, as seen through its Support Letters. As the CPE Guidelines indicate below in [Figure 5](#), a “logical alliance of communities” qualifies for a full grade under Community Establishment just as long as there is awareness and recognition among its members:

With respect to “Delineation” and “Extension,” it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members.

[Figure 5: CPE Guidelines, pp. 4-5.](#)

**Fourth**, another misapplication of a term explicitly defined by Requestor, which was ignored and misapplied by the CPE Provider, concerns the “Name” of the Community under the Nexus Section. The CPE Provider not only misapplied the Community Definition as “a collection of many categories,” but also concluded that “there is no “established name” for the applied-for string to match,” as [Figure 6](#) illustrates below:

Because the community defined in the application is a collection of many categories of individuals and organizations, and because there is no single entity that serves all of these categories in all their geographic breadth, there is no “established name” for the applied-for string to match, as required by the AGB for a full score on Nexus.

[Figure 6: DotMusic Limited Community Priority Evaluation Report \(10 Feb. 2016\), p. 5.](#)

The name of the community is not a “collection of many categories” as the CPE Provider indicates. Requestor identified the established name of the community in the *first* sentence to its answer to Question 20A (the “Music Community”), as underlined in [Figure 7](#) below:

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.

Name of the Community is the Music Community  
The name of the community served is the "Music Community"

[Figure 7: DotMusic Limited’s .MUSIC Application.](#)

The BAMC states that the Requestor “argue[s] that the CPE Provider relied on the incorrect community definition—i.e., not the community definition DotMusic provided in response to Question 20A of the Application” and that “the CPE Provider expressly relied on DotMusic’s response to Question 20A, and this argument does not support reconsideration.”<sup>16</sup> The “argument” is not whether or not the CPE Provider relied on Requestor’s response to Question 20A, but whether or not the CPE Provider used the proper community definition. This is a procedural issue and not merely a “substantive disagreement.” If the CPE Provider used the proper community definition, then the grading would differ, resulting in a passing score. The CPE Provider did not argue whether or not a logical alliance of music communities that are aligned with an explicit community-based purpose and have submitted support letters have cohesion or not. In contrast, the CPE Provider argued whether or not a “collection of many categories”—which Requestor used to address the Eligibility criterion and *not* the community definition—had cohesion. If the “CPE Provider expressly *relied* on DotMusic’s response to Question 20A” then why did the CPE Provider: (1) not explicitly mention Requestor’s community definition in its CPE; and (2) create its own “general definition” of the community that was derived from Question 20D when the AGB explicitly states the definition should only be derived in Question 20A? The aforementioned points represent a procedural violation, not a substantive disagreement with the CPE Provider. It would

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<sup>16</sup> Recommendation of the BAMC Reconsideration Request 16-5 (25 January 2019), p. 14.

only be a substantive disagreement if the CPE Provider transparently and explicitly relied upon and applied the *correct* community definition of a “logical alliance” and made arguments in its favor (or against it). This did not occur.

Even with respect to Nexus, the CPE Provider ignores Requestor’s established name for the community: the “Music Community.” Again, the CPE Provider argues that the community does not exist because the community definition is a “collection of categories.” The misapplication of the community definition has also resulted in consequential grading errors across other CPE sections. This is a procedural violation warranting reconsideration.

### **C. FTI Consulting, Inc. Produced Methodologically Flawed Reports**

The BAMC’s actions violate the ICANN Bylaws because FTI Consulting, Inc. (“**FTI**”) did not adhere to a proper methodology in the FTI Reports.<sup>17</sup> The BAMC violated its Bylaws by failing to make a well-informed decision and failing to fairly apply its documented policies when it adopted these methodologically flawed reports to make its Recommendation.

*First*, FTI failed to obtain and review “all potentially relevant materials and documentation”<sup>18</sup> as part of its independent review. The ACFE’s Code of Professional Standards requires that FTI “*obtain evidence and information that is **complete, reliable and relevant.***”<sup>19</sup> However, FTI based its independent review of the CPE process on information solely obtained from ICANN and the CPE Provider—the two organizations being reviewed—even though FTI could have obtained a significant amount of additional relevant information from the community applicants.<sup>20</sup> This information was therefore not complete.

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<sup>17</sup> See Reconsideration Request 18-5 Exhibit 32, Reconsideration Request 18-5 (14 Apr. 2018).

<sup>18</sup> *Id.*

<sup>19</sup> Reconsideration Request 18-5 Exhibit 41, ACFE Code of Professional Standards Interpretation and Guidance, p. 8 (emphasis added).

<sup>20</sup> See Reconsideration Request 18-5 Exhibit 07, FTI Consulting, Analysis of the Application of the Community Priority Evaluation (CPE) Criteria by the CPE Provider in the CPE Reports (13 Dec. 2017), p. 8.

**Second**, FTI failed to interview all of the relevant individuals with “knowledge pertinent to the subject being investigated”<sup>21</sup> FTI had the capability to review the community applicants affected by the CPE Provider’s CPEs, but refused to talk with any of the applicants. FTI’s blanket acceptance of declarations made by ICANN and the CPE Provider is a significant problem with the FTI Reports as it does not consider “*the possibility of conjecture, unsubstantiated opinion and bias of witnesses and others*” in accordance with ACFE standards.<sup>22</sup> FTI simply accepted that the documents and interview statements were accurate and free of bias—despite being from the organizations under review. Instead of critically examining this evidence, FTI (1) did not question the information from ICANN and the CPE Providers; (2) refused to address the significant amount of contrary findings from third parties; and (3) excluded evidence that provided a contrary viewpoint to ICANN and the CPE Provider by deliberately choosing not to interview applicants.<sup>23</sup> FTI thus based the FTI Reports on a one-sided representation of the CPE process violating ACFE standards.

**Third**, FTI further did not exercise due professional care in conducting the CPE Process Review. In accordance with ACFE standards, FTI was required to discharge its professional responsibilities with “*diligence, critical analysis and professional skepticism*.”<sup>24</sup> FTI failed to achieve this objective because it simply accepted statements and information without further investigation or critical analysis. FTI was **only** concerned with determining whether the “reference[s] to the CPE Panel’s research” were reflected in the actual cited materials, **and not whether the underlying referenced research was true or accurate**.<sup>25</sup> FTI clearly failed to

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<sup>21</sup> *Id.* at p. 4.

<sup>22</sup> Reconsideration Request 18-5 Exhibit 41, CFE Code of Professional Standards Interpretation and Guidance, p. 8.

<sup>23</sup> Reconsideration Request 18-5 Exhibit 07, FTI Consulting, Analysis of the Application of the Community Priority Evaluation (CPE) Criteria by the CPE Provider in the CPE Reports (13 Dec. 2017), p. 8.

<sup>24</sup> Reconsideration Request 18-5 Exhibit 41, CFE Code of Professional Standards Interpretation and Guidance, p. 8.

<sup>25</sup> *See id.* at pp. 14-57.

critically analyze the information that it received and rather simply accepted the information as true without exercising any professional skepticism. FTI's interviews with the CPE Provider's personnel confirmed that ICANN did not affect the CPE Provider's CPEs and that the CPE Provider "never changed the scoring or the results based on ICANN organization's comments."<sup>26</sup> This conclusion on the actions of the independent evaluators for the CPE is based off of two interviews with CPE Provider personnel that *were not CPE evaluators*. Clearly, FTI's generalizations are unreliable; they are based on claims made by two CPE core team members on the evaluation process under the purview of the independent evaluators. FTI's actions have further rendered the entire CPE Process Reports significantly unreliable. FTI clearly failed to adhere to the methodology that it *chose to adopt* for the FTI Reports. By ignoring these failures in order to use the FTI Reports in the Recommendation, the BAMC violated its Bylaws-imposed obligations.

#### **D. The FTI Reports Are Substantively Flawed**

The FTI Reports are substantively flawed because FTI did not *address* any of the independent evaluations. FTI states that it "carefully considered the *claims* raised in Reconsideration Requests and Independent Review Process ... proceedings" and the "*claim* that certain of the CPE criteria were applied inconsistently across the various CPEs."<sup>27</sup> These simple declarations do not address the independent authority directly contradicting FTI's conclusions. FTI must have examined the full scope of relevant evidence and then confirmed or rebutted the authorities with adequate analysis. FTI, though, instead chose to ignore their existence rather than directly rebut their conclusions. By failing to consider divergent views on the CPE process, FTI produced a series of substantially flawed reports. FTI simply accepted statements and information

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<sup>26</sup> Reconsideration Request 18-5 Exhibit 33, Recommendation of the BAMC Reconsideration Request 18-5 (14 June 2018), p. 15.

<sup>27</sup> Reconsideration Request 18-5 Exhibit 07, FTI Consulting, Analysis of the Application of the Community Priority Evaluation (CPE) Criteria by the CPE Provider in the CPE Reports (13 Dec. 2017), p. 3 (emphasis added).

without further investigation or critical analysis. FTI's immediate acceptance that both the research performed by the CPE Provider and the information it received from ICANN and the CPE Provider were fully true and accurate further emphasizes the lack of any substantive evaluation in its review. The BAMC based its Recommendation on the flawed FTI Reports, which violate its obligation to act for the public benefit, make well-informed decisions based on expert advice, and apply documented policies consistently, neutrally, objectively, and fairly.

### **3. Conclusion**

The BAMC violated ICANN Bylaws by recommending that the ICANN Board deny Request 16-5. In addition to the reasons stated in the Request 16-5, the Board should grant Request 16-5 and reject the FTI Reports because the BAMC (i) improperly relies on the FTI Reports (which are the focus of a still-pending CEP<sup>28</sup>); (ii) bases its conclusions on unsupported statements about ICANN's communications with the CPE Provider; and (iii) untimely responds to Requestor's procedural requests, such as Requestor's request to make an in-person presentation to the BAMC.



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Arif Hyder Ali

Date: 12 February 2019

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<sup>28</sup> See Active Cooperative Engagement Process Proceedings requested by DotMusic on 14 September 2016, 6 October 2017, 7 November 2017, and 1 August 2018.