



ICANN Board Review Working Group

Second Interim Report for discussion with the ICANN community

June 2009

Summary and key points for discussion

The Board Review Working Group believes that most issues related to the external reviewer's report have been finalised.

1. The WG believes that the Board is already moving in the direction suggested in Recommendation 2 "Move to fewer but longer Board meetings".
2. At the end of 2008, the Board restructured the mandate of its standing Committees, and redefined their number and scope of action. No further action on Recommendation 3 "Consolidate the Board Committees" is required at this stage.
3. The ideas contained in Recommendation 4 "Broaden the skills of the Board" are already being addressed through the work of the Board Governance Committee.
4. The WG supports the initiatives suggested in Recommendation 6 "Build high performance culture at the Board level".
5. The WG supports the initiatives suggested in Recommendation 7 "Strengthen the strategic focus of the Board".
6. The WG supports the initiatives suggested in Recommendation 8 "Clarify the Board's accountabilities" with the exception of initiative 'f' (elect a Board acceptable to all constituencies) which seems impracticable within the ICANN context.

The WG seeks input from the community on the three major issues that remain outstanding: Board size and composition, compensation for Board members and the tenure and timing of appointment of Board members. With reference to the recommendations contained in the external reviewer's report, these issues are:

7. The WG recognises the complexity of the issues associated with Recommendation 1 "Reduce the size of the Board". It sees value in the proposal to reduce the size of the Board and the majority of WG members support this recommendation. Further discussion is required on how to implement this recommendation in the ICANN context.
8. The issues contained in Recommendation 5 "Make Board membership more sustainable" are complex. The WG acknowledges the general support from independent consultants and the community for the proposal of remunerating Directors with the Chair being remunerated at some multiple of the standard Directors' remuneration. The form and amount of this voluntary compensation still need to be discussed. Further discussion is needed on the timing of appointment of Directors and the duration of their term.



Background

As part of ICANN's commitment to accountability, transparency and continuous improvement, the ICANN [Bylaws](#) require the periodic review of 'each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee.' As specified in Article IV, Section 4 of ICANN's [Bylaws](#), the "goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness."

Each review is conducted by external, independent reviewers selected following publication of a Request for Proposals (RFP) based on Terms of Reference (ToR) detailing the scope of the work and listing a set of questions to be answered. The organizational review process includes the opportunity for public comment on the Terms of Reference of the review, its results and any proposed recommendation.

Although a review of the Board is not stipulated in the Bylaws, the Board of Directors decided that it would be appropriate to undertake such a review to identify ways that the performance of the Board might be further improved. The Board decided at the Sao Paulo meeting in December 2006 to add the Board to the list of organizations to be reviewed.

At the Paris meeting in June 2008, the Board adopted a resolution to adopt a Working Group (WG) model to facilitate this review process. To undertake this task, the WG draws on the expertise of the following current and past Board members: Amadeu Abril, Roberto Gaetano (Chair), Steve Goldstein, Thomas Narten, Rajasekhar Ramaraj, Rita Rodin Johnston, and Jean-Jacques Subrenat. The WG is being supported by Marco Lorenzoni (Director, Organizational Review) and Patrick Sharry, Independent Consultant.

Through consultation with the ICANN community, a [ToR](#) was developed and an [RfP](#) was posted. The Boston Consulting Group/ Colin Carter & Associates were selected to conduct the external review. The reviewers presented their [report](#) at the ICANN public meeting in Cairo in November 2008.

In order to obtain feedback from the community, a public session was held at the Cairo meeting. In addition, an [online public comment period](#) was opened to allow members of the ICANN community to react to the conclusions and recommendations of the independent review.

The WG has considered both the report and the comments received during presentation and the public comment period, and issued for [public consultation](#) an [interim report](#), which was presented at the ICANN meeting in Mexico City (March 2009).

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The present document is a draft of the WG's Final Report for presentation and discussion at the June 2009 ICANN meeting in Sydney. The WG is very keen to hear the views of all members of the ICANN community on the conclusions reached in this report. There will be opportunities for providing feedback both through a face to face session at the Sydney meeting, by participating in this session online or by contributing comments through the public forum on the ICANN website.

The WG will consider the comments received from the community, revise the report as necessary and submit it to the Board's Structural Improvements Committee for their consideration.



General remarks

In addition to comments about the particular recommendations contained in the external review report, the WG believes that it is important also to address some general remarks that were raised during the public comments periods about the report.

A few comments suggested that the external review had failed in understanding the specific “not for profit” nature of ICANN and its mission, and that reviewers based some of their key recommendations on standards that are specific to Boards of corporate “for profit” businesses. However, as it is mentioned in the body of their report, the conclusions of the external reviewer’s report draw on their experience in assisting a wide variety of both “for profit” and “not for profit” Boards.

ICANN values and unique governance model are indeed different from those of standard “for profit” businesses and from those of many “not for profit” corporations. Because the objective of the review process is to improve the operation of the ICANN Board and in consideration of this unique nature of ICANN, the WG considers however that there may be lessons that can be learned from other Boards, regardless of their “for profit” or “not for profit” nature.

In addressing the external reviewer’s report, the WG has taken each recommendation on its merits in order to determine whether it is appropriate for ICANN to implement.

Response to recommendations from the independent reviewer

Recommendation #1: Reduce the size of the board:

- (a) *Assess option 1: reduce the board to a maximum of 15 persons*
- *Redefine the Liaisons as an expert group of non-board members available to advise directors as required and develop a new communication protocol to ensure frequent exchange of views.*
 - *Provide ALAC with the right to nominate one or two voting board members.*
 - *Reduce the number of directors provided through the NomCom process from eight to six.*
 - *Provide one 'observer' position for the GAC and also, if thought necessary, for the technical community.*
- (b) *Assess option 2: halve the size of the board to around nine voting persons plus two observers*
- *One from each of the SO/ACs and possibly one from ALAC.*
 - *Four from the NomCom process.*
 - *The President.*
 - *An observer from each of GAC and the technical community.*
 - *Consider maintaining a majority of members sourced from the NomCom process (that is, four from SOs and ALAC, the President and five from NomCom).*
- (c) *Institute communication processes between board and technical community (such as a formal meeting at each of the three public meetings).*

The WG recognises that the question of the size of the Board is a difficult one. The report from the external reviewer presents a strong view that the size of the Board should be reduced. Members of the WG are conscious of the difficulties of working with a Board of the current size. The WG also notes the view expressed in external reviewer's report that large Boards are more prone to capture than small Boards. In considering this issue, some members of the WG suggested that the place to start is to ask "Would a small Board be more effective?" or perhaps more importantly, "Would a smaller Board help ICANN better achieve its mission?"

The WG notes the need to consider the workload of the Board in any proposed changes. Although a smaller Board has a strong appeal to many, the WG would also need to reassure itself that there would be sufficient Board

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members to effectively carry out the work that is required by the specific nature and governance model of ICANN.

Members of the WG are aware of the concerns raised by members of the community about the importance of the representative nature of the Board and the related issues of geographic, cultural and stakeholder diversity. The WG strongly supports the need for the continuation of such diversity on the Board, is committed to preserve that diversity regardless of the shape and model of the Board that is adopted as a result of this review, and believes that any change proposed needs to continue to provide genuine diversity. Some WG members are particularly mindful of the importance of the Nominating Committee process for providing that balance and diversity.

The WG also notes that the Board, while it has members drawn from the ICANN Supporting Organisations, is not a representative Board. The Bylaws state quite clearly that Board members have a fiduciary obligation to act for the good of the corporation as a whole and not in the interests of the organisation that allowed them to be seated.

With regard to liaisons, the WG recognises that in many ways it is well served by the individuals who currently serve as liaisons. However, at the same time, some members of the WG are of the view that the current model of liaisons is not working well for the Board nor for the liaisons themselves: in particular, it notes that the flow of information between the Board and the groups represented by the liaisons is not optimal. In addition, the liaisons have to sit through many meetings which have very little to do with their area of representation. A model where the liaisons would be invited for discussions only to particular meetings relevant to their area of representation and at which they would provide reports might be a more efficient and effective process. However, other WG members are of the view that the liaisons need continuity in order to be of real value. A process which has the liaisons only attending some meetings would break this continuity and decrease the effectiveness of the liaisons and the Board as a whole. In particular, the WG is keen to ensure that any change to the current liaison arrangements does not impede or decrease the much needed interactions between the Board and the technical community.

On the balance of all these views, the majority of WG members are in favour of a reduction of the size of the Board. However, further discussion is still needed on possible operational measures to be adopted in order to achieve such a reduction.

The WG notes that the ALAC Review WG is likely to recommend that the At-Large be given two voting seats on the Board. In working through the implementation of this ALAC Review recommendation, careful attention will need to be given to interdependencies such as the overall size of the Board, the number of ALAC representatives on the Nominating Committee and the role of users in the Non-Commercial Users Constituency of GNSO (which, at



least in theory, might provide an imbalance by allowing users two channels to election to the Board).

Recommendation #2: Move to fewer but longer board meetings:

- (a) Introduce six two-day 'in person' board meetings, three of which would be held adjacent to public meetings.*
- (b) Discontinue monthly teleconferences except in special circumstances.*
- (c) Schedule 'fireside chats' before each board meeting with senior executives to discuss important issues.*
- (d) Hold two one- or two-day strategy retreats - adjacent to regular board meetings.*
- (e) Review arrangements for inter-meeting approval of urgent matters.*
- (f) Ask regularly, after board meetings, whether the board spent its time on board work – or is getting too deep in management matters.*

The WG believes that the Board is already heading in the direction set out in the first of these recommendations, considering that the Board already meets face to face five times per year (two retreats and three sessions at ICANN's public meetings).

However, the WG does not believe that it should recommend the elimination of the monthly teleconferences. If these were discontinued, the Board would not be able to get through its current workload. However, there may be the possibility of making better use of these calls by, for example, having "single issue" calls rather than standard Board meetings.

The Board has already moved to consider the arrangements for urgent inter-meeting approvals (2e) and the BGC is currently considering the role of the Executive Committee in this regard.

The WG is very supportive of recommendation 2f and believes that it is critical for the improvement of the performance of the Board.

Recommendation #3: Consolidate the board committees:

- (a) *Consolidate the Reconsideration and Conflicts Committees into the Governance Committee.*
- (b) *Redefine the scope of the Governance Committee to incorporate all matters relating to legal issues, conflicts of interest, reconsideration and fairness. Also assign to this committee the task of defining the skills and experience required on the board.*
- (c) *Redefine the scope of the audit committee to include overseeing the legitimacy of the budget process and other key aspects of the existing finance committee.*
- (d) *Discontinue the Finance and Executive committees.*
- (e) *Consider establishing a Risk Committee of the board.*
- (f) *Consider establishing (but sparingly!) temporary committees with clear sunset clauses to deal with important issues – such as the JPA matters.*
- (g) *Limit the size of board committees to three or four board members with management attending by invitation.*
- (h) *Allocate responsibility for setting the board agenda to the Chairman, Deputy Chairman and President in consultation (with other board members able to add items as they wish).*

While the restructuring of the mandate of the Board standing Committees has been addressed already by the Board in its resolutions of [7 November 2008](#), the other recommendations of a procedural nature are being addressed by the Board Governance Committee.

At its meeting in Cairo in November 2008 the Board restructured the number and scope of action of its standing Committees: the Reconsideration and Conflicts of Interest Committees have been folded into the Board Governance Committee, and the Executive Committee reduced in size and limited in scope from its previous state.

Some new committees have been established as well: Structural Improvement (to coordinate and harmonize all the independent reviews of ICANN key structures), Public Participation (to oversee ICANN's meeting planning, response to questions and suggestions from the public, etc.). IANA (to oversee the management of the IANA function), and Risk (to oversee and coordinate ICANN's understanding of and response to various categories of risks to the Corporation).

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The WG considers that no further actions are required at this time in response to Recommendation #3 from the independent reviewer's report.

Recommendation #4: Broaden the skills of the board:

- (a) *Formally define the skill and experience and independence mix required for the board to operate effectively – in the short and longer terms.*
- (b) *Form a view about the main gaps in skills that should be met.*
- (c) *Formally define the participation of the ICANN chairman and the chairman of the Governance Committee as part of the Nominating Committee's process for choosing new board directors.*
- (d) *Develop a process for engaging the Supporting Organisations and Advisory Committee in a discussion about the mix of skills required.*
- (e) *Offer training in director's responsibilities to all board members.*
- (f) *Encourage each director to nominate an area of 'learning' for the year.*
- (g) *Occasionally invite prominent company directors to meet the board over dinner to talk about 'the role of the director'.*

This recommendation, and in particular the options 4a and 4b, is also being considered by the Board Governance Committee.

With regard to 4c, the WG is of the view that it is appropriate and useful for the Chairman of the Board to have a formal meeting with the Chairman of the Nominating Committee to discuss the skill needs of the Board, and notes that informal contact already occurs.

A formal discussion between the Chairs should take place after a full Board discussion about necessary Board skills, and the Chairman of the Board should represent the Board position on this. If this process is followed, there is no need for the Chairman of the Board Governance Committee to meet with the Chair of the Nominating Committee.

The WG supports 4e and 4f, but notes that some comments received during the consultation process question whether it is appropriate for ICANN to deliver training to its directors. Some training is already provided for new Board members and the WG suggests that this be reviewed and strengthened. The Board should also implement a process where Board members nominate areas where they would like further training, particularly where those needs are in core Board functions such as finance.

The BGC is currently assessing the training needs of Directors and the WG requests the BGC to take these conclusions into consideration.

Recommendation #5: Make board membership more sustainable:

- (a) *Retain a tenure limit but increase the average term served by board members by extending the tenure limit from two three-year terms to two four-year terms.*
- (b) *Invest in more board support including the establishment of a senior company secretary role to augment the existing provision of dedicated logistical/secretarial support for board members.*
- (c) *Abandon extensive minutes for board meetings in favour of discussion summaries and a record of decisions and requests.*
- (d) *Review the value of and need for the 'board list'.*
- (e) *Reduce the volume of board papers by assigning all document appendices and 'for information' papers to a separate part of the existing secure internet site.*
- (f) *Develop clearer and more extensive formal delegations to management and document these generally within a board governance charter (example attached as appendix (a)).*
- (g) *Introduce payment for board members with the chairman paid at 2.5 times the amount paid to other directors. Explore numbers of around USD50,000 for board members and USD150,000 for the chairman.*
- (h) *Assess whether any additional payment is justified for Committee Chairs as well as the consequential impacts for other ICANN community organisations.*

With regard to (a), in considering the sustainability of Board membership, the WG believes that consideration also needs to be given to the timing of appointments to the Board. The current arrangements with appointments occurring at different times during the year are considered by some WG members to be not optimal because there are two independent processes through which Board members are seated. This makes it difficult to get effective representation (eg gender and geography). If the size of the Board is reduced, this would be an even more difficult issue. Other WG members are of the view that the current arrangements are suitable and provide a useful way of providing a transition for incoming Board members. Further discussion is needed in order to formulate a WG position on this specific aspect

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With regard to (b), the WG believes that significant steps have already been taken in this direction. The Board will allow the new arrangements to take full effect and monitor this issue over time.

With regard to (c), the WG supports a change to the format of minutes. In the longer term, record keeping should move to minutes that better reflect the conclusions of the Board discussions and accurately record the rationale for decisions and summarize the different positions that were advanced during the discussion.

The WG recognizes that the issue of remuneration of Board Directors is a complex one.

Part of the rationale for remunerating Board members is to allow ICANN to continue to attract high calibre Board members. Some members of the WG are of the view that ICANN cannot rely on volunteer Board members in the longer term and therefore some form of remuneration will be necessary in the medium to long term. Further, some WG members are of the view that if ICANN is to be able to attract as future Board members persons with "firepower" needed to help navigate ICANN through the post-JPA waters, ICANN will need to be able to offer at least some reasonable amount of compensation. Others believe that ICANN should always be able to attract volunteer Board members of high quality because of the important and interesting work that Board members undertake. They further believe that compensation might attract people who do not necessarily have the qualifications to sit on the Board or an understanding of the DNS, but rather are looking for a way to make additional money.

The WG acknowledges that the proposal from the external reviewers to remunerate Board Directors was also confirmed by a further study commissioned by ICANN to Watson Wyatt, which provides some possible figures for compensation based on benchmarking of practices of a variety of Boards. It also notes the almost unanimous support for the proposal to remunerate Board Directors in comments from members of the community during presentations and during the two public comment periods.

The WG does not believe that the precise determination of levels of payment of Board Directors falls under its mandate, and has rather worked to determine a set of principles based on the reviewer's recommendations and on comments from the community.

With this perspective, the WG has discussed a number of possible models for remuneration or other form of payment for Board members. One possibility would be the payment of an allowance to Board members in acknowledgement of their time spent on ICANN tasks. Another possibility would be a sitting fee. The WG feels that payment should be linked to performance and should not be a salary. Parameters for any form of reimbursement would need to be determined, and the report from Watson Wyatt contains parameters that could provide guidance here.

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The WG considers that individual Directors must always be given the choice either to accept or to refuse the payment of a remuneration. It furthermore considers that in recognition of the incredibly high workload that is required of the Chair of the Board, this function should be compensated with some multiple of the standard Directors' remuneration.

The WG is keen to avoid attracting "professional directors" onto the Board as they may well lack the passion and commitment necessary for effective performance. If remuneration were to be offered, the WG suggests that a limit be placed on the number of Boards on which an ICANN Board member could sit and receive remuneration for his/her director's role. The initial suggestion is that this be two Boards.

Quite apart from considerations of payments for services, the members of the WG support the idea that Board members should be reimbursed for all of the costs associated with their role on the Board. This should cover not only travel and related costs, but also telephone costs, consumables and other expenses directly incurred in carrying out their role. The WG acknowledges that this issue is being addressed by the Board Finance Committee and that staff is presently working to draft a specific reimbursement policy.

Recommendation #6: Build 'high performance' culture at the board level:

- (a) Introduce individual performance evaluation for all board members based on a simple peer review process conducted every two years.*
- (b) Review the process for evaluating the performance of the President.*
- (c) Design ways to test regularly the values and attitudes of ICANN staff.*
- (d) Discuss the 'bad news', confidentiality and conflict survey responses at the board.*

The WG supports the initiatives suggested in Recommendation 6. Most of these ideas are currently being worked on in the Committees of the Board. In developing the positions outlined below, the WG is aware of the close relationship between the ideas discussed here in Recommendation 6 and those contained in Recommendations 4 and 7.

Recommendation 6a is receiving focussed attention in the BGC. The Board and the BGC will continue discussions about this topic to determine the best way forward.

With regard to Recommendation 6b, the WG and the Board generally recognise the need to improve this process. The Compensation Committee is currently working on this.

The WG is very supportive of Recommendation 6c. Members of the WG recognise that this would best be done by tasking management to undertake an appropriate survey of the staff as a whole. There are a number of these tools available. The WG suggests that the Board discuss this issue with senior managers to agree on an appropriate approach.

The Board is already aware of the issues raised in Recommendation 6d. The WG suggests that the best way forward would be for the Board to continue discussions on these issues over the coming months.

Recommendation #7: Strengthen the 'strategic' focus of the board:

- (a) Allocate some time after a board meeting (several times each year) to discussing whether the board is getting too deep into detail that should be left to management.*
- (b) Define annually the five most significant issues facing ICANN and build extensive regular discussion of these issues into the board meeting agenda.*
- (c) Measure and track the board time spent on strategy, policy and operational issues.*
- (d) Initiate a robust assessment of work done at the board to ascertain what can be delegated to management. Schedule one or a series of conversations between the board and the management group to discuss views on the respective roles.*

The WG notes that discussion of the ideas contained in recommendation 7 is already taking place at Board level. However, there are aspects of the specific elements of the recommendations that are worthy of being addressed here.

The WG strongly supports the idea behind recommendation 7a and recognises that there is often a temptation for the Board to delve into too much detail at the expense of keeping a more strategic focus. Regular consideration of the way that Board time is allocated would be one way of keeping an appropriate focus. However, that recommendation also raises a deeper issue in the minds of members of the WG – the nature of the work of the Board relative to the nature of the work of management and the manner in which work is delegated to staff and then monitored by the Board.

The WG suggests that the BGC be tasked with more clearly defining the process by which the Board delegates work to management and then subsequently monitors the outcome of that delegation. One important aspect of this will be minutes that track the work that has been delegated and the timeframe in which the work should be delivered. The BGC is currently working on better definitions of what is Board work and what is staff work. The WG supports this approach and requests that the BGC also considers what might be appropriate levels of staff support for Board activity.

The WG also supports recommendation 7b and acknowledges that conversations to build shared understanding of the Board's priorities would be useful. ICANN already has a well established planning process which includes strategic and operating plans which set out priorities. However, the WG believes that these documents reflect the plans for the ICANN community

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as a whole and there is still a need to build agreement around the Board table about where the Board should most appropriately focus its efforts.

While the WG supports the intention behind 7c, some WG members are concerned that the effort required to collect the relevant data may outweigh the benefit from the analysis of the results. Others believe that a simple conversation at the end of each Board meeting would be sufficient to provide improvement and focus in this area.

There is support for Recommendation 7d. The WG believes that conversations between Board and senior management are very important and need to be improved. The WG supports the implementation of this recommendation.

Recommendation #8: Clarify the board's accountabilities. Initiate a program of discussions that explore the following propositions:

- (a) Agree the accountability of ICANN's board – to ICANN itself, the ICANN community and/or the Internet?*
- (b) Affirm that ICANN directors owe their loyalty to the board and not to their sponsoring organisations.*
- (c) Support proposals for a process to dismiss the board but ensure that the hurdle is quite high.*
- (d) Discuss possible conflict issues in the board's role overseeing the ICANN community where its members are appointed by those who are doing the work. Agree that a key role of the independent directors (via NomCom) is to ensure that the board continues to carry out its role without compromise.*
- (e) Discuss the future work division between paid staff and volunteers and form a view as to what this will look like in five years time.*
- (f) Consider the proposition that the stakeholder groups get together to appoint a board acceptable to all of them – rather than directly appointing their own representatives to the board.*

With the exception of the recommendation 8f (see below), the WG is supportive of all of the recommendations contained in this section and believes that ICANN is already moving in this direction. The issue of loyalty of Board members raised in recommendation 8b is already addressed through the induction that Board members receive and through discussions at the Board table. The Board is already taking steps to address the issues raised in recommendation 8c (although further legal analysis is necessary). The BGC is already addressing the issues raised in recommendation 8d.

After discussion of different alternative models and consultation with the community, the WG believes that the recommendation 8f is impractical in the current ICANN environment.