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AT-LARGE ADVISORY COMMITTEE

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Advisory of the Committee

Related to the ICANN SIC Board Review WG Document Entitled
"ICANN Board Review Working Group Draft Final Report" – Last updated: 19 September 2009

Introduction

By the Staff of ICANN

The proposed comments from At-Large / ALAC, were initially composed by Sebastien Bachollet, Chair of the At-Large working group on the Future Structure and Governance of ICANN. The [original text](#) was made available for At-Large community comment on 19th November 2009.

This text was also discussed during a [teleconference](#) of the At-Large Working Group on the Future Structure, Accountability and Transparency of ICANN that took place on 27 November 2009.

Rev2 of the text, prepared by Sebastien Bachollet with assistance from Adam Peake, incorporates comments received from the At-Large community and the members of the At-Large Working Group on the Future Structure, Accountability and Transparency of ICANN.

Rev3 of the text (the present document) includes grammatical clarifications.

During the meeting of the Executive Committee on 3rd December 2009, the Chair of the At-Large Advisory Committee requested Staff to prepare grammatical clarifications to Rev2. Staff were also requested to run five-day online vote on Rev3 of the text starting on 4th December, the result of said vote being that the ALAC endorsed the Statement by a 14 – 0 vote. You may review the result of this vote under: <https://www.bigpulse.com/p8273>.

[End of Introduction]

The At-Large Advisory Committee (ALAC) welcomes the opportunity to comment on the ICANN Board Review Working Group Draft Final Report issued on 19th September 2009.

This document contains the comments, concerns, and recommendations of the At-Large community as relayed to the ALAC in a bottom-up, multi-stakeholder process.

In its role as an advisory body to the ICANN Board, the ALAC is providing this Advisory in response to the call for public comments announced on 5th October 2009. .

The Advisory follows the format of the Draft Final Report and responds to the eight recommendations in order.

Comments

In general, the ALAC broadly supports the Board Review Working Group recommendations that are contained within the Draft Final Report. However, the ALAC has a number of specific concerns.

<i>Recommendation #1: Reduce the size of the board</i>

The ALAC fully supports “the specific nature and unique governance model of ICANN”. Broad representativeness of the Board is very important to the ALAC.

The role of the ICANN Nomination Committee (NomCom) to provide balance and diversity is essential. This is particularly the case given that within the other statutory bodies involved in the selection of Board members there is no possibility to have any balance.

For example, the GNSO sends two Directors to the Board, one from each house, while the ALAC, will send one Director to the Board. Therefore, there is no possibility of these bodies having balanced regional representation on the Board. The ccNSO council and ALAC provide good examples of the potential for real geographic balance but there still room for considerable improvement with respect to balance and diversity even with the help of the NomCom.

In addition, it is the opinion of the ALAC that having two Directors elected by the At-Large community will allow some balance possibilities and to be more confident that the voice of end-users will be heard by the Board and be reflected in their participation to the work of the Board of ICANN.

The ALAC agrees with the overall conclusions of the Working Group that on balance no change in the current liaison arrangement needs to be made. However, the ALAC disagrees with the suggestion of the Working Group that the At-Large Director should

replace the current position of ALAC liaison to the Board. The ALAC recommends that when the At-Large Director is selected and seated, the position of ALAC liaison to the Board continues at least until such time as a second voting Director is put in place (as recommended during the ALAC review). Given that the roles of the ALAC liaison to the Board and Director are different, it is important that the ALAC, as an advisory committee, is able to present opinions on policy to the Board that reflect the bottom-up, (i.e., end users/ALS/RALO) process. The person selected by the At-Large end users as a voting Director will serve the interests of the Corporation¹ and not act as a representative of the constituency that selected them. The Board will lose an important input on ICANN policy if the ALAC liaison to the Board is removed at this time.

The At-Large community is currently working on a selection process for the voting director and will present a process to the Structural Improvements Committee shortly.

Recommendation #2: Move to fewer but longer board meetings

The ALAC agrees with the Working Group comment. However, we are concerned that the Working Group is suggesting that the Board take on more work. If this is the case, the ALAC would like to note that this is not consistent with what we believe to be the overall intent of the review (i.e., to reduce the Board's workload and time spent on ICANN matters). Whatever changes are made, we stress the need for the Board to continue to operate in the most transparent and open manner possible. In particular, we recommend that all staff inputs to the Board, including policy briefings, staff recommendations and Board papers, be made public.

Recommendation #3: Consolidate the board committees

The ALAC agrees with the Working Group recommendation and has no further comment.

Recommendation #4: Broaden the skills of the Board

¹ See ICANN Bylaws ARTICLE VI, Section 7 DUTIES OF DIRECTORS: “Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.”

The ALAC broadly agrees with the Working Group's comments. However, the ALAC requests that the At-Large community work on giving weight (or a ranking) to the following items to allow a better mix within the Board (and the other bodies) of ICANN:

- skill
- experience
- independence
- geographic
- cultural
- stakeholder diversity
- gender
- language
- ability
- competency

To start the debate the ALAC believes it is very importance that ICANN seeks to achieve gender balance membership of the Board and in all decision-making bodies. The Board Review Working Group's final report should make a recommendation to this effect.

The ALAC wishes to note the importance of the NomCom as an independent committee and that it must remain so. We would like the Board Review Working Group to be more direct in rejecting the proposal in 4.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”*). The ALAC believes that it is important for the NomCom to meet with all the bodies it selects people for, and also with other ICANN committees and constituencies. This is to ensure the NomCom is fully informed of the ICANN community's opinions and needs regarding the NomCom's work, and that the community is encouraged to support the NomCom in identifying likely candidates.

Regarding recommendation 4(d) (*“Develop a process for engaging the Supporting Organisations and Advisory Committee in a discussion about the mix of skills required”*). The ALAC is already providing input to the NomCom by informal exchanges between the two Chairs.

We would like to amend recommendation 4(g) (*“Occasionally invite prominent company directors to meet the board over dinner to talk about 'the role of the director'”*) to read *“Occasionally invite prominent company, and not-for-profit organizations, directors to meet the board [~~over dinner~~] to talk about 'the role of the director'.”*

<i>Recommendation #5: Make board membership more sustainable</i>

The ALAC disagrees with the Working Group regarding the issue of extending the term of board members to 4 years. We have seen no evidence that a longer term is required as

board members have been able to get up to speed and contribute fully within their first year of service. A longer term may cause problems with board members who are not performing to the fullest of their abilities, but do not meet the threshold for removal. A longer term may also make it more difficult to recruit candidates to what is known to be a very demanding and time-consuming position.

Regarding the removal and replacement of Directors, the ALAC notes that other bodies that the NomCom selects people for have already put in place processes for removal, under certain circumstances, of NomCom appointees in their own bylaws and procedures. We suggest that these processes should be consistent across all the bodies for which the NomCom selects. The ALAC agrees that the General Counsel should include this task in his work as recommended by the Working Group.

Once disbanded, the NomCom has no institutional memory and only retains information about candidates for one year. As such the NomCom may not be in a position to help with a replacement process for any vacancy occurring after a person's first year of service. The Board, in consultation with the ICANN community, may be the only body able to select a replacement. An example of this is the Board's recent selection of GNSO Council members for the Non-commercial Stakeholders Group.

The ALAC broadly supports providing compensation for board members and for the reimbursement of expenses incurred in their work for ICANN. The General Counsel's study on compensation should include an examination of possible methods (for example, from an annual fee to a series of seating allowances that might better reflect the work done by individual members, etc.) and the appropriate level of compensation, taking into consideration compensation made to corporate and non-profit boards, as well as national and international organizations around the world.

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

The ALAC has begun a process of creating performance indicators for ALAC members. We agree with the comments made by the Working Groups on this point.

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

The ALAC supports the Working Group's comments, with some observations. Regarding comments on 7a ("*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*"), whatever changes are implemented, the full transparency, openness and accountability of the board must be ensured.

With respect to 7.b (*“Define annually the five most significant issues facing ICANN and build extensive regular discussion of these issues into the board meeting agenda”*), we agree to the importance of the strategic and operational planning processes. However, we believe the Board should focus on the goals of these processes and that it should lead them and make sure they are successfully met. We are concerned that any goals independent of the strategic and operational planning processes might be a distraction and detract from their successful implementation.

Regarding 7.c (*“Measure and track the board time spent on strategy, policy and operational issues”*), it would be helpful to accurately understand how much time board members spend on ICANN matters. Many estimates have been made, and accurate knowledge would help matters ranging from recruitment to compensation. Such data may also identify areas that can be improved.

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

The ALAC agrees with the comments of the Working Group.