

At-Large Workspace: Proposed Changes to the NCUC Charter

Public Comment Close	Statement Name	Status	Assignee (s)	Call for Comments Open	Call for Comments Close	Vote Open	Vote Close	Date of Submission	Staff Contact and Email	Statement Number
03 October 2017	Proposed Changes to the NCUC Charter	No Statement							Benedetta Rossi benedetta.rossi@icann.org	TBC

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Brief Overview

Purpose: The purpose of this public comment proceeding is to obtain community input on proposed changes to the charter of the GNSO Noncommercial Users Constituency (NCUC). The changes have been approved by the membership of the NCUC and are awaiting ICANN Board review and approval. Due to the extent of the revisions and consistent with the ICANN Board Process for Amending GNSO Stakeholder Group and Constituency Charters, the ICANN Board Organizational Effectiveness Committee has authorized this public comment proceeding.

Current Status: Charter changes have been approved by the membership of the NCUC. ICANN staff has assessed the amendments and determined that the proposals do not present any direct fiscal or liability concerns to the ICANN organization.

Next Steps: Pending community feedback, the ICANN Board will review the proposed changes to the NCUC charter.

Section I: Description and Explanation

The GNSO Noncommercial Users Constituency (NCUC) has completed phase I of the ICANN Board Process for Amending GNSO Stakeholder Group and Constituency Charters and voted to amend its governing charter documentation. In addition, as part of its phase II responsibilities, ICANN staff has assessed the charter changes and determined that the proposals do not present any direct fiscal or liability concerns to the ICANN organization.

The document titled *Bylaws of the Noncommercial Users Constituency (2017)* reflects the NCUC's proposed new bylaws documentation. The document is the culmination of extensive work by the NCUC leadership and follow-up dialogue with ICANN staff before, during, and after ICANN58.

Among a number of changes noted by staff, the amended bylaws:

- Align various provisions with the charter of the Noncommercial Stakeholders Group;
- Add a complete new chapter that thoroughly details new mechanisms to help the NCUC fulfill its obligations as part of the new ICANN Empowered Community;
- Clarify areas of NCUC membership eligibility – particularly the definition of eligible membership organizations and matters regarding non-eligible organizations;
- Expand provisions obliging NCUC members to disclose instances of support from ICANN or specific parts of the ICANN community;
- Add details on the duties and expectations for regional representatives on the NCUC Executive Committee;
- Expand provisions for the removal of NCUC officers;
- Create a new vice chair role – replacing the secretary-treasurer role;
- Provide more detail about the role of the NCUC Treasurer; and
- Add more detail about the role and activities of the NCUC Policy Committee.

Reviewers of the new revised governance document should consider scrutinizing it as though it were freshly created.

Section II: Background

The ICANN Bylaws ([Article 11, Section 11.5c](#)) state, "Each Stakeholder Group ... shall maintain recognition with the ICANN Board." The ICANN Board has interpreted this language to require that it must formally approve any GNSO Stakeholder Group and/or Constituency charter amendments.

In 2013, the ICANN Board approved a [Process for Amending GNSO Stakeholder Group and Constituency Charters](#) establishing four phases that must be executed to secure formal ICANN Board approval of any community governance changes. Those phases are:

- Phase I: Amendment Preparation
- Phase II: Staff Review
- Phase III: Public Comments
- Phase IV: Board Review

After receiving a recommendation from its Organizational Effectiveness Committee, the ICANN Board shall either:

1. Recognize the proposed charter amendment by a simple majority vote; or
2. Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns.

If neither condition is met, the ICANN Board will ask for further explanation of the proposed amendments by the community.

Section III: Relevant Resources

[Bylaws of the Noncommercial Users Constituency \(2017\)](#) [PDF, 120 KB]

Section IV: Additional Information

Section V: Reports

Staff Contact

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FINAL VERSION TO BE SUBMITTED IF RATIFIED

The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.

FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.

FIRST DRAFT SUBMITTED

The first draft submitted will be placed here before the call for comments begins.

The comments and rationales regarding any part of the 2017 by laws as reviewed and posted by comments by ICANN, are in this different letter to make it easy to follow once posted to our wiki for comments.

General comments:

- ALAC shall comment on this review.
- NCUC is, at its start after the first GNSO review, a semi conflicting organization with ALAC, due the not clear definition of its individual membership, somehow not transparent. While we may consider the opportunity to any individual to affiliate itself to the group more convenient inside ICANN, by the other hand should be relevant to give clear requisites for the application and publish all rules related to non-acceptance of any application to guarantee fairness and transparency.
- NCUC is an organization concerned with the non-commercial focus and as such shall be the individuals they will accept as members. To state any person is an individual concerned with non-commercial aspects as defined by NCUC, the individual shall prove to be member, employee or to have any kind of proved relationship with any Non-Commercial organization which focus falls under the requirements stated by NCUC related to organization eligibility as such: educational, science, charity, human rights
- Another relevant points related to NCUC is about the closeness of their decisions, as the bylaws allows too much discretionary power to the EC. In some way this new bylaws also fail in this regard and we shall consider some suggestions.
- Regarding Executive Committee duties still much power and few participation of members , for example as to choose the representatives for NOMCOM, the chair and vice chair of Policy Committee but those are not really ALAC/ATlarge business and may be commented as individuals at public comments.
- Treasure and Policy Committee also are internal matters and ALAC shall not comment.

Related to the above points that is concerned to ALAC/ At Large, there are suggestion and rationale in the right column where, at the left, are the bylaws as published by ICANN.

Below the review objectives for NCSG / NCUC

- Align various provisions with the charter of the Noncommercial Stakeholders Group;
- Add a complete new chapter that thoroughly details new mechanisms to help the NCUC fulfill its obligations as part of the new ICANN Empowered Community;
- Clarify areas of NCUC membership eligibility – particularly the definition of eligible membership organizations and matters regarding non-eligible organizations;
- Expand provisions obliging NCUC members to disclose instances of support from ICANN or specific parts of the ICANN community;
- Add details on the duties and expectations for regional representatives on the NCUC Executive Committee;
- Expand provisions for the removal of NCUC officers;
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- Add more detail about the role and activities of the NCUC Policy Committee.

2017 BY LAWS NCSG/NCUC as published	ALAC Comments
I. Constitution	
<p>A. The NonCommercial Users Constituencies (NCUC) for the Internet Corporation for Assigned Names and Numbers (ICANN) is a Constituency of the Non-Commercial Stakeholders Group (NCSG), which is organized under the Generic Name Supporting Organization (GNSO) as specified by Article 11, Sections 3 and 5 of the ICANN Bylaws.</p> <p>B. The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is and to protect noncommercial online communications, which includes expression for political, personal, research, educational, and recreational purposes. The NCUC gives voice and representation in ICANN processes to nonprofit organizations that serve noncommercial interests such as nonprofit educational and philanthropic organizations, human rights and public interest policy advocacy groups, and families or individuals who register domain names for noncommercial personal use and are primarily concerned with the noncommercial, public interest aspects of domain name policy.</p> <p>C. The NCUC is accountable to its constituents through elections, term limits, consultation, transparency, and review and redress mechanisms, which are described in these bylaws and in its other procedural documents.</p>	
II Organization and Structure	

A. The Noncommercial Users Constituency shall consist of three distinct parts: the Membership, the Executive Committee, and the Policy Committee.

B. The Membership shall consist of NCSG member organizations and individuals that meet the membership criteria, complete the processes set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG members who decide to join the NCUC

C. The Executive Committee (EC), directed by the Chair, shall be responsible for the administration of the Constituency, including arrangements for meetings, website communications, mailing lists, and teleconferences. The selection process of the Executive Committee, along with the EC's powers and duties, are defined in Section IV below.

D. The Policy Committee shall consist of the NCUC Chair, elected GNSO Council Representatives who are also NCUC members, and any active NCUC members who volunteer for the Policy Committee, such as those involved in policy development process (PDP) working groups, after review by the NCUC EC, within the limits set out in Section V.B. The Policy Committee should also have a vice chair. The Policy Committee's selection process and duties are set out in Section V below.

B. Add the following phrase at the end of the section:

...under their published rules.

Rationale: Review and approve out of the publish rules is against the item C –Constitution – stating “C. *The NCUC is accountable to its constituents through elections, term limits, consultation, transparency, and review and redress mechanisms, which are described in these bylaws and in its other procedural documents*”.

D. change 'have' to 'elect/ select'

Rationale: Have is not appropriate word for bylaws - must be clear stated: will be elected or select by its members? By the EC?

III. Membership

<p>A. Eligible organizations.</p> <p>B.The membership of the NCUC specifically excludes:</p> <p>C. Notification.</p> <p>D. Official Representative.</p> <p>Each prospective Member organization, in its application, shall appoint an individual to serve as its Official Representative to the NCUC. This representative will have the privilege of voting and speaking publicly for the Member within proceedings and discussions of the Constituency. The Official Representative must be formally authorized to represent the Member Organization by a responsible official of that organization. <u>In addition to verification by the NCSG, the NCUC EC may also make inquiries to the Member Organization to verify their selection if necessary.</u></p> <p>Members can change the designated Official Representative in two ways:</p> <ol style="list-style-type: none"> 1. The Chief Executive or Executive Director of the Member Organization can notify the NCUC EC in writing of the change; or 2. The existing Official Representative can resign and submit to the NCUC EC in writing the name of the new Official Representative. The newly designated Official Representative must have the delegated authority to represent the Member Organization as described above. If an Official Representative holds an elected office in the NCUC and is subsequently replaced as organizational representative, the elected office will be vacated and filled by the NCUC EC according to the procedures generally applicable for filling a vacancy in that position 	<p>Suggestion related to the highlighted sentence: "If not in accordance with the rules and bylaws, further explanations can be demanded to the Member Organization.</p> <p>Rationale: The highlight sentence is somehow aggressive and can be understood as if NCUC does not like the person they can inquiry the organization, as if asking for change such person. This is not the spirit of ICANN and shall not be to NCUC to decide up front. If the person does not behave while already member, then is another problem, but not at the time of application.</p>
<p>E. Additional Representatives.</p> <p>Each Member may also designate one or more individuals to serve as Additional Representative(s) to the Constituency. Additional Representative(s) may not vote, but otherwise may participate in the Constituency mailing list, discussions, and meetings. In case an Official Representative resigns without notifying the NCUC of a new Official Representative from the organization, the Additional Representative automatically becomes the representative of the organization within the NCUC. <u>The Executive Committee shall, at its discretion, determine limits</u> to the total number of Additional Representatives that an organization may appoint (provided that the limit shall apply to all Constituency Members equally).</p>	<p>Add "and publish" between "determine" and "limits".</p>
<p>G. Eligible Individuals</p>	

A natural person who has been accepted as an Individual Member of the NCSG (NCSG Charter and who meet the following criteria are is eligible to join the NCUC as an "Individual Member" subject to the following additional requirements:

An individual Internet user who has one or more registered domain names for personal, family, or other noncommercial use; is concerned with the noncommercial aspects of domain name policy; and is not represented in ICANN through membership, personally or by his or her full-time employer, through membership in another Supporting Organization, or through membership in a GNSO Stakeholder Group. Representatives in the Government Advisory Committee (GAC), or those working for a state-supported top-level domain (TLD) registry operator may not join the NCUC as individual members. Those employed in government departments and intergovernmental organizations who are not directly involved in ICANN-related work may be eligible to join at the discretion of the NCUC EC. Individuals should provide a disclosure statement in accordance with paragraph III.I with their application. Failure to do so at the time of application could be grounds for an ineligibility finding by the EC.

An individual Internet user who is primarily concerned with the noncommercial aspects of domain name policy, and is not represented in ICANN personally or by his or her employer through membership in another Advisory Committee or Supporting Organization and their stakeholder groups.

An individual who is employed by or a member of a non-member noncommercial organization (such as a university, college, or large nongovernmental organization (NGO)) can join the NCSG in an individual capacity if his or her organization has not already joined the NCSG. The Executive Committee shall, at its discretion, determine limits to the total number of Individual Members who can join from any single organization (provided the limit shall apply to all organizations, of the same size category, equally).

Rationale: The eligibility of individuals is written in a very confuse way, making difficult for interested persons to understand and even complain further unacceptance. Clear state on requirements and publishing not only avoid discrimination but also contributes to the transparency

Text Suggestion:

To be elected as Individual Member, any interested person shall meet all the following requirements as stated in its application proposal, in accordance with paragraph III.I. Failure to state at the time of application could be grounds for ineligibility.

Requirements;

1. Individual is concerned with noncommercial aspects of domain name policy, stating its relation, employment or membership with any Non-Commercial organization as provides in item III.A, not yet member of NCSG.
2. Has one or more registered domain name for personal, family or noncommercial use.
3. Is not represented in ICANN through membership, personally or by his or her full-time employer, through membership in another Advisory Committee or Supporting Organization, nor through membership in any GNSO Stakeholder Group.
4. Shall not be a member of the Government Advisory Committee (GAC).
5. Shall not be a member or any kind of employee of State Supported ccTLD Registry.
6. Shall not be a member of a Non Commercial/ Non-Governmental Organization which application was already denied by NCSG.

Specific considerations:

Government or Intergovernmental Organizations employees who are not directly involved in ICANN-related work, may be eligible to join. The specific conditions for such acceptance shall be published under NCUC's rules, to guarantee transparency and fairness regarding individual's acceptance.

The Executive Committee shall publish as part of its rules, the limited numbers of individuals from the same organization which can to be part of NCUC, to guarantee total transparency and fairness regarding individual's acceptance.

H. Participation Rights.

I. Financial Disclosure Statements.

A disclosure statement should be provided by an individual or an organization who is receiving an individual or group research grant, funding, or consulting fee from ICANN, another Supporting Organization or GNSO Stakeholder Group, governments, or commercial entities involved in ICANN-related activities, unless the funding or the relationship with the donor are the subject of a non-disclosure privilege. This should be done in a form and manner prescribed by the Executive Committee, which will be published and disclosed on NCUC online communication channels. Members can request the EC to keep parts of the disclosure statement confidential; however, the EC will decide, at its own discretion, whether to approve the confidentiality request. The list should be updated periodically and old disclosures removed. The EC will follow up on any disclosures they believe require further consideration. Failure to disclose financial support within three months of having been granted financial support will result in the reconsideration of membership

J. In the event that a complaint is received or it becomes known to the Chair and the EC that there is an overt and deliberate effort by one or more organization(s) or chapters to control or dominate the Constituency; then, by majority vote of the EC, the identified organization(s) should be subject to a membership review. Remedies may include (a) cessation of the dominating/controlling behaviors, (b) suspension of membership, or (c) limiting, in a nondiscriminatory manner, the membership eligibility of chapters and sub-units and/or individuals affiliated with the affected organization(s).

This can raise legal concerns. Believe EC can accept or not the State and take some actions as removal the member etc, but not publish what was predefined as confidential between aprts.

Add "as stated by the EC rules" after the "reconsideration of membership".

Rationale: In any bylaws clear message shall be the rule. Reconsideration not under any rule can open a door for discrimination.

VIII. NCUC Participation in the ICANN Empowered Community

A. Any Member of the Constituency may request materials included per Section 22.7 of the ICANN Bylaws, Inspection of ICANN's accounting books and records, by making such a request to any member of the Executive Committee. Such request shall include, minimally:

1. The name and contact information of the requestor;
2. Specific information for which access is requested; and
3. Confirmation that such request is for a purpose permitted per Section 22.7 (a) of the ICANN Bylaws.

The Executive Committee shall act on any such request within thirty (30) days of receipt. If approved by a majority vote of the Executive Committee, the Chair shall within 5 business days submit the request to the GNSO Representative of the Empowered Community for forwarding to the Secretary of ICANN. If the Executive Committee declines to approve such a request, a rationale for said action must be provided to the Member.

B. Requests for reconsideration, per Section 4.2 of the ICANN Bylaws, may be initiated by a majority vote of either the Executive Committee or of the Policy Committee. Upon being notified of such a vote by either Committee, the Executive Committee Chair shall take appropriate action to file such request directly with the Board Governance Committee or, if so requested by the initiating Committee, to follow any and all procedures established by the GNSO that would cause said request to be filed as a Community Reconsideration Request, per Annex D, Section 4.3, of the ICANN Bylaws.

C. The Executive Committee, by majority vote, may initiate a petition to commence proceedings under the Independent Review Process, per Section 4.3 of the ICANN Bylaws. This shall include approval by majority vote of the Executive Committee for participation in any and all conditions precedent for participating in an Independent Review Process (IRP) proceeding, including the petitioning for commencement of a Cooperative Engagement Process (CEP) action. Upon notification of an Executive Committee vote initiating action related to or for a direct petition for an Independent Review Process proceeding, the Chair shall: (1) File said petition directly with the IRP provider, and/or (2) Take any action necessary and as directed by the Executive Committee, including filing for a Cooperative Engagement Process proceeding or engaging representation for the Constituency, to commence the IRP action. If the Executive Committee intends its petition to be a Community Independent Review Process action, per Annex D, section 4.2 of the ICANN Bylaws, it shall indicate this when approving the petition.

Upon such action, the Chair shall follow any and all procedures established by the GNSO that would cause said IRP petition to be filed as such. In such instance, the Chair shall coordinate all Constituency participation in the required Mediation process, per section 4.7 of the ICANN Bylaws, and any subsequent processes related to the IRP requiring Constituency representation.

D. Except as otherwise provided in these Bylaws, the Executive Committee shall be the representative voice for the NCUC for all matters involving the ICANN Empowered Community (Article 6 of ICANN's Bylaws). Decisions on matters involving the Empowered Community shall be by majority vote of the Executive Committee. The Chair shall act as the NCUC representative to any forum or committees that result from the NCUC's role in the Empowered Community, unless otherwise provided for by the Executive Committee by majority vote.

Spells out 5 as "five": ... the Chair shall within five (5) business days...