

Staff Analysis of Business Constituency (BC) Reconfirmation Report

Submitted to the Board (January 2009) by Philip Sheppard, Mike Rodenbaugh, and Zahid Jamil

Section	Clause or Language	Recommendations
1	In Section 1, Practices and Operations, it is stated, "The BC operates in a fully transparent manner using its web site as its main window to the world (www.bizconst.org). Here can be found all relevant administrative documents as well as adopted policy positions."	<p>Comment 1: In reviewing your website, Staff did not find any published email lists, only names of members and website links. Also, there is no budget/financial data presented on the website. Another often suggested enhancement to constituency websites is a public discussion list, which is also not evident on the BC site.</p> <p>Comment 2: On the website, "Issues" and "Newsletters" do not appear to have been updated since since 2007 and the last constituency "Statement" shown is dated June 2008, almost 9 months ago. Staff notes that constituency "Positions" appears to be kept current with references in 2009.</p>
1	Further in Section 1, it is stated, "The website contains an explanation of the BC's outreach and policy development process."	Although there is a discussion of the policy development process, Staff did not find any outreach/recruitment explanations or sections.
1.4	Staff notes that the charter discusses the role of the "Credentials Committee," which is to review member applications and "ensure they represent a range of organisations both large and small, individuals and associations."	Staff wonders if this committee's responsibilities could be broadened to include outreach and recruitment in addition to its current role within the BC.
1.5	The charter refers to several responsibilities (e.g. Rapporteurs, Credentials Committee, Nominating Committee) that are not mentioned in the charter document.	Staff recommends that these sections on your website dealing with communications and responsibilities be incorporated into the formal charter as you have done with the policy development material.

Staff Analysis of Business Constituency (BC) Charter

Version June 2003 as extracted from the BC website (<http://www.bizconst.org/>)

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ALL	General	In its next amendment process, Staff suggests that the BC consider using the New Constituency Petition and Charter Template (hereinafter "Template") as a guide for both organization and content. It was developed and published by the Staff and is available at: http://gns0.icann.org/en/improvements/newco-process-en.htm .
	General	Staff recommends incorporating a comprehensive "Principles" section emphasizing the Constituency's commitment to openness, transparency, and fairness and behavioral expectations consistent with ICANN Bylaws and Policies. Consult section 1.4 of the Template.
	General	Staff recommends the inclusion of a separate Recruitment and Outreach section to emphasize the important role that growth and expansion play within the GNSO. See, for example, Template Section 4.3.
	General	This charter has not been amended in approximately six years. Staff notes that there is no mention as to how amendments are to be handled within the Constituency. Staff recommends that a section be added for this purpose and that the BC consider formally reviewing its charter at least every three years, if not annually, as a way of ensuring that it remains up-to-date and relevant. One option is to create a new Section, at the end of the charter, to track and document approved amendments. See Template, Section 11.0 for an illustration.
	General	Staff found only sparse references to the employment of communications and meetings and suggest that a separate section be created to outline and describe the BC's processes. See Template Section 5.0 for recommendations. Staff notes that the BC's web site contains a "Communication Guidelines" section and suggest that some/all of that material be incorporated into the next charter revision.

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	ICANN Nominating Committee	There is no mention in the charter concerning the Constituency's Bylaw requirement (Article VII) to name a delegate to the Nominating Committee. Staff notes that this responsibility may be placed with the Stakeholder Group in the planned June 2009 Bylaws amendments.
1.0	The Business Constituency is that entity referred to in Article X.5(d) of the ICANN bylaws.	This reference may need to be amended when the Bylaws are changed to reflect the new GNSO Council restructure scheduled for June 2009.
3	Membership	Consider adding a sub-section that addresses the rights, duties, and responsibilities of members. See Template Section 4.5. Staff notes that there is a "Responsibilities" section on the BC's website and suggests that some/all of the generic material (excluding individual assignments) be incorporated into the formal charter at its next revision.
3.5	The designated representative must be either a director or employee of that member but not an affiliate or "connected undertaking."	The meaning of "...connected undertaking" is unclear.
3.6	At the request of at-least two paid-up members and following a thorough review by the Officers and the Credentials Committee, a member, who over a sustained period of time acts in conflict to this Charter, or who engages in acts which appear to be inappropriate for the stability, functionality or bona fide reputation of the Constituency, or who is or threatens to be a vexatious litigant, may have its membership terminated at the discretion of the Officers and the Credentials Committee.	Given that appearances can be deceiving, Staff recommends that the BC consider amending this section to read, "...or who engages in acts that disrupt the stability, functionality, or bona fide reputation of the Constituency." Consideration of a constituency "code of conduct" may be appropriate here.
8	Membership Fees	Staff suggests adding a sub-section dealing with financial and budget transparency per the suggestion in Template, Section 9.2.

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4.1	As specified in the ICANN by-laws two or three designated representatives of paid-up members shall be elected by members as GNSO Council representatives to serve a two-year term. As specified in the ICANN by-laws, the regular term of one representative selected by the Constituency shall begin in an even-numbered year and the regular term of the other representative(s) selected by the Constituency shall begin in an odd-numbered year.	<p>Staff suggests that this wording be generalized, e.g., “The BC shall elect the number of representatives to the GNSO Council as provided by the ICANN Bylaws and in accordance with seats allocated to it by the Commercial Stakeholder Group.”</p> <p>In addition, Staff notes that term limits for GNSO Council members were approved by the ICANN Board (2 Feb 2009) and may be referenced at: http://www.icann.org/en/minutes/prelim-report-03feb09.htm</p> <p>After satisfying a term limit, can an elected individual be “off” for a year or more, then be reelected for another term? One option may be to add a clause that no officer is eligible to hold office for more than six out of ten consecutive years.</p>
4.1	In order to assure geographical diversity, no two Council representatives may be citizens defined by nationality of the same geographic region as defined from time to time within the ICANN bylaws. For information purposes there were five such regions in 2003: Europe; Asia/Australia/Pacific; Latin America/Caribbean Islands; Africa; North America	Note: this requirement may move to the Stakeholder Group level when the Bylaws are amended to reflect the GNSO Council restructuring in June 2009. Staff also suggests removing specifically dated references.
4.2	The GNSO Council representatives shall be the Officers of the Constituency and fulfill the function of an executive committee. The Officers are tasked with fulfilling the Constituency mission via administrative supervision and coordination.	What is the decision-making criteria used by the Executive Committee comprised of the GNSO Council representatives? If the BC were only allocated 1 or 2 seats by its Stakeholder Group, would the EC continue to be staffed this way? One concern is that, with such a small group and no specific decision-making process identified, the Constituency may be in danger of capture. Also, there is no mention in the charter as to how a Constituency Chair or Leader is chosen from among the GNSO Council representatives that are elected in Section 5.
4.3	There shall be a professional secretariat responsible for the day to day administration of the Constituency. Typically the following services, which may be changed by the Officers from time to time, will be provided by the secretariat	If not elected, how is this position appointed and by whom? Will this position remain necessary if a constituency “toolkit of service”, as recommended by the GNSO Improvements Report, is instituted?

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5.7	Votes shall be counted and elimination made as follows:	Note that the elimination methodology in this section may require amendment depending upon the number of Council seats apportioned to the BC by the Commercial Stakeholder Group.