

# Staff Analysis of Intellectual Property Constituency (IPC) Charter Reconfirmation Report<sup>1</sup>

Submitted by Steve Metalitz on behalf of the IPC, 29 January 2009

Section	Clause or Language	Recommendations
B-1	The IPC operates in full compliance with the ICANN Bylaws and its thoughtfully crafted Charter document.	Staff notes below a number of areas where it recommends enhancements to the IPC Charter document to support this assertion.
B-2	The IPC's Charter sets forth clearly delineated and transparent processes that ensure fairness.	Staff cannot locate a published list on the IPC website ( <a href="http://www.ipconstituency.org/membership.htm">http://www.ipconstituency.org/membership.htm</a> ) that contains all Constituency member names. It has been suggested via public comments that transparency and openness should also include publishing budget/financial data on each constituency's website. Staff has not been able to find any IPC financial information at the current site.
C	<p>The IPC Charter rules permit the following members into the IPC: individuals, companies, law firms, and IP Organizations who represent the interests of intellectual property owners globally.</p> <p>Because the IPC consists of IP Organizations dedicated to representing the interests of intellectual property owners globally, the IPC does in fact represent the interests of the community it purports to represent - in full compliance with the ICANN Bylaws.</p>	<p>On the IPC website (<a href="http://www.ipconstituency.org/membership.htm">http://www.ipconstituency.org/membership.htm</a>), there are 29 Category 2 and 3 members listed by organization name (no links or other identifying information, e.g. country/region). The Reconfirmation Report (Section C, pgs 6-10) identifies only 19 Category 2 and 3 members. The report further states that there are 12 Category 1A members and 68 Category 1B members; however, they are not listed either on the website or in the Reconfirmation Report. Given the important representational differences between Category 2 (local, state, national), and Category 3 (global / international), Staff wonders why members are not specifically identified as to their individual category. Staff also notes that, at the bottom of membership website page, the information was last updated 05/09/08.</p>

<sup>1</sup> Staff also considered input from the IPC Minority Report submitted by Victoria McEvedy on 30 January 2009 as well as public comments submitted in the appropriate Public Comment Forum (<http://www.icann.org/en/public-comment/-gns0-constituency-renewals>) in preparing this feedback.

Section	Clause or Language	Recommendations
C-IPCC	<p>The IPC intends to be clear: individual members of the IPC have made tremendous contributions to the work of the constituency. They have served as Officers and have represented the constituency on the GNSO Council. However, a “one-member one-vote system” in the IPC is for obvious reasons, not appropriate, nor reflective of the reality of the membership of the constituency, which consists of IP Organizations that represent the interests of tens of thousands of intellectual property owners.</p>	<p>As noted in the Charter analysis below (see II-B and III-A), Staff wonders if the IPC has considered tiered/weighted voting systems that would afford Category 1A and 1B members voting rights without engendering capture concerns that the Constituency rightfully wishes to avoid.</p>
C-IPCC  D (p. 13)	<p>The IPCC's tiered system of voting reflects that the priority in governance of the constituency should be given to the international Organizations with the broadest coverage in terms of membership.</p> <ul style="list-style-type: none"> <li>• Only category 3 and category 2 IPC members shall have nomination and voting privileges. Category 3 members shall have three votes; category 2 members shall have two votes. They may cast all their votes for one candidate or spread them out accordingly.</li> <li>• Only category 3 and category 2 members listed as members of the IPC at the start of the election may participate in the elections.</li> </ul>	<p>Staff notes that, according to the Reconfirmation Report, the IPC has the following membership: Category 2 and 3=19 firms; Category 1A=12 law firms; and Category 1B=68 individuals. In terms of membership alone (not representativeness), Category 1B outnumbers the other two and, yet, according to Section D (Elections), they are not accorded any nomination or voting privileges. It seems reasonable that a tiered voting system could be fashioned that would provide each Category 1 member with a single vote while raising the weighting for organizations to levels that would maintain representational balance while providing everyone the opportunity to vote in Constituency elections.</p>
D (p. 14)	<p>The IPC is open to all Organizations and individuals that are committed to the advocacy and development of intellectual property as fundamental components of meaningful commercial activity in the national, regional, and global realms; who are primarily and substantially involved in the field of intellectual property; and who make a substantial contribution through its members or otherwise to the field of intellectual property.</p>	<p>Staff notes that this section of the report does not address the IPC’s activities related to recruitment and outreach. The Charter assigns responsibility to the IPC Officers (4.C.2) to “reach out to any other interested IP groups around the world and encourage them to participate.” Staff encourages the IPC to include a separate Recruitment and/or Outreach section in its Charter as exemplified in Template, Section 4.3.</p>
D (p. 15)	<p>The IPC rarely conducts voting on policy issues. Rather, the constituency almost always achieves consensus through a process of dialogue, discussion, and compromise of competing viewpoints. Through this process the IPC develops its policy positions without formalized votes.</p>	<p>Staff compliments the IPC on this outcome, which is consistent with GNSO improvements and recommendations approved by the Board.</p>

## Staff Analysis of Intellectual Property Constituency Charter

*As approved by the IPCC on November 14, 2005 and amended on October 17, 2008*

Section	Clause or Language	Recommendations
ALL	General	In its next amendment process, Staff suggests that the IPC consider using the New Constituency Petition and Charter Template (hereinafter "Template") as a guide for both organization and content. It was developed by the Staff to be consistent with the improvements recommendations endorsed by the ICANN Board and is available at: <a href="http://gns0.icann.org/en/improvements/newco-process-en.htm">http://gns0.icann.org/en/improvements/newco-process-en.htm</a> .
	General	Principles such as transparency and fairness are mentioned in the charter {e.g. VI(A)(1)}; however, Staff recommends incorporating a comprehensive "Principles" section emphasizing the IPC's commitment to openness, transparency, and fairness and behavioral expectations consistent with ICANN Bylaws and Policies. Consult section 1.0 of the Template.
	ICANN Nominating Committee	Staff notes that there is no mention in the charter concerning the Constituency's Bylaw requirement (Article VII) to name a delegate to the Nominating Committee. This omission is noted only for the sake of completeness; this responsibility is being recommended for placement with Stakeholder Group in the planned June 2009 Bylaws amendments.
II(B)	<ul style="list-style-type: none"> <li>• Category 1A: a company, firm, or organization, which does not fulfill the requirement for category 2 or category 3 membership, but has a demonstrated interest in the protection of intellectual property.</li> <li>• Category 1B: an individual who has a demonstrated interest in the protection of intellectual property.</li> </ul>	<p>Cited for reference to subsequent comments below.</p> <p>The constituency opens its membership to these additional categories; however, they are considered observers and are accorded no voting rights.</p>

Section	Clause or Language	Recommendations
III(A)	The IPC Council (IPCC) shall be composed of one designated representative and up to two alternative representatives of each member organization of category 3 and category 2 members.	Category 1A and 1B members have no representation on the IPC Council. Staff wonders if extending certain additional privileges to these member categories may increase IPC's membership and create a higher level of participation and fairness. For example, could the Category 1A and 1B members be thought of as "interest groups" within the Constituency and, as such, elect one representative to the IPCC?
III(A)	Category 1A and 1B members are invited to participate as observers.	See comment immediately above.
III(B)(4)	Elect in accordance with the provisions provided herein or remove three representatives to the GNSO Council.	Consider generalizing to "...remove representatives to the GNSO Council as appropriate" on the basis that the number of seats allocated by the Stakeholder Group to the IPC may change over time.
III(D)	Only category 3 and category 2 members are entitled to vote.	It would be useful to provide the rationale for excluding Category 1A and 1B members from exercising any votes. Would the IPC reconsider providing voting rights to all members even if the weighting system recognized the broader representativeness of the larger organizational members? Might such a change encourage greater participation, membership, and overall fairness?
IV(B)(1)	(a) those individuals holding office on the effective date of these IPC bylaws shall remain in office until the conclusion of the 2005 ICANN annual meeting.	Consider generalizing this language so as not to refer to a particular date.
IV(C)(2)	(f) reach out to any other interested IP groups around the world and encourage them to participate in the IPC;	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.
V(A)(1)	Three individuals shall represent the constituency on the GNSO Council in accordance with the ICANN Board resolution to amend the ICANN bylaws effective on April 18, 2005.	Staff suggests that this wording be generalized, e.g., "The IPC 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."

Section	Clause or Language	Recommendations
V(A)(1)	(a) Two of those individuals holding offices at the time of adoption of these revised IPC bylaws shall remain in office until the conclusion of the 2006 ICANN annual meeting, after which time they may run for reelection, provided their candidacies do not conflict with any other provision of the IPC or ICANN bylaws.	Consider generalizing to avoid referring to a specific date (e.g. see IPC Charter, Section V(B)(1)) or eliminate as no longer necessary. Is a transitional amendment needed for the IPC Charter to handle the latest GNSO Improvements implementation/transition?
V(A)(1)	(b) One of those individuals holding office at the time of adoption of these revised IPC bylaws shall remain in office until the conclusion of the 2005 ICANN annual meeting, after which time that individual may run for reelection, provided that his or her candidacy does not conflict with any other provision of the IPC or ICANN bylaws.	Consider generalizing to avoid referring to a specific date, e.g. see IPC Charter, Section V(B)(1). Same implementation/transition as that immediately above.
V(B)(1)	(1) Pursuant to Article X (3)(2)(a) of the ICANN bylaws, the term of an IPC GNSO Council representative shall commence at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected by the IPC shall begin in an even-numbered year and the regular term of the other representative selected by the constituency shall begin in an odd-numbered year	Note: this provision may move to the Stakeholder Group level when the Bylaws are amended to reflect the GNSO Council restructuring in June 2009.
V(B)(2)	(2) An IPC GNSO Council representative may not hold an IPC seat on the GNSO Council for more than two successive terms. If no successor is elected, the elected representative shall remain in office until a successor has been elected.	Term limits for GNSO Council members were approved by the ICANN Board (2 Feb 2009) and may be referenced (if desired) at: <a href="http://www.icann.org/en/minutes/prelim-report-03feb09.htm">http://www.icann.org/en/minutes/prelim-report-03feb09.htm</a> Section could be amended by adding text "As required by the ICANN Bylaws."
V(C)	The GNSO Council representatives must be citizens of countries that are in different geographic regions as defined by Article VI (5) of the ICANN bylaws.	This requirement may be moved to the Stakeholder Group when the Bylaws are amended to reflect the GNSO Council restructuring in June 2009.
VIII	These bylaws were adopted by the IPCC on November 14, 2005 and replace the bylaws that were effective on July 22, 2005. These bylaws will come into force the day after they were adopted by the IPCC	Staff suggests adding a new Section, at the end of the charter, to track and document approved amendments. See Template, Section 11.0 for an illustration.