

RIWG Proposed Updates to ICANN Bylaws, with ICANN Legal Suggested Updates and Notes

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN ("Nominating Committee"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in accordance with the articles of incorporation and Bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Notwithstanding Section 7, the Nominating Committee shall ensure the nomination of unaffiliated Board Members. For the purpose of this section reapplying NomCom Board appointees shall be deemed to be unaffiliated.

Commented [SE1]: We are not clear on the meaning/purpose of this reference. Can the RIWG clarify?

Commented [SE2]: Suggest that this provision is more appropriate for inclusion in the "ineligible for selection" (Section 8.8) below. Recommend removal of this language in favor of the draft language below.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

- (a) A non-voting Chair, appointed by the Board;
- (b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;
- (c) One voting delegate each selected by the following entities:

(i) The Council of the Address Supporting Organization established by Section 9.2;

(ii) The Council of the Country Code Names Supporting Organization established by Section 10.3;

(iii) The Governmental Advisory Committee established by Section 12.2(a)

(iv) The Security and Stability Advisory Committee established by Section 12.2(b);

(v) The Root Server System Advisory Committee established by Section 12.2(c); and

(vi) The Internet Engineering Task Force.

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(d) Five voting delegates selected by the At-Large Advisory Committee established by Section 12.2(d);

(e) Seven voting delegates to the Nominating Committee shall be selected by the Generic Names Supporting Organization established by Article 11;

(f) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 8.3. TERMS

(a) The term for each voting delegate shall be a two-year term. No individual may serve as a delegate for more than two terms. In addition, no individual may serve in consecutive terms, regardless of the entity selecting them to the Nominating Committee. An individual will only be eligible to serve a second term as a delegate on the Nominating committee if a minimum of two-years has elapsed between the end of their first term and the beginning of the term for which they are being selected.

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the ICANN annual meeting in two years, subject to the Transition Article xx, subject to the details in the approved Nominating Committee Standard Operating Procedures.

(c) The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.

(d) It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

(e) Vacancies in the positions of delegate, shall be filled by the entity entitled to select the delegate, subject to the details in the approved Nominating Committee Standard Operating Procedures. If a delegate is selected to fill a vacancy and less than eight months have elapsed in that term, the delegate will be considered to have served a full term for the purposes of Section 8.3(a). If more than eight months have elapsed in the term at the time of the delegate is selected to fill a vacancy, such service will not be considered a full term pursuant to Section 8.3(a).

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- (ii) One delegate from the Registrars Stakeholder Group;
- (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;
- (iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));
- (v) One delegate from the Intellectual Property Constituency; and
- (vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.
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(f) ~~For any vacancy in the position of Chair, the Board shall appoint a replacement.~~ For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

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(g) The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

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Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

- (a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
- (b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
- (c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
- (d) Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
- (e) Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
- (f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website. The Nominating Committee, while ensuring confidentiality, will ensure that it maintains transparency and accountability to the ICANN Community for all its processes.

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

- (a) No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.
- (b) In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 of the ICANN Board, those individuals who do not meet the definition of "unaffiliated" as set forth in the Nominating Committee Standard Operating Procedures shall be ineligible for selection by the Nominating Committee for those Seats. Service on the ICANN Board shall not render any candidate ineligible pursuant to this Section 8.8(b).

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

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Commented [SE12]: The documentation suggests that there is an intention to confirm that just serving on the Board will not render a reapplying Board member ineligible. We propose this language to make this item clearer. The specific Bylaws language presented by the RIWG, however, suggests something different. "For the purpose of this section reapplying NomCom Board appointees shall be deemed to be unaffiliated" - which can be read to suggest that no matter how their circumstances changed over the past years of service, they would still be deemed unaffiliated. If that was intended, this would seem to create inconsistency with the recommendations.

Separately, we note that there is still pending a conversation with the community as to whether the "unaffiliated" status should be required across all NomCom appointees. If there is a possibility that the number of appointees impacted will be anything less than all, this section will need to be rewritten, as we could not leave that detail to an Ops Procedure document, as it would create inconsistency with the Bylaws.

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Page 2: [1] Deleted **Samantha Eisner** **11/13/20 1:56:00 PM**

Page 2: [2] Deleted **Samantha Eisner** **11/13/20 5:01:00 PM**

Page 2: [3] Commented [SE5] **Samantha Eisner** **11/13/20 1:42:00 PM**

Rationale for change: 1. Match the singular tense of “each voting delegate”.

2. Once we establish that the term is two years, recommend that we do not need to re-state that as it causes confusion in the remainder of the text.
3. Clarifies that no consecutive service is allowed.
4. QUESTION FOR RIWG: the last sentence added here requires two years between terms, in an attempt to clarify that a person can be appointed to a new term so long as two years will have passed between leaving and returning. Does this match the RIWG’s intentions? Alternatively, would the RIWG like to have a rule that two years will have passed before an individual is eligible to be considered for appointment (so more than two years might elapse in practice?).

Page 2: [4] Commented [SE6] **Samantha Eisner** **11/13/20 2:02:00 PM**

Necessary to effectuate two year terms. Suggest reference to a transition article wherein we identify the 1/2 terms and clarify impact on term limits for the transition. We can then remove the transition article at an appropriate time in the future. The Transition Article would place into Bylaw language the information presented on the table, and we can produce that for the RIWG’s review upon request. It would be part of Article 27 of the Bylaws.

Page 2: [5] Deleted **Tom Barrett** **9/3/20 6:21:00 PM**

Page 2: [6] Commented [SE9] **Samantha Eisner** **11/13/20 2:08:00 PM**

Can teh RIWG confirm the lentght of term it anticipates for Chair or Chair elect?

Page 2: [7] Commented [SE10] **Samantha Eisner** **11/13/20 2:20:00 PM**

Clarifying impact of vacancy appointment on term calculation.