

Comments of the Non-Commercial Stakeholders Group on the Assessment Report of the Independent ICANN Nominating Committee Organizational Review

8 February 2018

The Non-Commercial Stakeholders Group (NCSG) is pleased to have reviewed the report prepared by Analysis Group, the independent examiner performing the ICANN Nominating Committee (NomCom) Review, dated 9 January 2018. We understand that the goal of the assessment report is to achieve a level of agreement between the broader ICANN community and the independent examiner as to which areas of the NomCom work well and which may benefit from improvements. We understand and appreciate that recommendations will be included in the final report, a draft of which will be published in March, and in our comments today share perspectives that we hope will feed into your recommendations.

By way of background, we wish to note that the NCSG is the most diverse body in the Generic Names Supporting Organization, with individual and organisational members from 161 countries. As a network of individual and organisational academics, Internet end-users, and civil society actors representing the interests of non-commercial registrants, we represent a broad cross-section of the global Internet community and are dedicated to advancing the interests of non-commercial uses and users of the Internet.

1. General comments on the review

The survey methodology, with regards to the candidates selected for interviews, was broad and geographically inclusive. However, we note the disparity between the number of male and female respondents. It is also not apparent to us that other attributes of diversity have been measured, such as ideological diversity, or varying levels of community seniority. This is a critical flaw in the work given the important role that the NomCom plays in filling leadership.

Differentiation of individual community representation is important to avoid conflict of interests, diversity of views and ensuring the respondents were well distributed along the community groups. Although we also note that the ICANN community members may have representation in different community groups leading to overlapping constituency representation on the community groups, the questions should be well understood to reflect the community in which they are active on or which behalf they are answering the questions on.

2. Individual capacities

While individual NomCom members are elected from the community blocks, we agree that their role as representatives to these communities should be greatly outweighed by their role as trustees. This will give them the independence that they need for objectivity. It would then be

important to gauge the balance between the two roles and how they can be accountable to the wider Internet governance community. While the independence of NomCom members is important, this independence cannot be achieved without a balanced participation in NomCom by various groups. It should be noted that the current composition of the NomCom is mostly from the commercial side and the Non-Commercial Stakeholder Group only has one delegate. If there is no balance in composition then the NomCom will be prone to capture under the very claim of independence.¹ This is an issue we feel very strongly about and which we believe must be rectified.

In addition, to measure the levels of understanding and agreement between NomCom members on candidate selection, it would be best also to include the performance of the different selected groups like the Board and community leaders, both in terms of community views and the predetermined performance indicators. This gives us the opportunity to compare the strength of the various NomCom cohorts. This is in view of the fact that the performance of the Board and other NomCom-appointed leaders reflects on its experience and knowledge in recruitment and a good interaction with the community to reflect leadership teams that would best work with them.

For future research, we request for the review teams to be able to retrieve anonymous candidate rating data for more analysis on candidate selection (respecting ICANN's privacy policies and best practices in privacy and data protection). Such data, if suitably analysed, will help us to understand whether the team had agreed and/or understood the candidate attributes they were looking for and the levels of objectivity. Again, further from the community perceptions, it will give more details on how the NomCom understands and balances its two roles.

3. Linking research findings

We would like to request a comparative analysis between the findings of the previous NomCom review and the current one. This would help the community to better understand the findings, to identify unresolved, recurring issues that need to be worked on, and build institutional knowledge.

4. NomCom term limit

We concur with the research findings that view the current terms of the NomCom representatives to be too short for said representatives to interact with the broader Internet governance community, and to understand their roles properly.

5. NomCom procedures

¹ This under representation is also confirmed by the survey result that, "There is concern that the NomCom may not accurately represent constituencies (both across organizations and within organizations) and over the role and participation of nonvoting members" (p.11).

The NCSG concurs with the finding that the rules and procedures of the NomCom are changed far too frequently. To comment further and to be able to suggest recommendations the NCSG would like to request that information be made available on how the NomCom develops its own rules of procedure and processes, how often change occurs, what areas are changed, the process by which rules, procedures and processes are developed, who is consulted, and what the approval process is. We believe these are important issues to be addressed to prevent the NomCom from being captured by a group through the change of operating procedures. We believe operating procedure changes should not happen at the whim of the NomCom itself²; moreover, the operating procedures and the long-term practices of the NomCom which have become customary should not be changed without consultation with the community.

6. Transparency and Confidentiality

“The NomCom has made significant progress in becoming more transparent, but transparency of its processes is still a concern within parts of the ICANN community.”

We agree that NomCom processes have become more transparent as a result of the first review, however, the Nomcom still plays the role of a black box and not many know how it operates. The claims of confidentiality of NomCom process has crept into those deliberations that have nothing to do with the candidate’s personal data and candidate selection. This is even against the current operating procedures of the NomCom which clearly states that “In balancing the requirements of transparency and confidentiality, the NomCom will follow the principle that process is transparent and data (i.e., information relating to Candidates) is kept confidential.”³ This provision has to be interpreted narrowly and confidentiality should be only be applied to “data, information relating to Candidates”. Not every act of the NomCom should be subject to confidentiality.

7. Reliance on the Chair

Per the research findings, the NomCom relies too much on the Chair to carry out its tasks. While this can be a convenient arrangement and it has worked so far, it makes the Chair too powerful and might lead to abuse of power.

8. Lack of communication channel between NomCom and Community

² At the moment the NomCom reserves the right to change its operating procedures “in the course of its work”. This creates uncertainty and results in too many modifications.

“Considerable care has been taken in developing the NomCom Procedures. In setting and publicizing its procedures, the NomCom reserves the right to modify them in the course of its work in order to ensure efficiency and effectiveness in fulfilling its responsibilities. If the NomCom concludes that modification of these procedures is necessary, the NomCom will post the changes on the NomCom web page.”

NomCom Operating Procedures A.(1),

<https://www.icann.org/resources/pages/nomcom2017-procedures-2017-02-07-en>

³ Section 7(1) Nomcom Operating Procedures

As the report states, there is a communication problem. The NomCom does not provide a communication channel for the community.⁴

Conclusion:

A committee that can change its own operating procedures in secret and only announce and publish the outcome while providing no rationale for the changes is very much prone to capture. We respect the independence of the NomCom and it should operate and work for the broader, global public interest. To achieve this, there is a need for more transparency, a more diverse composition of its membership, and better rules to prevent capture. When there is an imbalance of stakeholder group representation on the NomCom (which the first review referred to and which still exists) the independence of the committee cannot be achieved.

⁴ “There is a lack of communication between the NomCom and SO/ACs regarding the desired skills and qualities of potential candidates. In addition, the Board and SO/ACs sometimes struggle to reach consensus on what they need and do not have an effective way to communicate to the NomCom if current appointees should be re-appointed.”