AT-LARGE
ADVISORY COMMITTEE

Advisory of the ALAC

Related to the ICANN SIC Board Review WG Document Entitled
"ICANN Board Review Working Group Draft Final Report" – Last updated: 19 September 2009

Introduction

By the Staff of ICANN

The proposed comments, from At-Large / ALAC, included in this document were composed by Sebastien Bachollet, Chair of the At-Large working group on the Future Structure and Governance of ICANN.

It is being made available for comments from the At-Large working group on the Future Structure and Governance of ICANN and then to the Community, after which a final text will be produced and voted on by the ALAC.

[End of Introduction]

Introduction

The ICANN Board Review Working Group issue a Draft Final Report on the 19th of September 2009 open for comments.
http://www.icann.org/en/reviews/board/board-review-wg-draft-final-report-19sep09-en.pdf

The following document select the main issues At-Large/ALAC is willing to address, propose comments and opinions to be raise as an Advisor body to the board concerning the Board review and linked maters.
They will be also provided to http://www.icann.org/en/public-comment/public-comment-200911.html#board-review-2009

The At-Large / ALAC comments (or no comment) are in green in this document.

Response to recommendations from the independent reviewer
Recommendation #1: Reduce the size of the board:
(a) Assess option 1: reduce the board to a maximum of 15 persons
• Redefine the Liaisons as an expert group of non-board members available to advise directors as required and develop a new communication protocol to ensure frequent exchange of views.
• Provide ALAC with the right to nominate one or two voting board members.
• Reduce the number of directors provided through the NomCom process from eight to six.
• Provide one 'observer' position for the GAC and also, if thought necessary, for the technical community.
(b) Assess option 2: halve the size of the board to around nine voting persons plus two observers
• One from each of the SO/ACs and possibly one from ALAC.
• Four from the NomCom process.
• The President.
• An observer from each of GAC and the technical community.
• Consider maintaining a majority of members sourced from the NomCom process (that is, four from SOs and ALAC, the President and five from NomCom).
(c) Institute communication processes between board and technical community (such as a formal meeting at each of the three public meetings).

The question of the Board size is a very difficult one.
The report from the external reviewers presents a strong view that the size of the Board should be reduced in order to increase its effectiveness, and notes that large Boards are more prone to capture than small ones.
In turn, Members of the WG are conscious of the difficulties of working with a Board of the current size, and started investigating this issue by asking 'Would a smaller Board help the Organization better achieve its mission?', question that needs to be answered by considering the workload of the Board of ICANN.

Although a smaller Board could have a strong appeal, the WG also underlines the need for having a sufficient number of Board Members to effectively carry out the work that is required to the Board by the specific nature and unique governance model of ICANN. Members of the WG are aware of the resistance raised by members of the community to reducing the size of the Board and, in particular, because of the importance of the representative nature of the Board and the related issues of geographic, cultural and stakeholder diversity. The WG strongly supports the need for the continuation of such diversity on the Board and is fully committed to preserving that diversity. Some WG

members are particularly mindful of the importance of the Nominating Committee process for providing that balance and diversity.

The WG also notes that the Board, while it has members drawn from the ICANN Supporting Organisations, is not a representative Board. The Bylaws state quite clearly (Art. VI, Section 7) that Board members "have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies." Further, inasmuch as ICANN is organized as a not-for-profit public benefit corporation that duty also translates to acting in the best interests of the public that ICANN serves, namely the universe of Internet users.

Having carefully considered the multiple aspects related to the size and composition of the Board of ICANN, the WG has concluded that the reviewers' recommendation to adopt major reductions of the size of the Board was inappropriately based on practices of the corporate sector. ICANN does not fit easily into a corporate model for a number of reasons, including: the cultural and geographic diversity of its stakeholder base; the plurality of tasks assigned to the Board; and the nature of ICANN's mission.

Furthermore, the WG is well aware of the enormous amount of activity that is currently underway in ICANN. This is resulting in an extremely high workload for the Board, Supporting Organisations and Advisory Committees, and the Staff. This is not an appropriate time to undertake a major change such as a significant reduction in the size of the Board.

The WG remarks that several measures suggested by reviewers and supported by this WG (recommendations # 2, 4, 5, 6, 8) are expected to impact positively on the effectiveness of the work of the Board.

In relation to reviewers' recommendation # 7, this WG recommends moreover a further measure (see below) that is expected to have further positive effects on the workload of the Board.

Finally, the WG invites the CEO to investigate the way that Staff interacts with the Board 'vis à vis' matters to be considered by the Board, and to institute measures to decrease the workload on the Board (most likely with a concomitant decrease in Staff workload as well). In case of success of these measures, one could expect that the size of the Board could be reduced without detrimental impact on its ability to discharge its duties, that frequency of meetings dealing with routine ICANN business could be reduced, and that the Board could have more time to deal with truly strategic issues.

In conclusion, the WG recommends against any drastic reduction in the size of the Board at this time. The WG also recommends that the question of the size of the Board be re-examined in three years, when the effects of the other changes suggested in this review can be assessed.

This recommendation was approved by the WG with one abstention, one vote against and all others voting in favour.

The WG was requested by the Structural Improvements Committee to assess different options to implement the recommendation issued by the ALAC Review Working Group to include two further voting Board Directors in representation of At-Large.

The Board Review WG has discussed this recommendation from the perspective of the impact that it will have on the Board. Some members were supportive of the recommendation, others were willing to support the inclusion of only one voting seat, while still others were of the view that the there should be no voting seats given to At-Large given the advisory nature of the committee.

After considerable discussion, the majority of this WG voted in support of the recommendation that the At-Large community should be given one voting seat on the

Board. This voting seat (when filled) would replace the existing position of the ALAC liaison.

This recommendation has already been sent to the Structural Improvements Committee and forwarded to the Nominating Committee Review WG.

The WG discussed whether the inclusion of this further voting Director should be balanced by the reduction of one unit of the number of Directors appointed by the Nominating Committee, and does not recommend the adoption of this measure.

The WG also gave consideration to the mechanism by which this new At-Large Director would be appointed. The conclusion from this discussion was that ALAC and At-Large should devise the selection process, to be presented to the Board for approval. The selection process must ensure that the appointment has the approval of ALAC and the approval of the At-Large community more broadly. The WG expects that the selection process will be designed, approved and implemented in time for the new Director to be seated at the latest at the 2010 AGM.

With regard to liaisons, the WG recognises that in many ways it is well served by the individuals who currently serve as liaisons. However, at the same time, some members of the WG are of the view that the current model of liaisons is not working well for the Board, nor for the liaisons themselves. In particular, it notes that the flow of information between the Board and the groups represented by the liaisons is not optimal. In addition, the liaisons have to sit through many meetings which have very little to do with their area of representation. A model where the liaisons would be invited for discussions only to particular meetings relevant to their area of representation and at which they would provide reports might be a more efficient and effective process. However, on balance, WG members are of the view that the liaisons need continuity in order to be of real value. A process which has the liaisons only attending some meetings would break this continuity and decrease the effectiveness of the liaisons and the Board as a whole. In particular, the WG is keen to ensure that any change to the current liaison arrangements does not impede or decrease the much needed interactions between the Board and the technical community.

On the balance of these perspectives, the WG has concluded that no change needs to be made to the current liaison arrangements at this point.

The At-Large / ALAC fully support "the specific nature and unique governance model of ICANN". The representativeness of the board is very important but it is strange that it is for related issues like geographic, cultural and stakeholder diversity and not for the entity that elected them.

The role of the NomCom to provide balance and diversity is essential because in the other bodies selecting board members there is no possibilities to have any balance.

For example with the 2 GNSO board directors who will come from each house (Alan can you confirm?) or At-Large / ALAC with just one board member we are not able even to have a gender balance. CcNSO council and ALAC are good examples for real geographic balance but still a lot to do for other type of balance even with the help of the NomCom.

Historically 9 at-Large directors were suppose to be elected by At-Large (5 were elected by a worldwide election in 2000). In the ICANN 2.0 organization 2 bodies were in charge of representing At-Large.

The NomCom to select 8 board members and At-Large / ALAC to elect one Liaison and to organize the voice of the Worldwide End Users into the ICANN processes.

Now with the election by At-Large / ALAC of one board member, ICANN is back to this number of 9 board seats.

In fact NomCom represent the voice of all the constituencies of ICANN – it is an "inside" At-Large and At-Large / ALAC represent the voice of all the End Users – it is an "outside" At-Large.
Therefore in the future ICANN may decide to decrease the number of board members selected by "inside" to increase the number of board members selected by "outside".
We thing that right now 2 seats elected by At-Large / ALAC will allow us to have a gender balance and 2 regions represented. And we will be more confidante that the voice of the End-Users will participate better to the Board of ICANN work.

We are still questioning on how the advisory role to the board of ALAC will be continued.

At-Large / ALAC is working on the election (selection?) process for one board director but we would like to clarify when she/he will be seated?
Do we need to have a director seated by the 2010 "mid-year meeting" or by the "2010 AGM"?

"The WG expects that the selection process will be designed, approved and implemented in time for the new Director to be seated at the latest at the 2010 AGM."
"On balance of these views, the WG recommends to maintain the current arrangements, but to seat all the incoming Directors at an ICANN meeting (i.e., the mid-year meeting for SO and At-Large appointees, and the Annual General Meeting for NomCom nominees), in order to facilitate their transitioning."

Recommendation #2: Move to fewer but longer board meetings:
No At-Large / ALAC comment in this part of the document

Recommendation #3: Consolidate the board committees:
No At-Large / ALAC comment in this part of the document

Recommendation #4: Broaden the skills of the board:
(a) Formally define the skill and experience and independence mix required for the board to operate effectively – in the short and longer terms.
(b) Form a view about the main gaps in skills that should be met.
(c) Formally define the participation of the ICANN chairman and the chairman of the Governance Committee as part of the Nominating Committee's process for choosing new board directors.
(d) Develop a process for engaging the Supporting Organisations and Advisory Committee in a discussion about the mix of skills required.
(e) Offer training in director's responsibilities to all board members.
(f) Encourage each director to nominate an area of 'learning' for the year.
(g) Occasionally invite prominent company directors to meet the board over dinner to talk about 'the role of the director'.
This recommendation, and in particular the options 4a and 4b, is also being considered by the Board Governance Committee.
With regard to 4c, the WG is of the view that it is appropriate and useful for the Chairman of the Board to have a formal meeting with the Chairman of the Nominating Committee to discuss the skill needs of the Board, and notes that informal contact already occurs.
A formal discussion between the Chairs should take place after a full Board discussion about necessary Board skills, and the Chairman of the Board should represent the Board position on this. If this process is followed, there is no need for the Chairman of the Board Governance Committee to meet with the Chair of the Nominating Committee.

With regard to 4d, the WG recognizes the value in having input from the SOs and ACs into the Nominating Committee process. However, the WG sees little value in creating an extra formal process to capture this input. SOs and ACs are encouraged to develop proposals for ways in which their input might most effectively be incorporated into the considerations of the Nominating Committee. Any such proposals should be submitted to the BGC for consideration.

The WG supports 4e and 4f, but notes that some comments received during the consultation process question whether it is appropriate for ICANN to deliver training to its directors. Induction training is already provided for new Board members and special skills training by outside experts has been instituted for Directors adjacent to ICANN meetings. The WG suggests that these practices be reviewed and strengthened. The Board should also implement a process where Board members nominate areas where they would like further training, particularly where those needs are in core Board functions such as finance.

The BGC is currently assessing the training needs of Directors and the WG requests the BGC to take these conclusions into consideration.

The At-Large / ALAC request that the community to work on giving weight (or a ranking) to the following items to allow a better mix within the Board and the other bodies of ICANN:
- skill
- experience
- independence
- geographic
- cultural
- stakeholder diversity
- gender
- language
- ability
- competency

We would like to amend the recommendation 4(g) by
(g) Occasionally invite prominent company [and not-for-profit organizations] directors to meet the board over dinner to talk about 'the role of the director'.

Regarding recommendation 4(d) At-Large / ALAC is already giving inputs to the NomCom by informal exchanges between the two Chairs.

Recommendation #5: Make board membership more sustainable:
No At-Large / ALAC comment in this part of the document

Recommendation #6: Build 'high performance' culture at the board level:
No At-Large / ALAC comment in this part of the document

Recommendation #7: Strengthen the 'strategic' focus of the board:
No At-Large / ALAC comment in this part of the document

Recommendation #8: Clarify the board's accountabilities.
Initiate a program of discussions that explore the following propositions:
No At-Large / ALAC comment in this part of the document