

Registries Stakeholder Group Statement



Bylaws Amendments and Documents to Implement the NomCom2 Review

Date statement submitted¹: 29 May 2023

Reference url:

<https://www.icann.org/en/public-comment/proceeding/bylaws-amendments-and-documents-to-implement-the-nomcom2-review-17-04-2023>

Background²

ICANN is seeking Public Comment on a group of related documents that are all part of the implementation of recommendations from the NomCom2 Review. The ICANN Board initiated Bylaws amendment processes over these proposed updates to the Bylaws, that are necessary to complete the implementation.

The proposed amendments would:

- Require that three of the NomCom's eight selections to the ICANN Board of Directors meet a new qualification requirement of being "Unaffiliated" (Article 7 of the Bylaws).
- Change NomCom delegates' terms to serve two-year terms, instead of one year (Article 8).
- Transform all NomCom delegates into voting delegates, except for leadership (Article 8).
- Create a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom, since the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities. (Article 8).
- Define how these new requirements will be transitioned into practice (Article 27).

A proposed amendment to Article 12 of the ICANN Bylaws is also presented at the request of the Root Server System Advisory Committee (RSSAC). The RSSAC requests that if its appointed delegate becomes a voting member through this process, that the ICANN Board's role in appointment of RSSAC membership and leadership be removed.

There are additional proposed documents that are necessary to view in order to give context to the proposed Bylaws amendments:

- First, the proposed amendments to Article 7 reference a new standard for "Unaffiliated" Directors, and the NomCom2 Review Implementation Working Group's (NomComRIWG) proposed statement defining that standard is provided for Public Comment.
- Second, the NomComRIWG also produced a draft Charter for the NomCom Standing Committee referenced in the proposed Bylaws. That document is also available for Public Comment.

Documents

- [Proposed Amendments to the ICANN Bylaws](#)
- [Proposed NomCom Standing Committee Charter](#)
- [Proposed Statement Defining "Unaffiliated" Directors](#)

Related RySG comments

- [RySG comment on the Draft Final Report of the NomCom2 Review](#) (7 May 2018)
- [RySG comment on the ICANN Board WG NomCom Report](#) (21 Nov 2014)

¹ This is a copy of the text submitted via the ICANN Public comment platform.

² Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.

Registries Stakeholder Group Comment

Guiding questions:

1. Do you have input on the [Fundamental Bylaws amendment](#) proposed for Article 7 of the ICANN Bylaws and the related proposed statement defining “Unaffiliated” Directors?
2. Do you have input on the proposed [Standard Bylaws amendments](#) proposed to Article 8 of the ICANN Bylaws as well as the Transition Clause proposed for Article 27? These would:
 - a. Change NomCom delegates’ terms to serve two-year terms, instead of one year.
 - b. Transform all NomCom delegates into voting delegates to be able to vote, except for leadership.
 - c. Create a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom.
3. Do you have input on the NomCom [Standing Committee Charter](#)?
4. Do you have input on the [requested changes to Article 12](#) related to the RSSAC?

The Registries Stakeholder Group (RySG) welcomes the opportunity to comment on the proposed Bylaws amendments and documents that are part of the implementation of recommendations from the NomCom2 Review. The following comments are consistent with those previously provided by the RySG: [comments on the NomCom Report \(21 Nov. 2014\)](#) and [comments on the Final draft Report on the NomCom 2 Review \(7 May 2018\)](#).

1. Fundamental Bylaws amendment (re: Unaffiliated)

While, to be clear, the RySG believes the appointment of directors who are independent or “non-affiliated” to be a laudable goal, one which we support in concept, we are concerned with the draft definition within the “ICANN Nominating Committee (NomCom) “Unaffiliated” Director Statement “. It is our impression that the definition is so wide as to in effect exclude anyone who has had any meaningful interaction with the ICANN community. We believe that this definition requires significant revision in order to achieve the desired goal – getting the best candidates to submit their candidacies. We encourage ICANN to ensure that in seeking “independence”, we do not go so far as to disqualify all those with relevant experience, which could be of added benefit to the Board and the community as a whole.

The RySG also believes that care must be taken not to overly restrict the pool of potential candidates at the outset of the process. The NomCom can only select from amongst those who apply. In the past, some pools have been more limited in the number of well-qualified candidates based on all of the selection criteria. We therefore respectfully suggest that when defining “unaffiliated” reasonable flexibility is envisaged so as to best support the NomCom in performing their role. This also is important in terms of timing: if suitable “unaffiliated” (under a strict definition) candidates do not make it through the regular selection process, there won’t be enough time to find additional candidates for consideration—and the Board should never be under-staffed due to an avoidable procedural complication.

2. Standard Bylaws amendments

- Change terms to two-years
 - The RySG reiterates its support for changing the terms for voting delegates to two-years and instituting a one term limit noting that an individual may serve a second term provided a minimum of two years has passed since the conclusion of their first term. NomCom service is a complex responsibility and the additional year will provide necessary experience and continuity. The term limit will avoid allowing members to be involved in selecting Board members over three consecutive cycles.
- Transform all delegates into voting members
 - The RySG supports allowing all delegates to vote. As delegates participate in discussions and can influence voting, they should be permitted to participate fully with voting rights. In addition, the RySG doesn't see how the GAC can vote unless the NomCom breaks the confidentiality rules for that member so they can get instructions from the GAC. The RySG is aware that the GAC has never participated on NomCom and may be discussing if it sees any way it could participate.
- Create a NomCom Standing Committee
 - The RySG reiterates its support for the creation of a NomCom Standing Committee. The Standing Committee could be given the responsibility for improving the productivity, transparency, effectiveness, and accountability of the NomCom. With a Standing Committee the NomCom and its delegates could focus on the current year's evaluation and selection activities rather than being mired down solving perennial issues about the application process. The Standing Committee would over time develop institutional knowledge about the NomCom to further enhance its future efforts.

3. Standing Committee Charter

The RySG supports the draft Nominating Committee Standing Committee Charter that was posted for public comment on 17 April 2023.

4. Requested changes to Article 12

The RySG believes the RSSAC will determine their operational procedures and therefore offers our support but no specific comment.

Summary of Submission:

The Registries Stakeholder Group (RySG) welcomes the opportunity to comment on the proposed Bylaws amendments and documents that are part of the implementation of recommendations from the NomCom2 Review and provided comments consistent with those previously provided by the RySG on the NomCom Report (21 Nov. 2014) and the Final draft Report on the NomCom 2 Review (7 May 2018).