June 30, 2023

Subject: Board Discussions on NomCom Rebalancing: NCSG Comments

Dear Tripti Sinha,

Thank you for your letter of April 26, and for consulting the NCSG on the matter of the Bylaw changes concerning the NomCom. As you are aware, the NCSG has been requesting changes to the numbers of the GNSO representative for many years, to rectify what we see as an unfair preponderance of commercial interests in the NCPH (4 seats for commercial entities, 1 for noncommercial entities). We are pleased to provide the following comments.

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in the formulation of Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999 we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

About this invitation to discuss the "rebalancing" of the NomCom

Thank you for this invitation to provide further comments on this important issue, we have provided comment under each question.

1. What does it mean to have a balanced NomCom at a point in time? For example, what criteria would you apply to measure or assess whether the NomCom is balanced? And further, how can one test whether or not the NomCom is balanced?"

In order to assess whether the NomCom is balanced, one must assess whether the selection of candidates to the various organizations they serve have been balanced appropriately. Clearly a goal of an independent nominating committee is to introduce new candidates to the organization. These individuals bring experience and knowledge of the Internet issues we are tasked to manage at ICANN, yet have fresh ideas and perspectives that may not be present in the ICANN ecosphere, from which other candidates for these committees and organizations are chosen.

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We are not aware of any qualitative analysis that has been done on the committees that NomCom serves. Perhaps that analysis should be done before we move to "rebalance" the NomCom in a broader sense....what we need right now is to right a historic wrong that has occurred in the GNSO representation. A broader analysis of the NomCom and its goals needs to be done before we consider further changes.

While we of course agree that NomCom reps are not there to serve the communities and constituencies from whom they are chosen, the proof of their independence is not currently measured. It is a fact that if a NomCom member represents a given constituency, they are likely to be doing outreach to members of that same constituency, that is simply the milieu in which they work, from whom they gather their professional contacts. How many of our NomCom reps are successfully reaching out to, recruiting, or positively evaluating candidates who can bring us fresh perspectives, who would find themselves in different constituencies were they to elect to join ICANN groups after their appointment is fulfilled?

In the NCSG, we certainly cheer when we find new candidates who bring a human rights perspective to the work, who have a background in the non-commercial world, who have worked for NGOs or studied and taught in relevant academic disciplines. The community at ICANN is not short of commercial, intellectual property, or security perspectives. It is rather short of globally diverse participants, and of those who have spent their working careers representing the individual user of the Internet, rather than commercial actors and large organizations. This is one of the reasons that the NCSG has been pushing for more than one seat on the NomCom, not just to rectify a fairness issue in terms of one representative per constituency (i.e. NPOC, NCUC, and the non-affiliated members of the NCSG) , or parity with the other side of the non-contracted party house (why 4 for them and 1 for us?). It is to promote greater representation of those who are often left behind at ICANN, individuals and NGOs who are not big clients of the contracted parties or the IPC, whose members represent large business clients in the main. ICANN, as a multi-stakeholder organization created to fill a regulatory gap and manage the DNS in a fair, balanced, competitive and safe way, needs to focus on ensuring representation of those who are not powerful actors in the Internet ecosphere.

"2. Do you support the view that the current composition of the NomCom needs to be rebalanced?

The NCSG has two constituencies, the Noncommercial Users Constituency (NCUC) and the Not for profit Operational Concerns Constituency (NPOC). We also have many members in the NCSG who are not affiliated with either constituency. Over the years, the NomCom has had only one representative from the NCSG.   When NPOC was created, logically there should have been a second seat added for the new constituency.   This is in sharp contrast to the other side of the Non-contracted

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parties house of the GNSO, which has two representatives for the Business constituency (BC), and one each for the IPC and the ISPCP.

Our proposal is to request the board to consider rebalancing the GNSO as there are 7 constituencies in the GNSO and every constituency should have 1 slot either by increasing the total number to 8 to accommodate NPOC or to request the business constituency to relinquish one of the two seats they are holding. If the goals of fairness and the broader rejuvenation of the NomCom (and thus the Board and the GNSO Council, among others) are to be met, the NCSG should also have a seat for the non-affiliated members who are also currently unrepresented, bringing the number of seats to three, in balance with the commercial side of the House, which has four at the moment, but would lose one seat to the NCSG in the rebalancing exercise. We would therefore recommend that the Board's proposed amendments read as follows:

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(eg) **Eight** Voting delegates to the Nominating Committee shall be selected from the

Generic Names Supporting Organization established by Article 11, as follows:

(i) One delegate from the Registries Stakeholder Group;

(ii) One delegate from the Registrars Stakeholder Group;

(iii) **One delegate** from the Business Constituency;

(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

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(vi) **Three delegates** from consumer and civil society groups, selected by the **Non-**

Commercial Stakeholders Group

(h) One voting delegate each selected by the following entities:

(i) The Council of the Country Code Names Supporting Organization established

by Section 10.3;

(ii) The Council of the Address Supporting Organization established by Section

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9.2; and

(iii) The Internet Engineering Task Force.

3. How frequently does the balance need to be measured or assessed?

We believe there should be a qualitative mechanism implemented to assess whether the broader goals of the NomCom are being met. Once the fundamental fairness of the GNSO representation is addressed, we need to ascertain what kind of decision-making is going on in the NomCom and how it is measured? How broad and diverse, in terms of geographic, gender and talent, is the output of the NomCom? If it is achieving those goals, then it need not be reviewed for balance more frequently than every ten years, if not, then a five-year window might be appropriate. At the moment, however, we are reviewing without a qualitative measure of the success of both the attraction of the talent pool, and the assessment and selection process. We are very pleased to see the moves to create more information sharing between subsequent NomComs, and the oversight committee. We hope it signals an effort to do much better qualitative analysis of the work of the NomCom.

Typically, such assessments might coincide with the NomCom's annual nomination and selection cycle. This is when the committee's composition is naturally in focus, as new members are being selected. It's a good opportunity to assess whether the current or proposed composition of the committee is balanced in terms of geographic diversity, sector representation, gender balance, skillset, and other important factors. We would point out that NCSG is one of the only SGs that makes the effort in its Charter to ensure geographic and gender diversity in its own practices of choosing representatives.

Again, if the composition of the NomCom is adjusted to ensure that it matches at least the GNSO Council representation, that particular aspect of balance does not need to be addressed on a rolling basis. However, the issue of whether or not representatives are behaving according to requirements of their position, namely that they not favor their own constituency interests, or select candidates with knowledge and expertise that matches or benefits their constituency interests at the expense of ICANN's broader multi-stakeholder goals does need to be addressed through qualitative analysis.

4. How do you suggest that the NomCom's composition be rebalanced?

As discussed in our answer to question 1, we think the fundamental rebalancing of the GNSO seats needs to take place, and that could be done by the Board referring the matter back to the GNSO Council for reconsideration. The rationale that the BC needs two seats for big and small business simply does not hold water, we all have big and little members. (Note: we are very sympathetic to small business interests

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at ICANN, which we do not see as being fairly represented, but this is a feeble excuse for denying NPOC its seat on the NomCom, or for the commercial side of the House to have 4 seats, and the non-commerical only 1.)

5. Who should conduct this work, and how should it be conducted?

We are not sure what work you are referring to here, but we have suggested quite a bit of work in the following areas:

- Qualitative assessment of the NomCom's output, both in terms of the ability to attract a broad candidate pool, and the actual voting and selection process;
- Assessment of whether NomCom members are indeed remaining neutral in their assessment of candidates, and not preferring those whose interests match their own;
- A broader community discussion of what the NomCom goals are, now that ICANN is 25 years old and must rise to new challenges befitting its modern role and risk scenarios.

This work might properly be addressed by an independent NomCom review committee. The qualitative analysis could be done by an independent contractor, preferably with a strong background in qualitative analysis and scholarly research in multistakeholder organizations.

6. How would your community group prioritize consideration of this issue within your planning efforts?

We believe that righting the historic wrong and assigning two additional seats to NCSG to provide parity with the commercial side of the non-contracted party house could be done quickly. It simply requires the will to be fair.

The various qualitative research streams require a bit of time, and due consideration should be undertaken as to whether some of this work should be assigned to an outside contractor with board selection experience (not just private sector commercial boards, but a wider variety of high level boards including those in the non-commercial sector).

Thank you for this outreach to seek our comments. We would be happy to discuss the matter further.

Yours truly,

Julf Helsingius

NCSG Chair

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