



ERC's Proposed Clarifications, Corrections, and Modifications to New Bylaws

8 February 2003

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Committee on ICANN Evolution and Reform Proposed Clarifications, Corrections, and Modifications to New Bylaws 8 February 2003

Since the New Bylaws became effective on 15 December 2002, various members of the community have identified clarifications, technical corrections, and minor modifications that would be desirable. After reviewing many suggestions, the Evolution and Reform Committee recommends that the Board adopt the following clarifications, corrections, and modifications to the New Bylaws. Added text is underlined and in magenta and ~~deleted text is stricken out and in red~~. Explanations of the changes appear in gray below.

The proposed changes to the New Bylaws will be placed on the agenda of the Board's meeting of 25 February 2003. Comments on the proposed changes are invited; they should be submitted no later than Saturday, 22 February 2003.

Committee on ICANN Evolution and Reform
8 February 2003

[Click here to submit a comment on these proposed clarifications, corrections, and modifications to the New Bylaws.](#)
Comments must be made by 22 February 2003.

ARTICLE VI: BOARD OF DIRECTORS, Section 8. TERMS OF DIRECTORS

1. Subject to the provisions of the Transition Article of these Bylaws, the regular term of office of Director Seats 1 through 14 shall begin as follows:
 - a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
 - b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
 - c. The regular terms of Seats 7 and 8 shall begin at the conclusion

of ICANN's annual meeting in 2005 and each ICANN [annual](#) meeting every third year after 2005;

d. The regular terms of Seats 9 and 12 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2002 and each ICANN [annual](#) meeting every third year after 2002;

e. The regular terms of Seats 10 and 13 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2003 and each ICANN [annual](#) meeting every third year after 2003; and

f. The regular terms of Seats 11 and 14 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2004 and each ICANN [annual](#) meeting every third year after 2004.

[Explanation: The above changes are to eliminate ambiguity by specifying that the beginning and ending of all terms of Directors are measured with reference to the conclusion of an ICANN *annual* meeting.]

5. [Subject to the provisions of the Transition Article of these Bylaws, No](#) Director may serve more than three consecutive terms. [For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term.](#)

[Explanation: The first change is made to conform to the addition of Article XX, Section 2(8) (see below), which is intended to remove ambiguity regarding how the term-limitation provision should be applied. The last sentence is added to clarify that a person who is appointed to fill a vacancy and serves the last part of that term may (if selected to do so) serve the next three consecutive terms in their entirety, and also that a person who is term-limited becomes eligible to fill a vacancy in a subsequent term after a break in service even if that term is consecutive with the last full term served.]

ARTICLE VII: NOMINATING COMMITTEE, Section 2. COMPOSITION

The Nominating Committee shall be composed of the following [persons](#)~~delegates~~:

[Explanation: This change corrects the language of the preamble to reflect that both delegates and other types of persons are included in the list below.]

1. A non-voting Chair, appointed by the ICANN Board;

[items 2-6 are unchanged]

7. Two voting delegates, one representing small business users and one representing large business users, selected by the Business Users Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws; ~~and~~

8. One voting delegate each selected by the following entities:

[items a-i are unchanged]

j. The ICANN Technical Liaison Group established by Article XI-A of these Bylaws; and

9. 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.

[Explanation: Paragraph 9 is added to allow, but not require, the Chair to appoint an Associate Chair to assist in the direction of the Nominating Committee. The Associate Chair may not otherwise be a participant on the Nominating Committee.]

ARTICLE VII: NOMINATING COMMITTEE, Section 3. TERMS

Subject to the provisions of the Transition Article of these Bylaws:

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

2. 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 immediately following ICANN annual meeting.

3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the immediately previous Chair serving as an advisor, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.

[Explanation: The addition to paragraph 3 corrects an omission by specifying the terms of service on the Nominating Committee of the Chair, any Associate Chair, and the immediately previous Chair.]

4. Vacancies in the positions of delegate, non-voting liaison, or Chair on the Nominating Committee shall be filled by the entity entitled to select the delegate, non-voting liaison, or Chair involved. A vacancy in the position of non-voting advisor (immediately previous Chair) may be filled by the Board from among persons with prior service on the Board or a Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.

[Explanation: If the immediately previous Chair is not available to serve as advisor, it is appropriate (but should not be required) for the Board to

appoint another person with suitable experience to provide guidance to the Nominating Committee. This provision allows for, but does not require, the Board to appoint a former Board or Nominating Committee member to fill this role. The last sentence permits, but does not require, the Chair (who has discretion to appoint an Associate Chair under proposed Section 2(9) of Article VII) to fill a vacancy in the position of Associate Chair.]

5. 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.

ARTICLE VII: NOMINATING COMMITTEE, Section 8. INELIGIBILITY FOR SELECTION.

No person who serves on the Nominating Committee in any capacity shall be eligible for selection to any position by the Nominating Committee, 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.

[Explanation: The addition of section 8 corrects an unintentional omission by clarifying that those serving in any capacity on each year's Nominating Committee are ineligible to be selected by that Nominating Committee for any position. The ineligibility lasts only until a new Nominating Committee is seated at the conclusion of the next annual meeting. If a person continues to serve for even part of the next Nominating Committee's term, however, he or she would also be ineligible for selection by that Nominating Committee.]

ARTICLE XI: ADVISORY COMMITTEES, Section 2. SPECIFIC ADVISORY COMMITTEES

[items 1-3 are unchanged]

4. At-Large Advisory Committee

[items a-g are unchanged]

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region; certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to paragraph 4(i) of this Section. ~~, that involve individual Internet users at the local or issue level and that, in the aggregate, are open to participation by all (but~~ Each At-Large Structure must have a membership consisting only of individual Internet users who are citizens ~~and or~~ residents of the RALO's Geographic Region (as defined in Section 5 of Article VI). At-Large Structures may allow entities within their RALO's Geographic Region other than individuals to participate in their activities as non-members, but that participation shall not predominate. The At-

Large Structures comprising each RALO shall, in the aggregate, allow membership by all individual Internet users who are citizens of countries within the RALO's Geographic Region. If so provided by its Memorandum of Understanding with ICANN, a RALO may also have as its members individual Internet users who are citizens ~~and~~ or residents of the RALO's Geographic Region.

[Explanation: The proposed amendment clarifies the required membership characteristics of At-Large Structures, the details of which are to be specified in the RALO's Memorandum of Understanding with ICANN. An At-Large Structure may have as members individuals who are either citizens or residents of the region (i.e. citizenship and residency are not both required), and may also allow participation (but not membership) by organizations in its region. At-Large Structures may not include within their membership (a) individuals not resident or having citizenship within the region or (b) organizations. Particular At-Large Structures may have membership focused on a particular locality or issue of interest, but an RALO's composition must allow every citizen of the region who is an individual Internet users to belong to at least one At-Large Structure.]

i. The ALAC is responsible for certifying organizations as meeting the criteria and standards for At-Large Structures. The criteria and standards for certification of At-Large Structures within ~~a~~ each Geographic Region shall be established by the Board according to the requirements of paragraph (h) of this Section and based on recommendations of the ALAC ~~and shall be stated in the Memorandum of Understanding between ICANN and the RALO for that Geographic Region~~, so that each RALO is afforded the type of structure that best fits its Geographic Region's customs and characteristics. Those criteria and standards shall be stated in the Memorandum of Understanding between ICANN and the RALO for that Geographic Region. Decisions to certify or de-certify an At-Large Structure as meeting the applicable criteria and standards shall require a 2/3 vote of all the members of the ALAC and shall be subject to review according to procedures the Board may establish. The ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

[Explanation: The proposed revisions clarify that the criteria and standards for certification of At-Large Structures, as stated in the RALO's Memorandum of Understanding with ICANN, must meet the requirements of Section 2(4)(h) of Article XI.]

[item j is unchanged]

ARTICLE XX: TRANSITION ARTICLE, Section 2. BOARD OF DIRECTORS

[items 1-7 are unchanged]

8. In applying the term-limitation provision of Section 8(5) of Article VI, a

Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

[Explanation: Paragraph 8 has been added to cure ambiguities in the New Bylaws concerning how to apply the three-consecutive-term limit for Directors that is stated in Section 8(5) of Article VI. Issues of interpretation of the limit have already arisen concerning (a) whether it applies to service before the New Bylaws were effective and (b) how to count service on the Transition Board. To avoid uncertainty, these issues should be clarified.

The proposed paragraph 8 is intended to provide a simple rule for the application of term limits that allows some degree of continuity of Board membership while at the same time providing for Board rotation in a reasonable time, considering the often foreshortened terms that characterize the initial terms on the New Board.

Because of the many tenures of office of various Directors under the Old Bylaws and various adjustments of those tenures by amendments to the bylaws, in some cases it is highly uncertain how to apply the term limit to service under the Old Bylaws. Some unfairness would ensue from counting service under the Old Bylaws, moreover, because some members of the Old Board voluntarily cut their terms short to allow the reformed New Bylaws to go into effect. Further, it is unclear whether service on the Transition Board should be counted as a "term", since the Transition Article does not refer to it as such.

Once the New Bylaws are fully phased in, the normal limitation expressed in Article VI, Section 8(5), is three consecutive terms of three years each. The practical effect of the transition provision proposed is to limit Directors who served on the Old Board or the Transition Board (or both), who will have already served periods ranging from six months to approximately four-and-one-half years, to two more consecutive three-year terms. The maximum continuous service permitted under this transition provision approximates the maximum limit on consecutive Directors' terms that will apply under the New Bylaws to Directors who did not serve on the Old Board or Transition Board.]

ARTICLE XX: TRANSITION ARTICLE, Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

[items 1-5 are unchanged]

6. The terms of the GNSO Council members described in paragraph 5 of this Section 5 shall last for the remainder of their terms under the Old Bylaws, except that ~~at the~~ terms of all of those GNSO Council members shall ~~end~~ ~~conclude~~ at the conclusion of the ICANN annual meeting in 2003. Any vacancy occurring before that time in a position on the GNSO Council described in paragraph 5 of this Section 5 ~~before that time~~ shall be filled by the constituency ~~which~~ that the vacant position represents for the remainder of the term lasting until the conclusion of the ICANN annual meeting in 2003. In selecting three persons to serve on the GNSO Council, the initial Nominating Committee shall designate one to serve a term until the conclusion of the ICANN annual meeting in 2004 and the other two to serve terms until the

conclusion of the ICANN annual meeting in 2005.

[Explanation: The proposed addition of the third sentence establishes a procedure to more clearly designate the terms of the GNSO Council members initially selected by the Nominating Committee. The proposed revisions to the first two sentences conform to the addition of the third sentence.]

ARTICLE XX: TRANSITION ARTICLE, Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

5. At-Large Advisory Committee

a. There shall exist an Interim At-Large Advisory Committee ~~U~~ until such time as ICANN recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws, ~~there shall exist an~~ The Interim At-Large Advisory Committee shall be composed of (i) ten individuals (two from each ICANN region) selected by the ICANN Board following nominations by the At-Large Organizing Committee, and (ii) five additional individuals (one from each ICANN region) selected by ~~The~~ initial Nominating Committee ~~shall select five more individuals, one from each region, as soon as feasible, to serve terms on the (Interim) At Large Advisory Committee as specified by Article XI, Section (2)(4)(c)(3) of the New Bylaws~~ in accordance with the principles established in Article VII, Section 5 of the New Bylaws. The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2005.

[items b-d are unchanged]

[Explanation: The proposed revisions to Section 5(a) clarify the terms of the ALAC members initially selected by the Nominating Committee.]

Questions concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

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