



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

(Amended 23 February 2003)

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Committee on ICANN Evolution and Reform Proposed Clarifications, Corrections, and Modifications to New Bylaws As Amended 23 February 2003

On 8 February 2003, the Evolution and Reform Committee [posted proposed clarifications, technical corrections, and minor modifications](#) to the [New Bylaws that went into effect on 15 December 2002](#). In making its proposal, the Evolution and Reform Committee invited comments on the proposed changes. Several comments were received at the Committee's e-mail address for comments and otherwise. (Submissions to the e-mail address have been [publicly archived](#).)

Based on the comments received, the Committee has modified its proposal for changes in two respects:

1. With respect to voting in the GNSO Council, various members of the community have pointed out that in several instances language of [Article X, Section 3](#) (entitled "GNSO Council") does not clearly conform to the provision for equalized constituency voting in [Article X, Section 5\(2\) of the New Bylaws](#). These unintended inconsistencies should be corrected to reflect the intent that voting on the GNSO Council should in all respects be equalized between contracted-provider and user constituencies. The [language posted below](#) implements this correction.
2. Based on [comments from the Interim At-Large Advisory Committee](#) and others, the Evolution and Reform Committee has concluded that the language of Article VI, Section 2(4)(h) and (i) [as proposed in the 8 February 2003 document](#) was too prescriptive regarding the composition of At-Large Structures. Flexibility is important to allow the RALOs and At-Large Structures to thrive in the different customs and characteristics that prevail in different parts of the world. Accordingly, [those two proposed paragraphs have been revised](#).

The language below incorporates the above two modifications and shows the Evolution and Reform Committee's current proposals for clarifications, corrections, and modifications to the New Bylaws. [Added text is underlined and in magenta](#) and ~~deleted text is stricken out and in red~~. Items changed from the 8 February 2003 proposal are shown with the legend: "**(Proposal Revised)**". Explanations of the changes appear in **gray** below.

The Committee recommends that the Board adopt the following amendments to the bylaws at its 25 February 2003 meeting.

Committee on ICANN Evolution and Reform
23 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.]

[paragraphs 2-4 are unchanged]

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.]

[paragraph 6 is unchanged]

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;

[paragraphs 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:

[subparagraphs 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 a 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.]

(Proposal Revised) Article X: GENERIC NAMES SUPPORTING ORGANIZATION, Section 3. GNSO Council:

[paragraphs 1 and 2 are unchanged]

3. A GNSO Council member may resign at any time by giving written notice to the ICANN Secretary. A GNSO Council member selected by a Constituency may be removed by that Constituency according to its published procedures. A GNSO Council member selected by the Nominating Committee may be removed for cause stated by a three-fourths (3/4) vote (see Section 5(2) of this Article) of all members of the GNSO Council (excluding the member to be removed), subject to approval by the ICANN Board. A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, unless the member holding the position before the vacancy occurred was selected by a Constituency, in which case that Constituency shall fill the unexpired term by giving the ICANN Secretary written notice of its selection.

[Explanation: The above change is to make clear that the equalized voting provision of Article X, Section 5(2) is to be applied in counting votes of the GNSO Council to remove members appointed to the GNSO Council by the Nominating Committee.]

[paragraphs 4 and 5 are unchanged]

6. The GNSO Council shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting; any such selection must have ~~the~~ affirmative votes ~~of~~ comprising a majority of ~~the votes of~~ all the members of the GNSO Council. Notification of the GNSO Council's selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

[Explanation: The above changes are to make clear that the equalized voting provision of Article X, Section 5(2) is to be applied in counting votes for Directors selected by the GNSO Council.]

7. The GNSO Council shall select the GNSO Chair, for a term the GNSO Council specifies but not longer than one year, by written ballot or by action at a meeting. Any such selection must have ~~the~~ affirmative votes ~~of~~ comprising a majority of ~~the votes of~~ all the members of the GNSO Council.

[Explanation: The above changes are to make clear that the equalized voting

provision of Article X, Section 5(2) is to be applied in counting votes for the GNSO Chair.]

8. Except as provided by paragraph 6 of this Section, the GNSO Council shall act at meetings. Members of the GNSO Council may participate in a meeting of the GNSO Council through use of (i) conference telephone or similar communications equipment, provided that all members participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all members participating in such a meeting can speak to and hear one another, (b) all members are provided the means of fully participating in all matters before the GNSO Council, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a member of the GNSO Council or other person entitled to participate in the meeting and (y) all actions of, or votes by, the GNSO Council are taken or cast only by the members of the GNSO Council and not persons who are not members. ~~A~~ Members entitled to cast a majority of the total number of votes of GNSO Council members then in office shall constitute a quorum for the transaction of business, and ~~the acts by of~~ a majority vote of the GNSO Council members present at any meeting at which there is a quorum shall be ~~the acts~~ of the GNSO Council, unless otherwise provided herein. (See Section 5(2) of this Article concerning the number of votes that GNSO Council members may cast.) Advance notice of such meetings shall be posted on the Website, if reasonably practicable, at least 7 days in advance of the meeting. Except where determined by a majority vote (see Section 5(2) of this Article) of members of the GNSO Council present that a closed session is appropriate, meetings shall be open to physical or electronic attendance by all interested persons. The GNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

[Explanation: The above changes are to make clear that the equalized voting provision of Article X, Section 5(2) is to be applied in calculating a quorum of the GNSO Council and in counting votes of the GNSO Council, including votes to close a meeting.]

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

[paragraphs 1-3 are unchanged]

4. At-Large Advisory Committee

[subparagraphs a-g are unchanged]

(Proposal Revised) h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region, ~~that~~ have been 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 only) individual Internet users who are citizens and residents of the RALO's Geographic Region (as defined in Section 5 of Article VI).~~ If so provided by its Memorandum of Understanding with ICANN, a RALO may also ~~have as its members~~ include individual Internet users who are citizens ~~and or~~ residents of countries within the RALO's Geographic Region.

[Explanation: The above changes, together with those in Article XI, Section 2(4)(i) below, are intended to clarify the relationships between RALOs and At-Large Structures, and to describe their characteristics, in a clearer way. With the above changes, Article XI, Section 2(4)(h) defines the components (such as At-Large Structures) of a RALO. The requirements for those components are described in Article XI, Section 2(4)(i). The last sentence of paragraph 4(h) is revised to indicate that an RALO may include individuals who are either citizens or residents of the RALO's region. The phrase "have as its members" is replaced with "include" to reflect the possibility that circumstances might make some inclusionary concept other than membership most appropriate for a particular RALO.]

(Proposal Revised) i. ~~The ALAC is responsible for certifying organizations as meeting the criteria and standards for At-Large Structures.~~ The criteria and standards for the certification of At-Large Structures within ~~a~~ each Geographic Region shall be established by the Board based on recommendations ~~of~~ from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for that Geographic Region, ~~so that.~~ The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in Section 5 of Article VI) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO ~~is afforded~~ the type of structure that best fits ~~its Geographic Region's~~ the customs and characteristics of its Geographic Region. Once the criteria and standards have been established, the ALAC shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structures. 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 of the members of the ALAC and shall be subject to review according to procedures ~~the~~

~~Board may~~ establish ed by the Board. On an ongoing basis, ~~the~~ ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

[Explanation: With the above changes, paragraph 4(i) covers the characteristics of At-Large Structures and the manner in which they are certified. The criteria that At-Large Structures must meet are to be stated in the RALO's MoU. Although this paragraph of the bylaws provides guidance to the Board on the design of the criteria for At-Large Structures to be set forth in the RALO's MoU, the Board is afforded flexibility to achieve these objectives in a manner that fits the customs and character of the RALO's region. The criteria should ensure that the participation and interests of individual Internet users from the RALO's region predominate in the operations of each At-Large Structure, even though the At-Large Structure may also allow organizations, as well as individuals from other regions, to participate. In addition, to the extent possible each RALO's MoU must be designed to provide a mechanism for every citizen of the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.]

[subparagraph j is unchanged]

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

[paragraphs 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

[paragraphs 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 ~~all 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.]

[paragraphs 7-10 are unchanged]

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

[paragraphs 1-4 are unchanged]

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.

[subparagraphs 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.]

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