

# **ALAC and At-Large Community White Paper.**

## ***Call for community Comment on the 'Proposed process for the 2010 selection of an ICANN At-Large Board Member'.***

*January 2010.*

### ***Executive Summary.***

The Board has requested that the ALAC submit to the Board Structural Improvements Committee (SIC) plan for how to select the Board member with the intent of having the new member seated no later than the Annual Meeting scheduled to be held in December 2010, and preferably no later than the ICANN meeting scheduled to be held in Brussels in June 2010.

At its 22 December 2009, the ALAC charged a small group with the task of creating initial this white paper to be distributed for wide-spread comment early in January 2010. Included in this document is a review of community discussions to date (inclusive of debate points and rationale for any recommendations made, a draft process timeline, specific issues and recommendations for community review and feedback.

It should also be noted that the proposed At-Large Board Member Selection process resulting from this community consensus building effort will be specifically designed to best meet the needs of our community and to source and seat the best available candidate available at this time in a timely manner and is not to be assumed to be a 'fixed for the future' standard operational procedure. Further this inaugural process will be subject to complete and rigorous review by the ABSdt, ABSC, At-Large and wider ICANN community both at the completion of the final process in 2010 and before a next appointment process is required in the future.

The five (5) Issues are identified in this White Paper and the following recommendations need now to be considered by the ICANN and At-Large community to elicit discussion, comment and input into each, so that final recommendations to the Board of ICANN regarding our proposed At-Large Director Appointment Process for use in this inaugural appointment post ALAC Review, has as much community support as possible. Specifically these are:

1. Term of appointment.
2. Director qualifications.
3. Creation of list of candidates.
4. Electorate.
5. Voting process.

**The recommendations listed for specific community feedback on, in this document are:**

## **1. Term of appointment**

### **Recommendation: 1.1**

The At-Large Board member should be appointed to terms equal to those of the SO members and should be seated at the same time as those members. As a transition provision, the initial term should be adjusted based on the actual starting date, but in no case should it be markedly less than three years to allow the At-Large Board member to properly be integrated into the Board. The number of consecutive terms should be the same as for other Board members.

## **2. Director qualifications**

### **Recommendation: 2.1**

The criteria for At-Large Director candidates should include those mandated by the ICANN Bylaws, those promulgated by the NomCom for its Director candidates, and the additional At-large criteria:

- An understanding of ICANN At-Large.
- An understanding of the potential impact of ICANN decisions on the global Internet-using community and the Internet end-user community in particular.
- A track record of working to build consensus with a diverse set of interests working together on complex policy issues.

## **3. Creation of list of candidates**

### **Recommendation: 3.1**

The selection of candidates to comprise the election slate should be made by an At-Large Board Selection Committee. The ABSC should be composed of two representatives from each ICANN region and a Chair. The Chair shall be selected by the ALAC and the chair shall have a vote. All ABSC members will need to confirm their willingness and ability to dedicate significant time to the process.

## **4. Electorate**

### **Recommendation: 4.1**

The Board seat should be selected by the ALAC plus the RALO Chairs. The RALO-appointed ALAC members and the RALO Chairs may be directed by their ALSs if the RALO desires (and in accordance with their RoP). This methodology gives ALSs large control over who is selected,

without the complexity of two-level vote weighting and centralized ALS elector verification. The vote should be by secret ballot.

## **5. Voting process** (*two alternate recommendations provided*)

### **Recommendation: 5.1**

5.1 The first round is a vote conducted with STV ballots. If more than 50% of first-choice votes select the same candidate, that person is declared winner. If there is no winner, the standard STV mechanism identifies the top two candidates. A Plurality vote is then held to select the winner.

### **Recommendation: 5.2**

5.2 The first round is a vote conducted with STV ballots. If more than 50% of first-choice votes select the same candidate, that person is declared winner. If there is no winner, the standard STV mechanism identifies the top three candidates. A Plurality vote is then held to select the winner, or to narrow the field to the top two candidates. If no winner was declared, the candidate with the fewest votes is dropped and a third and final round is held to select the winner.

## ***Background***

The ICANN At-Large Advisory Committee (ALAC) annually selects a person to act as its Liaison to the ICANN Board of Directors. The ALAC Liaison, as is the norm for such positions on the ICANN Board, has full speaking rights but cannot make motions or vote. By current convention, the Liaison may participate (but not vote) in some Board committees but typically not the more strategic ones (Audit, Compensation, Executive, Finance).

The ICANN Board, during its August 2009 meeting, approved in principle that the ALAC Liaison to the Board be replaced by one Director, with full Board-member privileges, to be appointed from the At-Large Community. This was a compromise position between those who favoured the status quo, and those who advocated replacing the Liaison with two voting Board members, as recommended by the ALAC Review Committee in its [report of June 2009](#) (and equivalent to the Board members selected by the ICANN Supporting Organizations, the GNSO, ccNSO and ASO).

The Board has requested that the ALAC submit to the Board Structural Improvements Committee (SIC) a plan for how to select the Board member with the intent of having the new member seated no later than the Annual Meeting scheduled to be held in December 2010, and preferably no later than the ICANN meeting scheduled to be held in Brussels in June 2010.

Prior to the creation of this white paper, a number of teleconferences were held. The initial one was a brain-storming session of the North American Regional At-Large Organization (RALO) which resulted in a proposal for the overall structure of the process as well as suggesting a number of specific features. This was followed by a community-wide teleconference on the process and later one on voting mechanisms. Full details may be found in Appendix I and links to all resources can be found at the [Portal for At-Large Director Selection Process](https://st.icann.org/working-groups/index.cgi?at_large_director_appointment_process) ([https://st.icann.org/working-groups/index.cgi?at\\_large\\_director\\_appointment\\_process](https://st.icann.org/working-groups/index.cgi?at_large_director_appointment_process)).

## Comparable Processes within ICANN

The new At-Large Board seat is the first seat allocated to an ICANN Advisory Committee (AC), but there are a number of seats currently allocated to the three ICANN Supporting Organizations (SO) s: The Generic Names Supporting Organization (GNSO), the Country-Code Names Supporting Organization (ccNSO) and the Address Supporting Organization (ASO). Each SO appoints two Board seats. In all cases, the Bylaws designate the seat for the overall Supporting Organization, and in all cases, the actual selection is made by the SO Council (perhaps with advice or initial participation from the various groups comprising the entire SO).

Using At-Large terminology, this is analogous to the Board seat being designated as an “At-Large” seat, but selection is made solely by the ALAC. The Board direction was clear in that this is not just an ALAC appointment, but one to be done with the involvement of the entire At-Large Community – a more community-based selection mechanism that that used by the SOs.

## ***Methodology for Comment on the Outcomes of the White Paper Process***

At its 22 December 2009, the ALAC charged a small group<sup>1</sup> with creating the initial draft of this white paper. It is expected to be distributed for wide-spread comment early in January 2010. Since whatever ultimate process is decided upon will take time to implement and carry out, it is important that the process itself be determined with the utmost speed if we are to meet the target of seating the new Board member by June 2010. More specifically, if this date is to be made, the process must be frozen and approved by the Board no later than the end of the Nairobi meeting in March 2010.

Milestones of the overall process to include:

- Dates of SIC meetings and document deadlines
- RALO discussion / ratification of final process
- ALAC meeting to ratify recommendation to the Board
- Board meeting dates and document deadlines

<b>Proposed Date</b>	<b>At-Large Director Appointment Process Milestones</b>
January 8, 2010	Distribution of White Paper to ALAC and Reviewers (e.g. ALAC Review WG).
January 10/11, 2010	General release of White Paper.
January 14, 2010	Call for At-Large Board Member Selection design team (ABSdt) & At-Large Board Member Selection Committee (ABSC) Expressions of Interest.
January 26, 2010	Confirmation ABSdt Membership as per Agenda item in Jan 26 2010 ALAC Meeting.
February 9, 2010	Close of At-Large Community discussions and finalization of At-Large Board Member Selection (ABS) Process Recommendation for the ICANN Boards' Structural Improvements Committee (SIC) consideration at their Feb Meeting.

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February 15, 2010	Board would need final documents and recommendations from SIC for consideration at Nairobi Meeting.
Throughout February 2010	RALO Meetings to include ratification of recommendations to the Board (minority views may be also forwarded).
Throughout February 2010	Public Call for Statements of Intent (SOI) / applications from candidates.
February 23, 2010	ALAC Meeting confirms/ endorses ABSC Membership and ensures all documents and commentary outcomes have been forwarded to SIC & Board for consideration at Nairobi meeting.
March 12, 2010	Ratification by ICANN Board of At-Large Director Appointment Process.
	ABSC review and recommendations from Candidate SOI / applications / nominations.
Throughout May 2010	First round voting on candidate list.
"	Start of subsequent round(s) of voting (if required).
"	Declaration of Winner of election.
May 25, 2010	Endorsement of Director vote by ALAC for submission to the Board of ICANN.
June 2010	First At-Large Appointed Director Process completed, selected candidate submitted by ALAC to the Board of ICANN.
June 25, 2010 Brussels Meeting	At-Large Director seated at Board meeting.
July 2010	Initiate a review of the selection process and formulation of long-term processes for future At-Large Director appointments.

**Please Note:** The above milestones presume that the recommendations of this White Paper are accepted by At-Large and the ICANN Board. If changes are made, milestones will need to be altered accordingly.

## Decision Process

The only body within At-Large empowered to provide formal advice to the Board (and implicitly its committees) is the ALAC and therefore it falls on the ALAC to formally decide on the process to be recommended for the selection of the Board member. However, it is imperative that this process be developed by the larger At-Large Community.

The August Board resolution calls for the new Director to be appointed from the At-Large Community. The At-Large Community is formally defined in the ICANN Bylaws XI-2.4i (<http://www.icann.org/en/general/bylaws.htm#XI-2.4i>). In essence, it is comprised of the five RALOs, their respective At-large Structures (ALSs) and the individual ALS members, all as specified by the each RALO Memorandum of Understanding with ICANN and as overseen by the ALAC according to its rules and procedures.

That notwithstanding comment on and input into this current deliberation paper is sought from the wider community of those interested in ICANN At-Large issues. To that end, the following means (as a minimum) will be used to disseminate this and succeeding drafts and solicit comments:

- At-Large lists – ALAC, At-Large and all RALOs with a request to further disseminate to ALSes and engage their members.
- At-Large Wikis (with ability to comment directly)
- ICANN Public Comment Process
- The CPSR Internet Governance mailing list ([governance@lists.cpsr.org](mailto:governance@lists.cpsr.org))
- Appropriate WSIS, IGF and ISOC communications channels

Moreover, it is hoped that we will also receive comments from members of the At-Large Review Committee, the Board Structural Improvements Committee and the ICANN Board, all with a hope of ensuring that the process meets the original intent of those bodies that recommended the creation of an At-Large seat on the Board, and so that the resultant process can be approved with due haste.

### **At-Large Board Selection Design Team (ABSdt)**

A small group will need to be created very quickly to firmly define the time-line and oversee the process. Part or all of the ALAC Executive Committee could comprise this group, but it should not be limited to these people. Once candidates are formally solicited, no one who has submitted their name may participate in ABSdt deliberations.

The ABSdt will oversee the formulation of the selection process and well as oversee its execution. In future selections, a new person or body will be charged with this responsibility.

### **Terminology**

The term “appoint” is used in this document to refer to the process of selecting a person to fill the At-Large Board seat. The use of this term is not meant to be at odds with the term “elect” or “select” or whatever, nor is it meant to imply one process over another.

### ***The Issues***

A number of issues must be resolved in order to meet the preferred target. Each has been the subject of significant discussion and some controversy.

1. Term of appointment
  2. Director qualifications
  3. Creation of list of candidates
  4. Electorate
  5. Voting process

It is important to note that the process being designed need not be the one that is used in the long-term. Once the Board seat is filled, there will be plenty of time to craft a long-term process. This current process must be seen as being fair to all parties, but there are tight time constraints in putting it in place.

## 1. Term of Appointment

All other appointments to the Board (by Nominating Committee or the Supporting Organizations) are currently for three year terms. The ongoing Board Review (<http://www.icann.org/en/reviews/board/board-review-wg-draft-final-report-19sep09-en.pdf>, Recommendation #5) is discussing whether this three year term should be changed, but pending that decision, we will use the “three year term” in this discussion. Nominating Committee Board members are seated at the end of the Annual meeting, and SO-appointed members are seated 6 months later. The Board Review is considering changing the seating of SO Board members to coincide with the mid-year ICANN meeting. That Review has also taken as a given that the At-Large Board member should be seated at the same time as the SO members.

Related to the issue of term length is that of the maximum number of consecutive terms. The Bylaws currently allow no more than three consecutive terms, although this too is being discussed by the Board Review Committee.

### **Alternatives:**

Discussion within the Board Review reports seems to assume that the At-Large Board member will serve terms similar to those of other Board members. A number of RALO representatives initially supported having a one or perhaps two year term. There was also some discussion of rotating the position over the ICANN regions to even out representation.

### **Discussion:**

The rationale for a shorter term was primarily to cover the situation where a less than optimal person was appointed. On the other side, there was a belief that it would have a number of negative impacts:

- Three years is barely enough for a Director to start fully functioning effectively: establish credibility, understand the Board dynamics and develop good working relationships with other Directors.
- Shorter terms, particularly if incumbents are not returned for additional terms (as would be ensured if rotation was required) virtually guarantees that the At-Large Director would always be the junior person on the Board, never being eligible for the position of Chair, Vice-Chair or Committee Chair. Several former ICANN Directors confirmed that three years was the way to go.
- In the extreme, for a term of one year, the decision whether to reappoint or select a new person would need to be made very early in the person’s term. Given the sparse information documenting Board discussions, there would be virtually no opportunity to do any sort of assessment of how the person is doing prior to deciding on their fate.

It was observed that many who initially advanced the idea of short term limits, once explained the need for continuity and relationship-building, eventually came to agree with keeping the term of the At-Large Director in line with those of other Directors.

## **Recommendation: 1.1**

The At-Large Board member should be appointed to terms equal to those of the SO members and should be seated at the same time as those members. As a transition provision, the initial term should be adjusted based on the actual starting date, but in no case should it be markedly less than three years to allow the At-Large Board member to properly be integrated into the Board. The number of consecutive terms should be the same as for other Board members.

## **2. Director Qualifications**

The majority of the criteria for an ICANN Board member come directly from the ICANN Bylaws. These and the other criteria are summarized at [https://st.icann.org/alandocs/index.cgi?draft\\_candidate\\_requirements](https://st.icann.org/alandocs/index.cgi?draft_candidate_requirements).

The Bylaw mandated requirements are:

- Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
- Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;
- Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
- Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;
- Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
- Persons who are able to work and communicate in written and spoken English.

In addition, the Bylaws prohibit certain people holding other ICANN positions or national government positions from sitting on the Board; Board members are expected to meet specific conduct and conflict-of-interest criteria; and the number of Directors from any given ICANN region is controlled.

Over and above the Bylaw criteria, the ICANN Nominating Committee (NomCom) has several additional criteria:

- a commitment to ICANN's mission
- demonstrated capacity for thoughtful group decision-making and sound judgment
- an understanding of the importance of good governance practices and an ability to contribute to the Board in this regard

The NomCom also goes to some length to describe the very significant time commitment involved since the ability and willingness to allocate the necessary time is critical to a Board member's success. Currently, Board members are not compensated other than for explicit travel and similar costs (there are ongoing discussions regarding Board compensation in the Board Review committee).

The NomCom estimates 20-24 hours per week on the Board itself, plus an unspecified but presumably significant amount of time on Board committees.

Lastly, there has been some discussion about additional criteria to be imposed by At-Large. These have included:

- An understanding of the structural, communications and decision-making processes of ICANN At-Large
- An understanding of the potential impact of ICANN decisions on the global Internet-using community and the Internet end-user community in particular.
- A track record of working to build consensus with a diverse set of interests working together on complex policy issues.

To a lesser extent there has also been some discussion about a requirement that the Director come from an ALS.

### **Discussion:**

The criteria specified in the Bylaws are presumably not subject to discussion (although how one recognizes such qualities certainly is).

The NomCom criteria, time requirements and the need to agree to them have not been the subject of any substantive discussion to date. On face value, there does not seem to be any strong rationale for NOT accepting them as mandatory.

The additional At-large criteria will be discussed one-by-one.

### ***An understanding of ICANN At-Large***

This criteria is the most controversial (to date). Supporters say that such an understanding is essential. The SO (and presumably AC) members on the Board do not "represent" the organizations that appoint them to the Board. Once on the Board, the member is a free agent, but one who has an obligation to serve the best interested of ICANN and (as a California corporation) of the public good, and not the organization that appointed them. But the philosophy is typically to appoint someone who you have sufficient knowledge of and who understands and shares a value system with the appointing organization, such that the organization can have some reasonable expectation that their needs may be well served.

This issue is a key one, since with the addition of this full Board member, the ALAC and At-Large lose their Liaison on the Board. Without a Liaison OR a Board member that they can work with, ALAC and At-Large could be voiceless within the Board.

Others feel that we should be looking for the most eminent candidate available, and that knowledge of ICANN At-Large is not required to represent users. In the view of some, knowledge and involvement with ICANN At-Large is a negative quality (and perhaps a **very** negative quality). Such

views assert that ICANN "insiders" have unnecessary biases or limitations on viewpoints brought on by ICANN's operational culture.

The rebuttal to this is that it is the job of the NomCom to find such eminent personalities from outside of ICANN, and that it would be difficult to identify with and work with the ICANN defined At-Large Community without substantive prior knowledge.

One point of view is that candidates may come from outside the ICANN community; however those electing the Director are all within the At-Large infrastructure and as such can determine whether candidates suitably understand relevant issues and viewpoints.

To some extent, this issue goes back to whether this is a new position being defined reflecting the formal ICANN At-Large Community, or a partial recovery of the original At-Large director positions (the At-Large Community being created and the At-large Director positions abolished by means of new Bylaws in December 2002).

*An understanding of the potential impact of ICANN decisions on the global Internet-using community and the Internet end-user community in particular.*

To date, there has been no substantive discussion on this, and in particular, no disagreement.

*A track record of working to build consensus with a diverse set of interests working together on complex policy issues.*

Although there has been no substantive discussion or disagreement, the rationale is not intuitively obvious to all. There are probably few issues on which there is a single "At-Large" position. For many reasons, including political and cultural ones, there will be divisions. It is hoped that the At-Large Board member will, on an ongoing basis, reach out to At-Large to discuss the issues on which decisions need to be made. To the extent that this person can work with such diverse and divided groups, understand the varying points of view, and attempt to explain the larger issues which ICANN must consider, the better off we will be.

### **Recommendation: 2.1**

The criteria for At-Large Director candidates should include those mandated by the ICANN Bylaws, those promulgated by the NomCom for its Director candidates, and the additional At-large criteria:

- An understanding of ICANN At-Large.
- An understanding of the potential impact of ICANN decisions on the global Internet-using community and the Internet end-user community in particular.
- A track record of working to build consensus with a diverse set of interests working together on complex policy issues.

## **3. Creation of List of Candidates**

The selection of the list of candidates who will be eligible for the Director election is perhaps one of the most difficult issues. It is relatively easy to list the criteria, but then one must either narrow the field to a manageable number, or expect the electorate to do it.

## **Methodologies:**

The alternatives cover a very wide range. At one end, we could let anyone self-identify themselves (or be nominated by one individual) and they would be on the ballot. At the other end of the range, people could be nominated (self or by others), but a select group of people would review the candidates and select the winner. The latter is effectively how the ICANN Nominations Committee process works.

The NARALO brainstorming session resulted in a mid-ground proposal that has since received significant support.

### a) At-Large selects members for an At-Large Board Selection Committee (ABSC)

- The group was originally referred to as a "Nominating Committee", but it was felt that would be too confusing with the ICANN NomCom.
- The composition of the ABSC was not discussed in detail, but one suggested option was that each RALO would appoint or elect two people to the ABSC, well in advance of each election. Past ICANN NomCom members might be good choices.

### b) The ABSC is tasked with creating a list of candidates, which is made public.

- There were many comments that the ABSC should not just passively wait to hear from interested At-Large insiders, but should also identify and solicit candidacy from people who would qualify and may be seen to fulfil the positions. There should be a diversity of choices in the list of candidates, but qualified people should not be excluded because there are "too many" from any one region, gender, or other relevant characteristic.
- Through a process of questionnaires and/or interviews, the ABSC would reduce the total list of applicants to some "small" number of candidates.

### c) RALOs may add (a limited number of) "petition" candidates to the list supplied by the ABSC.

- This was added to allow individuals with strong grassroots support to be advanced as candidates despite being overlooked (or rejected) by the ABSC.
- Any individual wanting to be a candidate in this fashion must be sponsored by at least one RALO
- Additions made at this stage should be limited to only one or two per region

Though the issue has not been discussed much by the community, existing practise (such as SO appointments to the Board) suggests that a strong incumbent may have little or no opposition. While the ABSC must make every effort not to be seen to prefer acclamation over election, it is also important that the process allows for such a scenario. This, amongst other issues, will be considered during a review to be conducted after the first Director is placed.

## **Discussion:**

It is well understood that good replies on a questionnaire or even performance in an interview do not correspond to good performance later. The (occasional) failures of the ICANN NomCom testify to that. However, it is not clear that a declaration that a person meets all of the criteria along with a candidate's statement will provide electors with sufficient information to make an informed choice either.

The original desire to limit terms to one year was generally based on the concern that the "wrong" person may be appointed. This concern is well founded, given that there will no longer be an ALAC Liaison sitting on the Board, and unlike the SOs, At-Large will have only one Board Member instead of two. In the SO case, if a poor selection is occasionally made, there is still another person sitting on the Board selected by that SO. At-Large will have no such fall-back.

Accordingly, it is important that the At-Large Community does whatever possible to vet all candidates to ensure that they are credible Board material. Given that, the concept of a small group of people doing the vetting seems reasonable. The group must be sufficiently small to be able to function effectively, yet sufficiently large to allow it to continue to function if some members do not 'pull their weight' (which is virtually inevitable). The selection of the Chair of the group would also be critical to its effectiveness.

The issue of confidentiality versus transparency has been an issue with the ICANN NomCom. Some people feel that the NomCom should be far more open regarding who is applying and what the rationale is for making the selections that it does. Others feel that if all applications are not confidential, some people may not apply. If references are not confidential (both who is acting as a reference and the content of their input), fewer people would be willing to give references, and the contents may not be as candid. If deliberations were not confidential, people on the committee might vote to select who their constituents feel should be selected instead of who they believe is best based on the information available to them. The secrecy of the ABSC is balanced by the fact that -- unlike in the case of the ICANN NomCom -- it only supplies a list of best-qualified candidates and does not make the final choice itself.

There has been little substantive discussion outside of the original NARALO meeting on the concept of the ABSC, but there has been no known objection to the process.

There has been little discussion of the number of candidates to be selected by the ABSC. Two is probably too few, and four or five may be too many.

The concept of having additional people put on the slate was added during the NARALO discussion to allow for cases where there was a strong feeling that an important candidate had been ignored by the ABSC. In discussions since that time, opinions have been raised saying that each RALO may regularly add one or two or more candidates to the list -- perhaps each adding their favourite son/daughter to the list. If that indeed happens, it suggests that the ABSC is not properly doing its job, and that the community has no faith in it -- both of which point to failure. It also would imply that a significant part of the slate may not have been subjected to sufficient vetting, or had explicitly failed that vetting. A countering view suggested that the RALO additions should be reserved for circumstances considered to be extraordinary, and not normally be done by every region for every election.

In other elections, the concept of candidates being added after the nominating process is often accompanied by a “petition”, a requirement that a reasonable part of the electorate or community support the addition of such a person. It has since been suggested that in the present case, the equivalent would be for the person to be added to the slate only if their candidacy is supported by several RALOs. Although such support is not a guarantee of a later vote for the person, it does mean more than one region believes that the person would make a good candidate AND a good At-Large Board member. There is still some potential for “I’ll agree to your additional candidate if you agree to mine”, but hopefully this would not be major phenomena and that petition candidates would only be proposed in extraordinary circumstances.

During the NARALO brainstorm, one popular view suggested that, after all the candidates -- those selected by the ABSC combined with those petitioned by RALOs -- were identified, the RALOs would further reduce (and possibly order) the list. On reflection this step appears to be redundant with other processes already identified.

Regarding the situation where there is an incumbent At-Large Board member, the question is whether there should be special provisions which would allow this person to seek re-appointment unopposed. To the extent that the person is doing a good job on behalf of At-Large and that it is to the benefit of At-Large to have a Director who is in a senior Board position, this would be a good thing. On the other hand, issues of fairness and transparency call for the Director to actually have the conscious support of At-Large for such re-appointment. Moreover, if an incumbent has strong community support, it is only fair that other potential candidates know this ahead of time.

### **Recommendation: 3.1**

The selection of candidates to comprise the election slate should be made by an At-Large Board Selection Committee. The ABSC should be composed of two representatives from each ICANN region and a Chair. The Chair shall be selected by the ALAC and the chair shall have a vote. All ABSC members will need to confirm their willingness and ability to dedicate significant time to the process.

All documents and deliberations of the ABSC shall be confidential and this confidentiality shall continue past the existence of any particular ABSC.

A Statement of Interest (SOI) form should be created with due haste by the ABSdt (and ABSC as soon as it is formed). The creation of this form shall be done in an open and non-confidential manner.

Any person can submit a SOI on their own behalf. A person who has not submitted a SOI within pre-determined deadlines may not be considered by the ABSC.

A past ICANN NomCom Chair or Vice-chair will be requested to work with ABSdt on finalizing the details of the SOI and the ABSC operating rules.

Petition candidates need to have gone through the ABSC process and may be added to the slate proposed by ABSC by a formal request of RALOs. A petition will require the support of at least three of the five RALOs.

As part of the review of these processes (to be conducted after the first At-Large Director is selected), consideration should be given to future election processes allowing ALAC and/or RALOs to indicate support for the incumbent At-Large Director in advance of the ABSC collection of SOIs, as a matter of courtesy and fair notice to potential new candidates.

#### **4. Electorate**

A major and contentious issue is who does the voting. As will be noted in the next section, depending on the voting mechanism selected there may be more than one round of voting. If so, it is possible that the electorate could be different in each round.

##### **Alternatives:**

Unlike some aspects of the overall selection process, the issue of who votes has been the subject of MUCH discussion, perhaps not surprisingly. Options that have been suggested include the following. In all cases, the ballot could be either secret or open (the ALAC convention in recent years has been that all ballots involving individuals are secret).

- a. ALAC elects a Board member from the final candidate list. Each of the ALAC members has one vote (15 vote's total). As per other ALAC votes, if the RALO's Rules of Procedure (RoP) allow, a RALO could direct the votes of the RALO-appointed ALAC members.
- b. The RALOs elect a Board member from the final candidate list. Each RALO would have one vote (five vote's total). The selection process within each RALO would be in keeping with its own RoP and need not be identical.
- c. ALAC members and RALO Chairs elect a Board member from the final candidate list (20 vote's total). RALO-appointed ALAC members may be bound by their RALO as per their respective RoP, and Chairs may be similarly bound. If there are multiple rounds without the potential for full consultation of the RALO, bound votes may be controlled by a preset priority set by the RALO, or at the discretion of the RALO Chair.
- d. As a variation of the RALO Chairs voting, an automated process could be set up which would allow ALSs to vote and the result of this tally would automatically be fed into the overall vote. If a RALO requires that ALS votes be weighted, the automated process would need to account for this.
- e. All participating ALSs and individual members cast votes. The process must factor in the need for weighting ALS votes within a region and for overall weighting to ensure that each region has an equal overall vote. For the one RALO that currently has individual members (NARALO), the RoP calls for all such individuals to be collectively considered a single virtual ALS. A variant of this is to give each individual member a full vote equivalent to an ALS.
- f. All individuals who express interest as individual Internet users cast votes. This is equivalent to the 2000 vote for At-Large Directors.

## **Discussion:**

To some extent, this discussion is a philosophical one - almost a matter of faith. That is, no amount of logical argument is likely to persuade a person to change their opinion on some of the options. Specifically, there are those who feel that the 2000 election by individual electors was a model to strive for, and others who believe that is "has been tried before and unequivocally was shown to lead to disaster." There are some who feel that the ALAC members have been appointed to make decisions and that they should do just that, others who envision a more substantial role for ALSs and RALOs within the At-Large decision-making process, and yet others who feel that decisions should be taken at a grass-roots individual Internet user level.

Following the NARALO discussions, the question of "who votes" (offering the choices listed above) was put to meeting of every RALO (individually). At that time, the unanimous preference was option c) -- with ALAC members and RALO Chairs casting votes (with the Chairs being directed by their RALO). Some felt that since a RALO could also direct their own appointed RALO members, that this was a form of double counting. Since that time, one RALO has indicated it is reconsidering and is currently undecided on what method to use (EURALO). It should also be noted that a small but vocal minority within NARALO -- notably some of those who participated in the 2000 vote -- supported option f).

In the variants that require nested voting (that is, one secret ballot feeds into another), there is the potential for the lack of clarity bringing into question the validity of the vote.

Any direct vote of ALSs will without doubt bring into question to what extent that actual members of the ALS are being involved in the process and the decision, or whether the vote is being decided on and cast by a single representative of that ALS.

The issue of "voting with one's heart" vs. "voting with one's head" has also been raised. Given the importance of this process, it is vital that whoever the electorate is that is selected, that there can be a high degree of confidence that they will vote based on the evidence and not based primarily on the origins of the candidates or the languages that they speak.

At the other extreme, a vote purely carried out by ALAC members (option a) raised the question of whether the entire process is a sham with ALAC members acting as a clique.

One of the arguments raised is that the Board has designated the new seat as an "At-Large seat" and not an "ALAC seat". However, the Bylaws are consistent in identifying the SO seats as the GNSO seats, the ccNSO seats and the ASO seats, while in all cases, that actual appointment is made by the appropriate Council and not the entire Supporting Organization (terminology: At-Large is comparable to a SO with the ALAC being comparable to the SO Council). The Board motion adopted the principle of an At-Large director did make reference to the position being filled by the "At-Large Community" and that is taken to mean the term as defined in the ICANN Bylaws - the ALAC, RALOs and ALSs, with individual Internet users largely predominating in the operation of each ALS and as individual RALO members where applicable.

Comments by various members of the ALAC Review Committee do show sharp disagreement on how the various members envisioned the Board seat being filled.

The issue of secret ballot has not generated much discussion. The argument for a secret ballot is that it avoids personal conflict, and that one is more likely to vote how they truly believe is good for the organization if they don't have to be audited by friends and colleagues. The counter argument is how

an ALS or RALO will know if their direction was honoured if they cannot see how the vote was cast. It may be technically possible to reveal how votes were cast to an independent auditor to verify that directed votes were cast as directed. This does raise the question of why a group would select their leader if the person cannot be trusted.

Since any recommendation on this matter will need to be approved by the SIC and the Board, it would be useful to have the thoughts of members of those two bodies. It is clear from private discussions that there are some strong feelings in those groups. It is less clear if those thoughts will be shared prior to a recommendation being submitted. This is rather unfortunate. The process of creating the Non-Commercial Stakeholders Group Charter has demonstrated that common ground might have been reached if all parties had actually talked *prior* to a confrontation instead of just after it occurred.

In the absence of such dialogue, the recommendation contained in the ALAC Review Report (section 3.2.2.3, page 16) will be followed:

Designing a mechanism to place At Large members on the Board is a complicated task and the WG recommends that ALAC working with the RALOs and the ALSs (and with staff support) develop that mechanism. As an initial proposal, the WG suggests that Board members be elected through a process that involves ALAC, RALOs and ALSs, rather than just ALAC or the RALOs. This will provide the best representation of the voice and concerns of the individual Internet user.

#### **Recommendation: 4.1**

The Board seat should be selected by the ALAC plus the RALO Chairs. The RALO-appointed ALAC members and the RALO Chairs may be directed by their ALSs if the RALO desires (and in accordance with their RoP). This methodology gives ALSs large control over who is selected, without the complexity of two-level vote weighting and centralized ALS elector verification. The vote should be by secret ballot.

## **5. Voting Process**

Currently all ALAC votes for leadership and Liaison positions use a Single Transferable Vote (STV) system. When an elector casts their ballot, they rank all candidates in order of preference. The automated voting system computes the votes received considering only the first preference of all electors. If one candidate receives a majority of the votes, that candidate is declared the winner (a threshold other than 50% can also be used). If a winner is not declared, the candidate that received the least number of votes is dropped. All ballots are re-evaluated dropping that candidate and moving the others up to fill the gap. The process is repeated (evaluate the ballots and drop additional bottom candidates if necessary) until a winner is declared.

See [http://en.wikipedia.org/wiki/Single\\_transferable\\_vote](http://en.wikipedia.org/wiki/Single_transferable_vote) for further details.

The most-discussed alternative is to use a Plurality system, with the requirement that a winner must receive greater than 50% of the votes. In a Plurality system, each elector casts a ballot indicating their single preference. If no candidate achieves the required percentage, the bottom candidate is dropped and a new set of ballots are cast.

If there are many candidates with no clear winner, for N initial candidates, this could take as many as N-1 rounds. See [http://en.wikipedia.org/wiki/Plurality\\_voting\\_system](http://en.wikipedia.org/wiki/Plurality_voting_system) for further details.

The threshold in most elections is 50%. In some (including at least one ICANN Board seat election), a higher threshold is required. The benefit is that the person has a higher approval level. The downside is that in a highly contested election, no single candidate is able to reach the higher level of approval -- resulting in a stalemate.

### **Alternatives:**

The prime benefit of STV voting is that only one ballot needs to be cast. The rest of the process is automatic. If ballots are cast in one place with all electors present this is not a major benefit over Plurality voting (with its potential for multiple rounds). However, if votes are cast remotely, with each round taking several days, Plurality voting can be problematic in that the overall time taken to declare a winner can be long. If, in the case of directed votes, constituents must be consulted, this process can take long indeed.

On the side of Plurality voting, there are a number of perceived benefits:

- When a winner is declared, it is clear to the candidate, the other candidates, the electors and the other Board members, that the declared victor actually received the conscious vote of the majority of electors.
- The wording used in the Bylaws for the GNSO and ccNSO selection of their Board members implies an explicit final vote – “The ccNSO Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; **any such selection must have affirmative votes of a majority of all the members** of the ccNSO Council then in office.”
- For people who live in locations where STV (or similar) voting is common, there is a level of comfort with the process. For others, the process is not well understood, and some people tend to be overwhelmed by the need to prioritize all candidates with the result that they pick their preference and then don't think clearly about the order of the others.
- The ability to re-think their decision once a candidate is eliminated (potentially their favourite) is viewed as important to some people.

During the December 9, 2009 community teleconference, a number of speakers expressed interest in a hybrid scenario in which one round could be done by STV to narrow the slate to a small number of candidates and later round(s) could be carried out using conventional Plurality voting.

### **Discussion:**

Plurality voting with a single candidate selected provides clarity, but if multiple rounds are required, with a requirement for electronic long-period voting, the overall timing can be untenable. In person (or telephone) balloting can reduce the time for multiple rounds so as to be not problematic. Absent voters can potentially be addressed by using proxies. If some electors need to consult constituencies (such as ALS and ultimately ALS membership) between rounds, this can be problematic.

A hybrid model discussed during the December teleconference received significant support during and following the call. Specifically, if the first slate has too many candidates, then an STV vote is used to reduce the number of candidates to a small number (perhaps 3). Once there is a final slate,

individual ballots are held to determine the final winner. In the hybrid model, it is possible that the two phases use different groups of electors.

If multiple ballots are used, the issue of directed votes must be addressed. There are a number of alternatives: the respective communities can be re-consulted (potentially time-consuming), some automated way of doing this must be found, the community can provide an ordered list without the ability to reconsider between rounds, or the elector can be given the discretion to vote independently.

The issue of “fairness” is often raised in discussions such as this. However, the concept of “fair” is very subjective, and most parties agree that all of the mechanisms being described are reasonably fair. Some are more or less transparent.

One suggestion that has been made is to use Plurality voting (as previously defined) with a maximum of two rounds. If the first round does not yield a winner (with greater than 50% of the vote), the top two candidates will participate in a second round using the same electors. This method has the benefit of a maximum of two rounds and the winner has the clear affirmative vote of the majority. This is the method used in French presidential elections, and not surprisingly, there are those who feel that it is far from the best method. It does serve to narrow a very large field of candidates quickly, however. A variant of this is to use an STV ballot in the first round to identify either the winner (if more than 50% of first-choice votes go to a single candidate) or to identify the top two candidates for the runoff. This addresses most criticisms against the French-type system while preserving the maximum of two rounds and the clear affirmative vote of the winner. A further variant is to have the first STV round select three candidates, with up to two run-off rounds.

### **Recommendation: 5.1 & 5.2**

Two alternatives are provided.

5.1 The first round is a vote conducted with STV ballots. If more than 50% of first-choice votes select the same candidate, that person is declared winner. If there is no winner, the standard STV mechanism identifies the top two candidates. A Plurality vote is then held to select the winner.

5.2 The first round is a vote conducted with STV ballots. If more than 50% of first-choice votes select the same candidate, that person is declared winner. If there is no winner, the standard STV mechanism identifies the top three candidates. A Plurality vote is then held to select the winner, or to narrow the field to the top two candidates. If no winner was declared, the candidate with the fewest votes is dropped and a third and final round is held to select the winner.

Method 5.1 will take less time. Method 5.2 provides more direct elector control but takes up to one additional round.

RALO Chairs will be given sufficient time to consult with ALSs and constituents to determine regional preferences. It is to be expected that the voting period for subsequent rounds will be compressed such that an equal amount of preparation may not be possible -- RALOs will be advised to prepare sufficiently for all rounds in advance.

## Appendix 1: Documentation of Prior Actions

Prior to the creation of this white paper, a number of teleconferences were held. The initial one was a brain-storming session of the North American Regional At-Large Organization (RALO) which resulted in a proposal for the overall structure of the process as well as suggesting a number of specific features. This was followed by a community-wide teleconference on the process and later one on voting mechanisms. Agendas, outcomes and community comments can be found in the following web pages:

- A wiki page, "[Ideas for Consideration](https://st.icann.org/working-groups/index.cgi?ideas_for_consideration)", created 2009 Sep 26 to collect preliminary community comments ([https://st.icann.org/working-groups/index.cgi?ideas\\_for\\_consideration](https://st.icann.org/working-groups/index.cgi?ideas_for_consideration))
- Related to the NARALO "brainstorm" teleconference held 2009 Sep 21:  
[Meeting information](https://st.icann.org/naralo/index.cgi?naralo_brainstorm_on_at_large_director_selection_process_21_september_2009) ([https://st.icann.org/naralo/index.cgi?naralo\\_brainstorm\\_on\\_at\\_large\\_director\\_selection\\_process\\_21\\_september\\_2009](https://st.icann.org/naralo/index.cgi?naralo_brainstorm_on_at_large_director_selection_process_21_september_2009))  
[Transcript](https://st.icann.org/naralo/index.cgi?21_august_2009_naralo_brainstorm_transcript) ([https://st.icann.org/naralo/index.cgi?21\\_august\\_2009\\_naralo\\_brainstorm\\_transcript](https://st.icann.org/naralo/index.cgi?21_august_2009_naralo_brainstorm_transcript))  
[Summary Minutes](https://st.icann.org/naralo/index.cgi?21_09_2009_naralo_brainstorm_summary_minutes) ([https://st.icann.org/naralo/index.cgi?21\\_09\\_2009\\_naralo\\_brainstorm\\_summary\\_minutes](https://st.icann.org/naralo/index.cgi?21_09_2009_naralo_brainstorm_summary_minutes))  
[A draft selection process based on the brainstorm](https://st.icann.org/working-groups/index.cgi?at_large_draft_procedure_for_appointment_of_a_director), which was subsequently revised and includes community comment ([https://st.icann.org/working-groups/index.cgi?at\\_large\\_draft\\_procedure\\_for\\_appointment\\_of\\_a\\_director](https://st.icann.org/working-groups/index.cgi?at_large_draft_procedure_for_appointment_of_a_director))
- Two wiki pages posted 2009 Oct 7 to solicit community feedback:  
"[Questions About Legal or Other Issues](https://st.icann.org/alac-docs/index.cgi?questions_about_legal_or_other_issues)" ([https://st.icann.org/alac-docs/index.cgi?questions\\_about\\_legal\\_or\\_other\\_issues](https://st.icann.org/alac-docs/index.cgi?questions_about_legal_or_other_issues))  
"[Draft Candidate Requirements](https://st.icann.org/alac-docs/index.cgi?draft_candidate_requirements)" ([https://st.icann.org/alac-docs/index.cgi?draft\\_candidate\\_requirements](https://st.icann.org/alac-docs/index.cgi?draft_candidate_requirements))
- Related to a community-wide teleconference on the issue held 2009 Oct 8:  
[Meeting information](https://st.icann.org/alac-docs/index.cgi?8%20October%202009%20Community%20Call:%20At-Large%20Director%20Appointment%20Process) (<https://st.icann.org/alac-docs/index.cgi?8%20October%202009%20Community%20Call:%20At-Large%20Director%20Appointment%20Process>)  
[Transcript](https://st.icann.org/alac-docs/index.cgi?08_october_2009_transcript_community_call_at_large_director_appointment_process_en) ([https://st.icann.org/alac-docs/index.cgi?08\\_october\\_2009\\_transcript\\_community\\_call\\_at\\_large\\_director\\_appointment\\_process\\_en](https://st.icann.org/alac-docs/index.cgi?08_october_2009_transcript_community_call_at_large_director_appointment_process_en))
- Related to a meeting held 2009 Oct 27 between the ALAC and the ICANN Board's Structural Improvement Committee (SIC) during the Seoul ICANN meeting:  
[Meeting information](http://sel.icann.org/node/7183) (<http://sel.icann.org/node/7183>)  
[Transcript](http://sel.icann.org/meetings/seoul2009/transcript-alac-sic-27oct09-en.txt) (<http://sel.icann.org/meetings/seoul2009/transcript-alac-sic-27oct09-en.txt>)
- Related to a community-wide teleconference on the issue held 2009 Dec 7 (which included a presentation by Ralph McKay of BigPulse Online Voting Service):  
[Meeting information](https://st.icann.org/alac-docs/index.cgi?7_december_2009_community_call_at_large_director_appointment_process) ([https://st.icann.org/alac-docs/index.cgi?7\\_december\\_2009\\_community\\_call\\_at\\_large\\_director\\_appointment\\_process](https://st.icann.org/alac-docs/index.cgi?7_december_2009_community_call_at_large_director_appointment_process))  
[Transcript](https://st.icann.org/alac-docs/index.cgi?07_dec_2009_at_large_director_appt_process_transcript_en) ([https://st.icann.org/alac-docs/index.cgi?07\\_dec\\_2009\\_at\\_large\\_director\\_appt\\_process\\_transcript\\_en](https://st.icann.org/alac-docs/index.cgi?07_dec_2009_at_large_director_appt_process_transcript_en))

**Glossary:** *<to be completed>*