

2 September 2025

Tripti Sinha
Chair, ICANN Board of Directors

Re: Failure in ICANN's Governance Framework

Dear Tripti,

Over the past 26 years, I have had the privilege and honor to work with every ICANN Board member. This fact, coupled with my own service on the ICANN Board, provides me with a unique perspective on what it takes to be an effective and successful ICANN Board member. In my opinion, Chris Chapman is one of the most qualified and accomplished individuals to ever serve on the ICANN Board. However, the ICANN Board's repeated failure to address the "unaffiliate director" safeguards recommended by both independent expert Nominating Committee Reviews (2007 & 2018) has contributed to Chris not being reappointed to the ICANN Board. Sadly, I do not hold out much hope that the ICANN Board will timely address this ICANN governance framework failure. Therefore, I have copied the Chair of the Governmental Advisory Committee (GAC) and representatives from the United States National Telecommunication and Information Administration (NTIA) so that they can hopefully address this governance deficiency through ICANN's multistakeholder process or through other fora if necessary.

ICANN's Nominating Committee Is Fundamentally Flawed

Chris Chapman's experience with the 2022 and 2025 nominating committees offers a fascinating insight into the fundamental flaws of the byzantine and opaque nature of this critical ICANN governance mechanism, which lacks any true accountability mechanism. Despite Chris's impeccable resume, he was not the Nominating Committee's original selection in 2022. That distinction originally went to a more "popular" ICANN-affiliated community member, not unlike this year's selections. It has been my experience, informed in part by my own experience as an ICANN Nominating Committee delegate, that there is a bias within all Nominating Committees to make selections based upon their familiarity with the candidates. Instead of picking the most qualified candidates, many decisions are driven by who the Nominating Committee is most "comfortable" with. Much like "comfort" food can lead individuals to make poor dietary choices, "comfort" candidates can lead the Nominating Committee to make suboptimal decisions. Or, in the case of the 2022 Nominating Committee, initially overlooking the inconsistent academic qualifications of their original selectee.

Fortunately, in 2022, this error was identified, and Chris moved forward as the alternate ICANN Board selectee. Over the past three years, Chris has served with distinction, rising to the position of Vice Chair of the ICANN Board, serving as Chair of the CEO Search Committee, and participating in several key governance initiatives. Unfortunately, because of the opaque nature of the Nominating Committee, it is easy to (intentionally/unintentionally) derail the selection of

otherwise impeccably qualified candidates. I witnessed this firsthand during my tenure on the Nominating Committee, where a whisper campaign nearly denied the ICANN Board and community the opportunity to benefit from the service of one of its most qualified members. Upon information and belief, I understand that Chris was the victim of a similar whisper campaign this year.

ICANN’s Failure to Timely Address “Unaffiliated Director” Safeguards

In 2018 (over 7 years ago), an Independent Examiner Final Report undertaken in connection with a review of the Nominating Committee recommended that 3 of the 8 directors appointed by the Nominating Committee be “unaffiliated directors.” Unaffiliated directors have been defined as individuals having “limited or no prior experience” with ICANN. Despite the same recommendation being included in the First NomCom Review Finalization Working Group Report in 2010, the ICANN Board has failed to take affirmative action to implement this common-sense recommendation and instead has engaged in an all-too-common perpetual 'kick the can down the road' exercise.

Today, only three of the eight ICANN Board members selected by the Nominating Committee are “unaffiliated”: Chris Chapman, Catherine Adeya, and Sajid Rahman. With the selections of Constance Bommelaer de Leusse and Raul Echeberria, the number of unaffiliated directors will fall to two, as both Constance and Raul have long-standing relationships with ISOC. Unfortunately, over the past 18 years, some stakeholders within the ICANN community have sought to preserve this loophole in the ICANN By-laws, which permits the potential capture of the ICANN Board by affiliated directors.

The first Independent Review of the ICANN Nominating Committee¹ noted the importance of “strong, independent, unaffiliated Board members” as being central to NomCom’s purpose. It also noted that there was the need for “internal controls to ensure that it does not simply offer an alternative path to a leadership position for people who have been unsuccessful reaching that position through a constituency appointment process.” Despite the sound advice, unfortunately, this recommendation was watered down/passed over when it was forwarded to the ICANN Working Group tasked with implementing these expert recommendations.²

The WG sees validity in this recommendation, but observes that independence from interests that are otherwise part of the ICANN community is very hard—if not impossible – to achieve in the present ICANN environment. Based on consultation

¹ <https://www.icann.org/en/system/files/files/report-23oct07-en.pdf>

² <https://www.icann.org/en/system/files/files/nomcom-review-finalization-wg-final-report-29jan10-en.pdf>

with ICANN's General Counsel, non-affiliation of candidate Directors is not a legal requirement.

Unlike the first expert independent review of the Nominating Committee, which alluded to the majority of Nominating Committee appointments being "unaffiliated," the second expert independent review of the Nominating Committee took a more conservative approach, recommending that a minimum of three out of the eight ICANN Board members appointed by the Nominating Committee be "unaffiliated." Not unsurprisingly, the ICANN Working Group tasked with implementing this second expert independent review similarly watered down/passed over this recommendation, and any future action on this critical governance safeguard has been mired in internal ICANN Board committees over the past two years as detailed below:

- October 2007 – First Independent Review citing the need for "unaffiliated" directors
- January 2010 – Final Report of the First Review of the ICANN Nominating Committee
- June 2017 -Second Nominating Committee Review commenced
- June 2018 – Independent Examiner Final Report Produced (calling for 3 of 8 unaffiliated directors)
- March 2019 – Creation of NomCom Review Implementation Working Group (NomComRIWG)
- September 2019 – NomComRIWG produced Detailed Implementation Plan
- November 2019 – The ICANN Board accepted the Detailed Implementation Plan and directed the NomComRIWG to commence implementation, coordinating with the ICANN Board's Organizational Effectiveness Committee (OEC).
- June 2022- Final Implementation report provided to the OEC.
- March 2023 – ICANN accepted Final Implementation Report and Initiation of ByLaw Amendment Process including public comment period.
- April 2023 – Draft "Unaffiliated" Director Statement published for public comment
- September 2023 – ICANN Board accepts majority of recommendations, defers on "unaffiliated director." Send to ICANN OEC.
- June 2024 – ICANN OEC hands "unaffiliated director" issue to Board Governance Committee (BGC)
- December 2024 – No BGC action on "unaffiliated director" issue
- June 2025 – No BGC action on "unaffiliated director" issue

Need for Action, Not Endless Self-Reflection and Inaction

Sadly, the ICANN Board does not have the luxury of engaging in a multi-year/decade review and implementation process. It must act immediately to provide greater transparency and accountability into the Nominating Committee and to address the "unaffiliated director"

safeguards that both independent expert reviews have recommended. To address ICANN's repeated delays in implementing timely governance safeguards, ICANN should consider bifurcating the roles of General Counsel and Corporate Secretary. Sadly, ICANN's backlog of complex legal issues serves as a distraction from the Secretariat advancing and implementing appropriate governance safeguards. If the ICANN Board had a dedicated Secretariat, key governance issues would receive the necessary attention and resources they deserve.

Best regards,

Michael D. Palage

CC: Nicolas G. Caballero,
Chair, Governmental Advisory Committee (GAC)

Arielle Roth,
Assistant Secretary of Commerce for Communications and Information
Administrator, National Telecommunications and Information Administration (NTIA)

Susan Chalmers,
National Telecommunications and Information Administration (NTIA) Internet Policy
Specialist