ICANN BOARD SUBMISSION NO. 2015.10.21.1a

TITLE: **Consideration of Reconsideration Request 15-18**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

In Reconsideration Request 15-18 (attached as Exhibit A to the Reference Materials), Ron Andruff (Mr. Andruff), asked the Board to reconsider the Board Governance Committee's (BGC) decision to not recommend him for the position of the 2016 Nominating Committee (NomCom) Chair and the Board's appointment of Stéphane Van Gelder as the 2016 NomCom Chair.

Mr. Andruff suggests that the BGC did not make the Board aware of the following material facts, and therefore the Board did not consider them, prior to the Board's appointment of the 2016 NomCom Chair and Chair-Elect: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity" is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 360-Degree Review cannot adequately provide a true and full representation of the capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's 360-Degree Review emanated from individuals with a "suspect agenda".[1] Mr. Andruff further suggests that the Board was prevented from considering the foregoing material facts because the BGC did not inform him of its recommendation until the day of the Board meeting, thus depriving him of any reasonable opportunity to prepare a detailed response.

The BGC concluded that Mr. Andruff has not stated proper grounds for reconsideration. Mr. Andruff had the opportunity to provide the BGC with information relating to his qualifications in his EOI and during the two telephone interviews with the BGC. Mr.

[1] Request, § 8, Pgs. 4-5.

Andruff also had the opportunity to respond to any concerns raised in his 360-Degree Review during his second interview with the BGC. With respect to Mr. Andruff's arguments regarding the numbers of BGC members that were present for Mr. Andruff's interviews and that he was deprived of the opportunity to respond to the BGC's recommendation to the Board, the BGC concluded that Mr. Andruff has not stated a basis for reconsideration. The BGC therefore recommended that Request 15-18 be denied (BGC Recommendation). (*See* BGC's Recommendation on Reconsideration Request 15-18, attached as Exhibit B to the Reference Materials.) The BGC also recommended that, given his longstanding commitment, contribution and dedication to ICANN community, Mr. Andruff be afforded the opportunity to be heard by the Board as part of its consideration of Request 15-18.

In accordance with the BGC's recommendation, Board has had the opportunity to hear from Mr. Andruff and finds that he has not demonstrated that the BGC or the Board acted without material information or pursuant to false or inaccurate information.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC determined that Mr. Andruff has not stated proper grounds for reconsideration and therefore recommends that Request 15-18 be denied and that no further action be taken in response to the Request.

PROPOSED RESOLUTION:

Whereas, ICANN's Bylaws require the Board to appoint the Nominating Committee Chair and Chair-Elect.

Whereas, the Board has delegated to the Board Governance Committee (BGC) the responsibility for recommending candidates for the NomCom Chair and Chair Elect for Board approval.

Whereas, on 27 September 2015, the BGC met and approved its recommendation to the Board that Stéphane Van Gelder and Hans Petter Holen be appointed as the 2016 NomCom Chair-Elect, respectively.

Whereas, on 28 September 2015, in Resolution 2015.09.28.25, the Board appointed Stéphane Van Gelder as the 2016 NomCom Chair and Hans Petter Holen as the NomCom Chair-Elect.

Whereas, Reconsideration Request 15-18 challenges BGC's recommendation of the 2016 NomCom Chair and Chair-Elect and the Board's appointment of Stéphane Van Gelder as the 2016 NomCom Chair.

Whereas, the BGC considered the issues raised in Request 15-18 and recommended that Request 15-18 be denied because Mr. Andruff has not stated proper grounds for reconsideration and the Board agrees.

Whereas, Mr. Andruff has had the opportunity to be heard by the Board as part of the Board's consideration of Request 15-18.

Whereas, the Board finds that Mr. Andruff has not demonstrated that the BGC or Board acted without material information or pursuant to false or inaccurate information.

Resolved (2015.10.21.xx), the Board adopts the BGC's Recommendation on Reconsideration Request 15-18, which can be found at https://www.icann.org/en/system/files/files/recommendation-15-18-andruff-18oct15-en.pdf. .

PROPOSED RATIONALE:

I. Brief Summary.

Mr. Andruff is the 2015 NomCom Chair-Elect. (See Resolution 2014.10.11.01, *available at* https://www.icann.org/resources/board-material/resolutions-2014-10-11-en#1.a.) Per ICANN's Bylaws, the BGC recommends, and the Board approves, the NomCom Chair and Chair Elect. (*See* Bylaws, Article VII, §§ 2.1 and 2.2, *available at* https://www.icann.org/resources/pages/governance/bylaws-en/#VII; BGC Charter, Art. I,

§ I, *available at* https://www.icann.org/resources/pages/charter-06-2012-02-25-en.) After a careful evaluation process, which included review of the candidates' EOI statements, two rounds of interviews, and consideration of the 360-degree review of the 2015 NomCom Leadership (360-Degree Review), the BGC recommended to the Board that Stéphane Van Gelder and Hans Petter Holen be appointed as the 2016 NomCom Chair and Chair-Elect, respectively. On 28 September 2015, the Board appointed Stéphane Van Gelder as the 2016 NomCom Chair and Hans Petter Holen as the 2016 NomCom Chair-Elect. (*See* Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.)

Mr. Andruff suggests that the BGC did not make the Board aware of the following material facts, and therefore the Board did not consider them, prior to the Board's appointment of the 2016 NomCom Chair and Chair-Elect: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity" is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 360-Degree Review cannot adequately provide a true and full representation of the capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's 360-Degree Review emanated from individuals with a "suspect agenda". (Request, § 8, Pgs. 4-5.) Mr. Andruff further suggested that the Board was prevented from considering the foregoing material facts because the BGC did not inform him of its recommendation until the day of the Board meeting, thus depriving him of any reasonable opportunity to prepare a detailed response.

The BGC concluded that Mr. Andruff's claims do not support reconsideration and the Board agrees. As stated in the Rationale for Resolution 2015.09.28.25, "[t]he BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2015 NomCom leadership and conducted interviews with candidates before making its recommendations. The Board then considered and agree[d] with the BGC's recommendation for the 2016 NomCom Chair and 2016 NomCom Chair-Elect." (Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-

material/resolutions-2015-09-28-en#2.g.) Mr. Andruff did provide the BGC with information relating to his qualifications in his EOI and during the two telephone interviews with the BGC. Mr. Andruff also had the opportunity to respond to any concerns raised in his 360-Degree Review during his second interview with the BGC. With respect to Mr. Andruff's arguments regarding the numbers of BGC members that were present for his interviews and that he was deprived of the opportunity to respond to the BGC's recommendation to the Board, the BGC concluded that Mr. Andruff did not state a basis for reconsideration. Given this, the BGC recommended that Request 15-18 be denied. The Board agrees.

Further, Mr. Andruff was provided the opportunity to address the Board as part of its consideration of Request 15-18. The Board finds that Mr. Andruff did not demonstrate that the BGC or the Board acted without material information or pursuant to false or inaccurate information.

II. Facts

The BGC's Recommendation on Reconsideration Request 15-18, which sets forth in detail the facts relevant to this matter, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Request 15-18 is available at https://www.icann.org/en/system/files/files/recommendation-15-18-andruff-18oct15-en.pdf and is attached as Exhibit B to the Reference Materials.

III. Issues

In view of the claims set forth in Request 15-18, the issues for reconsideration seem to be whether reconsideration is warranted because the BGC did not make the Board aware of the following material facts, and therefore the Board did not consider them, prior to the Board's appointment of the 2016 NomCom Chair and Chair-Elect: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity" is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 360-Degree Review cannot adequately provide a true and full representation of the

capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's 360-Degree Review emanated from individuals with a "suspect agenda". (Request § 8, Pgs. 4-5.)

IV. The Relevant Standards for Evaluating Reconsideration Requests and the NomCom Chair and Chair-Elect Selection Process.

As Mr. Andruff challenges a Board action he must show that the Board acted without material information or pursuant to false or inaccurate information. (*See* Bylaws, Art. IV, § 2.2.) ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. (*See id.* at § 2.) The Board has reviewed and thoroughly considered the BGC Recommendation on Request 15-18 and finds the analysis sound.[2] The NomCom is composed of, among others, a non-voting Chair and non-voting Chair-Elect. Both are appointed by the ICANN Board. (*See* Bylaws, Art. VII, §§ 2.1 and 2.2.) The Bylaws provide that

> [i]t is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair..

(*See id.* at § 3.4.)

The Call for EOI for the 2016 NomCom Chair and Chair-Elect sets forth the requisite skills and experience. (*See* Call for EOI for 2016 NomCom Chair and Chair-Elect, *available* at https://www.icann.org/news/announcement-2-2015-06-04-en.) Further,

> [w]hile it is anticipated that the 2015 NomCom Chair Elect will become the 2016 NomCom Chair, in support of continuous improvement in its accountability and transparency, the NomCom will evaluate the performance of the current NomCom leadership, and the results of that evaluation will be available to the Board Governance Committee before it makes a recommendation to the full Board on 2016 NomCom leadership. These 360 degree reviews will be conducted by an independent third party provider

[2] Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

> and will consist of interviewing other NomCom leadership, NomCom members, and designated NomCom staff. The BGC will utilize the outcomes of these reviews in their processes leading up to the Board's formal appointment of the 2016 NomCom Chair and Chair-Elect.

(*Id.*)

V. Analysis and Rationale

The BGC concluded, and the Board agrees, that Mr. Andruff has not demonstrated a basis for reconsideration. As a preliminary matter, the Board notes that Mr. Andruff suggests that the BGC is "meddling in the affairs of the supposedly independent Nominating Committee." (Request, § 7, Pg. 4.) ICANN's Bylaws require the Board to appoint the NomCom Chair and Chair Elect, and the Board has delegated to the BGC the responsibility for recommending candidates for these positions for Board approval. (*See* BGC Charter, Art. I, § I, *available at* https://www.icann.org/resources/pages/charter-06-2012-02-25-en.) As such, the actions of the BGC challenged in Reconsideration Request 15-18 are part of the BGC's mandate as set forth in the BGC's Charter, which was approved by the Board on 13 October 2012. (*See id.*) If Mr. Andruff is challenging the Board's delegation to the BGC of the authority to recommend the NomCom Chair and Chair Elect for Board approval, the time to do so has passed.

With respect to Mr. Andruff's argument that the BGC "chose to overlook [his] exemplary record of sixteen years of service, sound leadership at ICANN, and solid overall marks in [his] 360 Review" and focused instead "on a subset of mean-spirited and targeted attacks on [the Mr. Andruff's] reputation by a few individuals" (Request, § 3, Pg. 1), the BGC concluded, and the Board agrees, that Mr. Andruff has not shown that either the BGC or the Board overlooked his years of service or the positive aspects of the 360-Degree Review. Rather, Mr. Andruff's EOI statement details his skills, experience, and contribution to the ICANN community, which is information that was considered by the BGC and the Board. (*See* Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.) Additionally, Mr. Andruff had the opportunity to, and did, provide the BGC with information relating to his qualifications in both telephone interviews with the BGC, as

well as address any concerns that he may have with his 360-Degree Review, and point out the positive aspects of his 360-Degree Review, during his second telephone interview with the BGC.

The BGC further concluded that Mr. Andruff's challenge of the BGC's recommendation on the basis that there were an insufficient number of BGC members present for his interviews is not a proper basis for reconsideration. (*See* Request, § 3, Pg. 2.) The Board agrees. There is no requirement mandating a minimum number of BGC members that must be present for the interviews, as there is no requirement that the BGC interview the candidates. Moreover, three of the four voting BGC members that had not recused themselves (those who recused themselves did so because they are eligible to be selected by the 2016 NomCom) participated during the first interview, and all four participated during the second interview. Further, all four voting BGC members who did not recuse themselves were present during the BGC meeting in which the BGC made its recommendation for the 2016 NomCom Leadership slate, and all voting Board members, except the three who recused themselves, participated in the Board decision on this matter.[3] Additionally, the same or similar number of BGC members were present at the interviews of the other candidates. It should further be noted that the number of BGC members present at the interviews are not inconsistent with the interviews conducted for the NomCom leadership positions in previous years. In all events, the number of BGC members who participated in Mr. Andruff's interviews does not speak to whether the Board acted without material information, or pursuant to false or inaccurate information, and therefore reconsideration is not appropriate on this basis.

With respect to Mr. Andruff's argument regarding lack of due process and procedural unfairness, there is no requirement that the BGC afford him the opportunity to respond to the BGC's recommendation before the Board considers the recommendation. Furthermore, even if there was such a process, this is not a proper basis for

[3] *See* Agenda of 27 September 2015 BGC Meeting, *available* at https://www.icann.org/resources/board-material/agenda-bgc-2015-09-27-en; *see also,* Minutes of 27 September 2015, *available at* https://www.icann.org/resources/board-material/minutes-bgc-2015-09-27-en.

reconsideration of Board action. Specifically, Mr. Andruff has not demonstrated that the Board failed to consider material information, or considered false or misleading information, in approving the 2016 NomCom Leadership. Nevertheless, the BGC recommended, and the Board afforded Mr. Andruff an opportunity to be heard on the matter before making its final determination in this matter.

With respect to Mr. Andruff's claim the Board's appointment of the 2016 NomCom Chair was made without material information, the BGC concluded and the Board agrees, that Mr. Andruff has not shown: (1) that the cited information would have been material to the Board's decision; (2) that the Board did not consider the information; or (iii) that the Board acted on false or inaccurate information. Instead, most if not all of the bases for reconsideration (as stated in the preceding paragraph) appear to be Mr. Andruff's opinion, and opinions do not serve as a basis for reconsideration because they are not material facts that were not considered, or false or inaccurate facts that were considered.

Indeed, as stated in the Rationale for Resolution 2015.09.28.12, "the BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2015 NomCom leadership and conducted interviews with candidates before making its recommendations. The Board then considered and agree[d] with the BGC's recommendation for the 2016 NomCom Chair and 2016 NomCom Chair-Elect." (Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.) As such, Mr. Andruff had the opportunity to provide the BGC with information that may be material to his candidacy such as his qualification, as well as address any concerns that Mr. Andruff may have with his 360-Degree Review, through his EOI Statement and during the telephone interviews with the BGC.

The full BGC Recommendation on Reconsideration Request 15-18, which sets forth the Analysis and Rationale in detail and with which the Board agrees, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Request 15-18 is available at [insert link], and is attached as Exhibit B to the Reference Materials.

VI. Decision

The Board had the opportunity to consider all of the materials submitted by or on behalf of Mr. Andruff (see https://www.icann.org/resources/pages/reconsideration-15-18-ra-2015-10-12-en) or that otherwise relate to Request 15-18. The Board also had the opportunity to hear directly from Mr. Andruff. Following consideration of all relevant information provided, the Board reviewed and has adopted the BGC's Recommendation on Request 15-18, which shall be deemed a part of this Rationale and the full text of which can be found at https://www.icann.org/en/system/files/files/recommendation-15-18-andruff-18oct15-en.pdf.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

Submitted By:	Amy A. Stathos, Deputy General Counsel
Date Noted:	20 October 2015
Email:	amy.stathos@icann.org

REFERENCE MATERIALS – BOARD SUBMISSION NO. 2015.10.21.1a

TITLE: **Consideration of Reconsideration Request 15-18**

Document/Background Links

The following attachment is relevant to the Board's consideration of Reconsideration Request 15-18:

Exhibit A is Reconsideration Request 15-18 and accompanying attachment, submitted on 11 October 2015.

Exhibit B is the Board Governance Committee's Recommendation on Reconsideration Request 15-18, issued 18 October 2015.

Submitted By:	Amy A. Stathos, Deputy General Counsel
Date Noted:	20 October 2015
Email:	amy.stathos@icann.org

Reconsideration Request Form

1. Requester Information

Name: **Ron Andruff**

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

2. Request for Reconsideration of (check one only):

_X_ Board action/inaction

___ Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

The Board Governance Committee (BGC) chose to overlook my exemplary record of 16 years of volunteer service, sound leadership at ICANN and solid overall marks in my 360 Review, focusing instead on a subset of mean-spirited and targeted attacks on my reputation by a few individuals.

Ironically, 360 Leadership Reviews were established in the Nom Com three years ago as a result of my insistent request to have peer reviews performed on all Nom Com members to enable two objectives . The first was to enable the members to gain from the experience of critical feedback so that they could responsively improve their skills and thus become more effective leaders within ICANN. The second was to enable the sending organizations (constituencies, SOs, ACs) to better evaluate how well or poorly their representatives had performed so that they could improve the quality of their representatives year-on-year.

In short, the reviews were intended to be a tool for improvement, rather than a basis for disqualification. That is especially true in regard to a review such as my own, which was strong overall while revealing a few areas that could be a focus for further improvement.

By way of example, TTG Consultants (facilitators of the 360 Review) stated to me that 2015 Nom Com Associate Chair, Cheryl Langdon-Orr, “was the 360 Review poster child on improvement over the three years she served” in leadership positions on the Nom Com. That is to say, the BGC gave her the latitude to continue despite having not scored well on her first 360 Review. I have not been accorded that same consideration.

In my case, 18 of 21 (86%) Nom Com members participated in the Written 360 Survey; while only 12 of 21 (57%) did the telephone interviews. With such a small sampling for the telephone interviews it takes but a few people to disproportionately skew the results.

The overall rating of my 360 Review is 42.3. A rating of 55 would mean a perfect score of all "A" rating responses on every question by all evaluators/raters. Who among us is perfect?

While humanly imperfect , I nonetheless received: 54 "A" (Strongly agree) responses; 75 "B" (Agree) responses; 37 "C" (Neutral) responses; 17 "D" (Disagree) responses; and only 4 "E" (Strongly disagree) responses. Taken together, that is 166 'points' in the A, B, or C range (of which 129 were A or B) versus 21 'points' on the negative side of the rating. The positive: negative ratio was 8:1 -- hardly a poor showing, much less one that should be the basis of the unprecedented step of blocking my ascension to the role of Chair after "paying my dues" through diligent and dedicated Nom Com service.

The BGC Chair, Chris Disspain, in the company of BGC member, Bruce Tonkin, told me that I was passed over because of "concerns about my 360 Review" and "lack of cultural sensitivity". While I do not dispute that my 360 Review shows some select areas where improvements can be made, it hardly demonstrates a lack of fitness to effectively assume the role of Chair. Further, "lack of cultural sensitivity" is a wholly subjective statement that is so vague in detail as to not even constitute the basis for self-corrective action. I must ask what culture I am supposedly insensitive to? Indeed, I find the assessment rather astounding given my interactions with a diverse population of ICANN members since the organization's inception, with many of whom I have become friends and with none of whom I have ever had a falling out over cultural matters. These unsubstantiated allegations are based upon someone's opinions or feelings but lack the backing of any detailed facts or evidence, and therefore should be given little weight.

The BGC interviewed me for the 2016 Chair position on August 18th and September 10t;, with a follow-on call with just two BGC members on September 28th to tell me that they had reached the decision to not recommend me as Chair to the full Board at their meeting later that day (Sept. 28th). The fact that I was not informed of this wholly unexpected decision until the very day of the Board meeting provided no opportunity for development of a detailed response that the Board might have considered in reaching its decision, and seems procedurally unfair.

Regarding the interviews themselves, it is my recollection that of the seven BGC members, two had recused themselves (as they may potentially seek re-election to the Board this year), while another one or two were absent on both calls. With about half of BGC members absent during the interview calls, I do not believe I was provided with a fair review by the BGC.

Summing up, while I do not dispute the notion that a poor 360 review might be

the basis for passing over a Vice Chair, my 360 review provided no substantial basis for such action. In addition, I have absolutely no doubt, based on my personal interactions as well as the result of the 360 review, that if my ascension to Chair was put to a vote of the Nom Com members with whom I have served over the past year I would win by a substantial margin.

4. Date of action/inaction:

September 28, 2015 ICANN Board Meeting in Los Angeles.

5. On what date did you became aware of the action or that action would not be taken?

September 28, 2015

6. Describe how you believe you are materially affected by the action or inaction:

Having served ICANN on a volunteer basis since 1999, I have established an ardent reputation as a passionate consensus builder, a proficient Chair, a skilled Working Group member, and an individual thoroughly dedicated to the preservation and enhancement of ICANN's multistakeholder model. Being passed over without the courtesy of a comprehensive review by the full BGC and no opportunity to provide a "minority report" that the Board could have considered at the same time it received the BGC recommendation, and to have the BGC's unsupported determination validated by the full Board, is a personal affront and an object lesson in discouragement to all those volunteers who dedicate so much of their uncompensated time and effort to ICANN.

In addition, the BGC's error in judgment has the potential to cause substantial damage to my name and reputation within and outside of the ICANN community by inevitably opening the door to questions and speculation about my capabilities and discernment, and also holds the potential to negatively affect my consulting business and income. There can be doubt that the community will take notice that I was barred from assuming the Chair role, and it can be reasonably assumed that the same individuals who cast aspersions on my supposed insensitivity may engage in a "whisper campaign" to further sully my heretofore pristine reputation for hard work, dedication, and fair dealing with others.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The entire ICANN community is adversely affected by this unfair action lacking in

adequate due process and unsupported by credible facts. The BGC is meddling in the affairs of the supposedly **independent** Nominating Committee. Interfering with successful and efficient processes within the body that selects 2-3 Board members each year is not only wholly unnecessary, it triggers suspicion about the very independence of the Nom Com. It is also likely to deter others from volunteering their time and energy within the NomCom and other ICANN bodies as they become aware of how review processes that are supposed to foster self-improvement can instead be used to unfairly tarnish reputations.

Since 2012, the Nom Com has established an effective succession plan that has enabled the Leadership to learn, administer and advise through moving from Chair-Elect to Chair to Associate Chair. The succession plan is a large part of why recent Nom Com's have been so productive in their annual deliberations and placements.

Devoid of any validated egregious actions on my part, and lacking justification from my 360 review, one can only wonder what warranted this unprecedented BGC action. This incident poses yet another major accountability question for the entire ICANN community to address.

8. Detail of Board or Staff Action – Required Information

I do not believe that the BGC made the Board aware of the following material facts prior to the full Board proceeding with a vote on the 2016 Nom Com Chair-Elect and Chair:

1. An insufficient number of BGC members were present for my interviews, as detailed in my response to item #3.

2. My 360 Review overall rating, as noted herein, cannot justify the 2015 Chair-Elect being passed over as 2016 Nom Com Chair. Of the 187 points scored, 69% were positive responses; 20% neutral (89% in the aggregate), and 11% negative.

3. "Lack of cultural sensitivity" is a totally subjective comment and no facts or evidence have been made known to me in justification of it. It has no basis in even alleged fact and therefore deserves little or no weight in my evaluation.

4. The Nom Com Chair-Elect does not speak in Nom Com meetings unless asked to do so by the Chair; i.e. the Chair-Elect does not comment on the candidates, does not poll, and does not vote. Because of this, the validity of the 360 Review on a Chair-Elect cannot adequately provide a true and full representation of the capabilities of an individual because there are too few opportunities to demonstrate them.

5. Having heard the negative comments written in my 360 Review firsthand, I believe that I know the individuals who took advantage of this opportunity to provide negative evaluations. These individuals and I have had a strained

relationship long before they came to serve on the 2015 Nom Com and it has persisted notwithstanding my attempts at reconciliation. I made the BGC aware of this unfortunate situation during my interviews, as well as the actions I attempted to normalize those relationships before, during and at the conclusion of the Nom Com deliberations. The BGC's decision to deny me the Chair position based on a small minority of comments emanating from individuals with a suspect agenda converts the 360 Review process into a forum for the pursuit of personal vendettas, and that is the worst possible outcome for ICANN and its stakeholders. In addition to all of this, the lack of procedural due process embodied in the fact that I was not informed of the BGC's decision until the very day of the Board meeting, denying me any reasonable opportunity to prepare a detailed response, prevented the Board from considering the material facts I have now recited in this filing.

9. What are you asking ICANN to do now?

I call on the Board to release the current (and formerly 2015) Nom Com Chair from duty and reinstate me to 2016 Nom Com Chair. That action is thoroughly justified based upon my overall high marks in the 360 review.

As Chair, I would have the option of inviting the current Chair to serve as my Associate Chair on the 2016 Nom Com.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

A stated in my response to item #6, there can be no doubt that the Board's less than fully informed decision to pass over me for the Nom Com Chair post will be noted within the ICANN community. It seems inevitable that this unprecedented action will cause substantial damage to my personal reputation within the ICANN community in which I have worked for nearly two decades, and will likely give rise to unsupported speculation that will result in additional damage. That damage is non-financial but nonetheless quite costly. While I cannot yet put a financial value on loss of future income that may result from widespread public knowledge of the Board's action I do believe that is also a likely result.

Who among us is perfect? Who within ICANN leadership can claim that they have no detractors? None. The allegations given undue weight by the BGC are wholly dubious, unsupported by any known evidence, and will not stand up to any serious scrutiny. In the absence of any substantiated evidence of an egregious act or a clear and consistent pattern of "cultural insensitivity" on my part, I submit that the BGC overreacted and committed a serious error compounded by lack of adequate notice and ability to respond in advance of the Board decision.

I call upon the Board – now in possession of the material facts I have provided – to take immediate measures to correct the BGC's actions in this matter and restore me to the position of 2016 Nom Com Chair.

Given the substantial damage that can incur to the reputation and fortunes of any individual in a situation like this, blocking normal ascension to a one-year Chair position should only be undertaken when there is clear and convincing evidence that the individual under consideration is regarded negatively by a substantial percentage of his peers and lacks their support as well as the skills to perform the duties involved. My 360 review demonstrates, to the contrary, that I am well regarded by the majority of my Nom Com peers and, while perhaps needing to focus on a few areas of self-improvement, could admirably perform the Chair role if given a fair opportunity to do so.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

____ Yes

__X__ No

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

[electronically signed: Ron Andruff] 11 October 2015

_____ _____

Signature Date

ATTACHMENT

ICANN
NOMCOM LEADERSHIP 360º EVALUATIONS REPORT FOR RON ANDRUFF

Submitted by
TTG Consultants
Contact Information Redacted

ICANN
NOMCOM LEADERSHIP 360º EVALUATIONS REPORT
FOR RON ANDRUFF

The following is a Summary of a 360º Survey containing evaluation ratings for the current ICANN Chair-Elect, Ron Andruff. There were two parts to the evaluation process…

1. A written 360º Survey/Evaluation.
2. An telephone interview with participating evaluators/raters.

These Surveys/Evaluations were conducted during July and August, 2015.

Evaluators/Raters

Twenty-one evaluators were invited to participate in the 360º Survey (including the individual being evaluated)…

- Eighteen of the twenty-one invitees responded with a written 360º Survey.
- Three invitees did not participate in the 360º Survey process.
- One invitee did not complete the full Survey for Ron Andruff.
- Nine invitees did not participate in the telephone interview.
- A total of twelve invitees participated in all aspects of the 360º Survey process.

THE ON-LINE, WRITTEN 360° SURVEY

Methodology for the On-Line, 360° Written Survey

The Written Survey was completed on-line. It contained 11 questions.

Each question could be answered by indicating one of the following five rating responses…

A. Strongly Agree
B. Agree
C. Neutral
D. Disagree
E. Strongly Disagree

The questions asked for a rating response about the following…

1. Demonstrates Integrity.

2. Participates in an open and honest manner.
3. Demonstrates good judgment.
4. Effectively uses influence in an appropriate manner.
5. Is an effective leader.
6. Is a good listener.
7. Individual treats others with respect.
8. Takes responsibility and is accountable for ensuring the nominating committee meets its timelines.
9. Demonstrates impartiality and neutrality.
10. Demonstrates an understanding of the values a nominating committee appointee would add to each of the ICANN Board, ALAC, GNSO and ccNSO.
11. Demonstrates an understanding of the criteria for selection of nominating committee appointees to each of the ICANN Board, ALAC, GNSO and ccNSO.

Each evaluator/rater also was invited to provide a detailed explanation of "why" each rating response was made.

Meanings of the Written 360° Survey Rating Ratios

Overall Ratings

The Survey provides for a maximum overall response rating of 55 (the highest possible) which would mean the person being rated received "A" rating responses on every question by all evaluators/raters.

Thus, an overall rating of **55 / 55** would mean a score of all "A" rating responses on every question by all evaluators/raters.

Individual Question Ratings

Each of the 11 questions has a maximum rating of 5. Thus a **5.0** would mean that all evaluators/raters provided an "A" rating response on that specific question.

Written 360° Survey Rating Responses for the Chair-Elect

The pages that follow indicate the Written 360º Survey ratings and their explanations for the individual being rated: the Chair-Elect of the NomCom, Ron Andruff.

Included are anonymous excerpts (detailed explanations of "why" rating responses were made) from each question in the written comments section of the Survey. In order to protect the anonymity of all evaluators/raters, many of their specific words have been changed, but their comment meanings/contexts remain intact.

THE IN-PERSON / TELEPHONE INTERVIEWS

Methodology for the In-Person and Telephone Interviews

The following questions were asked of each of the interviewees:

1. "Please elaborate on your answers to each of the questions and issues in the 360º Survey Questionnaires for Ron Andruff."
2. "As viewed and perceived from your NomCom experience, please describe Ron Andruff's…
    a. *Leadership Style* ("how" he leads other people and teams),
    b. *Management Style* ("how" he manages projects and meetings),
    c. *Operating Style* ("how" he gets things done, such as accomplishing tasks)?"

In addition, each interviewee was invited to elaborate on any other relevant topic.

WRITTEN 360° SURVEY RATING RESPONSES FOR RON ANDRUFF

Average Overall Rating: 42.3 / 55. Responses were: 54 "A" (Strongly Agree) responses, 75 "B" (Agree) responses, 37 "C" (Neutral) responses, 17 "D" (Disagree) responses and 4 "E" (Strongly Disagree) responses.

Question #1 (Demonstrates Integrity): **4.2** out of a possible 5.0. Responses were: 7 "A" (Strongly Agree) responses, 8 "B" (Agree) responses, 1 "C" (Neutral) responses, 1 "D" (Disagree) responses and 0 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron adheres to a high level of honesty and moral principles – clearly a major part of the definition of integrity. During his term of Chair-Elect, there was never an instance in which his integrity was questionable. He is a very fair man. Ron is totally committed to ICANN. He helped the NomCom process and showed his integrity by not influencing members in any way. Integrity is a core value for Ron, and attaining that value has been a personal goal for him for many years.

Areas for Improvement/Development…

As Chair-Elect, he didn't always demonstrate a non-neutral agenda.

Question #2 (Participates in an Open and Honest Manner): **4.1** out of a possible 5.0. Responses were: 5 “A” (Strongly Agree) responses, 9 “B” (Agree) responses, 2 “C” (Neutral) responses, 1 “D” (Disagree) responses and 0 “E” (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron participated in a very transparent, open and honest way – all core values of integrity. He implemented his role as Chair-Elect perfectly by being open and honest. Ron showed openness and honesty by intervening when situations dictated, or when he was requested to do so. He fulfilled his role as a member of the leadership team with openness and honesty. He did not actually lead (which is the role of the Chair-elect), but he showed leadership competencies and qualities thru openness. He was open “to learn” while on the leadership team. Whatever the question (technical, critical or process), he showed an openness and willingness to help the NomCom.

Areas for Improvement/Development…

Were there conversations behind the scenes? Did Ron’s politeness and seeming honesty disguise such activities?

Question #3 (Demonstrates Good Judgment): **3.4** out of a possible 5.0. Responses were: 4 “A” (Strongly Agree) responses, 5 “B” (Agree) responses, 2 “C” (Neutral) responses, 6 “D” (Disagree) responses and 0 “E” (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron demonstrated good judgment in certain areas, specifically regarding process. He brought forth some good ideas that showed good judgment – some were adopted, some were rejected. He was anxious to learn (as Chair-Elect), and he will serve the NomCom well.

Areas for Improvement/Development…

The best interests of the NomCom and the rapport of the group were often not served by Ron’s leadership style and his judgment, particularly regarding processes and principles. His misinterpretation of situations and issues, along with inappropriate responses, often fostered resentment rather than positive engagement.

Ron's comments to the group often were not those of one showing good judgment – they were seen as negative and patriarchal.

Question #4 (Effectively Uses Influence in an Appropriate Manner): **3.3** out of a possible 5.0. Responses were: 3 "A" (Strongly Agree) responses, 5 "B" (Agree) responses, 5 "C" (Neutral) responses, 2 "D" (Disagree) responses and 2 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron uses his influence in an appropriate manner regarding process. Some of his insights about ICANN were helpful to the group in deciding on good "fits" for certain candidates.

Areas for Improvement/Development…

Ron constantly provided negative, arbitrary comments which carried underlying messages that he is the hardest worker in the group – more so than anyone else. He appeared to be a bully toward other members on many occasions – very opinionated and controlling, particularly about process. Ron does not use his influence appropriately regarding candidates. There is concern about his ability next year to separate his constituencies' interests from the supposed independent role of the NomCom Chair. His style of using influence is often neither appropriate nor effective.

Question #5 (Is an Effective Leader): **3.5** out of a possible 5.0. Responses were: 3 "A" (Strongly Agree) responses, 6 "B" (Agree) responses, 5 "C" (Neutral) responses, 2 "D" (Disagree) responses and 1 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron listens carefully and thus is able to lead a group in a consensus way. He was able to "get things done." When given the opportunity to lead, he did it well. His leadership qualities are appreciated; specifically his sense of humor, his knowledge of NomCom's objectives and his appreciation of the tasks to be performed. Ron has strong team skills.

Areas for Improvement/Development…

Ron's opinionated and controlling leadership style – particularly about process – borders on bullying. His leadership style may be useful elsewhere, but not as Chair of the NomCom.

Question #6 (Is a Good Listener): **3.9** out of a possible 5.0. Responses were: 4 "A" (Strongly Agree) responses, 8 "B" (Agree) responses, 5 "C" (Neutral) responses, 0 "D" (Disagree) responses and 0 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

During interviews, Ron was seen to be listening intently, and he made serious comments during these sessions. He ensured that all participants had the opportunity to speak, and he listened to them. He really tried to be an attentive listener. He is aware that we have two ears and one mouth, so we should be listening twice as much as speaking.

Areas for Improvement/Development…

There were no comments or suggestions.

Question #7 (Treats Others with Respect): **3.8** out of a possible 5.0. Responses were: 8 "A" (Strongly Agree) responses, 1 "B" (Agree) responses, 6 "C" (Neutral) responses, 1 "D" (Disagree) responses and 1 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron is polite and pleasant, and tries his best to be friendly and respectful. He is quite respectful of others' opinions and this is one of his strongest qualities. Ron is quite pleasant and respectful as a co-worker – in small groups as well as on the NomCom. His showing mutual respect for others provides opportunities for more full and complete participation.

Areas for Improvement/Development…

Ron's sense of respect is to treat the group and individual members in a nit-picking and almost harassing way. He has not shown the ability to avoid conflict by interacting with others in a caring and respectful way. Respectful behavior requires the acknowledgment that others use different styles and competencies to reach the same values and/or results, and Ron does not realize this. As a NomCom member (prior to his recent leadership role), he was dedicated and valued, but he will not be a good Chair. Although he is not disrespectful, he sometimes will "preach" and become officious – a behavior that can be annoying.

Question #8 (Takes Responsibility and is Accountable for Ensuring the Nominating Committee Meets Its Timelines): **4.3** out of a possible 5.0. Responses were: 6 “A” (Strongly Agree) responses, 10 “B” (Agree) responses, 1 “C” (Neutral) responses, 0 “D” (Disagree) responses and 0 “E” (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron is task and outcome focused and is quite dedicated and serious about time line responsibilities. Although his role as Chair-Elect was not to lead, he remained cognizant of the need to respect and meet NomCom time lines. As Chair-Elect, he worked well with other leadership to ensure accountability regarding time lines. Ron often reminded the group about the processes necessary (next steps) to meet time lines. Having served for 3 years on the NomCom, he is aware of the troublesome places on the calendar where the Committee can fall behind regarding time lines – and this knowledge should serve him and the NomCom well if he is confirmed as Chair for 2016.

Areas for Improvement/Development…

He kept to deadlines, but in a non-positive, autocratic way when dealing with others.

Question #9 (Demonstrates Impartiality and Neutrality): **3.6** out of a possible 5.0. Responses were: 4 “A” (Strongly Agree) responses, 5 “B” (Agree) responses, 5 “C” (Neutral) responses, 3 “D” (Disagree) responses and 0 “E” (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron is very fair and impartial. As Chair-Elect, when he intervened, he showed neutrality and impartiality. Ron realizes that the role of the Chair is to demonstrate impartiality and neutrality in order to increase effectiveness and output of the group. The Chair must create an environment in which all members feel comfortable and empowered; Ron likely will do so if confirmed.

Areas for Improvement/Development…

As a leader, Ron demonstrates far too much personal bias. He showed partiality toward members that did not meet with his approval.

Question #10 (Demonstrates an Understanding of the Values a Nominating Committee Appointee Would Add to Each of the ICANN Board, ALAC, GNSO and ccNSO): **4.1** out of a possible 5.0. Responses were: 5 "A" (Strongly Agree) responses, 8 "B" (Agree) responses, 4 "C" (Neutral) responses, 0 "D" (Disagree) responses and 0 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron has considerable knowledge about each position with which the NomCom is involved. He does his homework, particularly for Board and GNSO positions. He clearly thinks highly of the NomCom, its role in ICANN, its work and its usefulness in bringing the necessary skills and geodiversity to the bodies it serves and supports.

Areas for Improvement/Development…

Ron could improve on his understanding of ccNSO and ALAC requirements.

Question #11 (Demonstrates an Understanding of the Criteria for Selection of Nominating Committee Appointees to Each of the ICANN Board, ALAC, GNSO and ccNSO): **4.1** out of a possible 5.0. Responses were: 5 "A" (Strongly Agree) responses, 10 "B" (Agree) responses, 1 "C" (Neutral) responses, 1 "D" (Disagree) responses and 0 "E" (Strongly Disagree) responses.

Summary of Explanations…

Positive…

Ron has an understanding of – and he has worked hard for – Board and GNSO appointments. He has the knowledge of the criteria (and he has worked to further define those criteria) for the BGC, GNSO, ALAC and ccNSO. He has worked hard to establish the selection criteria for the NomCom to use as working tools.

Areas for Improvement/Development…

There were no comments or suggestions.

TELEPHONE INTERVIEW RESPONSES FOR RON ANDRUFF

Individual comments included…

Leadership Style (how he leads other people/members and teams):

Positive…

Ron is very polite and quite funny. He is open to listening to others. He has not intervened much – realizing he's there to learn. He is a good communicator. He acquired good experience this year as Chair-Elect. Ron summarizes well. He will be a very good Chair. He likes leadership. He is clearly dedicated and committed to the cause, and knows what he wants. Ron is very knowledgeable about ICANN.

Areas for Improvement/Development…

Ron insists on his viewpoints, but is not persuasive about them. Sometimes he has a problem about facilitating a group conversation. Often, he is seen as lobbying for his own interests. Ron is too opinionated when facilitating meetings or groups. He is not a nurturer. He is not a good consensus builder. If he is confirmed as the Chair for 2016, he will need a coach to help him lead. He is judgmental of people – he's quick to chastise others, which puts their backs up (especially when they are unpaid volunteers). He can be quite sanctimonious – "you aren't working hard enough!" He has been quick to criticize those missing meetings, but he too has missed meetings – a hypocritical attitude. Ron doesn't have adequate experience in leading a group. He leads with a "School Marm" attitude. He should learn to be more neutral and impartial during deliberations.

Management Style (how he manages projects and issues):

Positive…

Keeps time lines on schedule. He can read between-the-lines on a resume – he knows how to drill-down. Ron is good at profiling the skill sets needed for appointments – beyond just the requirements.

Areas for Improvement/Development…

Ron doesn't always take into account all the skill sets that might be needed. He often shouts and screams (instead of calmly motivating) to get his way. He doesn't understand the human dynamics of a group. He often tries to make people look as though they are not as good as he is. He is strategic, but to his own benefit.

He is not a strategic leader (a visionary with a long range view and an "overview" perspective).

Operating Style (how he gets things done, such as accomplishes tasks):

Positive…

Ron knows how to get things done. Descriptive words might include: gentle, supportive, consensus builder, energetic, listener and smart. He is very organized and detail oriented – he takes many notes which allows him to follow-through. He's a stickler for process. Ron is a very honest, hard worker who is a good listener.

Areas for Improvement/Development…

He is precise and clear, but often teacher-like. He can be quite long-winded. Sometimes he seems to get nervous. He frequently focuses on personalities rather than on the task at hand – that is, he comments on the way people express themselves rather than on the tasks involved. He doesn't realize people have personal boundaries (for example, he will try to adjust someone's tie, collar or other clothing). He doesn't always respect diversity (religion, culture, etc.) and he doesn't recognize the hardships others have sometimes experienced in attending meetings. He takes issues or comments to an extreme. He doesn't keep information confidential. Sometimes he interjects comments when he should remain silent. He needs to pay more attention to a discussion and focus on the issues involved. His interpersonal communication can be demeaning, disrespectful and micro-managing, with a bully-like attitude.

Other Comments…

It is the consensus of nearly every evaluator that if Ron is confirmed as Chair, he will need a coach to help change some of his attitudes and behaviors.

RECOMMENDATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 15-18

18 OCTOBER 2015

The Requester, Ron Andruff (Mr. Andruff), seeks reconsideration of the Board Governance Committee's (BGC) decision to not recommend Mr. Andruff for the position of the 2016 Nominating Committee (NomCom) Chair and the ICANN's Board's appointment of Stéphane Van Gelder as the 2016 NomCom Chair.

I. Brief Summary.

Mr. Andruff is the 2015 NomCom Chair-Elect.[1] Mr. Andruff was one of several candidates who submitted an Expression of Interest (EOI) for the 2016 NomCom Chair and Chair-Elect. Per ICANN's Bylaws, the BGC recommends, and the Board approves, the NomCom Chair and Chair Elect.[2] After a careful evaluation process, which included review of the candidates' EOI statements, two rounds of interviews, and consideration of the 360-degree review of the 2015 NomCom Leadership (360-Degree Review), the BGC recommended to the Board that Stéphane Van Gelder and Hans Petter Holen be appointed as the 2016 NomCom Chair and Chair-Elect, respectively. On 28 September 2015, the Board appointed Stéphane Van Gelder as the 2016 NomCom Chair and Hans Petter Holen as the 2016 NomCom Chair-Elect.[3]

Mr. Andruff suggests that the BGC did not make the Board aware of the following material facts, and therefore the Board did not consider them, prior to the Board's appointment

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[1] *See* Resolution 2014.10.11.01, *available at* https://www.icann.org/resources/board-material/resolutions-2014-10-11-en#1.a.
[2] *See* Bylaws, Article VII, §§ 2.1 and 2.2, *available at* https://www.icann.org/resources/pages/governance/bylaws-en/#VII and BGC Charter, *available at* https://www.icann.org/resources/pages/charter-06-2012-02-25-en
[3] *See* Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.

of the 2016 NomCom Chair and Chair-Elect: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity" is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 360-Degree Review cannot adequately provide a true and full representation of the capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's 360-Degree Review emanated from individuals with a "suspect agenda".[4] Mr. Andruff further suggests that the Board was prevented from considering the foregoing material facts because the BGC did not inform him of its recommendation until the day of the Board meeting, thus depriving him of any reasonable opportunity to prepare a detailed response.

Mr. Andruff's claims do not support reconsideration. As set forth in the Rationale for Resolution 2015.09.28.25, "[t]he BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2015 NomCom leadership and conducted interviews with candidates before making its recommendations."[5] Mr. Andruff had the opportunity to provide the BGC with information relating to his qualifications in his EOI and during the two telephone interviews with the BGC. Mr. Andruff also had the opportunity to respond to any concerns raised in his 360-Degree Review during his second interview with the BGC. With respect to Mr. Andruff's arguments regarding the numbers of BGC members that were present for Mr. Andruff's interviews and that he was deprived of the opportunity to respond to the BGC's recommendation

[4] Request, § 8, Pgs. 4-5.

[5] Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.

to the Board, for the reasons set forth below, Mr. Andruff has not stated a basis for reconsideration.

The BGC therefore recommends that Request 15-18 be denied. Further, the BGC recommends that Mr. Andruff be afforded the opportunity to be heard by the Board consistent with Article IV, Section 2.12 of the ICANN Bylaws before the Board makes its final determination.

II. Facts.

A. Background Facts.

ICANN's Bylaws require the Board to appoint the NomCom Chair and Chair Elect.[6] The Board has delegated to the BGC the responsibility for recommending candidates for the NomCom Chair and Chair Elect for Board approval.[7]

On 4 June 2015, the BGC published a call for expressions of interest (EOI) for the 2016 NomCom Chair and Chair-Elect, seeking EOIs by 30 June 2015.[8] The call for EOIs was later extended through 20 July 2015.[9]

On 25 June 2015, Mr. Andruff submitted his EOI for the 2016 NomCom Chair.

During the week of 17 August 2015, the BGC interviewed candidates who submitted EOI statements for the 2016 NomCom Chair and Chair-Elect positions, including Mr. Andruff.

At its 3 September 2015 meeting, following the first round of interviews, the BGC discussed the candidates for 2016 NomCom Chair and Chair-Elect.[10] On 10 September 2015, the BGC conducted a second round of interviews of selected candidates.

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[6] *See* Bylaws, Article VII, §§ 2.1 and 2.2, *available at* https://www.icann.org/resources/pages/governance/bylaws-en/#VII.
[7] *See* BGC Charter, Art. I, § I, *available at* https://www.icann.org/resources/pages/charter-06-2012-02-25-en.
[8] *See* https://www.icann.org/news/announcement-2-2015-06-04-en.
[9] *See* https://www.icann.org/news/announcement-2-2015-07-01-en.

On 27 September 2015, the BGC met and approved its recommendation to the Board that Stéphane Van Gelder and Hans Petter Holen be appointed as the 2016 NomCom Chair-Elect, respectively.[11] On 28 September 2015, the Board appointed Stéphane Van Gelder as the 2016 NomCom Chair and Hans Petter Holen as the NomCom Chair-Elect.[12]

On 11 October 2015, Mr. Andruff filed Reconsideration Request 15-18 seeking reconsideration of the BGC's decision to not recommend Mr. Andruff for the position of the 2016 NomCom Chair and the ICANN Board's appointment of Stéphane Van Gelder as the 2016 NomCom Chair.

B. Relief Requested.

Mr. Andruff asks that ICANN "release the current (and formerly 2015) NomCom Chair from duty and reinstate [Mr. Andruff] to 2016 NomCom Chair."[13]

III. The Relevant Standards for Evaluating Reconsideration Requests and the NomCom Chair and Chair-Elect Selection Process.

A. The Relevant Standards for Evaluating Reconsideration Requests

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.[14] Mr. Andruff challenges a Board action. With respect to Board action, to state a reconsideration request one must show that the Board acted without

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[10] *See* BGC Agenda, 3 September 2015, *available at* https://www.icann.org/resources/board-material/agenda-bgc-2015-09-27-en*; see also,* Minutes of the 3 September 2015 BGC Meeting, *available at* https://www.icann.org/resources/board-material/minutes-bgc-2015-09-03-en.

[11] *See* Agenda of 27 September 2015 BGC Meeting, *available* at https://www.icann.org/resources/board-material/agenda-bgc-2015-09-27-en; *see also,* Minutes of 27 September 2015, *available at* https://www.icann.org/resources/board-material/minutes-bgc-2015-09-27-en.

[12] *See* Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.

[13] Request, § 9, Pg. 5.

[14] Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

(a) one or more staff actions or inactions that contradict established ICANN policy(ies); or

(b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

(c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

material information or pursuant to false or inaccurate information.[15] Denial of a request for reconsideration of Board action or inaction is appropriate if the BGC recommends, and the Board agrees, that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.

B. The NomCom Chair and Chair-Elect Selection Process

The NomCom is composed of, among others, a non-voting Chair and non-voting Chair-Elect. Both are appointed by the ICANN Board.[16] The Bylaws further provide that

> [i]t is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.[17]

The NomCom Chair is responsible for organizing and leading the NomCom in its activities to select certain ICANN Board members and individuals who will serve in key leadership positions within ICANN's supporting organizations (SOs) and advisory committees (ACs) in accordance with ICANN's Bylaws. As set forth in the Call for EOI for the 2016 NomCom Chair and Chair-Elect, the NomCom Chair must possess the following skills and experience: (i) adequate time available to undertake the role; (ii) excellent communication and negotiation skills to manage a committee of 20-21 members; (iii) a clear understanding of the duties and responsibilities of each position for which the NomCom is selecting candidates; (iv) experience on or with a Board of Directors of organizations with similar scale, scope and diversity as ICANN; (v) strong organization and leadership skills; (vi) ability to remain unbiased;

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[15] *Id.*

[16] Bylaws, Art. VII, §§ 2.1 and 2.2.

[17] *Id.* at Art. VII, § 3.4.

(vii) no conflicts of interest; and (viii) a thorough understanding of, and satisfy, all criteria set forth in ICANN's Bylaws relating to the NomCom.[18] Further,

> [w]hile it is anticipated that the 2015 NomCom Chair Elect will become the 2016 NomCom Chair, in support of continuous improvement in its accountability and transparency, the NomCom will evaluate the performance of the current NomCom leadership, and the results of that evaluation will be available to the Board Governance Committee before it makes a recommendation to the full Board on 2016 NomCom leadership. These 360 degree reviews will be conducted by an independent third party provider and will consist of interviewing other NomCom leadership, NomCom members, and designated NomCom staff. The BGC will utilize the outcomes of these reviews in their processes leading up to the Board's formal appointment of the 2016 NomCom Chair and Chair-Elect.[19]

IV. Analysis and Rationale.

A. Mr. Andruff **Has Not Demonstrated A Basis For Reconsideration Of The BGC's Decision To Not Recommend Him To Serve As The 2016 NomCom Chair.**

Mr. Andruff challenges the BGC's consideration of his candidacy to serve as the 2016 NomCom Chair. As a preliminary matter, Mr. Andruff suggests that the BGC is "meddling in the affairs of the supposedly independent Nominating Committee."[20] As noted above, however, ICANN's Bylaws require the Board to appoint the NomCom Chair and Chair Elect[21], and the Board has delegated to the BGC the responsibility for recommending candidates for these positions for Board approval.[22] As such, the actions of the BGC challenged here are part of its mandate as set forth in the BGC's Charter, which was approved by the Board on 13 October 2012.[23] If Mr. Andruff is challenging the Board's delegation to the BGC of the authority to

[18] Call for EOI for 2016 NomCom Chair and Chair-Elect, *available* at https://www.icann.org/news/announcement-2-2015-06-04-en.
[19] *Id*.
[20] Request, § 7, Pg. 4.
[21] *See* Bylaws, Article VII, §§ 2.1 and 2.2, *available at* https://www.icann.org/resources/pages/governance/bylaws-en/#VII.
[22] *See* BGC Charter, Art. I, § I, *available at* https://www.icann.org/resources/pages/charter-06-2012-02-25-en.
[23] *See id.*

recommend the NomCom Chair and Chair Elect for Board approval, the time to do so has passed.

Mr. Andruff suggests that the BGC "chose to overlook [his] exemplary record of sixteen years of service, sound leadership at ICANN, and solid overall marks in [his] 360 Review" and focused instead "on a subset of mean-spirited and targeted attacks on [Mr. Andruff's] reputation by a few individuals."[24] In support of his view, Mr. Andruff notes that while 86 percent of the NomCom members participated in the written portion of the 360-Degree Review, only 57 percent of the NomCom members participated in the telephone interview portion of the 360-Degree Review. Mr. Andruff posits that "with such a small sampling for the telephone interviews it takes but a few people to disproportionately skew the results."[25]

Mr. Andruff has not shown that either the BGC or the Board overlooked his years of service or the positive aspects of the 360-Degree Review. Rather, Mr. Andruff's EOI statement details his skills, experience, and contribution to the ICANN community, and the BGC specifically considered this information.[26] Additionally, Mr. Andruff had the opportunity to, and did, provide the BGC with information relating to his qualifications in both telephone interviews with the BGC, as well as address any concerns that he may have with his 360-Degree Review, and point out the positive aspects of his 360-Degree Review, during his second telephone interview with the BGC. Finally, it is unclear how the number of NomCom members that participated in the telephonic versus the written 360-Degree Review supports reconsideration as the results of both are clear in the report, and there is no indication as to who participated in each portion.

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[24] Request, § 3, Pg. 1.
[25] *Id.* at § 3, Pg. 2.
[26] Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g

Mr. Andruff further challenges the BGC's recommendation on the basis that there were an insufficient number of BGC members present for his interviews.[27] This is not a proper basis for reconsideration. There is no requirement mandating a minimum number of BGC members that must be present for the interviews, as there is no requirement that the BGC interview the candidates. Moreover, three of the four voting BGC members that had not recused themselves (those recused did so because they are eligible to be selected by the 2016 NomCom) participated during the first interview, and all four participated during the second interview. Further, all four voting BGC members who did not recuse themselves were present during the BGC meeting in which the BGC made its recommendation for the 2016 NomCom Leadership slate, and all voting Board members, except the three who recused themselves, participated in the Board decision on this matter.[28] Additionally, the same or a similar number of BGC members were present at the interviews of the other candidates. It should further be noted that the number of BGC members present at the interviews is not inconsistent with interviews conducted for the NomCom leadership positions in past years. In all events, the number of BGC members who participated in Mr. Andruff's interviews does not speak to whether the Board acted without material information, or pursuant to false or inaccurate information, and therefore reconsideration is not appropriate on this basis.

Mr. Andruff also states that because he was not informed of the BGC's recommendation until 28 September 2015, just before the Board made its decision, he was deprived of due process because he did not have the opportunity to develop a detailed response for the Board's

[27] *See* Request at § 3, Pg. 2.
[28] *See* Agenda of 27 September 2015 BGC Meeting, *available* at https://www.icann.org/resources/board-material/agenda-bgc-2015-09-27-en; *see also,* Minutes of 27 September 2015, *available at* https://www.icann.org/resources/board-material/minutes-bgc-2015-09-27-en.

consideration. Mr. Andruff states that this seems "procedurally unfair."[29] As noted above, the BGC finalized its recommendation of the 2016 NomCom Leadership slate on 27 September 2015.[30] On that same evening, the BGC Chair asked Mr. Andruff via email to speak with him and another BGC member the following morning. With respect to Mr. Andruff's argument regarding lack of due process and procedural unfairness, there is no requirement that the BGC afford Mr. Andruff the opportunity to respond to the BGC's recommendation before the Board considers the recommendation. Furthermore, even if there was such a process, this is not a proper basis for reconsideration of Board action. Specifically, Mr. Andruff has not demonstrated that the Board failed to consider material information, or considered false or misleading information, in approving the 2016 NomCom Leadership.

B. Mr. Andruff **Has Not Demonstrated A Basis For Reconsideration Of The Board's Appointment Of The 2016 NomCom Chair.**

Mr. Andruff challenges the Board's appointment of the 2016 NomCom Chair on the basis that Board was unaware of the following material facts prior to voting on the 2016 NomCom Chair, because the BGC failed to so inform the Board: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's overall 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity" is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 2015 NomCom Leadership 360-Degree Review cannot adequately provide a true and full representation of the capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's

[29] Request, §3, Pg. 2.
[30] *See* Agenda of 27 September 2015 BGC Meeting, *available* at https://www.icann.org/resources/board-material/agenda-bgc-2015-09-27-en.

2015 NomCom Leadership 360-Degree Review emanated from individuals with a suspect agenda.[31]

Mr. Andruff has not shown: (1) that the cited information would have been material to the Board's decision; (2) that the Board did not consider the information; or (iii) that the Board acted on false or inaccurate information. Instead, most if not all of the bases for reconsideration (as stated in the preceding paragraph) appear to be Mr. Andruff's opinion, and opinions do not serve as a basis for reconsideration because they are not material facts that were not considered, or false or inaccurate facts that were considered.

As discussed in the foregoing section, which addresses all five points, and as stated in the Rationale for Resolution 2015.09.28.12, "the BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2015 NomCom leadership and conducted interviews with candidates before making its recommendations. The Board then considered and agree[d] with the BGC's recommendation for the 2016 NomCom Chair and 2016 NomCom Chair-Elect."[32]

Moreover, as the Board noted that Mr. Andruff had the opportunity to provide the BGC with information that may be material to his candidacy such as his qualification, as well as address any concerns that Mr. Andruff may have with his 360-Degree Review, through his EOI Statement and during the telephone interviews with the BGC. Accordingly, no reconsideration is warranted.

V. Recommendation.

For the reasons set forth above, the BGC concludes that Mr. Andruff has not stated proper grounds for reconsideration, and therefore recommends that Request 15-18 be denied.

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[31] *See* Request, § 8, Pgs. 4-5.

[32] *See* Resolution 2015.09.28.25, *available at* https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.

That said, the BGC does want to take this opportunity to note its appreciation for Mr. Andruff's contribution, commitment, and dedication to the ICANN community and encourages Mr. Andruff to continue his involvement with ICANN. Further, although not required, the BGC recommends that Mr. Andruff be afforded the opportunity to be heard by the Board pursuant to Article IV, Section 2.12 of the ICANN Bylaws before the Board makes its final determination.

1. Main Agenda:

a. Consideration of Reconsideration Request 15-18

Whereas, ICANN's Bylaws require the Board to appoint the Nominating Committee Chair and Chair-Elect.

Whereas, the Board has delegated to the Board Governance Committee (BGC) the responsibility for recommending candidates for the NomCom Chair and Chair Elect for Board approval.

Whereas, on 27 September 2015, the BGC met and approved its recommendation to the Board that Stéphane Van Gelder and Hans Petter Holen be appointed as the 2016 NomCom Chair-Elect, respectively.

Whereas, on 28 September 2015, in Resolution 2015.09.28.25, the Board appointed Stéphane Van Gelder as the 2016 NomCom Chair and Hans Petter Holen as the NomCom Chair-Elect.

Whereas, Reconsideration Request 15-18 challenges BGC's recommendation of the 2016 NomCom Chair and Chair-Elect and the Board's appointment of Stéphane Van Gelder as the 2016 NomCom Chair.

Whereas, the BGC considered the issues raised in Request 15-18 and recommended that Request 15-18 be denied because Mr. Andruff has not stated proper grounds for reconsideration and the Board agrees.

Whereas, Mr. Andruff has had the opportunity to be heard by the Board as part of the Board's consideration of Request 15-18.

Whereas, the Board finds that Mr. Andruff has not demonstrated that the BGC or Board acted without material information or pursuant to false or inaccurate information.

Resolved (2015.10.21.xx), the Board adopts the BGC's Recommendation on Reconsideration Request 15-18, which can be found at https://www.icann.org/en/system/files/files/recommendation-15-18-andruff-18oct15-en.pdf.

Rationale for Resolution 2015.10.21.xx

I. Brief Summary.

Mr. Andruff is the 2015 NomCom Chair-Elect. (See Resolution 2014.10.11.01, available at https://www.icann.org/resources/board-material/resolutions-2014-10-11-en#1.a.) Per ICANN's Bylaws, the BGC recommends, and the Board approves, the NomCom Chair and Chair Elect. (See Bylaws, Article VII, §§ 2.1 and 2.2, available at https://www.icann.org/resources/pages/governance/bylaws-en/#VII; BGC Charter, Art. I, § I, available at https://www.icann.org/resources/pages/charter-06-2012-02-25-en.) After a careful evaluation process, which included review of the candidates' EOI statements, two rounds of interviews, and consideration of the 360-degree review of the 2015 NomCom Leadership (360-Degree Review), the BGC recommended to the Board that Stéphane Van Gelder and Hans Petter Holen be appointed as the 2016 NomCom Chair and Chair-Elect, respectively. On 28 September 2015, the Board appointed Stéphane Van Gelder as the 2016 NomCom Chair and Hans Petter Holen as the 2016 NomCom Chair-Elect. (See Resolution 2015.09.28.25, available at https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.)

Mr. Andruff suggests that the BGC did not make the Board aware of the following material facts, and therefore the Board did not consider them, prior to the Board's appointment of the 2016 NomCom Chair and Chair-Elect: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity"

is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 360-Degree Review cannot adequately provide a true and full representation of the capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's 360-Degree Review emanated from individuals with a "suspect agenda". (Request, § 8, Pgs. 4-5.) Mr. Andruff further suggested that the Board was prevented from considering the foregoing material facts because the BGC did not inform him of its recommendation until the day of the Board meeting, thus depriving him of any reasonable opportunity to prepare a detailed response.

The BGC concluded that Mr. Andruff's claims do not support reconsideration and the Board agrees. As stated in the Rationale for Resolution 2015.09.28.25, "[t]he BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2015 NomCom leadership and conducted interviews with candidates before making its recommendations. The Board then considered and agree[d] with the BGC's recommendation for the 2016 NomCom Chair and 2016 NomCom Chair-Elect." (Resolution 2015.09.28.25, available at https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.) Mr. Andruff did provide the BGC with information relating to his qualifications in his EOI and during the two telephone interviews with the BGC. Mr. Andruff also had the opportunity to respond to any concerns raised in his 360-Degree Review during his second interview with the BGC. With respect to Mr. Andruff's arguments regarding the numbers of BGC members that were present for his interviews and that he was deprived of the opportunity to respond to the BGC's recommendation to the Board, the BGC concluded that Mr. Andruff did not state a basis for reconsideration. Given this, the BGC recommended that Request 15-18 be denied. The Board agrees.

Further, Mr. Andruff was provided the opportunity to address the Board as part of its consideration of Request 15-18. The Board finds that Mr. Andruff did not demonstrate that the BGC or the Board

acted without material information or pursuant to false or inaccurate information.

II. Facts

The BGC's Recommendation on Reconsideration Request 15-18, which sets forth in detail the facts relevant to this matter, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Request 15-18 is available at https://www.icann.org/en/system/files/files/recommendation-15-18-andruff-18oct15-en.pdf and is attached as Exhibit B to the Reference Materials.

III. Issues

In view of the claims set forth in Request 15-18, the issues for reconsideration seem to be whether reconsideration is warranted because the BGC did not make the Board aware of the following material facts, and therefore the Board did not consider them, prior to the Board's appointment of the 2016 NomCom Chair and Chair-Elect: (1) an insufficient number of BGC members were present for Mr. Andruff's interviews; (2) Mr. Andruff's 360-Degree Review rating "cannot justify the 2015 Chair-Elect being passed over as 2016 NomCom Chair"; (3) "lack of cultural sensitivity" is subjective and there is no evidence supporting the notion that Mr. Andruff lacks such "cultural sensitivity"; (4) the 360-Degree Review cannot adequately provide a true and full representation of the capabilities of an individual to serve as a Chair-Elect; and (5) the "negative comments" written in Mr. Andruff's 360-Degree Review emanated from individuals with a "suspect agenda". (Request § 8, Pgs. 4-5.)

IV. The Relevant Standards for Evaluating Reconsideration Requests and the NomCom Chair and Chair-Elect Selection Process.

As Mr. Andruff challenges a Board action he must show that the Board acted without material information or pursuant to false or inaccurate information. (See Bylaws, Art. IV, § 2.2.) ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. (See id. at § 2.) The Board has reviewed and thoroughly considered the BGC Recommendation on Request 15-18 and finds the analysis sound.[1] The NomCom is composed of, among others, a non-voting Chair and non-voting Chair-Elect. Both are appointed by the ICANN Board. (See Bylaws, Art. VII, §§ 2.1 and 2.2.) The Bylaws provide that

> [i]t is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair.

(See id. at § 3.4.)

The Call for EOI for the 2016 NomCom Chair and Chair-Elect sets forth the requisite skills and experience. (See Call for EOI for 2016 NomCom Chair and Chair-Elect, available at https://www.icann.org/news/announcement-2-2015-06-04-en.) Further,

> [w]hile it is anticipated that the 2015 NomCom Chair Elect will become the 2016 NomCom Chair, in support of continuous improvement in its accountability and transparency, the NomCom will evaluate the performance of the current NomCom leadership, and the results of that evaluation will be available to the Board Governance Committee before it makes a recommendation to the full Board on 2016 NomCom

[1] Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

> leadership. These 360-degree reviews will be conducted by an independent third party provider and will consist of interviewing other NomCom leadership, NomCom members, and designated NomCom staff. The BGC will utilize the outcomes of these reviews in their processes leading up to the Board's formal appointment of the 2016 NomCom Chair and Chair-Elect.

(Id.)

V. Analysis and Rationale

The BGC concluded, and the Board agrees, that Mr. Andruff has not demonstrated a basis for reconsideration. As a preliminary matter, the Board notes that Mr. Andruff suggests that the BGC is "meddling in the affairs of the supposedly independent Nominating Committee." (Request, § 7, Pg. 4.) ICANN's Bylaws require the Board to appoint the NomCom Chair and Chair Elect, and the Board has delegated to the BGC the responsibility for recommending candidates for these positions for Board approval. (See BGC Charter, Art. I, § I, available at https://www.icann.org/resources/pages/charter-06-2012-02-25-en.) As such, the actions of the BGC challenged in Reconsideration Request 15-18 are part of the BGC's mandate as set forth in the BGC's Charter, which was approved by the Board on 13 October 2012. (See id.) If Mr. Andruff is challenging the Board's delegation to the BGC of the authority to recommend the NomCom Chair and Chair Elect for Board approval, the time to do so has passed.

With respect to Mr. Andruff's argument that the BGC "chose to overlook [his] exemplary record of sixteen years of service, sound leadership at ICANN, and solid overall marks in [his] 360 Review" and focused instead "on a subset of mean-spirited and targeted attacks on [the Mr. Andruff's] reputation by a few individuals" (Request, § 3, Pg. 1), the BGC concluded, and the Board agrees, that Mr. Andruff has not shown that either the BGC or the Board overlooked his years of service or the positive aspects of the 360-Degree Review. Rather,

Mr. Andruff's EOI statement details his skills, experience, and contribution to the ICANN community, which is information that was considered by the BGC and the Board. (See Resolution 2015.09.28.25, available at https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.g.) Additionally, Mr. Andruff had the opportunity to, and did, provide the BGC with information relating to his qualifications in both telephone interviews with the BGC, as well as address any concerns that he may have with his 360-Degree Review, and point out the positive aspects of his 360-Degree Review, during his second telephone interview with the BGC.

The BGC further concluded that Mr. Andruff's challenge of the BGC's recommendation on the basis that there were an insufficient number of BGC members present for his interviews is not a proper basis for reconsideration. (See Request, § 3, Pg. 2.) The Board agrees. There is no requirement mandating a minimum number of BGC members that must be present for the interviews, as there is no requirement that the BGC interview the candidates. Moreover, three of the four voting BGC members that had not recused themselves (those who recused themselves did so because they are eligible to be selected by the 2016 NomCom) participated during the first interview, and all four participated during the second interview. Further, all four voting BGC members who did not recuse themselves were present during the BGC meeting in which the BGC made its recommendation for the 2016 NomCom Leadership slate, and all voting Board members, except the three who recused themselves, participated in the Board decision on this matter.[2] Additionally, the same or similar number of BGC members were present at the interviews of the other candidates. It should further be noted that the number of BGC members present at the interviews are not inconsistent with the interviews conducted for the NomCom leadership positions in previous years. In all events, the number of BGC members who

[2] *See* Agenda of 27 September 2015 BGC Meeting, *available* at https://www.icann.org/resources/board-material/agenda-bgc-2015-09-27-en; *see also*, Minutes of 27 September 2015, *available at* https://www.icann.org/resources/board-material/minutes-bgc-2015-09-27-en.

participated in Mr. Andruff's interviews does not speak to whether the Board acted without material information, or pursuant to false or inaccurate information, and therefore reconsideration is not appropriate on this basis.

With respect to Mr. Andruff's argument regarding lack of due process and procedural unfairness, there is no requirement that the BGC afford him the opportunity to respond to the BGC's recommendation before the Board considers the recommendation. Furthermore, even if there was such a process, this is not a proper basis for reconsideration of Board action. Specifically, Mr. Andruff has not demonstrated that the Board failed to consider material information, or considered false or misleading information, in approving the 2016 NomCom Leadership. Nevertheless, the BGC recommended, and the Board afforded Mr. Andruff an opportunity to be heard on the matter before making its final determination in this matter.

With respect to Mr. Andruff's claim the Board's appointment of the 2016 NomCom Chair was made without material information, the BGC concluded and the Board agrees, that Mr. Andruff has not shown: (1) that the cited information would have been material to the Board's decision; (2) that the Board did not consider the information; or (iii) that the Board acted on false or inaccurate information. Instead, most if not all of the bases for reconsideration (as stated in the preceding paragraph) appear to be Mr. Andruff's opinion, and opinions do not serve as a basis for reconsideration because they are not material facts that were not considered, or false or inaccurate facts that were considered.

Indeed, as stated in the Rationale for Resolution 2015.09.28.12, "the BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2015 NomCom leadership and conducted interviews with candidates before making its recommendations. The Board then considered and agree[d] with the BGC's recommendation for the 2016 NomCom Chair and 2016 NomCom Chair-Elect." (Resolution 2015.09.28.25, available at https://www.icann.org/resources/board-material/resolutions-2015-

09-28-en#2.g.) As such, Mr. Andruff had the opportunity to provide the BGC with information that may be material to his candidacy such as his qualification, as well as address any concerns that Mr. Andruff may have with his 360-Degree Review, through his EOI Statement and during the telephone interviews with the BGC.

The full BGC Recommendation on Reconsideration Request 15-18, which sets forth the Analysis and Rationale in detail and with which the Board agrees, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Request 15-18 is available at [insert link], and is attached as Exhibit B to the Reference Materials.

VI. Decision

The Board had the opportunity to consider all of the materials submitted by or on behalf of Mr. Andruff (see https://www.icann.org/resources/pages/reconsideration-15-18-ra-2015-10-12-en) or that otherwise relate to Request 15-18. The Board also had the opportunity to hear directly from Mr. Andruff. Following consideration of all relevant information provided, the Board reviewed and has adopted the BGC's Recommendation on Request 15-18, which shall be deemed a part of this Rationale and the full text of which can be found at https://www.icann.org/en/system/files/files/recommendation-15-18-andruff-18oct15-en.pdf.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

b. Any Other Business

Directors and Liaisons,

Attached below please find Notice of date and time for a Regular Meeting of the ICANN Board of Directors.

21 October 2015 – Annual General Meeting of the ICANN Board of Directors - at 12:45 UTC (1:45pm – 3:15pm in Dublin). This Board meeting is estimated to last approximately 90 minutes.

http://www.timeanddate.com/worldclock/fixedtime.html?msg=Regular+Meeting+of+the+ICANN+Board&iso=20151021T1345&p1=78&ah=1&am=30

Some other time zones:
21 October 2015 – 5:45am PDT Los Angeles
21 October 2015 – 8:45am EDT Washington, D.C.
21 October 2015 – 2:45pm CEST Brussels
21 October 2015 – 8:45pm CST Taipei
21 October 2015 – 11:45pm AEDT Sydney

REGULAR MEETING OF THE ICANN BOARD

Consent Agenda:

- TBD (if needed)

Main Agenda

- TBD (if needed)

MATERIALS (if needed) **– Link to BoardVantage Materials**

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

John Jeffrey
General Counsel & Secretary, ICANN
John.Jeffrey@icann.org <John.Jeffrey@icann.org>
<mailto:John.Jeffrey@icann.org <mailto:John.Jeffrey@icann.org> >
+1.310.301.5834 direct
+1.310.404.6001 mobile