

---

**ICANN Transcription**  
**GNSO Drafting Team to Further Develop Guidelines and Principles for the**  
**GNSO's Roles and Obligations as Decisional Participant in the Empowered**  
**Community.**

**Wednesday, 18 September 2019 at 21:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Attendance and recordings of the call is posted on agenda wiki page:

<https://community.icann.org/x/ZYICBw>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page

<http://gns0.icann.org/en/group-activities/calendar>

JULIE BISLAND:

Good morning, good afternoon, good evening, everyone. Welcome to the GNSO drafting team call on Wednesday the 18th of September 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. I don't see anyone only on the audio bridge. Just want to remind everyone to please state your name before speaking for transcription purposes, and please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Heather Forrest. You can begin, Heather.

HEATHER FORREST:

Thanks, Julie Bisland, very much. Welcome, everyone. Here we are very much on the home stretch. You will see that Ariel's put up the agenda for us in the – Ariel or Julie H, both of them in the background, both been working very hard as always. They've got the agenda for us up in the Zoom room, and really not a whole lot here to discuss by way of agenda.

---

*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

---

Our document package right now deals with the removal of directors, 3.1 is the document that we looked at last time, the NomCom director removal, the MCA appointment. 3.2 is a slightly different animal in that it deals with the appointment or the removal, rather, of a director who has been appointed by an SO or an AC. In our case, the unique twist on that means we deal with the directors that are appointed by each of the houses in the GNSO council's bicameral structure, and there are some questions there on what the other house is doing while one house is seeking to remove its director. And 3.3 is the board recall process.

So all of these things having to do with the removal of directors, largely the process is the same. It's the trigger that's different. In other words, who is being removed with some unique features of that.

So we spent our time in the document last time in 3.1. You'll see that our agenda really envisages us working in all three of them in this call in all three documents. I'm not convinced that that's super possible given the length of the documents.

What I would propose that we do, how we utilize our time today is to go through the changes that have been made in 3.1 since our last call, and then go through 3.2 and have a look at some of the comments that Wolf-Ullrich has just added that David and I and Steve added some weeks ago just to remind ourselves of what those are, and then if we're lucky, we're going to wind up with a few minutes at the end of 3.3 just to look at the trigger for the board recall process.

---

Does anyone have any concerns about that agenda, how I propose we attack this? Three pretty big documents ahead of us. Maxim said it's late so he won't be able to use the mic. No problem, Maxim. Thank you for joining us. I'll keep an eye out for comments from you in chat, and happy to read them out.

Okay, no one's objecting to the agenda. That's great. So let's go ahead and before we jump into 3.1, I'll just ask quickly, does anyone have any updates to SOIs? Ariel's got the document link on the screen. I probably should update my SOI. I don't know what the protocol is, but I have been nominated for the role of president of the IPC. For whatever reason, the IPC calls it president not chair. Thanks, Steve. And I suppose because I'm running unopposed, it makes good sense to put that in the SOI. So there you go. I shall do that when we're done with the call.

Thanks, Maxim. Any other updates to SOIs? No? super. And I assume nobody had any Any Other Business. Cool. So you see here on the screen Ariel's put up in the Zoom room the 3.1 document. Remember, 3.1 is the removal of a Nominating Committee director, in other words the director that's been appointed by the NomCom, and here I might lean on Ariel. Ariel, can you take us please through the changes that have been put into the document since our last call?

ARIEL LIANG:

Thanks, Heather. From top to down, you can see the changes I made in redline, and the first part you see is about who can submit the petition, and that was kind of a recommendation from last

---

time, the drafting team's call, language reflected here is from the call.

Then we don't have other additional changes on that page, and then this page is basically – this is not a substantive point. It's just saying when there's a petition that has surpassed the initial review about [council] leadership, the secretariat will inform the petitioner, the [inaudible] director and the chairman of the board about this particular petition, and then invite them to participate in the dialog. It's come out of the simultaneous process, so we just reflected this point here. So it's not really substantive.

And then the substantive change here is about the timeline of when the dialog must take place. The suggestion is the dialog must take place no later than the tenth day into the petition period. Initially, we put 15 days but the feedback was it's way too long, so we reflected this change here. And the paragraph below has some redline changes, but these are not really substantive, it's just editorial basically.

Related to that timeline change, we also may change here – I'll just quickly take you to this timetable. So you can see that we did a tenth day after deadline or dialog to take place, so we redlined it here as well.

Sorry for making us seasick. Let's just go back to page six. And then we have edits of some other content in [inaudible] redline on page six. This basically is to incorporate the point that when the GNSO community is invited to provide feedback on the petition, they should be able to take into consideration the dialog that

---

happens between the Petitioner, the [inaudible] director and chairman of the board. So we incorporated this point here.

And because the deadline for submitting the feedback is the 15th day and the dialog should take place on the on the 10th day or earlier, so they should be able to get access to the transcript and recording.

I see Steve has a hand up. Should I stop here and take questions? Heather, what do you think? Should I go through the rest of the changes now?

STEVE DELBIANCO: I have a question on page six.

ARIEL LIANG: Okay.

STEVE DELBIANCO: Honestly, it might be better – Ariel, if there are questions or comments, to do them page by page rather than jumping. And all I had is this. The paragraph where you changed from the 15 to 10 days, it says all invited parties. There's no way we can find a time for all invited parties. I would just scratch the word “all” so we don't make any promises here that you can only hold the call when everyone who was invited is able to participate. We'll take a critical mass, we'll do our best, but we cannot guarantee all. Thank you.

---

HEATHER FORREST: So Steve, let me jump in – and Ariel, forgive me for jumping in. And Ariel, correct me if I'm wrong. So that's just going to show the disadvantage of jumping in. Steve, as I understand it, there's only four people on the call. It's the person filing the petition, the director, and the chair of the board of directors, or the vice chair. So it's in that previous paragraph.

The GNSO shall invite the director subject to the petition and the chair of the board to a dialog with the Petitioner and the GNSO rep on the EC admin. So it's only four people.

STEVE DELBIANCO: How about the other two in the list? The corporate secretary of ICANN and the GNSO rep on the EC? They're listed in the same paragraph. That's the previous section?

HEATHER FORREST: Correct.

STEVE DELBIANCO: Alright then, for this [inaudible] four.

HEATHER FORREST: And I think it 's the case, Steve, that under the bylaws, we have to have all four.

STEVE DELBIANCO: We do? Alright, thank you.

HEATHER FORREST: Yeah. No worries. Ariel, am I okay? Did I say anything dumb?

ARIEL LIANG: No, [inaudible]. Thank you for bringing this point. And I just wanted to add I don't believe the ICANN corporate secretariat is the crucial party for this dialog. It's probably needed just to coordinate it, but to the crucial members, the four people, it's the Petitioner, the [inaudible] director, the chairman of the board or the vice chair if the chair [inaudible] director, and the GNSO rep on the EC administration. So only these four people.

HEATHER FORREST: Thanks, Ariel. Before you continue, let's turn to David.

DAVID MCAULEY: Heather, hi. I have a question for Ariel, and it's back on page five. Sorry that I didn't raise it when we were on page five. But can you remind me of where the [bidding is?] I printed out the document just this morning to read through, but I'm not sure it's the latest one. We seem to have a problem with Google Docs for some reason.

So my question has to do with, how have we settled the question of whether the individual's petition has to be submitted through an SG or constituency? And if that's the case, have we agreed that that starts the clock of the 21 days? So in Paragraph 4.2.1 for instance, the document that I printed out still says the date when

---

the GNSO council receives a petition marks the beginning of the Nominating Committee director removal petition period.

If we have a process whereby we require people to submit through an SG or constituency, I don't think we can, under the bylaws, enlarge that 21-day period. So I don't think that 21-day period would start when that SG or C delivers it to the council. I think it would start when they receive it. Have we settled that? That's my question. Thank you.

ARIEL LIANG:

I guess Heather probably has input on this too, but the language here is kind of similar to the rejection action that we dealt with earlier, and so I think in terms of who can submit and how they can submit, this language is tentative. That's what we kind of concluded in the last DT meeting, but I think it's still pending confirmation from the DT whether this is what we think is appropriate.

In terms of when the clock starts, based on my personal understanding, I think it will be difficult if the clock starts when the SG or C receives the petition, because we don't know for sure how long it would take them to actually process it and then forward it to the council.

If we start a clock when the SG or C receives it, it will run some kind of risk that [when they] miss the deadline for the dialog and the community input, etc., because really, the petition has only 21 days for the council to make a decision on that, so if the SG and

---

C's internal process takes long, then the council will have little time to react to that.

So my personal understanding is that the clock should start when the council actually receives it. But I don't think the drafting team really discussed this point in detail in the last meeting. I would defer to Heather for further input.

HEATHER FORREST:

Thanks, Ariel. And David, I think where we left it, just to be super clear, is we put in this language of the possibility of both, and asked people to walk away and see what they think about it. And I note that nobody's gone in there and tinkered with it. It could be that nobody's had time really to think about it or forgot, or it could be that people were in there and didn't find it objectionable.

So I think the challenge that we have now, what I would like to do is Ariel hasn't really made much in the way of changes or hasn't made any changes to that particular paragraph in terms of going through the edits. She's going through now, it's why she hasn't highlighted it.

What I think we ought to do is – and I can see Steve's comment in the chat there – if we can have Ariel go through the edits that she has done, and since we're going to come up with exactly this sort of timing/standing question in the 3.2 document, what I think we might do is pick it back up there as we review 3.2, because Wolf-Ullrich has made some comments under 3.2.

I think we come back to it. I realize that parking it is a slightly dangerous thing, because it does have a sort of domino effect,

---

this question. But if you're willing to bear with that, that's my suggestion. Alright. Cool. Thanks, David.

Ariel, back to you. Let's finish up the edits in this document.

ARIEL LIANG:

Thanks, Heather. I've just been [inaudible] in the document. Page seven doesn't have any kind of redline, and the comment here is mainly about the GNSO community feedback period on the 15th day, so the comment you see on the side is kind of resolved now because we have shortened the dialog to take place on the tenth day or earlier. So if you have that leisure time, you can take a look at this comment on the side, but they're resolved.

The next redline is on page eight, so you can see there's the one sentence there being struck, it's basically what the petition notice must include, so what we wrote here is the GNSO first petition notice must include the petition and the rationale for the petition, and then the second is the [council] decision and the rationale for the council decision.

So if you recall previously, we had this conversation whether the council really needs to provide its rationale for the decision even in the bylaws for section 3.1 (c)(i). It doesn't seem it's required, but then we realized when the Petitioner receives support from other decisional participant and when it becomes a supported petition, there must be rationale provided for why it's being supported. So the council cannot really avoid the step of providing a rationale at that point. So with that, it probably would just be efficient to record

---

why the council supports the decision here. And that's why we struck this sentence.

And the same situation applies to rejection action petition too. I see that Steve is doing some live editing of the document. Steve, do you want to just speak to the point you just added? Or I can keep going.

STEVE DELBIANCO: Ariel, I'm just trying to be helpful. I typed the words that you said. The rationale [would be required if a petition were] accepted. You can decide whether to add that or not, but if you had to say that, David's not the only person that would wonder why we were doing it when we didn't have to.

ARIEL LIANG: Good point. Yes, it will be helpful to include why here. So thank you for that suggested language. I'll just keep going. For the next change, I think there's a – this is a comment from Heather. Yeah, it's basically just confirming it's good practice for the GNSO secretariat to post correspondence between the GNSO rep on the EC with other decisional participants just to keep the communication records somewhere so that the confirmation is a good content to include.

Then the next redline is on page ten. That's actually Heather's suggested at phrase here, is the GNSO council meets no later than this day to decide whether to accept or reject this petition. And my comment is we probably don't need this phrase because this table is constructed based on maximum dates, so you can

---

see we have this on the heading here. So that means this action, each of the actions must take place no later than the days indicated in this table. So it's already implied for all these dates here, so I think it would be redundant to include this phrase here. So my suggestion's not to include. And then I'll just keep going. Sorry I'm not keeping track of the chats here.

So the next is a comment from David and me on this point. Actually, I kind of forgot what the gist of the comment, but I think it should be resolved. There is not a lot of controversy here. I'll ask David if you want to speak to that point. And I don't see a hand raised or chat. David, please go ahead.

DAVID MCAULEY:

Okay, thanks. The point I was making here is that the language in bylaws I guess it's 3.1(d)(i) is that whatever the action is – I forget – is within 24 hours of receiving the support. So that can truncate this period of time. So we have to be careful. So that was the nature of my comment. Is that helpful?

ARIEL LIANG:

Yes. Thanks, David, and thank you for reminding me what your concern was. I think we really cannot change this here too much because basically, in the bylaws, the requirement for the other decisional participants to decide whether they support the petition or not is by day 28, and then they don't really have an obligation to decide earlier than Day 28, so we are assuming [inaudible] support or reject a petition by day 28. That's why the bylaw

---

doesn't provide a lot of flexibility in time, and that's why we're kind of stuck with this date, day 28.

I hope I addressed your concern here. It's mainly because of the bylaw requirements. They really have this 24-hour obligation to inform the other decisional participants. David, do you have other comments before I move on to the next redline?

DAVID MCAULEY:

Thanks, Ariel. To be honest with you, I did not prepare this particular section for this call, so I'm doing it on the fly. I do think we have a problem here, and I will look at this again and send a note to list by tomorrow or Friday. The reason – I'll explain it more fully in the note that I send, but I do think we have an issue here and I think we should park it right now and come back to it. I apologize for that.

ARIEL LIANG:

Thank you, David. And sorry for putting you on the spot here. So we can pause this and move on to the next one. So the next is not super minor but is a minor editorial change. It's about the wording here. I see Heather's suggestion is to use immediately and then what I suggested is to put promptly, because we use promptly throughout the document. It's just to kind of imply that the action needs to take place ASAP. So it's a minor editorial change there.

And then the next one is actually about basically the GNSO is [inaudible] the position to potentially become a supporting decisional participant, and so basically, there's a similar GNSO community feedback period whether GNSO would like to support

---

the petition from another decisional participant, so during this process, GNSO community may be able to actually access the recording or transcript of the dialog that happened that's organized by the petitioning decisional participant. So this is the redline that we included here. If the recording and transcript is available from the [inaudible] decisional participant, then it perhaps can be circulated to the GNSO stakeholder groups and constituencies when they're developing their feedback. So that's the redline here.

And thanks for confirming, Steve. So the next part of the redline is basically reflecting the point that I mentioned earlier, is when the GNSO council is making decisions whether to become a supporting decisional participant, it can take into consideration of the dialog that happened in the petitioning decisional participant's part. So basically they can consider whether the dialog has occurred, and if occurred, what are the feedback, views, input exchanged during the dialog. If it hasn't occurred, whether there's reasonable effort made for invited parties to participate in the dialog. So basically, it's to reflect these points here.

Not seeing additional comments or hands raised, I'll just keep going. So these redlines are from Heather. It's about what to include in the notice when the GNSO council – oh, sorry, I will stop here. Steve, please go ahead.

STEVE DELBIANCO:

Ariel, this would just save a lot of text and make it easier to import sections, but in page 12 where we listed whether the dialog between the A, B, C, D has occurred, can we just say required

---

parties? When the dialog between the required parties has occurred, and that way it's more of a general purpose language and it'll be easier to import it where the required parties are different depending upon the action. Thanks.

ARIEL LIANG: Thanks, Steve. Yes, this is a valid point. What I think is it may be better to be precise here because otherwise, we probably should just use "required party" when we first mention all these people. So that's many sections ago.

STEVE DELBIANCO: Yeah. Keep in mind that in the next four bullets, you use the words "invited parties." So I was going to use the shorthand that you're using.

ARIEL LIANG: Okay. So what you're suggesting is to use "required parties" rather than "invited parties."

STEVE DELBIANCO: No. I was saying that instead of listing them all up there, say the word "required parties." But I'm offering it to make life easier for you as you move this from section to section. If you think it's easier for you to keep this explicit list, by all means do. And I did want to point out that you used the words "all invited parties" in the same section, so I thought you would welcome this suggestion. Thanks.

ARIEL LIANG:

Thank you, Steve. I do welcome the suggestion, but it doesn't take a lot of work to spell them out because I think there's only two parts, or three parts – I can't remember – that really specify who the invited or required parties are. But I will consider what you suggest and see what's the most efficient way of making this point in this document. But thank you for that.

I'll just move on to page 13 and the redline you see here is from Heather. It's basically to spell out what should be included in the notice when the GNSO council decides to become a supporting decisional participant. Originally, I thought the contact information of the GNSO representative on the EC administration is not required because that's probably for the petitioning decisional participant to provide. Then I considered Heather's suggestion and I think it probably doesn't hurt to provide a contact person from the GNSO side. So basically, we include everything from section 3.2(d)(I) A to B. So that's just repeating what the bylaw says.

Okay, so now we'll swiftly move on to the next one, and this comment on the side is basically when Heather and I worked on these GNSO community feedback before the Nominating Committee director removal community forum. Heather reviewed the text here and the logic doesn't work as smoothly, so she made some suggestion how to change the order of the paragraphs, and basically, it's me confirming she's right and we make this revision here.

---

So this paragraph is very similar to the paragraph you saw in the rejection action guidelines so it should be almost the same or consistent. So it shouldn't be new to you.

Then the next one is on page 16. This additional language is about when it's for the GNSO council to finally make the decision of whether this Nominating Committee director should be removed or not if the council has not reached a decision regarding the removal, the council will be deemed to have abstained from the supported position. So that's the language from the bylaws, and then we just want to repeat it here to clarify, so that's why we added it here.

Moving on to the motion part, if you see some of these boards and petitions have been highlighted, it's probably a typo in the bylaw that we spotted, because in other areas of the bylaws, it's using petitioning decisional participant rather than Petitioner decisional participant. So when we checked the bylaws, we spotted it and [probably should alert] somebody in Legal just to let them know this is probably a typo to be corrected.

And then this is a new comment from Wolf. I think Wolf is asking what does it mean, "brought," and what does it mean and by whom? It's basically just brought by the Petitioner. So I replied to Wolf's question here. But I'm wondering whether Wolf wants to explain his question and I hope I addressed it.

Looking in the chat, not seeing anything, or hands. I'm sorry about dominating the conversation here. Heather, please jump in. Please feel free to take over.

HEATHER FORREST: Ariel, you've done such a good job. I've sat here and benefited from it. I appreciate that, Ariel. And I didn't mean to put you on the spot to make you do all the heavy lifting. And indeed you've gone through all the changes, not just the ones that were made since the last call. And I think you're doing a brilliant job. I'm more than happy to take over and let you take a breather.

Just help me, Ariel, to identify as we finish going through this any changes that have been made since the last call. Some of the changes are - they predate the last call, but we didn't have a chance to discuss them in the last call. And Maxim has dropped. Bye, Maxim. Nice to have you on and we will see you next time.

Ariel's taken us to the point of the motion, and there's really not - let's say there are a few open questions here that I think are going to have to come back to this business of where the petition comes from or how it gets passed through, but I'm not sure that they necessarily can be resolved yet. I'd like to hear David's comments on 3.2. So this is the line of questioning here that I think we need to come back to, so we'll leave that as unresolved for the moment.

Ariel, if you can scroll us down. I think we'll carry on for the moment. Likewise, yeah, more questions on all those comments are about the past, and then we have the motion to accept. I don't recall that we have any edits there. I think the rest of the motions are pretty clean, which is super unfair because I took over from Ariel exactly at the point where there's nothing left to talk about. Ariel, you've done an amazing job. Thank you.

---

Anyone concerned with the thought that we jumped directly into document 3.2, which is the SO/AC board removal and handle some of our outstanding substantive concerns there? No. Cool. David says no. Alright, thanks.

So Ariel, if you could drive us to 3.2, I think that would be brilliant. Excellent. Thanks very much. And Wolf-Ullrich's been in the document. Thank you very much, Wolf-Ullrich.

The introduction is largely the same. We've got the fabulous graphic, and David's going to go to the car to get the cell phone, he'll be out for a moment. That's fine, we'll just do our introductory stuff here. And Ariel has ported across all of the sort of very basic changes that went through – I think before we even had our first call on 3.1, I know David and I – and maybe Steve – made some pretty basic editorial type comments in 3.1, so they've already been dragged across amongst which the heading on this chart you see here, bylaws completed and additional proposed steps.

David's [added the words,] the GNSO and/or the GNSO council in reflecting the bylaws there in terms of the council is, while we have action of the GNSO, based on the work of the bylaws drafting team which a number of you are on, those actions are manifested through council. Ariel, I think you can scroll us down. I'm not sure where the next comment is. Petitioning. That's right. We've got quite a bit of language here.

So now we're back to the eligibility point. You'll note here that we have the same sort of question in relation to, for a lack of a better word, standing. Ariel has pointed out the language in the bylaws does not have the word or use the word "petitioning." There's this

---

idea of the applicable decisional participant which we've used as a definitional here.

And it simply says – I've advised that as Ariel and Julie work on these documents, where we get a bit flummoxed, I think it's best to go ahead and quote the bylaws directly rather than try and paraphrase them, because I think the wording in the bylaws is so precise that any attempt to try and paraphrase could get us into trouble. So I think it's useful here that we quote Annex D section 3.2(a), subject to the procedures and requirements developed by the applicable decisional participant, an individual may submit a petition to the ASO, ccNSO, GNSO or At-Large community seeking to remove a director who was nominated by the supporting organization or the At-Large community.

I suppose I had contemplated here that that quote could then be reflected in the more specific by referring just to the GNSO as opposed to the supporting organization or so on in the paragraph that follows. So I think Ariel, we don't need your comment because I think we've already done it. We've actually quoted directly 3.2(a), so I think that's good, and then here's this question of how it gets submitted or to whom it gets submitted. And what we have here is such an individual must admit his or her petition meeting requirements to the council directly if the GNSO deems that the petition has met the requirements and so on. So this is the original language. I would like to know if David's back on. David, have we brought you back from your car? Yes. Super. Wonderful.

David, help us out with this standing point. I'm keen to hear your thoughts, and I've had some further thoughts about this as well. My initial thought, if I just give an introduction to where my head is

---

---

at, I raised a concern early on in 3.1 and I said, how is an individual going to know how to contact the GNSO secretariat directly? I understand that let's say the SG and C leaders know how to do that because that's something that they would do in their role, but a random individual, how would they do that? And I've started to wonder, and that's what put me down the path partly of, do they have to do it through the SG or C? Because that would be the person that they know to contact.

I wonder if this can also be handled maybe something that sits in the parking lot for the council in our covering note by somehow including on the GNSO website some sort of instruction for the rest of the world, not just SG and C leaders that says if you want to do any of these actions under the bylaws, here's the address of the GNSO secretariat. And maybe that's helpful. And maybe that gets rid of, in my mind, thinking that it has to pass through the SG or C and that gets us into trouble if there's an option.

David, over to you. Where's your head at at the moment?

DAVID MCAULEY:

Thank you, Heather. It's a difficult area as we were sort of alluding to when we were talking about 3.1. I like your idea that there should be an address and a well publicized address that someone can write to if an individual in a community who's not part of the GNSO wants to challenge the further standing of someone on the board that was nominated and put there by the GNSO. That seems to me to make sense and be consistent with the use of the word "individual" in the bylaws, because at the end of the day, we're stuck with the bylaws language.

---

But the other option is, as we've mentioned, to submit through a stakeholder group or a constituency. that's more difficult when the individual's not part of the GNSO. But if we did something like that, to me, the bylaws basically say an individual can submit a petition to a decisional participant. And that starts a clock of 21 days. The bylaws also say the decisional participant can decide how this is going to be done. They can set up a procedure to do it.

But it doesn't forgive the clock. For instance, in the former discussions, Steve was asking me, well, that doesn't make sense, how do we know that the SG will pass it along? But if you look at it from the other side, it doesn't make sense. If the decisional participant could create a procedure or could invoke a procedure that lets a petition be submitted to a subsidiary group, a subset of the GNSO, what's to prevent them saying "Take 100 days to sort this out." That's exactly not what the bylaws want. When a director's challenged, they want a quick and to the point – at least in theory – adjudication.

So my thinking is we have to live with the word "individual." We have the right to create processes. We can create a mailbox for direct application to the GNSO secretariat. But whatever we do, we need to keep our eye on the clock. So I think we have reasonable discretion to fiddle around here, but my concern is the clock that's ticking in the background.

As soon as the petition's submitted to whomever it's submitted, in my view, that starts the clock. Thanks.

---

HEATHER FORREST: Thanks, David. Steve, over to you.

STEVE DELBIANCO: Thanks, David. I'll do the counterargument because I believe that bylaws are saying the clock starts when the EC decisional participant receives the petition, not when a subgroup does. And it does allow the individual to go direct to the decisional participant, GNSO. If a registry member wanted to run it through the Registries Stakeholder Group, she might ask the Registries Stakeholder Group, "We need you to put this in right away, and if there's any question about whether the Registries Stakeholder Group would approve that and submit it to council," she says, "Never mind, I'll go direct." But you can't start the clock before council sees it, and she has a way to go around the stakeholder group and go direct to council.

I would say to you that if we came up with rules here, we can do all the rules we want for council, but we have very limited ability in this group to come up with rules to tell the Registries Stakeholder Group how to conduct its business, how to pass through petitions. And forget about telling the Noncommercial Stakeholder Group how to pass through anything.

So David, we can't bind the subsidiary parts of GNSO. We can in fact come up with procedures for council. So I think we have to stick with council.

HEATHER FORREST: Thanks, Steve. Glad I'm on mute, I had a good giggle at the relevant point. David, what's your thoughts here?

---

DAVID MCAULEY: Well, I don't agree with Steve. I certainly appreciate his argument and I think it's a good one. I think there's probably some ambiguity here, but I read 3.1 A and B as follows; that an individual can submit a petition to a decisional participant. That's the operative language.

It also says that this can be subject to procedures that the decisional participant develops, but if they're the ones developing the procedures for delivery, the delivery is when someone complies with what they've created as a process. And then [D] says during the period beginning on the date that the decisional participant received the Nominating Committee petition.

If the decisional participant's role is deliver the petition to this person or this group, and the Petitioner delivers it to that group, in my view, it starts the clock. I just don't agree with Steve on this one. So it would be nice if we could find out – I don't know if there's any grand authority that can tell us, but we have to, in my view, sort this one out.

HEATHER FORREST: Ariel, over to you, and after Ariel, I'll make some comments as well.

ARIEL LIANG: Thanks, Heather and David and Steve. Just one [inaudible] for me is that if we do have two routes for a Petitioner to submit their petitions, then one route is directly to the council, the other is

---

through an SG or C, but if we do start a clock when the petition is received at the SG and C level, that kind of leaves the council a shorter period of time to process the petition when it's finally sent to the council.

So it seems like these two routes will have two different time periods. Basically, the Petitioner will have – the council will have longer time to process the petition when it's directly submitted to it. But once people figure that out, they probably wouldn't even bother using the SG and C route. So it just seems not equal if we start a clock when SG and C receives it. That's my thoughts so far.

HEATHER FORREST:

Thanks, Ariel. I think that both Steve and David have made a good point, and I could see both sides. I think where I'm sitting at the moment – and this is a pretty significant change of headspace for me because I think I initially was really concerned about [inaudible] individual and how it goes through and how they contact secretariat and so on.

I think to Steve's point about we can't make rules for the other SGs and Cs, Steve, let's say I agree with that, but I also think that at the end of the day, the bylaws say that this thing has to go to the SO. Now, we can have a definitional argument about what the GNSO is and does the GNSO constitute one of its constituent parts or what.

For the purposes of the earlier discussion that we had, we said it's council that has to carry out these responsibilities of the EC admin

---

decisional participant. So I'm inclined to change my earlier view and say I really think that at the end of the day, it's council that's on the stick, so while we cannot let's say force an SG or C to do a particular thing, what we can do is at a general, we can require them to comply with whatever timeline or whatever actions – we can say that they can't obfuscate the role that council has to fulfill here, and they can't delay the role that council has to fulfill.

So I'm not – given that the bylaws expressly say that this thing has to go to the GNSO, I'm not convinced the clock starts when it goes to the SG or C. So I think what we can do is say – maybe I'm putting this in the conceptual parking lot of when we get together with the SG or Cs in Cancun and say, “Look, here's the package of guidelines that we prepared for council that set out what council has to do and what, if you like, the GNSO has to do to fulfill its responsibilities,” what I think we're then saying in Cancun is “And here, SG or Cs, is the stuff that you're going to have to get your ducks in a row on so that council can comply with all of this stuff.

So I think we highlight this for the SG or Cs and say “If you receive a petition, it needs to be – to use the language that we've used here – promptly passed on.” Because I do agree with David's point, I don't think we can set up some sort of process or mechanism whereby an SG or C can sit on, delay, reject or so on one of these petitions. If a particular stakeholder group or constituency wants to put in a petition as a group, that's fine, and in the making of that, saying when it goes to council, I think that's what starts the clock.

And Steve said “Won't the obfuscation likely be that the SG or C do not agree with the individual? That could take several days to

---

determine, after which the individual goes direct.” Practically speaking, the individual would submit [their petition to the] e-mail list. They’d have several days to debate about it. And I think the point would be that the clock doesn’t start to run until the thing goes to council. Yeah, and you agree with that. David, what’s your thoughts about that? Let’s say it doesn’t even have to be the whole SG, suppose several members get together of a particular SG or C, they want to debate this, and they do that however they do that, formally, informally. Do you agree David that the clock starts when the thing goes to council?

DAVID MCAULEY:

Not in the way that we’re discussing it now, Heather, I don’t. And believe me, I want to be on the side of Steve on this because I’m a member of the Registries Stakeholder Group and I know that we within the GNSO – and especially within the Registries Stakeholder Group have our procedures and I want to honor them. I’m a solid card carrying member of that group. So I don’t really like what I’m saying.

But when I read article 3 and annex D, I still come up with the fact that what that says is – and I’m not going to read the introductory language first – is an individual may submit a petition to a decisional participant seeking to remove a director. And the way that they do it is subject to procedures and requirements developed by the decisional participant.

Well, the bylaws require the decisional participant either in my view to accept it now or to come up with some procedures and requirements around this. This is a new right under the bylaws,

---

and so preexisting procedures that the Registries Stakeholder Group has or the GNSO have may not address this. This is a new right that individuals have under the bylaws and they're going to want to be able to exercise these rights.

So then the next section says during the periods of the date when the decisional participant received the petition, the clock starts. Well, the applicant or the Petitioner is going to argue, well, you created the procedure that required me to deliver this to an SG. So you're the one that decided that's where I have to put it, so that's when the clock starts. You told me to deliver it to X, I delivered it to X, that's it. The clock starts. It's subject to the procedures and requirements developed by you.

So my point is this is explicit in the bylaws, it's new as of 2016, it's an important right, so if an SG takes five days to deal with this, the Petitioner may say that's truncated everything.

Anyway, I'm not convinced. And I'm happy to be in the minority. If we move the other way, I'm not going to create a ruckus or anything, but that's the way I see it.

HEATHER FORREST: Thanks, Steve. Two things here. One – and I probably made it as clear as mud – my thinking is we need to go back to the original language that it has to be submitted to the council directly. And that maybe gets us out of this trouble.

My next suggestion is this; what I'd like to do is Julie and Ariel, can you help us, please, with setting up a Doodle? Let's set up a small group to discuss this point, because I'm super mindful.

---

We're a minute out now. We haven't sorted this out. We've got some questions in here about the house stuff that we're going to need to address as well. so I'm afraid given our super tight timetable, I know everyone's kind of mentally done with this thing, but we have to continue our push here to get these three documents done before we can turn it over to council.

So Julie is going to help us with a Doodle. We're going to set up a call, an extraordinary meeting if you like. Let's start off with this question of standing or – not so much standing. I think we all agreed about the individual. It's when the clock starts and how it gets there. And then I also want to look at the trigger for let's say what the other house is doing. While house A is trying to remove its director, what role does house B have in all of that? So Julie's going to help us with that.

We're at the top of the hour. There is some more that we have to handle in this document. I'm really sorry to impose on everyone, but if you are able to – A, if you're keen on this discussion on how it happens, I think it's really good to have you on there, which is why I'd like to do a Doodle rather than just mandate a call time.

So let's go from there. My very sincere apologies for cutting everyone short. And Julie's asked the question, who wants to be on the small group? To the extent that everyone can, I'm going to implore on the list that everyone try and join because I think it's an important point, or as many as possible. And if you've got multiple reps from your side, if at least one can attend, I think that would be brilliant.

---

So, great. Super. Thanks, everyone. Sorry to cut us short. Julie B, thanks very much for your backend help. Ariel, fantastic work on taking us through the changes. Julie, thanks for your help with the notes in the background.

Let's wind up the call and we'll focus our energies on sharpening sticks, as it were, for the call on the stuff remaining. Thanks very much, everybody. Have a very good day. Bye.

JULIE BISLAND: Thanks, Heather. Thanks, everyone. Have a good rest of your day or night. You can disconnect your lines. Thank you.

**[END OF TRANSCRIPTION]**