

**GNSO – ICANN Sydney Meeting  
GNSO Open Working session  
By-laws Discussions  
20 June at 09:00 local time**

**Note:** The following is the output of transcribing at the By-Law discussions Meeting held in Sydney on Saturday 20 June 2009 at 09:00 Local time. 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.

>>AVRI DORIA: Please find your seats. We're going to try and start this in a minute or two.

Okay. Good morning. We're going to start the first of our two days of meetings. My name is Avri Doria. I'm chairing the GNSO Council meetings.

One of the things that I've been questioning myself about is the going around and everyone giving their names at the beginning. I think it's a good idea, and then I realized that half of the people that will be here later in the day aren't necessarily here now. However, having thought about it and realizing why change what we do, I'd like to ask people to first go around the table, introduce yourself, and give your affiliation, just so we have that, and then I want to remind everyone that as we talk throughout the day, to please reintroduce yourself, or at least give your name and such, so that the record of people speaking can show it.

So Marilyn, can I ask you to start with introducing yourself?

>>MARILYN CADE: I'd be happy to, Avri. My name is Marilyn Cade. I am a member of the broader business community.

>>CLAUDIO DIGANGI: My name is Claudio DiGangi. I work on staff with the International Trademark Association. We're a member of the IPC.

>>ALEXANDER SCHUBERT: My name is Alexander Schubert. I am CEO of dotGAY LLC and I will apply for dot gay.

>>GREG RUTH: Greg Ruth, ISPCP constituency.

>>TONY HOLMES: Tony Holmes. Chair of the ISPCP constituency.

>>TONY HARRIS: I am Tony Harris with the ISP constituency.

>>KRISTINA ROSETTE: Kristina Rosette, IPC.

>>JIM BASKIN: Jim Baskin, from Verizon.

>>OLGA CAVALLI: Hi. My name is Olga Cavalli. I'm a NomCom appointee in the GNSO. I come from Buenos Aires.

>>JEFF NEUMAN: Jeff Neuman with NeuStar with the gTLD registries constituency.

>>MARIKA KONINGS: Marika Konings, ICANN staff.

>>TIM RUIZ: Tim Ruiz with GoDaddy and the registrars constituency.

>>DAN HALLORAN: Dan Halloran with ICANN staff.

>>CHUCK GOMES: Chuck Gomes with VeriSign and the registry constituency.

>>AVRI DORIA: Avri Doria, a NomCom appointee.

>>EDMON CHUNG: Edmon Chung, dot Asia, registry constituency.

>>ZAHID JAMIL: Zahid Jamil, BC constituency, business constituency.

>>MIKE RODENBAUGH: Mike Rodenbaugh, business constituency.

>>PHILIP SHEPPARD: Philip Sheppard with the business constituency.

>>MARGIE MILAM: Margie Milam, ICANN staff.

>>LIZ GASSTER: Liz Gasster, ICANN policy staff.

>>ALAN GREENBERG: Alan Greenberg, liaison from the ALAC.

>>TERRY DAVIS: Terry Davis, NomCom appointee.

>>ERIC BRUNNER-WILLIAMS: Eric Brunner-Williams, CORE.

>>LIZ WILLIAMS: Liz Williams -- no relation -- business constituency, and I'm a member of the nominating committee.

>>WERNER STAUB: Werner Staub from CORE.

>>AVRI DORIA: I'd like the people that are sitting in the chairs there to take that standup microphone and just sort of pass it around. You don't have all to go queue.

>>ROB HOGGARTH: Rob Hoggarth, ICANN staff.

>>KEN BOUR: Ken Bour, also ICANN staff.

>>JULIE HEDLUND: Julie Hedlund, ICANN staff.

>>PETTER RINDFORTH: Petter Rindforth, FICPI, member of the IPC.

>>MICHAEL YOUNG: Michael Young, Afiliias.

>>ALAIN BIDRON: Alain Bidron, France Telecom and ETNO, member of ISPCP.

>>FRED FELMAN: Fred Felman, MarkMonitor.

>>FAISAL SHAH: Faisal Shah, MarkMonitor.

>>BYRON HENDERSON: Byron Henderson, dot travel.

>>CHINT LIYANAGE: Chint Liyanage, Ph.D. student at La Trobe University.

>>TOM DALE: Tom Dale, Barton Dale Consulting.

>>ROD RASMUSSEN: Rod Rasmussen with InternetIdentity and here with the anti-phishing working group.

>>JAMES BLADEL: James Bladel, GoDaddy.

>>BOB HUTCHINSON: Bob Hutchinson from Dynamic Ventures.

>>SCOTT PINZON: Scott Pinzon, ICANN staff.

>>JARKKO RUUSKA: Jarkko Ruuska, Nokia.

>>RITVA SIREN: Ritva Siren, consultant.

>>KAREN NORTHEY: Karen Northey, BT.

>>AVRI DORIA: Okay. I guess that's the end of it. Do we have anybody on the phone?

>>STEVE METALITZ: Yes, this is Steve Metalitz from Washington with the intellectual property constituency.

>>AVRI DORIA: Oh, welcome, Steve. Anyone else on the phone? Okay. As is the case in the past, and it's an open meeting and people are allowed to speak other than just in the council. What I'll normally -- what I've normally done is looked at people's hands and I can do that around the table, but honestly I cannot see a third of the people, at least, that are over there [indicating], so I'd really suggest that if we have people that are in those side seats that are going to want to speak, they should just queue at the mic, so that I know, because otherwise I just won't know.

So sorry about asking people to queue, such an EITF thing to ask people to do, but still...

Okay. What I wanted to do first is just go through the agenda. It's been -- for the first two days. It's sort of been gelling over the last couple days. It's shifted around a couple times. I think what's up here on the board is the current, so for today, we're going to start out with the bylaw discussions, and essentially what I've asked Margie to do and will switch on the screens later is to take that merged set of bylaw changes which have the last ones that we worked on in the committee-of-the-whole team, and was merged with the ones that were received from legal counsel, and just go through them and try to walk through the changes and try to accept them as we go through.

You'll notice at the end of the second of -- of tomorrow, there's another chunk of time cut out for bylaws discussions. If we don't finish today, or if there are any controversial issues today, what my approach are be is to get the people that are in discussion about them to sort of talk to each other over the next day or two and see if we can't come back to those tomorrow to get them decided, because one of the things we do want to do is try and take a vote on recommending these changes to the board on Wednesday, if we can.

Then 11:00 to 12:30 is set aside to talk about the IRT report. There will be IRT members certainly from the council and others in the room to talk through it. I guess some staff hopefully will be here, too, that are -- can explain to us what's happening with it in terms of the DAG.

Then 12:30 to 2:00, there's a lunch session on GNSO scope and consensus policy, and basically this is the result of -- I had had a couple questions, both from new council members over time and also from others of what exactly -- please explain what's in scope and what's not in scope and how do we know. And so I had asked staff for some help in sort of laying that out, and this presentation is the result of that request.

So I don't know if this is the first time it's being given, but it's one of the early times, so it's both a refresher course for those of us that think we know, and for those who truly know it's a chance to review the course.

And of course if you have no idea goes it's a really good place to start.

Then from 2:00 to 3:30, we come back and talk about progress on resolution of over-archdiocese issues.

Then there's a discussion on geographical names at the first and second level. We've -- most people are probably aware of the letters to the GAC and the response and such.

Then there be a session on ongoing gTLD activities, including updates to DAG2 which Kurt will be giving, and then at the end of the day,

there was a travel drafting team, face-to-face meeting with ICANN staff, and like the rest of the meetings, it's open but it won't be a council meeting. It will be a travel team meeting.

And that's today.

Now let me go to tomorrow. And those will be all in this room. Basically, it was considered that most people would want to be here for most of these discussions, and nobody really wanted to schedule a parallel meeting.

Okay. So then tomorrow there's an early morning session which will be the inter-registrar transfer policy Part B brainstorming session, so that will essentially be a -- I guess at the moment there's still a team -- the charter for them is scheduled for Wednesday.

9:30, policy process Steering Committee discussion which is one of the sub-teams. Or, no, that's actually the whole committee will have a meeting, and that will be chaired by Jeff.

>>JEFF NEUMAN: Yes.

>>AVRI DORIA: Then there's the PPSC policy development process work team, which is one of the sub-teams of the PPSC, will have a meeting.

Now, on -- you'll see that there's basically two -- there will be parallel sessions and maybe it would have been better, actually, if I'd brought up the other -- hold on a sec.

Well, that's okay, I'll go through it. This is in one room.

Then in this room also, there will be preparation for the GAC, ccNSO, ACSO, and Board meeting. Basically a working lunch where we go through the agendas and the plans for those joint meetings. Then the PPSC working group work team meets after lunch. Then we come back to the GNSO Council restructuring, specifically the bylaws, and if we're finished with the bylaws, perhaps any other issues, see if we can get some update on what's going on with steering group charters and constituency charters and such as that.

Then there's the GNSO/GAC meeting planned where specifically the topics of names at the second level is what's -- but basically there are issues there.

And then there's the board, staff, and council dinner.

Parallel to that, there will be, at 9:30 in the morning, the IDN group, followed by the operations Steering Committee communications coordinations work team, chaired by Mason. Then a working lunch. Yes.

>>MIKE RODENBAUGH: Is this -- is there an Adobe connector at this

meeting? Southbound is asking me?

>>AVRI DORIA: I don't -- I think it could be.

>>MIKE RODENBAUGH: They said the URL is not working.

>>AVRI DORIA: Okay. We didn't actually specifically set one up for this meeting.

>>MIKE RODENBAUGH: Okay. Thanks.

>>AVRI DORIA: And we didn't prepare any documents to be put in it because although we could possibly think about setting up one for -- not for this first session, but for the ones when we have Kurt's presentations, maybe that will be useful, if we can. I -- I don't know how hard it is to set those up, but I didn't ask in advance.

So there's the OSC, GNSO Council operations work team chaired by Ray, and then after that, there's the constituency operations work team chaired by Olga. And those will be parallel sessions on Function Room 2 level.

So those are the two days. I'm not going to go through the agenda for the rest of the week at this point. It is all posted. We'll try to keep to those.

Now, I just got a request from the -- what was it? The board participation committee. I'm not sure I have the name right. That wanted to find a time to come in and talk to us about documents being ready two weeks early issue and get our take on it and such.

I'm not exactly sure where I'm going to fit that in, but there's a request to try and fit in them coming and talking to us at some point, so when I figure that out, I'll let people know.

>>PHILIP SHEPPARD: (Speaker is off microphone).

>>AVRI DORIA: Exactly. You know, I made that point. And I was very ashamed of myself, so thank you.

>>AVRI DORIA: Sure, I don't mind. So that's it for the schedule. Any questions on the schedule? I'm not going to go through the rest of it. Yes.

>>KRISTINA ROSETTE: Our open council meeting, if I remember correctly, is scheduled at the same time as the board public participation committee, and if it would be at all possible to perhaps coordinate with the folks who are leading that, so that whatever breaks we have may allow some of us to kind of pop over for five or 10 minutes, I think that would be appreciated.

>>AVRI DORIA: Okay. This is Wednesday?

>>KRISTINA ROSETTE: Yes.

>>AVRI DORIA: Okay. I'll look at that and see what -- okay.

So in which case what we should probably do now is go to the -- switch from my machine, which I guess was "B" to Margie's, which I goes is -- I don't know. Either "A" or "C." Okay. To her machine. Sorry, I didn't know whether it was "A" or "C," so I don't know if I asked the right letter.

Okay. While we're getting that set up, first of all, I want to thank everybody on that committee. We had meetings every week. We did a lot of work in between.

It's this one, yeah. I don't know if she's ready yet.

And we came to, I think, a lot of agreements. I mean, a lot of them were sort of helped along by the board's SIC helping us or making their decisions, but -- so -- and then I'm very appreciative of legal counsel also being willing to do an edit pass through it, so that we knew that what we were doing was correct. Are we ready?

>>MARGIE MILAM: Yeah.

>>AVRI DORIA: One thing I'll recommend before we see that up there is that any of their changes, the legal changes that were essentially cosmetic, should just be approved, and that we not worry about those, but I'd like to walk through each of the changes as we go through.

>>MARGIE MILAM: (Speaker is off microphone).

>>AVRI DORIA: The previous one was bigger.

Okay. So the first set of changes, I guess they deleted having the proposed bylaws there, which is quite reasonable and just actually talked about articles, so that was a deletion that seemed to make sense.

And then after that, most of the changes I had, the first set were all formatting changes, and people, please let me know if I'm wrong.

The first substantive change I had was in E, Point E down the page, so you can actually just go through and accept as we go through.

And please let me know if any of the formatting changes, and if I miss a --

>>MARGIE MILAM: (Speaker is off microphone).

>>AVRI DORIA: Yeah. The first substantive change was a change --

and it was really not all that substantive. Okay. There is basically changing "NomCom" to "nominating committee." That change happened a number of times and I'm suggesting that those -- is there any objection to accepting that change all the way through? I wouldn't think there would be.

>>PHILIP SHEPPARD: Avri, I'm not objecting to that. I've just noticed what's probably just a typo we've missed. On the very first point 1 of Article X, a number of constituencies doesn't quite make sense. I think there's a, if any, that doesn't need to be there.

>>AVRI DORIA: Okay. So basically going to Point 1.

>>PHILIP SHEPPARD: Article X1.

>>AVRI DORIA: Right. Article 10A, a number of constituencies, if any, which should have had another comma if we were having the clause, organized within the stakeholder groups.

Now, I think at this point before actually deleting it, it was to not presuppose -- yeah, the comma definitely needed to be there if the phrase is there at all, and I thought that this "if any" was to not necessarily preclude in the bylaws at this point a single constituency identified with a stakeholder group.

I don't know if we want to remove that, but I suggest -- I mean, I'm understanding you to suggest we remove the "if any" clause. Correct?

>>PHILIP SHEPPARD: Yes.

>>AVRI DORIA: I'm wondering if there's any discussion or concern with that. I mean, because there were some of the constituencies, as I understood, were perhaps arguing for an identity between constituency and stakeholder group. Yes, Chuck.

>>CHUCK GOMES: Thanks, Avri. Chuck Gomes.

Yeah, the -- and we may not know the full answer in terms of how to handle this until we get feedback from the structural improvements committee with regard to constituencies and constituency roles within the stakeholder groups, et cetera. I think there is the possibility that there may be stakeholder groups that at some various times may not have any constituencies.

I'm not sure that that's precluded if we remove dot -- "if any," but my leaning would be to leave it there.

>>AVRI DORIA: Alan and then Tony.

>>ALAN GREENBERG: The way I read that is if you -- if the "if any" were to be exercised, that would mean the GNSO has no constituencies,

not a particular stakeholder group. So --

>>AVRI DORIA: Oh.

>>ALAN GREENBERG: -- since there's probably no chance of that, you could delete it. That's the only way I can read that semantically.

>>PHILIP SHEPPARD: Me too.

>>AVRI DORIA: Okay. Thank you. Tony?

>>TONY HOLMES: I didn't read it the same way as Alan, and maybe that needs some discussion, but I would support Chuck. I think at this time, I wouldn't support removing that. I'd rather leave the words in there.

>>AVRI DORIA: Philip, you still have your mic on. Are you willing to leave it? Does it matter? I mean...

>>PHILIP SHEPPARD: Well, it doesn't make grammatical sense or logical sense to me but, I mean, you know, if that's how we want to start, then let's carry on.

>>AVRI DORIA: Thank you. Okay.

>>MARGIE MILAM: So leave it?

>>AVRI DORIA: Leave it. Thank you.

But the comma belongs there. Certainly grammatically the comma belonged there. I think it makes grammatical sense.

Okay. So then the next one was an addition and is back at E.

So we've accepted the "nominating committee" as opposed to "NomCom" and is there any objection to accepting that everywhere we run into it?

I didn't think there would be.

Okay. The next one was a parenthetical "as described in Section 5 of this article" and then a link to be added.

Any objection to that parenthetical phrase?

Okay.

Then let me see. The next one was the -- was in the next line, correct? There was a comment entered on that one, on the "no."

And the comment read: "Should the following limitation be included: No more than one officer, director, employer of a particular

corporation or other organization including its subsidiaries or affiliates shall serve on the GNSO Council at any given time."

And that was a question. Would someone like to talk to that recommended addition? Yeah.

>>DAN HALLORAN: So this is something that Sam Eisner and I have worked -- Sam Eisner, I don't know if you know her, is a new addition to the ICANN legal team and she and I worked on some comments to these bylaws, and she suggested this comment. She noticed that it was in the old bylaws or the current bylaws, but it seemed to be missing here and we didn't know if that was intentional or -- but it -- so it was just a suggestion to look at that again and see if you want to keep that rule or if you intentionally were getting rid of it.

>>AVRI DORIA: Thank you. Any comments? Yes, Marilyn.

>>MARILYN CADE: Thank you, Avri. Marilyn Cade. I'm -- I just -- it was in the old bylaws and it was, I think, considered very important when we first included that, but my -- and I think it definitely needs to remain, but I thought -- and this would be a question for legal staff -- it's not just any individual representative. It is also any individual entity, is it not?

Because we would not, for instance, want my company, mCADE LLC, a micro-enterprise, to be able to hold multiple seats, nor would we want other corporations or other groups to be able to hold multiple seats.

So I think just to ask the question of the legal team, that it would be no individual representative and no single entities -- now, I'm not -- you know, because otherwise we're going to have the thing we tried to avoid from the beginning, and that is capture by having an entity or organization be able to hold multiple seats.

>>AVRI DORIA: I -- Marilyn, I'm not sure I understood what you meant. That -- how is entity -- it says, "Of any particular corporation or other organization including "-- oh, you understand? Because I didn't understand this, so thanks.

>>DAN HALLORAN: I think Marilyn is just agreeing with what we were suggesting, which is, why did you get rid of that provision.

>>AVRI DORIA: Oh.

>>DAN HALLORAN: Maybe, Margie, if you could import the comment from the provision and put it in like a bracket, so everyone could see what we're talking about. If you go to it, what is it, page layout, view or something? You can see the comments.

>>AVRI DORIA: Yes, Tim, while that's happening.

>>TIM RUIZ: I think to me, the difference is, is that -- it depends on how the membership of a particular constituency or stakeholder group is constructed, so I think the text that's being suggested is probably important, because I could see situations where it could be kind of gotten around. If the membership is based on -- on an entity or an organization, then we still need to have that -- that language as far as an individual goes, who may be -- or individuals who may be from the same company or organization.

So I -- I agree with Marilyn but I also agree with the language that's being suggested. We need to have it covered both ways.

>>AVRI DORIA: Okay. Thank you. I guess it's because I'm not a lawyer. I don't understand what Marilyn's language adds to what's already there, and it's -- perhaps I'm not the only one understanding it, but...

>>MARILYN CADE: Avri, could I just clarify? I wasn't so much proposing language as I was trying to clarify the intent and make sure that it addressed the concern that I was raising.

>>AVRI DORIA: Okay. And does this address that concern? Because I thought it did. I thought this was sufficiently inclusive. Kristina, you were going to comment.

>>KRISTINA ROSETTE: I'm good.

>>AVRI DORIA: Oh, okay. Yes, Dan.

>>DAN HALLORAN: So I think Marilyn is saying the language she's looking at in the screen doesn't but the comments does.

>>AVRI DORIA: Oh, the comment, okay.

>>DAN HALLORAN: The current bylaws says if GoDaddy were also an IPC, it couldn't have two GoDaddy reps on the council.

>>AVRI DORIA: I understand. And the language that you're suggesting here would suggest that?

>>DAN HALLORAN: Yes.

>>MARGIE MILAM: (Speaker is off microphone).

>>AVRI DORIA: Yes, I guess I could see it because I was -- there it is. It's down in the bottom there. No more than one officer, director -- I'll read it from my screen. No more than one officer, director, or employee of any particular corporation or other organization, including its subsidiaries and affiliates shall serve in the GNSO Council at any given time.

Does anyone object to re- -- yes, Tim.

>>TIM RUIZ: No, I don't object to that. I just -- and maybe it's speculating hairs, but using GoDaddy as an example, you know, it may not be an employee, director, or officer. It could be a consultant or someone else that's representing them. And so through that process, that entity could still end up having more than one seat on the council. So I'm just saying it's not -- you know, it can't be just one way or the other. I think it needs to say both.

>>AVRI DORIA: Okay.

>>TIM RUIZ: Both the -- because the language that's being suggested, no more than one officer, director, that's fine. But then I think the current language that says "no individual representative," I think it's -- you know --

>>AVRI DORIA: Oh, yeah. No -- yeah.

>>TIM RUIZ: That needs to stay in some form in order to make it work in both ways.

>>AVRI DORIA: Okay. It's, again, me playing philosophical, as opposed to lawyer, so I'm not quite understanding. That seemed to be totally different. That seemed to be talking about the same person being in two places at the same time, as opposed to a company's representatives, and your thing that you were mentioning would seem to need the addition of "no more than one officer, director, employee, or consultant for a company should be" -- would seem to be what would need to cover your issue. If you want to go beyond employee. You know, or employee full versus -- I don't know. But that --

So first of all, on the other question, does anybody object to adding this sentence back in?

Okay. So please -- have you -- yeah. Add that one in. So that would be a sentence before that. Before this one. You should just be able to cut and paste. But no, type it. Please. Don't let me stop you.

>>MARGIE MILAM: (Speaker is off microphone).

>>AVRI DORIA: Employee or consultant -- I'm not sure "or consultant" actually covers it exactly, but --

>>PHILIP SHEPPARD: Probably agent or representative would be better, in this context.

>>AVRI DORIA: Okay. Thank you. I knew there had to be a proper way of saying it.

>>PHILIP SHEPPARD: Agent I think sounds plausibly legalistic.

>>MARGIE MILAM: So instead of "consultant," you want "agent"?

>>PHILIP SHEPPARD: "Agent," yeah.

>>AVRI DORIA: Please. Yes.

>>JEFF NEUMAN: I hate to extend this conversation because it's --

>>AVRI DORIA: Please make sure you give your name.

>>JEFF NEUMAN: In U.S. law, agent -- consultants usually have a contract that specifically say they are not an agent of the company. So you have both words in there. A consultant is not an agent in U.S. law.

>>AVRI DORIA: Okay. So then put both words in. As I say...

>>CHUCK GOMES: Remember to give your name when you talk.

>>AVRI DORIA: Thank you. And I would also like to remind everyone to use the mike when you speak because partially the folks doing the transcribing can't hear and also because it is being streamed.

Okay. So the next one is then -- okay. So "no more than one officer, director, employee, agent or employee or consultant."

>>MARGIE MILAM: All right, got it.

>>AVRI DORIA: And then the next comment was -- okay -- was on the GNSO Council is as diverse as possible and practical -- practicable. Is that just a change of word "practical" to "practicable"? Is "practicable" is a word?

>>JEFF NEUMAN: It is a legal word.

>>AVRI DORIA: It is a legal word? Okay. And it means what "practical" means?

>>JEFF NEUMAN: Practical.

>>AVRI DORIA: Okay. Thank you. Any objection to putting in "practicable" for "practical"? Okay. And then it went on, "including considerations of" was a -- let me see. I'm trying to figure out the exact change here. Can you make that one wide again? I'm sorry.

>>MARGIE MILAM: That's fine.

>>AVRI DORIA: Sometimes that format helps to understand the change better than the format I'm using. So "including considerations of" is

an addition there. That seems to be just a -- is there any issue with accepting that change? Okay.

Moving on. The next one there was a change in language and it read "there may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and Advisory Committees from time to time," then the deleted "who shall not be members or entitled to vote to make and to second motions or to serve as an officer in the GNSO Council but otherwise shall be entitled to participate on an equal footing."

And that was deleted and what was added was, "The appointing organization shall delegate, revoke or change the delegation of the liaison on the GNSO Council by providing written notice." Okay, "by providing written notice to the chair of the GNSO Council and to the ICANN secretary, liaisons shall not be members of or entitled to vote, to make or second motions" -- make -- "to make and"?

>>CHUCK GOMES: Something is confusing.

>>AVRI DORIA: The "and to" is deleted "or to serve as an officer in the GNSO Council. Otherwise, liaison shall be entitled to participate on equal footing with members of the GNSO Council." So there was a rewording. Yes, Kristina?

>>KRISTINA ROSETTE: I have a question whether or not we are intending the appointing organization shall not only have the ability to designate, revoke or change, da-ta-da, or that they may do so by providing written notice. If that's what we mean, then we need to stick a "and" in there.

>>AVRI DORIA: I think that's what we meant. I think we meant the "and."

>>CHUCK GOMES: Don't we need an "or" there instead of -- "and to" should be "or to?"

>>AVRI DORIA: "Or to second motions." Is that correct? An "or" would be fine. So we accept the deletion, and we accept the addition. Except that we have to add in the addition, if I understand, "the appointing organization shall" -- oh, no. So "shall designate, revoke or change" was okay, Kristina?

>>KRISTINA ROSETTE: Yeah.

>>AVRI DORIA: Okay. Then we accept that deletion. And please, if I say we accept or are rejecting something and I got it wrong, shout out before it actually happens.

This was really just --

>>KRISTINA ROSETTE: (Speaker off microphone).

>>AVRI DORIA: Yeah. The following deletion there is -- yes?

>>KRISTINA ROSETTE: But what you want to do is in the sentence that starts with "the appointing organization," what you want to do is after the word "council" insert "and shall do so" by providing written notice, blah, blah, blah, blah.

>>AVRI DORIA: Okay, thank you.

Okay. We're inserting "on the GNSO Council" -- please give the wording again, Kristina.

>>KRISTINA ROSETTE: Sure. After "on the GNSO Council," earlier on in that line, you want to insert "and shall do so by." You already have a "by" there, but...

>>AVRI DORIA: Okay. And then you can accept the rest of that addition and the deletion afterwards. Okay. And you can accept that one also.

>>DAN HALLORAN: Dan Halloran from staff. Now you got two "shall's" there so it sounds like there's two obligations. And I think the first one isn't really an obligation, like the appointing organization is not obligated to change its designation.

>>AVRI DORIA: That's a "may."

>>DAN HALLORAN: The whole idea of the sentence was to say if they are going to do it, they should do it by providing notice to the council and the secretary.

>>AVRI DORIA: So that would be a "may," right?

>>KRISTINA ROSETTE: That was my original question. Do we agree it's both or just one?

>>DAN HALLORAN: I agree it needs to be cleared up, but I wouldn't put both "shall's."

>>AVRI DORIA: The first "shall" should return to a "may"; is that what you're saying? Confused.

>>DAN HALLORAN: The organization does have to designate -- when it represents its representatives, it has to do by in writing to the council and the secretary. That's the whole idea of this sentence.

>>AVRI DORIA: So the second "shall" is not needed, you're saying?

>>DAN HALLORAN: I don't think it is needed.

>>AVRI DORIA: You are fine with removing it?

>>KRISTINA ROSETTE: Yeah. If it is only intended to accomplish that one purpose, then absolutely, that was my original question.

>>AVRI DORIA: Okay, sorry, I didn't understand.

>>MARGIE MILAM: Shall I make the "shall" a "may" and make the "may" a "and do so"?

>>AVRI DORIA: No, no, it would just be "by providing." It would go back to the original language.

>>PHILIP SHEPPARD: Avri, before we leave that, we have not gotten at the beginning of that sentence that we are designating a designation, which seems a little bit tautologist.

>>AVRI DORIA: So revoke or change?

>>PHILIP SHEPPARD: We probably don't need "designation." Don't we just mean the liaison? The appointment of its liaisons? The selection of its liaisons?

>>AVRI DORIA: So delete the "the" and the "of." Yeah, thank you.

Okay. The next one we had was the addition of an "and" in 2. Subject to the provisions of transition, Article 20 and Section 5 of these bylaws. Any objection to the addition of that "and"?

>>DAN HALLORAN: Sorry, Avri. We need to insert an "or" between "make second." You missed one line up.

>>AVRI DORIA: Oh, okay. We said that but then -- yeah, okay. Thanks. Probably want to save it where you are doing it.

>>MARGIE MILAM: I will clean up formatting later. I just want to get the words.

>>AVRI DORIA: The next one, as I said, was in 2 and is an addition of an "and." Any opposition to the "and"? Okay, 2, accept.

Going down. The next set seem to be all format -- formatting. We get to, in which case -- it is the paragraph that starts "in special circumstances such as but not limited to meeting geographical or other diversity requirements defined in the stakeholder group charters where no alternative representative is available to serve. No councilmember may be selected to serve more than two consecutive terms," and then, "in which case a councilmember would serve one additional term." Oh, comma. "In which case a council member may serve one additional term," and that would be an addition there.

Yes, Marilyn?

>>MARILYN CADE: Sorry. That might answer my question. My question was, so in the past when we've had -- say, for instance, someone leaves, there are still a few months left on their term --

>>AVRI DORIA: That's in the next sentence. "For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term."

Any objection, though, to the "in which case, a council member may serve one additional term" being the additional phrase there?

>>STEVE METALITZ: Avri, this is Steve Metalitz. Might I suggest you may want to say "in such a special circumstance" because it is not clear what you are referring to with "in which case."

>>AVRI DORIA: Okay, any objection to that change? Okay. Thank you. Okay.

Then the next change was one sentence later. "A former council member is," the word added was "former." It had been just "a council member who has served two consecutive terms must remain." But, of course, at that point, they are not a council member. They're a former council member so the addition of the word "former." Any objection to that word?

Okay. Then the next section, next change is in Section 3. And this is -- is this all just formatting? Trying to figure out what was the change here. This is an addition? Okay.

So the added language is "a vacancy on the GNSO Council shall be deemed to exist in the case of a death, resignation or removal of any member. Vacancy shall be filled for the unexpired term by the appropriate Nominating Committee or stakeholder group that selected the member, holding the position before the vacancy occurred by giving ICANN's secretary written notice of its selection.

"Any objection to the addition of that sentence? Okay, thank you.

Sorry, Alan.

>>ALAN GREENBERG: Not an objection, just a question of what does it mean? In general, a Nominating Committee ceases to exist once its makes its appointments, doesn't it?

>>AVRI DORIA: No. I believe the Nominating Committee stays in effect for filling interim positions. It doesn't do anything if there aren't any, but it does remain in seating until there is another one. And then --

>>ALAN GREENBERG: Okay.

>>AVRI DORIA: Yes?

>>JEFF NEUMAN: Again --

>>AVRI DORIA: Name.

>>JEFF NEUMAN: I just had a conversation with Dan. I think in this instance and maybe in some other ones, I'm just kind of wondering why it is the ICANN secretary as opposed to the GNSO secretariat. Why is this something that rises to the level of an officer of ICANN that you need to send written notice to them as opposed to just making it less formal?

>>AVRI DORIA: Dan?

>>DAN HALLORAN: Yeah, I think it is kind of a global issue. Probably in a lot of places it says "ICANN secretary." I don't know that it hurts, but I think you might also want to say GNSO secretariat. I don't know that the ICANN secretary needs to know every time one constituency is changing a rep or something.

>>JEFF NEUMAN: This is Jeff Neuman. What it probably was is just someone copied from the bylaws for the board and just cut and pasted here. There are similar provisions in the ICANN board bylaws.

>>AVRI DORIA: So you're recommending that it be changed to the GNSO secretariat?

>>JEFF NEUMAN: Yeah. I don't know of an instance where any of these changes should be the ICANN secretary. It should be just be GNSO secretariat. Okay.

>>AVRI DORIA: Okay, thank. You, any objection? Sort of accept that is as a global change for these things as they come through. Point out any others if you see them.

Procedures. Okay, the next change is "procedures for handling stakeholder group appointed GNSO council member vacancies. Resignations and removals are prescribed in the application stakeholder group charter." And then delete "or Nominating Committee charter approved by the board." Okay. Any objection to that change?

Okay. Moving on. Then we have a paragraph on -- an added paragraph on, "A GNSO council member selected by the Nominating Committee may be removed for cause, stated by 3/4 vote" -- okay. I'm losing it reading it too far away.

A GNSO Council member selected by the Nominating Committee may be removed for cause stated by a 3/4 vote of this article of all members

of the GNSO Council."

Now, that one is problematic given the -- other than sentence structure, the bicameral issues. So that one is a problematic addition. It should be 3/4 vote of both houses.

>>LIZ WILLIAMS: Avri, it's Liz. I just wanted to -- what's the problem you are trying to solve on that paragraph?

>>AVRI DORIA: That paragraph is there --

>>LIZ WILLIAMS: Sorry. Just can I finish?

>>AVRI DORIA: Sorry.

>>LIZ WILLIAMS: There are two concepts to me that I think are not self-evident. One is the notion of for cause. Anyone who is outside of a normal operating environment, in a legal sense, would not understand what "for cause" was. So the general users of these provisions are ordinary people who don't rely on legal terms. So an explanation of what "for cause" does in the conversation would be helpful.

And then the reason why it sticks out for me is the Nominating Committee provisions here -- so is it a thing that needs to revert back to the Nominating Committee because if a Nominating Committee member is removed, then are you asking the Nominating Committee to appoint another person? If that's the case, then how? Because this does have transitional questions associated with it. So it reads really badly, first of all.

And then -- so the way to fix that is what's the question we want to solve? And then do it in simple language.

>>AVRI DORIA: Okay. I think the question that needs to be solved is how to remove a Nominating Committee-appointed person.

I think once that Nominating Committee person is removed, the second question, it reverts to that previous paragraph that says if one is removed, if one dies, if one for any other reason doesn't continue, the Nominating Committee is asked to provide another person which has happened in the past.

I mean, I was a Nominating Committee person that was put in by a Nominating Committee midterm because someone got elected to the board, so it happens. So that would be the how you remove them.

The how you put them back in was already covered. That doesn't answer, though, what does "for cause" mean.

>>TONY HARRIS: Just a question. I think if you modify this and put

in "of both houses," wouldn't that mean that each of the two houses have to have -- has to have 3/4 votes?

>>AVRI DORIA: Yeah.

>>TONY HARRIS: So you are not considering the whole --

>>AVRI DORIA: That other clause of both houses -- of the whole council -- "of all members of the GNSO Council" would have to come out.

>>TONY HARRIS: So, in other words, one house might have 100% approval to request this and the other one could block it effectively?

>>AVRI DORIA: Yeah, right.

>>TONY HARRIS: Okay. Just so I understand. Thank you.

>>AVRI DORIA: It is putting a high barrier to getting rid of someone. I had Tim and then Jeff and then Alan.

>>TIM RUIZ: I don't recall that we discussed what happens if -- the Nominating Committee appointee that's being removed was assigned to one of the houses and has a vote. So if that vote is removed, then we've kind of imbalanced the houses and how do we deal with that until the new appointee is selected?

>>AVRI DORIA: That would be a different issue, yeah. Okay. Jeff?

>>MARGIE MILAM: You could probably clarify that by having the vote exclude the person --

>>AVRI DORIA: There was two questions. One of them, yes, it would exclude that person. But I think the point was being made, is that once that Nominating Committee person is out of that house, then a balancing vote -- the purpose that it served inside the house was a balancing vote. That balancing vote is now gone and how does that affect anything else was, I think, the question. And that's hard. Okay.

Now I had Jeff, then Alan, then Dan.

>>JEFF NEUMAN: So I think you might want to think about that issue that Tony had raised. If a Nominating Committee member is assigned to one house and 100% of that house wants to get rid of that person because they are just doing an awful job, not showing up, for whatever reason "for cause" is, how that's defined, the other house can gain that and say, "I like the person giving them hell" and vote for it. There is some gaming that could be done there.

I'm not sure if 100% of one house wants the person that's assigned to that house out for cause, I think that should have some weight -- I am

not sure the other house should even have a say in that. I'm just saying think about it because there could be some repercussions there we're not addressing.

>>AVRI DORIA: Yeah. I think, though, it could happen both ways. The gaming could happen in either direction.

>>JEFF NEUMAN: Right, sure. A house could gang up and say, "We don't like that guy or gal" --

>>AVRI DORIA: Disagreeing with us.

>>JEFF NEUMAN: -- "because they are disagreeing with us." I think you need to think about it. If there is really a for-cause --

>>ALAN GREENBERG: (Speaker off microphone).

>>JEFF NEUMAN: The second point is if there is for-cause. This subject to approval by ICANN board, I would add "which may not be unreasonably be withheld." I don't like these blanket approval-by-board statements and then just no accountability for that. I think that they should not unreasonably withhold any kind of approval like this.

>>AVRI DORIA: The question I would ask is, "unreasonable withheld" is as difficult to define as "for cause."

>>JEFF NEUMAN: It is a standard. It is a recognized standard.

>>AVRI DORIA: Okay, thank you. Alan?

>>ALAN GREENBERG: A couple of things. Regarding Tim's statement that if the person is removed and things are unbalanced, we can't stop people from dying so those situations happen on occasion and I think we have to live with it.

In terms of for-cause, I'm the one who originally put that in in the committee whenever it was, a year and a half ago or something. It was put in because it gave the board the ability to say "the house is ganging up on that person because they don't particularly like them and, therefore, they are trying to remove them without a real business cause and was left undefined very specifically for that reason, essentially giving the board ratification -- the ability to reverse the removal if they didn't feel there was valid -- a valid case against the person.

So I like the way it's worded right now. It gives the board the ability of stopping capricious action. On the other hand, it says the council can act.

>>AVRI DORIA: Are you objecting, therefore, to the addition of

"which can't be reasonably withheld"? Because your example seems like it would fit into a reasonable withholding?

>>ALAN GREENBERG: If a board decision saying that house or council is acting capriciously because the person is objecting to what they say but not acting out of bounds, we're now changing the definition of "for cause" with the definition of "reasonably withheld." I don't think it makes much difference either way.

>>AVRI DORIA: You wanted to respond directly to his response?

>>TIM RUIZ: Not really respond, just clarify. That's true. And I think that's why we need to maybe address that question at some point because it does have an impact. It changes the threshold, basically. If there is a vote missing, for whatever reason, death, removal, whatever --

>>AVRI DORIA: But it is not really a case with this particular --

>>TIM RUIZ: We don't have to necessarily address it here, but we should say something.

>>MARGIE MILAM: Can I say something? "Unreasonably withheld" seems a little weird in the context of a board approval. They have got their fiduciary duties, whatever standards typically under corporate law apply, and I don't know how that works when you have written in the bylaws that it cannot be unreasonably withheld. They will do what they need to do to exercise their fiduciary duties and you wouldn't want this to get in the way of that.

>>AVRI DORIA: Dan, you were next in the queue.

>>DAN HALLORAN: Few points. One I agree with Margie on that. Jeff, I understand your point. That's more when you are negotiating a contract between two parties. You want to stick that in to make it clear that they can't just arbitrarily or for bad reasons withhold it. There are all kinds of places in the bylaws where it says -- something is subject to approval by the board or subject to approval by the council, and they are sort of internal actions and you kind of presume they are acting in good faith and following their own bylaws.

So I don't think it is a huge deal, but I think it is kind of unnecessary there. So the main things I want to first say this isn't a new thing. This is in the current bylaws. You can already remove a NomCom appointee for cause. We were just suggesting you might want to stick it back in or check if you were taking it out on purpose.

I would agree you would have to change it to do the houses, but I think it should be -- you already talked about this. I think it should be the vote of each house and then make sure you get rid of the thing about "all members of the council." Just to clean up that thing, put

it in brackets or something.

>>CHUCK GOMES: A simple way to do it is maybe to move "of both houses" down to that other section "of all members of both houses."

>>DAN HALLORAN: You want to make sure you don't lump everybody together and have one vote.

>>MARGIE MILAM: "Of each house"?

>>AVRI DORIA: Yeah.

Liz? Sorry. You are not finished. Sorry.

>>DAN HALLORAN: The "each" you need is one line up. There you go.

>>MARGIE MILAM: You don't want me to move it?

>>AVRI DORIA: "Of each house of the GNSO Council."

>>DAN HALLORAN: I would get rid of "of all members" just to avoid confusion.

>>AVRI DORIA: Okay. Thank you. Liz?

>>LIZ WILLIAMS: Just a question for Dan, in a sense, but also how this would actually happen in practice is the Nominating Committee appointees are appointed for a year.

>> Two years.

>>LIZ WILLIAMS: And they're swapping houses?

>>AVRI DORIA: No. The way it's said here -- what's being asked is that the -- and this is not this year's Nominating Committee but a future Nominating Committee will appoint specifically to a house or to homelessness.

[Laughter]

I'm sorry. I will continue calling it that.

>>LIZ WILLIAMS: I was just trying to work out whether this problem could be solved by time rather than a bylaw change. But if it is a two-year time frame, it is too long so there is sufficient time for misbehavior or death or destruction or whatever to have a significant negative effect on the group and it is not resolved by time. If there was a rotation --

>>AVRI DORIA: There is no rotation. Basically, what's --

>>LIZ WILLIAMS: You are still stuck.

>>AVRI DORIA: What's been recommended is that a Nominating Committee -- that the Nominating Committee specifically appoints -- that's one of the changes that was accepted by the group a while back, that specific appointment to a specific house or to lack of house.

>>LIZ WILLIAMS: So then the change that you've just made about each house is actually very important so that each house has the choice.

>>AVRI DORIA: Of approving the change.

>>LIZ WILLIAMS: Yeah.

>>AVRI DORIA: Yeah. I'm going through. I have Liz. I've got Philip, Kristina, Chuck, Zahid.

>>PHILIP SHEPPARD: Thanks. It's on this point about the barrier for removal. I thought that when we first addressed this -- we are really looking at the logic of the relevant house taking a vote in terms of the relevant Nominating Committee representative. And now we're clarifying that indeed the studies state Nominating Committee will be appointing to one house, the other house and then homelessness.

It would make sense, would it not, for the relevant house -- for the housed Nominating Committee people to take that vote and the other house to be silent on that and for the whole council to take a vote for the homeless Nominating Committee --

>>AVRI DORIA: It is hardly to be dispossessed if you are homeless.

>>PHILIP SHEPPARD: But it makes sense. That's the relevant body to whom they are attached. That would seem to be the logic we would want to follow given the designation of nominating people to houses.

>>AVRI DORIA: I will put you back in the queue, Alan.

>>ALAN GREENBERG: It is just a clarification of his.

>>AVRI DORIA: Okay, clarification.

>>ALAN GREENBERG: When you say a vote of whole council for the homeless council, do you mean a single vote or a weighted vote? We avoided single votes --

>>AVRI DORIA: I assumed he meant of both houses.

>>ALAN GREENBERG: Okay.

>>AVRI DORIA: I think, by and large, the people on the council always mean both houses when they are talking about a whole council

vote. That's sort have been my assumption all the way through. When we have gone bicameral, there isn't a vote that's cameral. I have Kristina.

>>KRISTINA ROSETTE: I was just going to suggest because I understand the concern that Margie and Dan have raised, if whether you could put some kind of temporal requirement in there for board action because obviously if the person's performance has been problematic enough that there is a vote to remove them, that whole process is essentially rendered moot if the board doesn't get to it for several months.

I realize that, of course, you can't mandate very specific time frames, but to the extent that we could be a little bit more precise and impose promptly or something like that, I don't know, Jeff, would that solve your concern?

>>JEFF NEUMAN: Yeah, that would help. I just don't know how that fits in with board meetings and things, right?

>>KRISTINA ROSETTE: I know. That's why I was --

>>JEFF NEUMAN: Yeah. You're right. That's going to be a good amount of time -- there is no immediacy. I don't know if there is an emergency board -- Dan, is there a way for board to make emergency action by e-mail? I don't know.

>>DAN HALLORAN: You could just put in "as promptly as feasible."

>>AVRI DORIA: "In a timely manner"? What was your phrase?

>>DAN HALLORAN: "In a timely manner" would be fine.

>>AVRI DORIA: Okay, subject to approval by the board in a timely manner. Let me go through the queue. Chuck?

>>CHUCK GOMES: I'm coming back to what Jeff commented on, and I think Philip was addressing the same thing. It seems to me that there is some value in letting the house that's impacted for a voting Nominating Committee appointee to make the decision rather than both houses.

Now, in the case of the non-voting rep, that's where you definitely need a vote of both houses. But I don't know, is there -- do people agree with that, that maybe it would be better to -- for the voting NomCom reps? Let the house -- and have a high threshold, but the house that makes -- that is impacted by it can make that decision without the other house. To me that seems reasonable.

>>AVRI DORIA: Okay. What I'd like to ask -- and I'll go through the queue. I've got Zahid and then I've got Alan. I'd like to ask people that if they object to making the changes as recommended by Philip, you

know, get in the queue. Otherwise, you know, we can change the phrasing and think about how the phrasing would go.

>>TIM RUIZ: (Speaker is off microphone).

>>AVRI DORIA: I'll put you down. Sorry, I didn't have you. I have now Zahid, Alan, Tim. Did I have another hand? Go ahead.

>>ZAHID JAMIL: Yeah. I'm just trying to get clarification on why did we need to put in subject to approval by the ICANN board? Is that something that traditionally is done or what was the reason for putting that in there?

>>AVRI DORIA: I believe it was put in there -- I think somebody mentioned it earlier -- oh, it was Alan -- Alan, why don't you answer? You're the next one in the queue anyway.

>>ALAN GREENBERG: My memory may be failing me, but my recollection is that the July group last year decided to do it to say NomCom appointees on the house can be removed by a 75% vote of that house, and I requested that the board approval be put in -- or at least supported it -- to make sure that it wasn't capricious action.

So I do believe if we go back to the report we did a year ago, we'll find out that at that point we did say "of one house." I happen to like the two houses better, but my recollection is we added the board approval to make sure it wasn't capricious action of one house.

>>ZAHID JAMIL: So I think I'm -- what I'm understanding is that this is not some -- this is not a power that the board has on its own. This is a power that we are sort of, as a council, giving -- in the bylaws giving to them, saying, okay, if supposing we do go ahead and remove someone who is a NomCom appointee, then please could you take the final action in this case.

Then coming back to what Jeff said earlier, there's nothing to bar us imposing or suggesting procedures for the board to follow. So if we say, you know -- use the language say they cannot unreasonably withhold that, it's possible to do that. There's nothing barring it. And secondly, there should be a time limit, as well as Kristina said. So I'm -- you know, I'm not completely -- either in my situation, we take out the board approval altogether or put in a mechanism where things become very clear.

>>AVRI DORIA: Okay. Thank you. I've got Tim and then Mike.

>>TIM RUIZ: Just a question and then I'll comment on the change that we've been talking about, but if in this transition period or this time period between when the vote takes place to remove the NomCom appointee and when the board approves it, during that time frame is it assumed then that the NomCom appointee would continue to have voting rights

within that house until confirmed -- the removal's confirmed by the board?

I think that should probably be clear, so there's no -- it doesn't become an issue.

And then secondly, just, you know, we were talking about whether one house should be able to approve it or it would take both houses and about the gaming. You know, I think that works both ways. I can't see a situation where a house would likely block the removal of an NCA, just simply because it wouldn't be a good move politically, or however you want to put it.

So I don't really see the need for it to be both houses. But if we're going to go that route, then I certainly don't understand why we have to have the board approve it.

>>AVRI DORIA: I've got Mike and then what I'm going to suggest doing is that we stop this discussion and I'm going to look for a couple volunteers to go and re-craft this one a little so that we can come back to it tomorrow afternoon but go ahead, Mike.

>>MIKE RODENBAUGH: Yeah. I mean, just re-reiterating the point I think Zahid was trying to make which is that today the board has no role in the election of councillors or in removing councillors. Why are we now adding in a board approval to removing a councillor? It's just complicating things in my mind.

>>AVRI DORIA: Okay. So can I have a couple of volunteers that will get themselves together and sit down over coffee and re-craft the paragraph and send it out hopefully by the end of today?

I've got Alan, I've got Olga -- okay. Thank you, Tim. I've got Alan, Olga. Anyone else from -- Margie will sit with them. Okay. And see if you can't -- I mean, you've heard everybody's comments. See if you can craft something that meets them and we'll talk about that one again Sunday. But keep going through about --

>>CHUCK GOMES: Yeah. So they need to get it done before Sunday.

>>AVRI DORIA: Right. So if you could get it done, you know, hopefully during coffee breaks or whatever, today, tonight, and then so that we have it to look at during the day tomorrow. And Avri, are we clear, the changes we're going to try to make is making it a house decision for the housed nominating committee and getting rid of the board approval section? Is that --

>>AVRI DORIA: Those were two of the strong sentiments, but the people part- --

>>PHILIP SHEPPARD: That's the consensus we're --

>>AVRI DORIA: Well, I don't know.

>>PHILIP SHEPPARD: -- reaching without objection?

>>AVRI DORIA: You should probably participate in the group and helping reach that consensus, if you want to help make sure that viewpoint is represented.

>>PHILIP SHEPPARD: I thought that was the direction of the change. I wanted a clarification on that.

>>JEFF NEUMAN: With one addition, right? And that is, if it's the one that is not -- is homeless, then it would be both houses.

>>AVRI DORIA: Yeah, right.

>>PHILIP SHEPPARD: Yes, yes.

>>AVRI DORIA: Right. I think there's still discussion on the board.

>>PHILIP SHEPPARD: I think we're there.

>>AVRI DORIA: I think people that feel strongly about this, having heard the discussions, should work together and bring back something.

Okay. Let's try and -- we got about 10 more minutes. Let's see if we can hit some more of these. This one...

Okay. So this one gets marked for further work, and four, we still had --

>>MARGIE MILAM: We're still waiting on that one, right.

>>AVRI DORIA: Well, I'm not quite sure. Are we waiting on the SAC for that one or are we sending it to the board with the placeholder? I believe we're sending it to the board with the placeholder and then the board will deal with the placeholder. Is that a correct assumption?

>>STEVE METALITZ: Avri, could I get in the queue on this.

>>AVRI DORIA: Please. Go ahead. You've got the head of the queue.

>>STEVE METALITZ: Thank you. I just wanted to point out that however -- if the council is going to vote on these amendments, it should do so in a provisional motion or something like that, because we really should be approving ultimately a comprehensive set of amendments, and there are two places, at least, in these amendments where we're waiting for a decision by the board.

This is one of them, and the other one is in the last section of the

transition article, Paragraph D, dealing with noncommercial representation. And it's the clear sentiment of our constituency that we should not be approving or giving final approval to bylaws until the board acts on those two issues, both of which, in our view, were fundamental to the whole restructuring plan.

This one and the question of noncommercial representation.

So I just wanted to get that on the record that -- that any action that the council takes, depending on how the motion is fashioned, it should be some type of provisional approval because we really should be voting ultimately on comprehensive amendments.

>>AVRI DORIA: Well, actually, we don't actually have approval of bylaws. We just have recommended changes to bylaws. Approval of bylaws is actually something that the board does, not us.

So --

>>STEVE METALITZ: You were talking about having a motion --

>>AVRI DORIA: Right. We have a motion making our recommendation for changes. And --

>>STEVE METALITZ: Our view from the IPC is that we should not be recommending changes except on a provisional basis. You know, we could say this is fine as far as it goes, but there are two issues on which, at least as of now, we are waiting for a decision from the board, and until we get a decision from the board, which may or may not have been delegated to the SIC, we shouldn't be approving the full set of amendments. Or shouldn't be recommending, I should say, the full set of amendments.

>>AVRI DORIA: Okay. Well, that's something that I think will probably come out in the vote for the motion. And I -- you know, the -- there basically isn't a -- is a motion which will have this text, and that -- that's something that can come out in the motion, and we also discussed the notion of putting forward amendments that we would vote on before -- for the motion, if that was necessary.

Did I have any hands on this one? I've got Alan. Okay. Alan, go ahead.

>>ALAN GREENBERG: Although I agree in theory with what Steve is saying, my recollection is on this particular item, the board said since we don't have the board review completed and we don't know if there's going to be one seat or two, and if there's only one seat, the discussion is rather moot, let's wait until we know.

But that discussion -- that decision may take a long time to be made. Another year or two. And we can't necessarily wait for it.

I think we should be putting something in there saying assuming there are two seats, then this is what we would like to see, and if it revert -- if it goes back to one -- if a decision is made for only one seat, we're back to square one and have to have a talk about it.

>>AVRI DORIA: Okay. Yes, Philip?

>>PHILIP SHEPPARD: Regardless of the outcome of Alan has described, I think it's still the case that as Steve describes, we would be wise, at best, to make the provisional nature of any vote we take clear, because we haven't seen the full text and if it takes six years later to see the full text, then fine. That's the board's decision. But I think we should still make it clear that we're not approving something that we haven't seen.

>>AVRI DORIA: Okay. But then I -- I'm having trouble understanding exactly how we would do that. I mean, one possibility is to not make a recommendation on 4, and basically to remove 4, have an amendment to say, "Remove 4 from the proposed bylaws and just not send any recommended language on that," and then also if, you know, a group of constituencies wanted to propose that some other paragraph be taken out of the proposal, then that would be. Because I think we can approve 80, 90% of it easily without conditionalization, and then there's this paragraph and then I guess there's the paragraph later that, you know -- so I would recommend that we think about actually removing this paragraph from -- you know, and propose that as an amendment. That we amend the motion by, you know, removing recommended changes to Paragraph 4 here. And if somebody wants to propose an amendment, to propose removing -- and I don't have it in front of me -- whatever paragraph and clause one wanted to remove, and then we could vote on those two amendments separately, remove those clauses from the bylaws if they succeed, and then proceed with the bylaw recommendation. Yes.

>>MIKE RODENBAUGH: Another alternative is to just make it a little more vague, but leave it in. Just say the council shall make selections to fill its seats on the ICANN board by written ballot and the procedures are defined in the council, and that should be -- that should be totally non-objectionable, right? And then it's still in there.

>>AVRI DORIA: In fact, if we took out the placeholder -- the placeholder was a proposal from Steve, I believe, and that -- you mean, just remove that?

>>MIKE RODENBAUGH: Remove that and just say we make selections to fill its seats -- or seat or seats -- on the ICANN board, period.

>>AVRI DORIA: Okay. You mean period or the GNSO Council should make selections to fill its seats on the ICANN board by written ballot or action at a meeting. Election procedures are defined in the GNSO

Council operational rules and procedures approved by the board?

>>MIKE RODENBAUGH: Yes.

>>AVRI DORIA: Steve, would you be okay with that?

>>STEVE METALITZ: Well, no, because I think if it was made clear that a condition of the restructuring was that these seats would be filled in a certain way. In other words, that each house would get the chance to -- to select somebody for the board.

>>AVRI DORIA: Okay. Chuck? I'm sorry.

>>STEVE METALITZ: I think it's also not a good practice to -- I mean, I think that the method of selection of other members of the ICANN board is more clearly spelled out in the bylaws, so I would -- I would -- I think we need to have this in the bylaws. I hear what Mike is suggesting. But I think this is a fundamental issue and we need to flag in some way that we're not giving a recommendation on this topic until the board decides.

We could decide that question, but the board decides that.

>>AVRI DORIA: Okay. Chuck?

>>CHUCK GOMES: Yes. Well, I agree with Steve that this is a fundamental issue, and it was in our -- in our deliberations on the restructure plan.

But we did, in our recommendations, give specific directions and it -- it was that the contracted house would fill seat 13 and then the non-contracted house would fill seat 14, so I wouldn't agree that the order wasn't a part of our recommendation because it was.

>>AVRI DORIA: Okay. Gee, it's almost 10:30 now. We haven't gotten as far as I had hoped we would get on these.

But we don't have our next person. Okay. Yes, Mike.

>>MIKE RODENBAUGH: So what -- are we planning on having a vote to approve these recommendations on Wednesday?

>>AVRI DORIA: At the moment, there's a motion on the table to approve them. We need to approve them within the next two weeks, three weeks.

>>MIKE RODENBAUGH: Why?

>>AVRI DORIA: Because we need the bylaws to be set in place, basically scheduling backwards, a thing I've gone through a couple times in terms of the schedule --

>>MIKE RODENBAUGH: From Seoul, you mean?

>>AVRI DORIA: -- that in order to have the new council seated in Seoul, we need the board to be able to approve the bylaw changes at its meeting at the end of July in order for the board to be able to vote on them at its meeting at the end of July, they need a month.

>>MIKE RODENBAUGH: Okay. Well, but the fact is that these aren't ready for a vote, obviously. I mean, there's not a single document showing what all of the changes will be because we're now making changes again today. Constituencies haven't had a chance to review this. There's just no possibility that we could vote on this on Wednesday. We -- I think we -- I know we in the BC would exercise our right to put it off to the next meeting.

>>AVRI DORIA: Okay. What I would like to try and do, and one of the things I've talked about is, as opposed to -- scheduling a special meeting for next week before -- basically so that it was still possible to send them forward.

>>MIKE RODENBAUGH: These are obviously critical bylaws, right? I mean, and we need to have time for the constituencies to see what it is that's being proposed and have discussion.

>>AVRI DORIA: Right.

>>MIKE RODENBAUGH: That has not happened.

>>AVRI DORIA: But we've also been discussing them for many months.

>>MIKE RODENBAUGH: No. A small group has been discussing them for many months now.

>>AVRI DORIA: It's been a council -- it's been a committee-of-the-whole of the council with everyone free to participate and to be communicating back and forth as constituencies. It hasn't been a small drafting team. It's been a drafting team, a committee of the council with other members of constituencies as -- as wished.

>>MIKE RODENBAUGH: Okay. But there's a lot of moving parts in here that are still moving even today, and unless there's one baked proposal on the table that the constituency could review as a unified document, there's no possibility that we could vote on it. And we haven't seen that document yet.

>>AVRI DORIA: Okay. Well, the document has been on the table for a long time. Yes, there are changes that are now being added again at the end, but I -- but I think to say that the document hasn't been on the table is not quite accurate. The document has been on the table for a long time. We then went and got some extra comments from legal

counsel.

I understand that you'll exercise your right to not vote, but I do think -- or to not vote on it now, although this motion has been on the table for several weeks, and we're trying to close some last edits. We need to get a decision on it even if it's a negative decision. We need to get a decision on it before the end of the month. If we can't decide on votes by the end of the month, we're basically sort of saying that, you know, we can't get the new bicameral seated even by Seoul and that's sort of problematic at this point.

>>MIKE RODENBAUGH: It's not problematic to me. It's got to be done correctly. You know, you can't just rush something like this through, and that seems to me what's happening.

>>AVRI DORIA: I -- okay. Yes, Tony.

>>TONY HOLMES: Well, just to add some support for Mike, I agree that whatever we're going to vote on, it still needs to be something that's out there and we've had some chance to discuss it within the constituencies.

That is not the case, and I don't see the point of just voting when we know that we're going to get a negative vote. It's far better to give -- give us the time needed to pursue this, and there's a lot of integral parts in this. I agree with that as well.

So I'm in the same camp as Mike on this.

>>AVRI DORIA: Okay. I understand. I got Liz. I would like to say, though, that this has been on the table for a long time, but yes, Liz.

>>LIZ WILLIAMS: Avri, looking to see if we can solve problems rather than extend things forever, because there are some significant risks with not having -- significant external risks with not having a council sorted by the Seoul meeting, and perhaps -- and I understand what Mike's trying to do. He wants to -- to be precise and to make sure we have the right thing.

I think what needs to be done is identify where there are areas of only disagreement, so narrow it really down very, very tightly, and have a big list of things that are agreed upon that don't need to be discussed ever again and hone in very, very focused -- on a very focused way on what needs to be resolved and then only do those things.

>>AVRI DORIA: Right.

>>LIZ WILLIAMS: It stops the constant revision and discussion and sloppy -- sloppy -- not sloppy meaning poor quality, but sloppy discussion, because Mike's exactly right, the moving parts keep shifting and they are related to each other.

>>AVRI DORIA: Yeah. I actually don't think the moving parts have been shifting. I think the moving part -- the placeholder regarding names and selection has been a pretty fixed block for a while.

One of the things that was the intent -- and I don't know if we're going to succeed at it -- was that by tomorrow's meeting, we would have gone through this. And I'm still hoping we can go through this and have the solid document. There still is the constituency day before that for a last check on that, assuming that the constituencies have been following through on this work for the past months, since it has been on the table and it has been on the agenda for a while now, for the Wednesday meeting. It seems to me to sort of say we haven't had time when the motion has been out there for two weeks, the whole council's been talking about it for a month, and there is a constituency day still ahead.

To say we don't have time when the pressure of the schedule has been something that has been repeated often is problematic.

>>MIKE RODENBAUGH: To say we have constituency day is fine, but there's not that many members of our constituency that are here and our processes are in the BC, if there's any debate, I mean, this could take weeks for us to agree on whether to approve these or not.

And we've never still today -- we do not have a document saying, "These are the proposed changes," because we're still changing it on the fly this morning.

>>AVRI DORIA: Okay. Yes, Kristina.

>>KRISTINA ROSETTE: Regardless of -- I mean, I happen to agree with Tony and Mike, but even if you disagree, the fact remains that at least from the perspective of the IPC, there are two fundamental issues that are outstanding, and frankly if we're going to talk time, they've been on the table for the board since that small group locked themselves away after the Paris meeting and came up with a solution.

So we're going on now, almost about 10 months.

>>AVRI DORIA: Right. But --

>>KRISTINA ROSETTE: So --

>>AVRI DORIA: But one of those is we're trying to change the decision we gave in July, as it was quite clear who was doing seat 13, who was doing seat 14, as of the meeting in July, and it's basically been a movement afterwards to change that.

Also, the seat designations were decided in July and it's a motion that's been put through now to try and vary that.

>>KRISTINA ROSETTE: And the support -- the IPC support for that proposal was contingent on certain conditions having been met that have not yet been met, that will not and cannot be met --

>>AVRI DORIA: I think that that's debatable whether they've been met or not, but that's --

>>KRISTINA ROSETTE: -- in the next couple months. But I'm just making -- so that you're clear, regardless of whether the constituencies, the IPC has had a time to discuss this --

>>AVRI DORIA: Not for seat 13 and seat 14.

>>KRISTINA ROSETTE: -- that there are, from the perspective of other constituencies, outstanding issues that will not be resolved by Wednesday.

>>AVRI DORIA: Certainly not for 13 and 14. I mean, the issue of 13 and 14, the issue has not changed since the July meeting. That -- that -- that is the case.

>>KRISTINA ROSETTE: And that is not the issue that I've been talking about.

>>AVRI DORIA: Right. Okay. So that's one of the two issues that's being brought up as a blocking issue.

Now, on the other issue, was that IPC condition listed in the -- I don't believe so, but anyhow, okay, that's obviously an open discussion, and I also thought we had -- we had talked about various things, but I believe the board has already given us their decision on that one, that basically the board -- there was an IPC appeal to the board and the board came back with an approval.

>>STEVE METALITZ: Avri?

>>AVRI DORIA: Yes, I've got a hand from Eric, I've got Tim, and I've got Steve.

>>ERIC BRUNNER-WILLIAMS: Thank you, Avri. Eric Brunner-Williams from CORE. I happened to miss what the two objections were from the IPC. Could you state them in about a minute?

>>KRISTINA ROSETTE: The IPC wanted to ensure that the allocation of assignment of board seats as between the two houses was, in fact -- in terms of the recommendation that came out of that group was, in fact, preserved; and second, that the allocation of six seats to the noncommercial stakeholders group was dependent on that group fulfilling what, in fact, the BGC had identified as an issue and problem with the representativeness of that group, and it is the view of the IPC that

that representative issue has not yet been resolved.

>>AVRI DORIA: Okay. But the board did give us a response saying they would not do a re-allocation of the seats, when we asked SIC for the decision on that, they did give us -- and this was in response to your appeal. Tim.

>>TIM RUIZ: Just a question about the --

>>PHILIP SHEPPARD: Avri.

>>TIM RUIZ: -- the board seats. So what is the question that we actually posed to the board or what's the question we wanted them for the --

>>AVRI DORIA: The question was we wanted to switch who got to choose 13 and 4.

>>JEFF NEUMAN: And they said no.

>>AVRI DORIA: And they said -- no. They actually said we're not going to get into that one at the moment because whether there's one seat or two seats is really dependent on the board review and, therefore, they avoided that issue for now. That one they did not give us an answer on.

>>TIM RUIZ: So we're asking --

>>AVRI DORIA: We wanted to -- basically there was a recommendation from the users -- from the commercial users' house stakeholder group members saying that they wanted the seat that was elected next year, as opposed to the seat that was elected the following year.

>>TIM RUIZ: Oh, okay.

>>AVRI DORIA: And I forget which was 13, 14. I'd have to go back.

>>TIM RUIZ: So did we ask about whether there was -- so we haven't asked whether we'll -- the GNSO will still be allowed two seats regardless of how they switch -- change the board.

>>AVRI DORIA: We were assuming two seats but the board review could change that. I had Tim. Oh, yes, Steve. Sorry. And then I have Philip.

>>STEVE METALITZ: Yes, thank you, Avri. This is Steve Metalitz. On these two points, first, I think the -- if I'm not mistaken, the board hasn't even answered the question of whether each house would choose a seat.

>>AVRI DORIA: Correct.

>>STEVE METALITZ: Or it would fill one seat. So there is an issue about the order, but the threshold issue of will one house get to fill one seat and the other house get to fill the other seat hasn't been resolved. They just haven't decided that yet.

Secondly, on the representation on the council, I think the question that the structural improvements committee answered is not the question we're talking about. They said, "No, we will not reallocate seats." They did not answer the question of how the six seats allocated to the noncommercial stakeholder group would be filled.

>>AVRI DORIA: Right.

>>STEVE METALITZ: And that is -- that is the multiple issue that's before us.

>>AVRI DORIA: Isn't that a charter issue, though, between the board and that stakeholder group and I thought that we had pretty much --

>>STEVE METALITZ: It has to be made by the board, I agree.

>>AVRI DORIA: And it's between the stakeholder group and the board, and -- and so I don't understand how it affects the bylaws, that there are the six seats and it's the stakeholder group's charter with the board that determines how those are chosen.

>>STEVE METALITZ: Avri, look at the -- at the third-to-the-last paragraph in your document.

>>AVRI DORIA: The transition paragraph.

>>STEVE METALITZ: It describes how three seats will be filled in the transition article, but it doesn't say how the other three seats will be filled. So that's an open question.

>>AVRI DORIA: Right. And the rest of it is taken care of by the stakeholder charter. That's -- I mean, that's the case with --

>>STEVE METALITZ: That's a decision that has to be made with the board.

>>AVRI DORIA: Between the board and the stakeholder group in their charter.

>>STEVE METALITZ: If you're saying we have no interest in this fundamental issue that we insisted upon as part of the -- of the restructuring, I disagree. We do have an interest in this. It is up to the board. The board hasn't answered this. And all I'm saying is that I agree with you that probably 90% plus of this could be recommended now, but I think we need to make it very clear that we're

not giving the final recommendation until we see -- till the board acts on these two issues, which is, as Kristina has pointed out, they've had before them for many, many months and for whatever reason, they haven't answered.

>>AVRI DORIA: Yes, Chuck.

>>CHUCK GOMES: It seems to me that we should make it very clear to the board, and in particular the structural improvements committee, that these two issues may be showstoppers in terms of seating a council in Seoul, if we do not receive answers very quickly.

>>TIM RUIZ: Avri.

>>AVRI DORIA: Yes, Tim.

>>TIM RUIZ: From my viewpoint, that has to include what decision is going to be made about the size of the board and how that's going to affect the board members that the GNSO will be selecting. If it's down to one, that is a huge issue in my view, because again, that gets to the -- you know, the whole bicameral structure and one of the reasons why we went to that.

So if the board's going to be reduced in size, the GNSO needs to maintain the ability to select two of those seats. And it's not about representativeness; it's about participation. And if we can't participate equally in that -- in this bicameral model -- then in my mind it brings into Question the whole system altogether.

So I don't know if this being communicated and how others feel about this, but I think that's something that we as a council, I would like to see us communicate to the board very clearly.

>>AVRI DORIA: Okay. Thank you. Any other comments? Yes, Marilyn.

>>MARILYN CADE: Avri, it's Marilyn Cade. I have a question. I'm aware -- I may have missed something.

I'm aware that there was a board review proposal to change the size of the board, but at the public meeting in Mexico City that discussed the board report, there was strong opposition by the community to changing the size of the board, and when I read the public comments, I don't discern -- I know I count differently than some people do, but I don't discern community support for changing the size of the board.

Can I ask what -- you know, why we are now talking about the possibility that the board would change the number of seats that the council would elect, and if that is, in fact, a situation, is the council and the various constituencies intending to express their view, again, in the public forum about such a recommendation?

>>AVRI DORIA: Okay. Yeah. I think the only reason we're talking about it is because as part of the response that we got back from the board, they merely said, "We don't know what the ultimate outcome of that decision's going to be."

They didn't sort of say, "Because we think it will be one or we think it will be two." We basically got a response saying back, "Listen, this is still under discussion. Therefore, we cannot give you an answer on your question because we don't know the answer to that question." Yes, Chuck.

>>CHUCK GOMES: And they just recently posted, as most of you know, a document on the board review, and they still haven't addressed that issue.

>>MARILYN CADE: So my -- so my question is: The board may not have a decision on that topic, but it -- this is a bottom-up stakeholder-driven organization, so if the GNSO Council has a view about the idea of whether it would be fully represented by a single board member, has the GNSO Council put that view forward?

>>AVRI DORIA: No, I don't think we have. And perhaps we want to but so far no one has put forward a discussion point saying we should until now. So that's a different issue.

Okay. Now, it's quarter to 11:00. At 11:00 we were going to start talking about the IRT. We can either quickly go get cups of coffee or we can try to -- one thing I would like to ask, is there any objection to asking Margie to accept the rest of the -- I mean, the rest of the format ones so they are out of the document and we can go through and to accept the rest of the NomCom to Nominating Committee ones so that that part of the blue-marking of the document can -- because at the moment, the document looks a lot more marked up than it is largely because of formatting changes. So any objection to her doing that before we next talk about this?

Then we have a group of people that are going to go work on the language of the two issues -- I mean, of the one paragraph dealing with how to get rid of an unpopular NomCom appointee. And that's about it.

So, yes, Philip?

>>PHILIP SHEPPARD: Sorry, Avri. I wasn't on the list. I just wanted to say formally that the objection that you've heard from the IPC was one that we and the ISPs have formally supported in a resolution that we've sent to the board which is still unanswered. So there is not just one constituency. It is all three of us --

>>AVRI DORIA: Right.

>>PHILIP SHEPPARD: -- behind that. And we've had dialogue with the

SICs since, and they are still thinking about the issue very seriously but you have not yet come to a resolution. So it's outstanding and actively being thought be. So we are trapped in that timing issue.

>>AVRI DORIA: I think the issue I was making on it is that I did not -- I still have trouble understanding it as a bylaws issue. And as the bylaw -- what was the bylaw issue to the SIC was whether there were six or fewer seats. And the question of how they were allocated, yes, rests upon your appeal but also rests -- is something that I thought was centered in the stakeholder group charters and it's not in the bylaws. The bylaws doesn't discuss anywhere how any of the seats are elected by any of the stakeholder groups, and to single out one stakeholder group and to say "but we want to talk about how their seats are designated in the bylaws" is just -- seemed to me different than the treatment that we were according all the other stakeholder groups. Certainly, it is in the stakeholder group charter. Certainly your appeal is one that's still being discussed. I just didn't see it as a bylaws issue but as a stakeholder charter issue that still opened the community review and board approval and everything else. It's just -- does the bylaw get blocked because of a stakeholder charter issue? And that was my only issue.

>>PHILIP SHEPPARD: Yes, it does is our view.

>>AVRI DORIA: I understand that.

Okay. Yes, Tony.

>>TONY HOLMES: Just a quick question, Avri. When do you actually intend to pick up on this discussion?

>>AVRI DORIA: Again, Sunday at the end of -- tomorrow, I think. What time is it on the schedule? I got to look at it. Quarter past 3:00.

>>TONY HOLMES: Okay, thanks.

>>AVRI DORIA: Okay. Do people want to grab a cup of coffee and drink before we go into the IRT discussion at 11:00? Okay. Thank you. Break.