

**GNSO  
Operations Steering Committee (OSC) GNSO Council Operations Work Team  
19 August 2009 at 16:00 UTC**

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The audio is also available at:

<http://audio.icann.org/gnso/gnso-council-ops-20090819.mp3>

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(transcripts and recordings are found on the calendar page)

Participants on the Call:

Ray Fasset  
Wolf Ulrich Knobon

Staff:

Rob Hoggarth  
Glen de Saint Gery  
Gisella Gruber-White

Apologies:

Tony Holmes  
Ken Stubbs  
Ron Andruff  
Julie Hedlund

Coordinator: This call is now being recorded.

Gisella Gruber-White: Thank you, (Miriam). Good morning, good afternoon everyone. On today's call we have Ray Fassett, Wolf Knobon. From staff we have Rob Hoggarth, Glen de Saint Gery, and we have myself, Gisella Gruber-White. Tony Holmes may be joining us a little late. If he's not able to join then he does send his apologies. And we also have apologies Julie Hedlund and Ron Andruff. Thank you.

Ray Fassett: And Ken Stubb has sent his apologies.

Gisella Gruber-White: Fantastic. Thank you.

Ray Fassett: Okay. (Wolf), let's you and I - I want to go back to 3.5 here real quick, and that's quorum. Okay? So we'll just hit the ground running.

(Wolf Knob): Uh-hm.

Ray Fassett: All right, so we say there that a quorum is a majority of voting members, which includes at least one member of each stakeholder group. All right, that's pretty straight forward.

Now when we get down - now, I'm going to go down now to Section 5.3. We happen to have the ROP open.

(Wolf Knob): Which (slide) is that?

Ray Fassett: 5.3.

(Wolf Knob): 5.3, okay.

Ray Fassett: I wanted to run something by you.

(Wolf Knob): Yeah.

Ray Fassett: Okay, so there in the second paragraph beginning with "Members representing a majority of representatives from each house," that sentence.

(Wolf Knob): (Unintelligible) constitute a quorum.

Ray Fassett: Yeah. Shall constitute a quorum for the transaction of business and access to GNSO council members present at any meeting by which there is a quorum. It could be interpreted that that does not require what we define up above as

a quorum where we say "It must include at least one member of each stakeholder group." We don't say that down there. It could be a discrepancy.

(Wolf Knoben): Yes, because there's only preference made only to the houses.

Ray Fassett: Yeah. So just for consistency we should probably clear that up and put in there that, you know, there must be at least one member of each stakeholder group. Okay.

So staying with that paragraph now and here's something that I've been thinking about. I think it has to - what got me thinking about it was some of your comments last week that had to do with voting.

And I think there are two higher level issues that we need to keep in mind as a work team. One is the bicameral structure, and two the proposed bylaws. So what we want to be clear about - and I'm just thinking out loud as I'm talking - so what we want to be clear about is that we are not ambiguous in these rules of procedure to the point where council voting in some way excerpts the bicameral structure or is not in complete align with the bylaws. Does that make sense?

(Wolf Knoben): Yeah. Could you refer to a specific paragraph here?

Ray Fassett: Yeah. So let's stay with 5.3 again, same paragraph.

(Wolf Knoben): Yeah.

Ray Fassett: All right. The bylaws, which again, I spent some time looking at this a little more in depth. The bylaws actually outline certain thresholds based on the type of action being taken. There are thresholds that are identified, so I'm bringing that up now.

What I'm looking at is Page 15 of the document out for public comment. You know, it says "Except as otherwise specified in these bylaws (annex) here to the voting thresholds described below shall apply to the following GNSO Council actions."

For example, if in the bylaws it is saying that to create an issues report requires an affirmative vote of more than 25% vote of each house or majority of one house. There's an A through F here that depending upon what the action is the bylaws are actually defining what the thresholds are. Okay?

So in our rules of procedure we want to make sure that it's clear that the voting must meet those particular thresholds on those actions. Okay? So my suggestion is to add the - for example, whenever we talk about voting in these rules of procedures we want to be clear that, A, we have thought about the bicameral structure, and, B, we articulate clearly that thresholds are to meet the bylaw structures.

So let me read this sentence to you. "Members representing" - this is 5.3, first paragraph. "Members representing the majority of representatives from each house shall constitute a quorum for the transaction of business and" - all right, excuse me. "And actually GNSO Council members present at any meeting at which there is a quorum shall be asked by the GNSO Council provided they meet the voting thresholds contained in the ICANN bylaws."

So putting in that clarification provided they meet the voting thresholds contained in the ICAAN bylaws. So wherever we talk about voting in here we should be clear that we're saying provided they meet the voting thresholds contained in ICAAN bylaws. Does that make sense to you so it's clear?

(Wolf Knoben): Now, well it is clear to me. I have a general remark to that.

Ray Fassett: Yeah.

(Wolf Knob): My feeling is so as we are looking to deal with the procedure I have now, and we are - every time comparing what is in the bylaws, which is a higher level, you know, the higher level of the law, let me say...

Ray Fassett: Yeah, right.

(Wolf Knob): ...ICANN is the bylaw is the upper level, and then the rule and procedure comes down. So what we are doing is sometimes we are just sometimes we're repeating. We are repeating what is already in the bylaws. So I think we shouldn't do so.

I think the bylaw is (unintelligible), you know, they're outlining the law. So now the only question is what is - how to bring into effect, let me say, the laws, yeah?

Ray Fassett: Yes.

(Wolf Knob): And so to some extent it seems to me that as we also move some parts from the bylaws to the order of procedure, so then we try to bring it again in line with that, what is already in the bylaws. So my question is only - so I'm just also speaking, well...

Ray Fassett: Yeah, right.

(Wolf Knob): So, and thinking is that the right way to do or - because sometimes if you try not to repeat something then maybe is there some formulation we come into some pop- some situation which is - which maybe question it or which raise questions on several times. So we should avoid only to repeat what is in the bylaws. I'm not sure we're really doing that, but we should avoid that and just clarify in that case to look up how to bring into effect in the really operation of these bylaws.

So coming to what you have said I'm just thinking about was it held in that way. So it means makes it more clear what is already in the bylaw. Is there something in the bylaws which is not clear enough, which should not be repeated, let me say, or is it something is at a point which has to be more clarified?

Ray Fassett: Right, right. I think that's exactly the point.

(Wolf Knoblen): That's my question. I don't have a....

Ray Fassett: No, I think that's exactly the point. And as I was looking at this in this one, this is 5.3, okay. I'm just picking one out here.

(Wolf Knoblen): Yeah.

Ray Fassett: Where I'll pickup, "And acts of the GNSO Council members present at any meeting at which there is a quorum shall be acts of the GNSO Council." Now if you just stop there...

(Wolf Knoblen): So just to understand why, I understand that's part of this paragraph in that way that in any case if the council or members of the council coming together and are going to vote under the - and fitting to the voting levels, you know, given in the bylaws. So then the outcome of this voting is an outcome of the whole of the GNSO Council. That's what I understand.

Ray Fassett: Right, right. That's exactly the point or that's exactly the question. Are we already covering the point and then just being redundant? I think you're questioning what I'm saying here we're just being redundant. Is that right?

(Wolf Knoblen): Yes, it's the question because in some other cases I have the feeling that we are doing something redundantly. So it only - it's just a question.

Ray Fassett: Yeah.

(Wolf Knob): It's feeling though it doesn't make it more clear, so my English is not that (unintelligible). But so if it helps in that way then I will be convinced to have do so. So I already understand this is our (unintelligible) that it only - that's okay if there is a voting, which has to meet the voting levels then it shall be a voting of the whole GNSO Council.

Ray Fassett: Right.

(Wolf Knob): In the (correct) way.

Ray Fassett: Right.

(Wolf Knob): So that's what I already understand and the (unintelligible) from the formulation.

Ray Fassett: Right. And let me bring Rob into this conversation. Do you think that we are clear, Rob, that, you know, we're being consistent with the bylaws when we start talking about voting and various sections?

Rob Hoggarth: That's an excellent question. I've been struggling with that as you guys have been talking about it. Every intent I think of what the bylaw members drafting was focused on it. And I think the efforts that have been made at this point have been to produce that clarity.

And I guess I'm answering my own, you know, question to you. If we're still sort of struggling with this then it's not clear. I don't know what the solution is, but I think if we're - if you guys are having to struggle, and as I read 5.3, you know, I ask myself what are we trying to accomplish with this section and is it consistent with others?

And so I don't know that I'm being tremendously helpful in answering the specific question that you asked. I look at 5.3, and I say it seems like we have

many more words here than are necessary. And I think the point you guys are trying to make is that the more words you write the more chance you have in lack of clarity rather than more clarity.

You know, 5.2 is notice of the meeting. See 5.4 is the number of votes passed. Five point three I ask myself what is the purpose of this section? And the two paragraphs that are written there don't seem to be addressing the same point. I don't know if they're separate sections. I don't know if you lose something if you take them out.

But, Ray, I think you're doing the appropriate thing here, sort of getting us to look at it in a little bit more detail. And it creates more questions in mind than answers at this moment.

Ray Fassett: Yeah. Maybe that is - maybe you're hitting on a key point there. Maybe that is part of my thinking as well is what are we trying to say that hasn't already been said? We already talked about quorum earlier on, seems like we're repeating that. Five point three this is for some reason wanting to repeat that.

Rob Hoggarth: Well it actually potentially changes...

Ray Fassett: And it changes it, right.

Rob Hoggarth: ...said about the quorum, because the additional words here say each house, and you guys don't have that at present in quorum language above. In section 3.5 it doesn't talk about majority of the members of each house. And so that in and of itself may be an important point that you want to reexamine or capture.

Ray Fassett: Yeah, yeah.

(Wolf Knob): (Wolf) speaking. So really it comes to my mind, I understand - also some question mark about what is the meaning of that Paragraph 5.3? And what I

understand is it's following the one is - okay, the first part that was very clear only council members can vote - cast a vote, yes, that's the first one.

And the second one the only - what I can understand is, well what I said before, it should be expressed that all voting - let me say, all voting results of the council or of the members of the council (present) voting results they shall be voting results of the whole council. They shall be seen as voting results of the whole council.

It means if there are not enough council members present for a majority vote, anyway if there is a vote then it's not a majority vote, and there will be a calling to the law. It will not have a consequence as it's outlined in the laws. That's the only thing what I understand.

You know, you don't have to explain again to the voting level at this time. You have only to explain, okay, if under those conditions when the GNSO Council is meeting then the council - the council vote shall be seen as a vote of the whole council.

Rob Hoggarth: Right. If you have a quorum, even though that may not - and there has been a majority of that quorum, even though it doesn't constitute a majority of the council it's still a decision of the council. But, you know, and I think what Ray has pointed out and the challenge of a bicameral voting structure is that, and the way things have been setup in this structure, is that there are very specific voting thresholds that will govern whether something passes or not, particularly with respect to the PDP.

And so those voting thresholds in a number of respects will supersede the quorum requirements. You know, it comes down to for a consensus policy if you don't have, you know, 2/3 of the votes in one house and a majority in the other house - I'm sorry, 75% of the votes in one house and a majority in the other house, then it doesn't pass.

And this may be a question now that you've raised it, guys, that we want to have some perspective from the general council's office in terms of how that - those voting thresholds are affected by quorum requirements. But actually the question goes beyond just these couple of paragraphs, Ray.

(Wolf Knob): For me the question do we need any - the first part of the second paragraph referring to the quorum, do we need that really? As we have already a paragraph, 3.5...

Ray Fassett: You're talking about the paragraph, "Members representing the majority of representatives", that whole paragraph, right? (Wolf)?

(Wolf Knob): Pardon me?

Ray Fassett: You're questioning whether we need the entire paragraph that begins, "Members representing a majority of representatives".

(Wolf Knob): Well I would say what we need is acts by so then the GNSO Council members present at any meeting at which there is a quorum shall be acts of the GNSO's Council unless otherwise provided herein.

Rob Hoggarth: This is Rob. That sounds excellent.

Ray Fassett: Well, remember, though, acts of the GNSO Council would be voting.

Rob Hoggarth: Well, (Wolf) also suggested that, you know, consistent with other - I can't remember at the moment, (Wolf), your exact comment, but, you know, you cautioned it or clarified it with respect to its consistency with other sections or with the bylaws (I believe).

(Wolf Knob): Yeah, according to the bylaws. That's clear.

Ray Fassett: All right. I need a new draft on this. How do we want to do this (Wolf)? You want - I mean, how do we - usually Julie is our drafter. She'll come back with the modified language.

(Wolf Knoblen): Yes, but I just put a copy to my email and send it to you directly, so...

Ray Fassett: Oh, you did. That's great. Okay.

(Wolf Knoblen): Then we could - in between we could go forward and then come back to that maybe, yeah? So let me - I would put through that, no?

Ray Fassett: Okay. Let me go back to Rob's point, too, now; back to 3.5. This sort of drives to the point of we always got to keep in mind the bicameral structure. We say a quorum is a majority of voting members. It may need to read, thinking out loud, a quorum is a majority of voting members of each house. If we don't - if we're not clear there, we're potentially being ambiguous to the point of usurping the bicameral structure.

Does that make sense (Wolf)?

(Wolf Knoblen): Oh, sorry, I didn't follow you.

Ray Fassett: No, no, that's okay. We say right now a quorum is a majority of voting members, voting council members.

(Wolf Knoblen): Yeah. That...

Ray Fassett: There's the chance that by just saying it that way that a majority of voting council members is not representing a majority from each house.

(Wolf Knoblen): Yeah, yeah. Okay. One moment. One moment.

Ray Fassett: So if that's the case, potentially due to ambiguity, bicameral structure, the whole thinking the whole foundation of that is being usurped for sake of a better word. I mean, it's just - I don't know what the right word is but we're not being consistent.

So we could say - to remedy this, what we could say a quorum is a majority of voting members of each house.

(Wolf Knoblen): Yes, but you know, on the other hands in the bylaws you have outlined specific cases where we need a majority of each house, yeah, and referring to the PDP stages and what else, you know, different cases we have for...They are - so what we are defining here is a quorum which is in addition referring to other cases. That's what I understand.

So, you know, referring to the cases which are defined in the bylaws, so there must be a quorum in those cases. And this is not bypassed by that paragraph 3.5, that's what I understand because the bylaws, you know, are the bylaws.

Ray Fassett: So are you saying that it's not necessarily important for us to clarify that a quorum is a majority of voting members of each house? You don't think that's necessary?

(Wolf Knoblen): You know, I understand that would mean here if we formulate that that in certain cases, the council cannot vote. So in any case where there's no majority of each house then there is no voting. Yeah? Because you say at the time of a vote there must be a quorum. That's the last sentence here.

And if that's the meaning...

Ray Fassett: Maybe at the time of a vote there must be a quorum...

(Wolf Knoblen): Yeah, but...

Ray Fassett: Must be a majority - maybe instead of saying it must be a - the time of vote there must a majority of voting members from each house.

(Wolf Knoben): I'm not very much very well experienced in all the voting - of the council voting. You know, I understand the voting is done with regards to the PDP process activities and on the other hand altered to some minor issues, as well, right? Administratively (unintelligible).

So the question is, should there be in all cases, really, that quorum that all - both houses shall have a majority, but this is just - that's the question, you know, for that.

If other - I'm asking you and the others that other cases that there's voting done in the - on council level for minor issues and it should be avoided that they put the level so high, you know, for minor issues.

Rob Hoggarth: This is Rob. I think that was one of the discussions that you guys initiated in Sydney when you first started talking about a quorum. It was that balance between being able to just conduct business...

(Wolf Knoben): Yeah.

Rob Hoggarth: Versus trying to make sure that everybody has an opportunity for a voice balancing, you know, the attempt where if somebody doesn't really like a potential action, they could delay it or prevent it from happening just by not showing up.

I know I create this problem by noting the difference between 3.5 and 5.3, but I'd like to throw it to Glen just briefly to clarify a point you guys have probably talked about in the past but may resolve this in some respects. That is on the really important issues you basically go, Glen, I believe to the absentee ballot approach.

And so that almost obviates the need for a quorum from some perspective because everybody is getting a chance to vote ultimately over a 24 or 48 hour period, even if they were not able to attend the council meeting itself. Is that correct?

Glen de Saint Gery: Yes, it's Glen. That is correct. And actually the - we can only do that if there is a quorum in council. We saw will be a quorum as quorum is going to be defined because the quorum allows us to carry on our business.

And that is one of the questions that has come up already in council and that is if there is not a quorum, can we go ahead anyway with an absentee ballot vote in order to get the votes in from all the councilors.

And I think it was legal counsel who gave the advice that we couldn't do that because we had to have a quorum to first of all start our business.

Does that perhaps help?

((Crosstalk))

Rob Hoggarth: That's very helpful.

Ray Fassett: Yeah, that makes sense to me.

Glen de Saint Gery: So we can get the majority vote through absentee ballots if people, of course, don't bother to vote or if they just ignore it, then, well that's their problem and that's the problem of their (unintelligible) group, too.

Ray Fassett: Okay, I'm not going to - I don't want to devote too much on this. If we're okay with quorum as it is written, I'm okay with it. I just wanted to have the discussion.

(Wolf Knoben): Yeah. So I send it to you, my suggestion of the 5.3. I don't know whether you received already.

Ray Fassett: Not yet. I don't have it.

(Wolf Knoben): It's just only a part of the second paragraph, you know.

Ray Fassett: Okay. Yeah, I haven't gotten anything yet. You sent it to me personally, ray@goto.jobs?

(Wolf Knoben): No, I sent it to the...

Ray Fassett: Our list?

(Wolf Knoben): Our list.

Ray Fassett: Oh, okay, great. That's even better. I think I got it. There it is. Okay. I'm just going to read it. "Acts by the GNSO Council members present at any meeting at which there is a quorum shall be acts of the GNSO Council unless otherwise provided herein."

Let me go back to the original language. I think that's much better. Again, I think to Rob's point we're cutting out words and it makes sense to me.

Okay. Let's offer that modification to the list and see if there's anybody that objects. Okay?

And Rob, I think you liked that for clarity purposes, too, right?

Rob Hoggarth: Yes, sir. I think it's a marked improvement.

Ray Fassett: Okay, good.

Okay, let me keep going here on a couple of my notes. All right, so back to this same theme here, if I go back to - let's look at Section 5.1, if you can, (Wolf).

(Wolf Knoblen): Yeah.

Ray Fassett: All right.

(Wolf Knoblen): Five point one, yeah?

Ray Fassett: Yeah. There's the first sentence, then there's a bigger body paragraph and then the very last paragraph it says, "Except where determined by a majority vote of members of the GNSO Council." See that sentence?

(Wolf Knoblen): Yes, I see.

Ray Fassett: Yeah, so this is specific to what, whether there can be a closed session or - all sessions are default to open unless there's a vote of members...

(Wolf Knoblen): Oh, yeah.

Ray Fassett: Yeah, yeah, yeah. So, I'm - again, when we talk about voting, so I'm thinking except where determined by a majority of vote of members of each house of the GNSO Council present, again, inserting that language again of each house because we're talking about voting again.

Any thoughts on that?

(Wolf Knoblen): Yeah, okay. So it's just a question how people - how council members, you know, look at that case, you know, to hold a closed session or an open, so...

Ray Fassett: Should we - so, yeah, so the overriding question at a higher level is should we ever - should it ever be deviated that we need a majority of each house, I

mean, should we be so clear on this that it can be deviated regardless of the issue.

Rob Hoggarth: This is Rob if I can comment.

Ray Fassett: Yeah, yeah, please Rob.

Rob Hoggarth: This assumes that, at least as I read it now, that you already have a quorum.

Ray Fassett: Right.

Rob Hoggarth: Because you've already got a meeting, so then the question is, are you creating a new thresh - a new voting threshold for closing meetings that requires a majority from each house to approve that.

Is that correct?

Ray Fassett: Yeah, that's it. Correct.

Rob Hoggarth: Okay.

Ray Fassett: And regardless of the issue, so the point I'm making is if this one happens to be about a closed session, but the point is in the rules of procedure we're talking about, you know, a vote of the members, a vote of the council...

Rob Hoggarth: Yeah.

Ray Fassett: And every time we talk about a vote of the members or the vote of the council, should we always say, be clear that is do we need a majority from each house so there's no ambiguity.

(Wolf Knobens): Yeah, well in this case, I would agree.

Ray Fassett: Okay.

(Wolf Knoblen): Directly because, you know, looking at the interest of ICANN or ICANN as an open organization and we should have meetings as open as possible...

Ray Fassett: Oh, yeah.

(Wolf Knoblen): As possible, so the level to decide not to have an open meeting should be very high. So that's what you are doing with that if you implement both houses. That means for me the level shall be higher to come to an agreement about closed meetings. That's the result of it.

Rob Hoggarth: This is Rob. Just for the record, Glen, can you recall if there has ever been a closed session of the GNSO Council?

Glen de Saint Gery: Yes, there was not of the council itself, but of a meeting, a pre-council meeting, and it caused such an uproar that it was never to be thought of again. It happened in New Zealand.

(Wolf Knoblen): Okay.

Glen de Saint Gery: But the council meeting has never been closed to the best of my knowledge in all the time I've been there.

(Wolf Knoblen): Okay, so my point is if we could do that here because it makes it more difficult - even more difficult to hold closed meetings.

Ray Fassett: Okay, so, I mean, a part of what I'm hearing, too, is it should be or it's logical for it to be case dependent, you know, whether we say each house - majority of each house. Well, in this case yeah we all believe that council meeting should be open so make the threshold as high as possible which is - I agree with that.

Don't get me wrong, but I get the higher level point I was making in - is whatever it is that the council might be voting on, we are clear in the ROP that it requires a majority house.

(Wolf Knoben): Well, this is a basic question really Ray so...

Ray Fassett: Yeah, that's why I wanted to bring it up.

(Wolf Knoben): Yeah.

Ray Fassett: It is. Let's just - yeah. We'll just keep going. Maybe we can look at it through the entire document and see what those cases are and go that direction. We can try that.

(Wolf Knoben): Okay.

Ray Fassett: All right. This is slightly different. So under 5.4 where it's the number of votes cast, okay?

(Wolf Knoben): Yeah.

Ray Fassett: Okay. There's a - there's something. I think we're saying it. I'm looking at Julie's mock-up. I think we've said it.

It says, "To pass a motion, must obtain a majority of the votes cast. Abstentions count as votes past."

So that - does that mean that an abstention - well, it says abstention count - this has the effect of making an abstention count the same as a vote against.

What is the logic of that? Why would we have an abstention be counted as a vote against - shouldn't it be neutral; not for, not against?

Rob Hoggarth: I think the point -- this is Rob -- I think the point that's trying to be made here and not having drafted it. I'm just suggesting is that in effect or from a practical standpoint, if you have to meet a certain braiding threshold of five people and we have seven and three abstain. In effect those three abstentions are not votes for so they are votes against.

And then they're apparently, you know, these exceptions to that rule. I don't quite understand it at this moment. We may have to ask Julie that if she's the one who wrote this down initially.

Ray Fassett: Okay, yeah. Let's keep that as an open point.

Rob Hoggarth: I don't know, Glen do you have any perspective on this piece about abstentions and near fact? I know that more recently the Chair has asked members who abstain who articulate the reasons for that abstention, but I don't know how you count them Glen when you're, you know, reflecting a vote of the council.

Glen de Saint Gery: I can also telling you from experience - it's Glen speaking that abstentions are counted as votes against.

Ray Fassett: Presently?

Glen de Saint Gery: And it happened once at - I can't remember where it was, but it was an open council meeting in during an ICANN meeting and there were say for example ten votes in favor and there were 6 abstentions - well, in any case it may - the vote was counted so that those abstentions were counted as no votes and the motion didn't pass.

Ray Fassett: And...

Glen de Saint Gery: And the abstention, the reason for abstention has always been asked for because previously it was required by the Board to know why people abstain from the voting.

When something was passed to the Board, it always has to have the exact wording of the person why they abstained and I think that's probably why it's become habit now.

Ray Fassett: Okay, and this language here where abstention counts basically counts against is consistent with the proposed bylaws? I'm assuming that; right?

(Wolf Knoben): Yes.

Ray Fassett: Okay.

(Wolf Knoben): It was speaking so my question is in several cases there are abstentions because people have entered in that specific questions which is forty about so - and at trial or not and then they abstain.

So how much could that count against?

Glen de Saint Gery: This is Glen. I agree with you both. That is in fact what happened the other day on council again. Somebody abstained from approving the minutes and the reason from abstaining from approving the minutes was because they were not absent. They were absent from that meeting.

So I agree with you. It is a passage that is on care there.

Rob Hoggarth: This is Rob. Maybe I can shed a little bit of light. I became a lawyer because I wasn't good at math. I think - and so maybe you guys can help in this respect, but let's say your threshold is 50% and you have ten votes but somebody - and so you need five people to vote, but two people abstain and so now are you calculating that percentage on ten or on eight?

I think that's where this falls into play.

(Wolf Knob): Yes. That's what I see (correctly).

Ray Fassett: Okay, okay.

Rob Hoggarth: So maybe with your knowledge of that (Wolf) or (Rick) and Ray, you know, maybe that perspective as well, you guys may want to revisit this area again.

I'm not sure of that and I'm not sure if that was in Julie's mind in this section, but that might impact the viewpoint of some of the other Board team members. I don't know.

In many respects it doesn't really matter if it's small numbers because we're dealing in percentages and so, you know, when Glen is doing calculations I think it becomes more of an issue the more people you have participating in a vote, but it is certainly something that everybody should be aware of.

Ray Fassett: Yes. So (Wolf), what do you say? We leave - do you want to revisit this with the rest of the team?

(Wolf Knob): Yes, yes.

Ray Fassett: Next week? Okay.

(Wolf Knob): Yeah.

Ray Fassett: I need to think about it some more.

Unfortunately that's one of my weaknesses as a Chair just for the record is I have to think about things. I'm not real quick.

Okay...

Rob Hoggarth: Some would argue that that's strength.

Ray Fassett: What was that Rob?

Rob Hoggarth: Some would argue that that is a strength.

Ray Fassett: Okay. Okay, 5 - on the 5.5. Minutes I have a question.

We say that GNSO Council shall transmit minutes of its meetings to the ICANN secretary. Now when I read that the first time, I thought - I'm thinking secretariat, right? I'm thinking GNSO Council secretariat but when I read it literally ICANN's secretary is John Jeffrey. Is that really our intention?

Rob Hoggarth: This is another Glen question in terms of what currently happens now versus what might happen in the future?

Glen, you don't currently send stuff to John Jeffrey, do you?

Glen de Saint Gery: No, I don't, except if it something that has to go to the Board and then Avri does it

Ray Fassett: Right. So here we're just talking about minute transmittal.

Glen de Saint Gery: Yes.

Ray Fassett: So we should probably fix this to say that GNSO Council shall transmit minutes of its meeting to the GNSO Council Secretariat?

Rob Hoggarth: Well, actually the secretariat produces the minutes.

Ray Fassett: Yeah, isn't that right? That was my next part.

Okay, so right. So yeah...

Glen de Saint Gery: I'll tell you what presently happens and what has happened for a very long time is that the minutes have gone to the Chair and the Vice-Chair first. They edit them and then they are sent to the council list.

Ray Fassett: All right, so maybe how we say this is the GNSO Council secretary shall transmit minutes to the Council Chair and Vice-Chairs?

(Wolf Knoben): That makes sense, yeah.

Ray Fassett: All right. You work on that.

Rob Hoggarth: This is Rob again. Just one point of order here.

Ray Fassett: Yeah, yeah.

Rob Hoggarth: And that is, you know, you're describing a process that may be useful to have civilian rules and operating procedures.

You're probably talking about two separate pieces because as I read 5.5, those refer - I read those as being the approved minutes.

Once the - you know, Glen typically does whatever she does. Avri and (Chuck) have looked at it. The Council then votes at their next meeting or the meeting thereafter and "approves" the minutes and so then they get I guess posted on the Web site.

So you may want - this may end up being a much larger section and just reflects all of those acts.

Ray Fassett: Those steps.

Rob Hoggarth: Yeah.

Ray Fassett: The steps. So first there's the taking of the minutes and then who it gets transmitted to and then what happens to the approval of the minutes.

(Wolf Knob): Wait a minute. That's in 5.5(a).

Ray Fassett: Okay. All right, so let me ask this then. You're right. It is. It is sort of covered in there so - so do we even - what is that first paragraphing? Do we even need that first paragraph?

(Wolf Knob): Maybe you put it to the end.

Ray Fassett: You know, 5.5 - do we?

(Wolf Knob): It should be all...

Ray Fassett: You mean as the last step?

(Wolf Knob): As the last step, you know, or we can call the whole paragraph only 5.5 and then start with your procedure and then at the end we put that paragraph in the council shall transmit and vote and so on.

Rob Hoggarth: That's a good idea. Naturally the last paragraph repeats some of the text.

Ray Fassett: Okay, so we don't really need 5.5(a). We might just need - it might read 5.5 procedure of minutes and then we just go into it.

Does that make sense?

(Wolf Knob): Yeah.

Ray Fassett: Or did I just confuse everybody?

(Wolf Knoblen): Yeah.

Ray Fassett: And then we take what is existing now as the first paragraph under 5.5 minutes and from a blocking and tackling standpoint we just move that step all the way to the end.

Is that what I'm hearing?

(Wolf Knoblen): How about - you know, because 5.5(a) the last paragraph also include the approval of the Board. Is that necessary I'm asking? So because our minutes of the meetings are no later than the day after the date on which they are formally approved by the Board.

Ray Fassett: That should be Council there.

(Wolf Knoblen): Yeah.

Ray Fassett: The Board that should be changed to Council. That's a good catch.

(Wolf Knoblen): You know, I wasn't reading that before. I was thinking okay that's procedure. It's not that important. Okay, it's really important as you go across.

Ray Fassett: Well, I'm guilty of the same thing. I read ICANN secretary a thousand times and the vision of Glen is popping in my head instead of reading what it means.

Rob Hoggarth: Well, I think - this is Rob again. I think part of this is that these procedures came from the original perhaps GNSO.

Ray Fassett: Yeah.

Rob Hoggarth: And there may be aspects of this that need to remain in that if the new GNSO will heavily utilize working groups.

When you read that last paragraph it currently says all minutes and meetings of the GNSO and any Council thereof might be without - you know, hopefully modified by saying any meetings of the GNSO Council and any working groups or something like that in parenthesis or at least at this point until the working group model work team is done with all its effort, just take out that parenthetical and have it say all minutes and meetings of the GNSO Council shall be approved promptly and should be approved - well, that whole first sentence isn't really necessary perhaps.

There may be some - I don't know if we can just do it right now but that needs to be overhauled; that last paragraph and the very first paragraph you were referring to, right?

Ray Fassett: Yeah, let me take a stab at this one. I'll draft something and send it to the list.

Glen de Saint Gery: This is Glen again. Can I have you a bit of background there?

Ray Fassett: Yeah, yeah.

Glen de Saint Gery: Indeed that came from the old GNSO and at that time there was not a full-time secretariat.

Ray Fassett: Right.

Glen de Saint Gery: And there were about three or four people on the staff of ICANN; one was (Dan Heleron). And it was (Dan) who used to go through that because it wasn't - the Chair didn't do it.

Ray Fassett: Right, right.

Glen de Saint Gery: I think it comes from a very long time ago and for that reason...

Ray Fassett: Yeah.

Glen de Saint Gery: ...but obviously we have moved very far away from that too.

Ray Fassett: Right. Let me take a - yeah, that's right. Let me take a stab at cleaning that up. I'll send it to the list and then you guys can fix it for me.

How's that?

Okay, I'll do 5.5 and 5.5(a). I'll probably collapse it into one (way).

(Wolf Knob): I would say also it should reflect this as working group model.

Ray Fassett: Yeah, right, right. So instead of any Councils thereof...

(Wolf Knob): Yeah.

Ray Fassett: We would just update that to the new language, the new semantics.

(Wolf Knob): Okay.

Ray Fassett: Okay, good. All right, let's see what else I have here.

Okay, let's see. Is absentee voting covered in the new bylaws?

(Wolf Knob): Yes it is at the end, not in the new bylaws, but here in the rules and procedure it has been transferred to.

But before we go to that point I still had another point here. There was a question with regards to - oh do we really (start off) the Section 4 as well or not?

Ray Fassett: Section 4, sure, sure.

(Wolf Knoblen): Yes sure, yes. Okay it's Section 4.1. And I had the question because if you look to the archive below B, point B, is the council chair elected from one of the - however then the council level nominating committee appointee shall serve as one of vice chairs.

So well as we have in the new model, we shall have three NCAs. So the question is and I understood it in that way, that the - it shall be the non-voting NCA.

Rob Hoggarth: Yes sir, that is correct. This is Rob. That non-voting NCA is intended to serve as sort of this council level advisor position.

And I think this provision as drafted right now notes that, you know, the council chair ultimately is elected from one of the houses to keep the balance on the leadership team, it was important for, you know, an independent player to be a part of that team.

Otherwise the leadership team of chair and two vice chairs might be dominated by one house or the other.

Ray Fassett: Yes, the two out of three concept right?

Rob Hoggarth: Yes sir.

(Wolf Knoblen): That means we insert here then the non-voting - or the council level non-voting NCA.

Rob Hoggarth: That would be a good clarification, yes.

Ray Fassett: All right, I agree in this context. But as long as you mentioned it, I had the question on this that, you know, what if this person isn't - doesn't have the skill set necessarily of a vice chair?

We're default - so it would, you know, we're defaulting the job if you will, to somebody who may not have that skill set.

(Wolf Knoben): Yes. I would say in (non-com), that's one of the tasks of the (non-com) to look at this. So that should be a precondition for the (non-com).

Ray Fassett: Okay, okay. That's good clarification.

Another one on this for clarification that I had was, we say that, you know, if the chair's elected from one of the houses, that person shall retain his or her vote in that house.

Should we be clear that we also mean the same thing for any of the vice chairs? You know, we specifically point out that the - if the chair's elected from one of the houses, that person shall retain his or her vote in that house. But we don't say the same thing for the vice chairs. Should we, that the vice chairs will also retain their vote in his or her house?

(Wolf Knoben): Yes, I think that is pointed out already isn't it?

Ray Fassett: I don't think so. We have a sentence, right in that same paragraph, we have a sentence that says if the chair's elected from one of the houses, that person shall retain his or her vote in that house.

(Wolf Knoben): Yes.

Ray Fassett: To me that seems logical, almost unsaid, but we're saying it. Then the question I had, well as long as we're saying that, do we need to say that the

vice chair's elected from one of the houses that those persons shall retain his or her vote in their respective house?

(Wolf Knoblen): Yes. I was thinking that it was already in the bylaws dealing with the structure of the house. And then there's something in the bylaws with regard to the election of chairs and vice chairs itself, isn't it? Well...

Ray Fassett: That I don't know. This is Ray. I don't know. You're saying that that's already covered or you're suggesting that it might be covered in the bylaws already (Wolf)?

(Wolf Knoblen): Yes, I think so. But it should be checked really.

Ray Fassett: Okay.

(Wolf Knoblen): I think I have read it but it's not here in the rules and procedure but maybe in the bylaws. But okay, we have to check it. Yes.

Ray Fassett: All right.

Rob Hoggarth: Yes, we'll do that. The language that's here drafted in 4.1 was taken directly from the consensus working group that met July of last year.

And I think as part of their consensus discussions it was a particular point of discussion that, you know, the chair would have a vote as opposed to, you know, someone who would just be acting in an administrative capacity.

And so in running for the chair position, someone was not giving up their ability or opportunity to express a vote on the council.

They did not - I just went back and looked at their final report that they provided to the board. They did not include any specific language about the

vice chairs. If you guys wanted to add that, that would be something separate from what they had originally put together.

(That way) that's good or bad, just making that observations.

Ray Fassett: Yes, right. I was just raising it to it's not a big issue, it's just for clarity.

(Wolf Knob): Okay. And I added the following two paragraphs.

Ray Fassett: Okay.

(Wolf Knob): You see that in green?

Ray Fassett: Which one (Wolf)?

(Wolf Knob): It was after that paragraph you were just talking about, the NCA. There are two paragraphs which are in green. Mine should be in green, I think so.

But in my text it's green. So it starts with in the event that the general council has not elected and so on. You see those?

Ray Fassett: Yes.

(Wolf Knob): So those paragraphs, that's - those paragraphs I inserted as a suggestion so because there were something - there was something in it before with regards to the election or to the case. If there is no successful election of a council chair (happen since).

So and then the question how to really come to a successful election.

Ray Fassett: Yes.

Rob Hoggarth: Yes, this is Rob. And the council is aware that they still have an expectation from the board that right now they only have a provision for the first ballot for electing the chair. And the board has asked the GNSO Council -- and it is still a to do for them -- to develop and agree on the process for subsequent ballots in terms of how to approach that.

But this would be an important fallback provision that I believe the working group last July also came up with just to make sure that if in fact there was some sort of a stalemate that the council could continue to function and in an administrative capacity. Of course the two vice chairs would serve collectively as the chair for the council.

Ray Fassett: Well based on that I mean are - is this addition that (Wolf) added, is that providing the clarity that we're looking for?

I think (Wolf) what you're saying is that, you know, what happens if the GNSO Council has not elected a chair? Then what? Right?

(Wolf Knob): You know, my - the reason why I put it in is the following. So if I look to the bylaws, now the existing suggestion for public comment, the paragraph which deals with the council chair election says in the event that the GNSO Council has not elected a GNSO Council chair by the end of the previous chair's term, vice chairs will serve as interim GNSO co-chairs until a successful election can be held at (unintelligible).

So that until a successful election can be held. So I think those procedures should contain something which deals with what does it mean until a successful election can be held.

Ray Fassett: I see.

(Wolf Knoblen): So that's the reason why I put it in here. So - and then the second paragraph may be - so there's a second sentence I put it in was each follow-up council meeting shall be used to conduct a successful council chair election.

There must be something which binds the council to come to a successful election. So that's just a suggestion for a my side here is for our council meeting shall be used to conduct a successful, you know, it could be a situation that okay, maybe the council is more or less happy with having an interim solution for one or two years. Why not?

Ray Fassett: Right. I think it's a good suggestion. I like it.

Rob Hoggarth: This is Rob. My only question there would be that I would expect that that wouldn't preclude the council from otherwise conducting, you know, perhaps an email ballot or something like that.

And from that perspective Glen, you know, we've already been in some conversations over the last couple of weeks of what will happen during the transition.

In the past have the elections been held at a council meeting or are they conducted via email? How is that currently done?

Glen de Saint Gery: Up till now Rob, the elections are held by email ballot. And the results of the email ballot has to be confirmed at a council meeting.

And the old bylaws that we were acting under made Provision 4 an election at a meeting, at an in person meeting or by electronic ballot.

And it has just so happened that up till now we've had - it's been the most convenient way of doing it that there's been a ballot sent out and that the results are confirmed at a council meeting.

(Wolf Knob): Okay, what I understand if I understand your point Rob and Glen was that means it should not be the - given the opportunity for voting for a chair election only at a person, in person meeting but also in-between.

So as soon as possible as it is possible - it's possible so by balloting for example.

So...

Rob Hoggarth: Yes, my only concern was that you not limit it to council meetings but maybe...

(Wolf Knob): Yes, I wouldn't do so. So it's better, you know, to include or to do something else, to formulate something else.

Glen de Saint Gery: I think if we go back to the old text, it was fairly clear that it could be done by either an email, an electronic ballot or in a council meeting.

(Wolf Knob): Yes, sure.

Rob Hoggarth: Great, I'll confirm that with - if that's okay with you Ray as well, I'll confirm that with Julie and she can remind and pull out that - some of that old language to reflect (Wolf) - (Wolrick)'s really important point here that there should be some mechanism to continue to encourage the council or force the council to continue to make efforts and that, you know, it can't just be left in that state - you know, that limbo status, but that there needs to be continued efforts to conduct the election.

Ray Fassett: I think it's a good point, yes.

Okay that's all the comment I have for now. I have a few nits. What I'm also going to do is go through and see where it might say council members

instead of working groups. And I have a few things like that maybe to send off to the list. But that can all be done I think on list.

We did not get today to Section 5.8 and 16. Those are a little more complex issues. But that's okay. We'll get to that. We'll make that the priority for next call. Does that make sense?

(Wolf Knoben): Yes.

Ray Fassett: Okay I don't have any more comment on this one right now for discussion. Does anybody else?

(Wolf Knoben): No.

Ray Fassett: And I have time by the way. So if there is, I can stay on.

(Wolf Knoben): No questions, I do not have. The absentee voting, what's your question? It's under Paragraph 16.

Ray Fassett: Yes, so I guess we'll probably delve into that one a little more (in-depthly). I think one point I wanted to make on that as I was reading through it is the issue of proxy voting. I think we can stay away from that for now.

So just throwing that out there. That's a very contentious issue. And our role here is just, you know, of prioritizing. You know, we want to make sure we can get the council seated by Seoul. I don't know if we need to get into proxy voting to accomplish that.

Okay, but that's for the next discussion.

Okay, if that's - that's all I have. If there's anything else by anybody, we can adjourn the meeting.

(Wolf Knoblen): Yes.

Rob Hoggarth: Ray, just to confirm, your meeting time next week will be one hour earlier next Wednesday, is that correct?

Ray Fassett: That's correct, 15:00 UTC.

(Wolf Knoblen): One (moment). Just a minute. I have to check that. It's - oh 15:00 yes, (with me), okay. Good. That's better, yes.

Ray Fassett: Great. Well thank you (Wolf) for joining today...

(Wolf Knoblen): Yes.

Ray Fassett: ...and Rob and Glen and Gisella. Thank you very much.

(Wolf Knoblen): Okay, thank you.

Woman: Thank you Ray.

Ray Fassett: Okay.

Rob Hoggarth: Thank you Ray.

Ray Fassett: Sure. Bye-bye.

Gisella Gruber-White: Thank you (Miriam).

END