

**GNSO – ICANN Sydney Meeting
GNSO Open Working session
Council Restructuring
21 June at 15:15 local time**

Note: The following is the output of transcribing at the GNSO Council Restructuring Meeting held in Sydney on Sunday 21 June 2009 at 15:15 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: Okay. Let's start. Okay. So this session is a continuation of the first session we had yesterday morning. Seems like weeks ago now. So what we're going to do is we'll do two things. One, we'll start with the group that went away to rewrite the paragraph that was sort of difficult and mangled and review that and see how that one works.

Then, basically, we'll proceed through the rest of the document and try and hopefully knock out most of the changes that are still pending, taking into account and acknowledging that there's two pieces that we will not solve in this meeting today. One of those being that, one, we already passed by in terms of seats 13 and 14 and how we basically put the -- do the directors' election. That one we won't work on further today. And, also, when we get to the bottom of the document, acknowledging that there is an outstanding issue on how the council representatives of NCSG are placed into the council, that there's a pending question with the board.

I did have a long discussion with Roberto yesterday saying, Hey, you guys got to make a decision on this. It's gating getting the bylaws done and it's important that you guys work it out. Please work it out. And Roberto said he would do everything possible to get that worked out during this week and come to the various -- that the SIC will make its recommendations on those two issues this week and then we can continue. The board is not going to take any votes on this until it has got the bylaws in front of it as a proposal. But the SIC is basically the one working on resolving the issues. So they will work on those. So we'll leave those two sections alone, but we will try to work through the rest.

Who wants to talk through the change here? Who from that group wants to -- I mean, I can read it and then someone can explain.

>>MARGIE MILAM: Tim, you want to?

>>AVRI DORIA: Someone want to take the lead on this rewritten section?

>>TIM RUIZ: Sure. We had several discussions about concerns over some sort of check in the event of just a single house voting to remove the NCA. So this is kind of the compromise we came up with. And Philip offered what we felt was actually the best compromise in regards to including the board, which is actually an appeal process with the board instead of having the board approve the removal itself.

So basically what we came up with is -- you can see that the NCA that's actually appointed to a particular house can be removed by a 3/4 vote of all members of that applicable house. In the case of the Nominating Committee, the non-voting Nominating Committee Appointee, it would take a 3/4 vote of all members of both houses and then such removal shall be subject to reversal by the ICANN board on appeal by the affected GNSO member or any other GNSO Council member.

>>AVRI DORIA: Yes, Philip?

>>PHILIP SHEPPARD: Just one clarification -- well, point. This is the first time I have seen the text that we discussed earlier. I'm not sure we need an appeal by any other GNSO council member. I thought an appeal by the affected party was probably sufficient. That was my original thinking. That may be worth discussing, if people think otherwise.

>>AVRI DORIA: I was sort of surprised by -- it was an interesting -- could anyone explain the rationale for having another GNSO council member do it on somebody's behalf? Yes?

>>TIM RUIZ: I can't explain the rationale. I believe that was at the request of a couple of the other members on the team, Alan and Olga, neither one of which are here. So I'm not sure we can explain the rationale for that. I would be fine with just "the appeal of the affected GNSO member."

>>MARGIE MILAM: That's what I remembered as well. I think they just wanted to have an extra check in case there was just some egregious situation that a council member, you know, could possibly object. But it is really -- it was their issue.

>>AVRI DORIA: Is there a problem with having it appealed by someone other than the person that was -- for example, okay, one case I can imagine is if someone -- and this is just a hypothetical where this might be useful. If someone has been in the hospital and, you know, 3/4 of the members decide to boot her because she hasn't been attending meetings and someone else basically says, Wait a second, this is unfair, this person has been in the hospital, et cetera. So that kind of circumstance might be when it makes sense to have someone else have the ability if the person being booted is incapacitated or unavailable to do that. That would be my only thought as to why that might make sense. I don't see a harm in it. Is there an objection to it?

>>PHILIP SHEPPARD: Yes, I'm objecting I think because, I mean, you need to have standing normally to make an appeal. I don't see where an unaffected party would have standing in this case. It just seems a strange addition. I would speak against it.

>>AVRI DORIA: Okay. In which case, I suggest we strike it. Does anybody object to striking it?

>>TIM RUIZ: Those who would object aren't here.

>>AVRI DORIA: We'll have to put a line through it at the moment and we'll have to go back and check with them, though. This is the team in which we're working on it for the moment, so I would say striking it is the prerogative of this group. And if they want to basically get it put back in, they can come and get it put back in and we can check with them. Thanks.

Okay. As I said, 4 is remaining as a red pending until such time we get an answer from the board SIC.

Where is the next -- so there is "provisions" replaced by "procedures." And "the chair and any other officers," any objection to that? That just seems a grammatical type of change. Anyone object to that?

Okay.

>>MARGIE MILAM: I'm trying to figure out how to show the comments again.

>>AVRI DORIA: Okay. I should have that in front of me. I'm just not in the right place. Okay. You have fewer comments to look at?

So in 5 there was a question on the word "or both," "as the GNSO Council shall select the GNSO chair for a term" -- "for a term the GNSO Council specifies but no longer than one year, by written ballot or by action at a meeting or both." And then the comment is the inclusion of "both" confuses the requirements. What is trying to be achieved here? It may be better to remove "or both" unless we can reach a better formulation of this.

So does the "both" make sense to someone? No? Anybody want to argue for keeping "or both"? It does make -- it does seem that you are either going to elect someone by written ballot or by action at a meeting.

>>MARGIE MILAM: What about the proxy vote when you do a vote in presence and people can vote later if they are not in presence? Is that what that's trying to --

>>AVRI DORIA: The proxy vote is really only -- is it defined for

things other than PDP? Yes, it is defined also for the election of officers. But wouldn't that be part of the written ballot procedure? Yes, Tim.

>>TIM RUIZ: I was just wondering why it had to be specified at all. The sentence couldn't end after "longer than one year"? The procedures contained in the operating rules and procedures, why "by written ballot or action at a meeting" has to be included at all?

>>AVRI DORIA: Which is because that stuff is going to be in the operating rules and procedures is basically what you're saying. We don't need to say what the procedures are here because the procedures are elsewhere. Does anybody object to removing the whole phrase? No?

>>MARGIE MILAM: So just end at "one year"?

>>AVRI DORIA: Yep. And then the procedures for selecting "the chair or any officers" are contained within the -- so, yeah. Any objection to accepting that grammatical -- I think it is grammatical phrasing. Okay.

Moving down -- I shouldn't even look at the one I have got anymore because it is too confusing.

So the next one is in terms of the vice chair, and it's "each house is described in section -- of this article shall select a vice chair who will be vice chair of the whole GNSO Council for a term the GNSO Council specifies but not longer than one year." And then it had that same "by written ballot or by action at a meeting or both" in it. Then it had "the provisions for selecting these positions are contained within the GNSO Council operating rules and procedures approved by the board." But we already have the previous sentence that says that. Or do we need to repeat that? And the previous sentence says, "for all officers, chair and any other officers are contained in." Do we need to repeat that sentence that's crossed out here? I'm assuming we want to remove the "by written ballot or action of a meeting or both" as we did before. Is that a correct assumption? Anyone object to that assumption?

>>TIM RUIZ: Why not move the "provisions for selecting" to the end?

>>AVRI DORIA: Okay. Why not move the "provisions for selecting" to the end?

>>TIM RUIZ: Yeah.

>>AVRI DORIA: That makes sense. Any objection?

>>STEVE METALITZ: Avri, this is Steve Metalitz.

>>AVRI DORIA: Yes, Steve.

>>STEVE METALITZ: I'm not sure if there is any discussion going on but I'm not catching what's going on but I do have a question.

>>AVRI DORIA: Okay. We have been talking. It mostly has been me talking, not a whole lot of discussion. But please go on.

>>STEVE METALITZ: This is on this vice chair paragraph.

>>AVRI DORIA: Yes.

>>STEVE METALITZ: It talks about electing vice chair and then the last question says, "the vice chairs will serve as interim GNSO co-chairs," plural. Is there a provision for electing other vice chairs that needs to be cross-referenced here?

>>AVRI DORIA: Like I said, this reference is to each house electing a vice chair. So I think in that previous paragraph, it says, "Each house shall elect a vice chair who will be vice chair of the whole of the GNSO Council for a term." And then later -- so it's referring to the two vice chairs elected by each house.

>>STEVE METALITZ: Sorry. Thank you.

>>AVRI DORIA: So the next one is -- I'm not sure how to tell you where it is. In 6B, and "except as otherwise specified in these bylaws Annex A hereto or the GNSO Council operating rules and procedures approved by the board, the default threshold to pass a GNSO Council motion or any other voting action requires a simple majority vote of each house." And then it goes on to create basically the list A -- and this was already in there -- "create an issues report requires more than 25% of both houses or majority of one house." And these are the rules specified in the -- that were specified in the July working group.

And then there was a comment related to -- I'll get to the comment first. Is there any objection to the rewrite of the top half before I get into the comments related to the rest? It was basically a formalization of what we already had but a rewriting basically introducing the paragraph with the thresholds and saying if there isn't already -- if there isn't a defined threshold in either these bylaws, Annex A or the operating rules of procedures, then the default is the simple majority of each house.

So is there any objection to that rewrite? Can that one be accepted? Yes.

>>PHILIP SHEPPARD: Just one comment on consistency. Either every time we refer to "operating rules and procedures" we are going to follow that with the phrase "approved by the board" or we don't. I think at the moment it is a bit of a mix, isn't it? I can't see the point of saying "approved by the board" every time. I just think we

need to say somewhere else the rules and procedures will be approved by the board and leave it at that.

>>AVRI DORIA: We would have to put in a note somewhere. We would have to put in an extra clause somewhere to say there will be such procedures that are --

>>PHILIP SHEPPARD: What I'm saying, I'm not sure in previous references to "operating rules and procedures" we have always used the phrase "approved by the board."

>>AVRI DORIA: There was an attempt to do it. I don't know if I was consistent all the way through. I had attempted when I did one of the edits to try to put "approved by the board." And I think we have a choice of either saying it every time or putting in a new paragraph that says there shall be operating rules and procedures which shall be approved by the board.

Unless anybody objects, I'd say that -- ask Margie to basically go through and make sure it is consistent with the "approved by the board" phrase. In this case, it's there obviously.

And no objection to accepting that edit? Okay. Thank you. And that would accept the deletion also since this replaces what was deleted.

Okay. Now going down to -- there is two comments that need to be discussed related to -- which one is it? It's E. It's related to the whole section? Could this be moved to Annex A for the PDP procedures? I think that this entire paragraph can be replaced by the paragraph above. If this is already specified in the operating procedures, do we need to restate this here?

That had been actually a thought I had earlier, but it had been important to Chuck that those be listed here as opposed to in the transition. And the case was that we weren't doing a rewrite and edit of Annex A at this point.

So basically we're leaving Annex A alone until the PDP working group - - yeah, until the -- yeah, PDP working team had finished its work and there had been a choice of either having these here or having them in the transition. And there had seemed to have been consensus for a point made by Chuck that it was better having these here.

Any comments on whether we leave them here? Put them in the transition? We really didn't want to open up Annex A at this point because Annex A will get opened up at another point.

>>MARGIE MILAM: And I think the reason that they're concerned about it is because of the contractual obligations under the registry agreements. Consensus policies is policies adopted in the manner -- in the bylaws, so they thought at least this part needed to be there.

>>AVRI DORIA: They didn't actually say that in their comment, that they were worried about it from that basis. It seemed to be --

>>MARGIE MILAM: I've heard Jeff say that in the PDP thing. I might be repeating that.

>>AVRI DORIA: That's from the legal team.

Any comments? Should we put this in Annex A? I mean, because it's this paragraph that calls out Annex A, so I don't see why that would -- I would suggest that we just leave this here for now and -- any objection to just leaving this and responding pretty much as I've responded to the comment? No? Again, then let's leave it here and move on.

Okay, next is in Article 10, Statement 1, "the following stakeholder groups are hereby recognized as representative of a specific group of one or more constituencies." Any objection to the "one or more constituencies"? Okay, accept it.

Next one. At the end of C in paragraph -- oh, still 1, sorry. There was an "a" inserted after "Internet." So just --

>>MARGIE MILAM: Accept?

>>AVRI DORIA: I think so. I'm just curious in looking at parallel construction why the B didn't get an "and" after its semicolon if we need an "and" after this semicolon.

>>MARGIE MILAM: From a drafting point of view, there is only one "and."

>>AVRI DORIA: Of course. Yes, sorry. That was a silly question. I was just being stupid. Yes, I know that's in the minutes.

Okay. The next one is 3.

>>MARGIE MILAM: Right above 3.

>>AVRI DORIA: Right above 3, thank you. So on the last line, let me go to the top of that sentence. It is the whole thing here. Basically -- okay. I will read the whole thing. "Each stakeholder group identified in paragraph 1 of this section and each of its associated constituencies shall maintain recognition with the ICANN board. Recognition is granted by the board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with prevailing laws and consistent with procedures designed to ensure fairness.

Stakeholder group and constituency charters may be reviewed periodically as prescribed by the board" as opposed to "will be reviewed periodically as prescribed by the board." Was that a legal suggested change? Must have been. So I guess we're not requiring the board to review them periodically, but they can do it in a non-periodic manner.

Any objection to "may" replacing "will"? Okay. Accept.

And then in the next one there was a line removed. "Any group of individuals or entities may petition the board for recognition as a new or separate constituency." And then the phrase that was excluded, "including recommended organizational placement within a particular stakeholder group," and that was removed. And because it was moved down to one of the bullets and then "any such petition shall contain" and then there is a sequence, A, "a detailed explanation of why the addition of such constituency will improve the ability of the GNSO to carry out its policy-development responsibilities; B" -- which I guess would start a new line in a cleaned up version -- "a detailed explanation of why the proposed new constituency would adequately represent, on a global basis, the stakeholders it seeks to represent; C" -- and this was the line that was moved from above -- "a recommendation for organizational placement within a particular stakeholder group; and, D, a proposed charter that adheres to the principles and procedures contained in these bylaws."

Any issues with those edits? A whole set of them in 3 there?

>>PHILIP SHEPPARD: Avri, my only concern there is the phrasing of B, "a detailed explanation of why a proposed new constituency would adequately represent on a global basis." It is sort of looking into the future, and what it doesn't capture is precisely who at the time of the petition has gotten together to say who we are and who we represent now.

I mean, clearly there is going to be an aspiration of growth. That's fine. But it seems to be suggesting a petition coming from an individual with high hopes would qualify.

>>AVRI DORIA: So basically you're suggesting it say "a detailed explanation of how the new proposed constituency adequately represents"?

>>PHILIP SHEPPARD: I think so, yeah. That would be better.

>>AVRI DORIA: Any objection to changing it in that manner? In which case, please. And I said "how" instead of "why." I guess "why" is just as good. So probably leave it as "why."

Yes, David?

>>DAVID MAHER: Is there an assumption that every constituency must

be global? You can't have a constituency, say, of later than -- whatever? I'm just asking.

>>AVRI DORIA: I guess that's the assumption here that, yes, that it needs to be a global constituency. Is that something that we don't want to say?

Constituencies have, by and large, not been geographical. In fact, there's been a requirement that they be global up until now, so that would be a large change.

Okay. So we'll leave that as global and accept the rest of the change. Any issue with accepting the rest of the change?

Okay. Moving on -- okay. I'm not sure where the next one is because we lost that.

Okay. So under (d), there is a -- oh, and I have to make sure I keep track of time here because we do need to --

>>MARGIE MILAM: We're at 4:00.

>>AVRI DORIA: We're at 4:00? And it's at 5:00 that we have our joint session, so I want to make sure that we're -- we finish by 4:45."

Okay. The line being removed is "prior to approval and confirmation such new constituencies shall submit a formal charter to the board that adheres" -- but we already had "charter," so that line was basically moved up into the list. So any objection to removing that from here? Basically, that was (d).

Okay. Then 5: "The board may create new constituencies within any stakeholder group in response to such a petition as described in Section 4 link], if the board determines that such an action would serve the purpose of ICANN. Whenever the board posts a petition or recommendation for a new constituency for public comment, the board shall notify the GNSO Council and the appropriate stakeholder group affected and shall consider any response to that notification prior to taking action."

Any issue with the edits of replacing "it" with "the board"? I wouldn't think so.

And then adding "the board" in the future -- in the following sentence? "The board shall notify..."as opposed to "It Shall Notify"?

Okay. Moving on...

Okay. Now we're on in Article 10, Section -- oh, you're back -- no, you're not back.

Okay. Then a deletion of "Initially, the," and it's just "The policy development procedures to be followed by the GNSO shall be stated in Annex A of these bylaws. These procedures may be supplemented or revised in a manner stated in Section 3(4) of this article," and then, two "check cross-references."

So any objection to replacing "initially, the" with "the"?

No? Okay. And then probably only need to "check cross-reference" once, but that's no biggie.

>>MARGIE MILAM: Yeah. I'll do that later when we're finished.

>>AVRI DORIA: Yeah. Yeah, yeah. In fact, that exists all the way through the document.

>>MARGIE MILAM: Yeah.

>>AVRI DORIA: Okay. And then we're into transition articles and where's our next edit?

Okay. There, 2, a deletion of "Notwithstanding the adoption of these bylaws amendments, each," and then just "Each GNSO constituency described in Paragraph 1 of this subsection shall continue operating substantially as before..."

Any objection to that change? No?

Okay. Thank you.

Okay. Then down to 3. Then this was prior to the commencement of ICANN meeting -- meetings. Oh, okay. It's replacement of "meeting" to "meetings."

"In October 2009."

And then we have the escape clause "or another date," and then further -- so I assume there was no objection to changing "meeting" to "meetings."

>>MARGIE MILAM: Is there a comment there, Marika?

>>AVRI DORIA: Oh, is there a comment?

>>MARGIE MILAM: Which line? 3?

>>MARIKA KONINGS: "And officers."

>>AVRI DORIA: "Prior to commemorate of the ICANN meetings and officers"?

>>MARGIE MILAM: No. It should be worded, "GNSO shall consist of its current constituency structure as described," or some sort of --

>>STEVE METALITZ: I think there's a comments there about the officers.

>>AVRI DORIA: Yeah. And we're not quite sure what that comment is actually applying to.

Oh, so let me read it. "Prior to the" -- excuse me?

>>TIM RUIZ: I think it's current structure and officer.

>>AVRI DORIA: Okay. "Prior to the commemorate of the ICANN meeting in October 2009 or another date, the board may designate by resolution the GNSO Council shall consist of its current constituency structure and officers," and then add -- oh, and then "as was the line that was commented." I see. "And officers."

Any objection to adding "and officers"?

Okay.

"As described in Article X of the bylaws as amended 29 May 2008."
Excuse me?

>>MARGIE MILAM: Okay.

>>AVRI DORIA: I'm not sure that that 29 May 2008 --

>>MARGIE MILAM: I'll confirm that and then accept that if --

>>AVRI DORIA: Yeah, right. So leave that as marked because that -- I don't assume anyone here has a strong opinion on that as long as it's a correct and reasonable date.

Okay. And then at the bottom there, "subject to any change by action of the GNSO Council or ICANN board."

So that means -- I should probably read that whole sentence to make sure it makes sense.

"All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO Council and in existence immediately before the adoption of this transition article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO Council," and then the addition: "Or ICANN board."

Any question or objection to the addition of "or ICANN board"?

Okay. Thanks. Accepted.

4, an addition of a line -- or actually it's a replacement of replacing "Upon Adoption of This Transition Article," with, "Beginning with the ICANN meetings in October 2009, or another date the board may designate by resolution, the representatives..." et cetera. Any objection to the rephrasing?

>>STEVE METALITZ: I think it -- that probably should be "beginning with the commencement of the ICANN meetings or another date," because the ICANN meetings isn't a date.

>>AVRI DORIA: So you're saying beginning with the commencement of the --

>>STEVE METALITZ: Yeah, I think just make it parallel with the --

>>AVRI DORIA: Okay. Yeah, okay.

>>STEVE METALITZ: (Speaker is off microphone) of the ICANN meetings.

>>AVRI DORIA: Any objection to the change? Okay. So we can accept that rephrasing.

Okay. Then continuing down, and then we get to (d): "The three seats currently assigned by the noncommercial users constituency shall be reassigned as three of the six seats of noncommercial stakeholder group." And any objection to that change?

>>STEVE METALITZ: This is Steve. I just want it on the record that as you mentioned, that this issue will be decided by the board, including all the members of that.

>>AVRI DORIA: Right. So that one probably -- what we should probably add is two comments. One here and one beside the election clause, which was 4, up higher, saying that these issues are pending board or board SIC confirmation or board SIC decision? Is that what you're looking for?

>>STEVE METALITZ: Yes.

>>AVRI DORIA: Okay.

>>MARGIE MILAM: Can you read it?

>>AVRI DORIA: Yeah. "These revisions are pending SIC approval."

>>MARGIE MILAM: Okay.

>>AVRI DORIA: And then add that comment also to the -- to Paragraph 4 up above, where it talks about how the director --

>>MARGIE MILAM: The 13 and 14 seats, right.

>>AVRI DORIA: 1 and 14 of the board are elected, and so those two are marked as pending decisions. Yes.

>>CARLOS SOUZA: Avri, just a question. The new GNSO board is going to be seated in the beginning or in the end of the next ICANN meeting?

>>AVRI DORIA: The idea is the beginning.

>>CARLOS SOUZA: Okay. So it's a change in the -- in the mandates. Because it could sound like a silly question, but as it affects me directly, I just want to know if we -- because I remember that we are using the end of the meetings as the -- the last day of the mandate and not the commence -- not the beginning. So is there a change in this --

>>AVRI DORIA: I think because this was the transition article, we were --

>>CARLOS SOUZA: Okay.

>>AVRI DORIA: -- trying to get the new council --

>>CARLOS SOUZA: Seated in Korea. Thank you.

>>AVRI DORIA: -- seated as the steering group -- and that's in the stakeholder-based council -- seated at the beginning.

And then normally, yes, the elections were the end, but the stakeholder group -- and so I -- I don't know that it would necessarily affect you. It really depends on how the NCSG process was that, you know, if the three seats moved in and then afterwards there was the election, that would be. But that's, you know, a stakeholder group, et cetera, issue to be dealt with. Yes.

>>ROBIN GROSS: Well, the way that, for example, Carlos' term goes is it ends at the end of the meeting, so now I'm not sure who we're supposed to send to represent us, and so are we -- and so are you saying we need to have the -- because we know we have to have the elections between now and then, but in terms of when those council -- when that seat gets replaced, I thought he would finish his term and --

>>AVRI DORIA: I think the way this is being written -- and if I understand, it's the way it was working with most, is that that meeting was the beginning of the stakeholder group elected representatives.

Now, how each stakeholder group was doing its elections and, for example, that allows for assuming that the -- that the SIC approves it, that the three current ones move into that role and then another one starts up later. I don't think it's actually determined -- actually, it is. It basically says "as long as the SIC approves it," that the

three seats move into.

>>ROBIN GROSS: But I'm just -- I'm still -- because this seems to be like basically ending a term a meeting early. I mean, is that the intent, then, to say, "Well, forget about the two-year term. In this case, it's only an 18-month term"?

>>AVRI DORIA: Well, it's not really. It's one week early.

>>ROBIN GROSS: Okay. But you know we have these meetings where all the work is done and the people come, and so, you know, in terms of who to send, we had been anticipating that Carlos would finish his term and go to the meeting and -- but now it sounds like you're saying that maybe it's going to be an entirely -- the new council and he's not going to --

>>AVRI DORIA: That was what I was understanding is that the new council in this one transition time slot, the new council was seated at that meeting.

Is that how other people understood it?

So that had been the understanding and am I -- I mean, is that how the other stakeholder group constituencies had understood that?grows.

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

>>AVRI DORIA: Until now? Steve?

>>STEVE METALITZ: I thought the goal was to have the new council seated in time for the Seoul meeting.

>>AVRI DORIA: Yes. That was my understanding also.

>>STEVE METALITZ: [inaudible] individuals or not [inaudible]

>>AVRI DORIA: Okay. So repeating what you said because the transcribers had difficulty, I think what you said was that yes, the new council was seated, but that didn't necessarily mean that it was different council members; that council members, depending on how things were done within their own stakeholder group, could indeed continue through that particular meeting and then there would be a replacement election afterwards.

>>STEVE METALITZ: Well, that -- I think, I think that's not exactly what I said, but --

>>AVRI DORIA: Sorry.

>>STEVE METALITZ: -- there's only one stakeholder group to whom this matters and that's the commercial stakeholders group because we're the

only ones that are losing seats, so we have to have a system for reducing nine to six, and only six should be seated at Seoul or whatever date the board specifies.

>>AVRI DORIA: Right.

>>MARGIE MILAM: I just wanted to ask Rob, since he's been involved in all the transition stuff, if he has any -- if that's correct.

>>ROB HOGGARTH: No, I have nothing to add. Thank you.

>>AVRI DORIA: Rob has nothing to add. Yes, Tim.

>>TIM RUIZ: So using -- you know, Carlos' example here particularly, so in Seoul even though an election may take place, Carlos could sit on the council for that meeting and then at the end of that meeting -- and be considered part of the new council and at the end of that meeting, the newly elected councillor could take up. That's a possibility that may not necessarily be the best solution, but that's --

>>ROBIN GROSS: (Speaker is off microphone).

>>TIM RUIZ: Yeah, that's what it sounds like yeah.

>>AVRI DORIA: Okay. That wouldn't be precluded by what's written there. Okay. So any -- next change. So we've added those two comments that say basically on these two issues, we're waiting for the SIC to give us a decision. And what's next?

Okay. The next one was "The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows," and I guess that was just an addition -- a clarification phrase there.

Any objection?

Oh, okay. Yes. Right. That was that same comment. Right.

>>MARIKA KONINGS: (Speaker is off microphone).

>>AVRI DORIA: Okay. Then the three seats selected by -- okay. And then "as follows: One voting member to the contracted party house; one voting to the non-contracted party house; and one member assigned to the GNSO Council at large."

Now, the fact that this was assigned by the Nominating Committee -- actually, going back to that -- was that was -- where was that one decided? I'm not clear. Is that what the legal came up with? We're asking the Nominating Committee -- this Nominating Committee to make that decision?

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

>>MARIKA KONINGS: (Speaker is off microphone).

>>PHILIP SHEPPARD: I thought that was what we had discussed --

>>STEVE METALITZ: We had a lot of discussion about that.

>>AVRI DORIA: We had discussed that for -- for the future, but had we actually --

>>PHILIP SHEPPARD: No, I think we --

>>AVRI DORIA: -- worked it out with the Nominating Committee for this point.

>>PHILIP SHEPPARD: No, exactly. That's my point. I think we had discussed it as desirable for the transition also, but the last conversation we had with the Nominating Committee is that's not what we're doing.

>>AVRI DORIA: Right. So therefore, that's why I just went back to it and sort of said for us to put it in that that's who's doing it is not correct. And then I think we had gone to how had we resolved it at that point?

>>PHILIP SHEPPARD: Didn't we ask the SIC this one as well?

>>AVRI DORIA: I don't remember at this point.

>>PHILIP SHEPPARD: I'm sure we punted it somewhere else.

[Laughter]

>>PHILIP SHEPPARD: And if we didn't, we should have.

>>AVRI DORIA: Right. I don't think we left it up to the NomCom -- the NCAs. I'm not sure what to do with this one at the moment, because I don't think "by the Nominating Committee" has been agreed to by the Nominating Committee, and so to say they're going to do it is not reasonable.

>>STEVE METALITZ: This is Steve. I would just say that there are lots of things in these bylaws that parts of ICANN are called to do, whether they want to do them or not, so I don't know if that's a reasonable option or --

[Laughter]

>>AVRI DORIA: I think at this point it may be difficult to get the Nominating Committee that's already engaged in this year's work to

necessarily do it, though. Why don't we leave it in for the moment, and I'll talk to the Nominating Committee. Yes, Edmon.

>>EDMON CHUNG: Is this just for this particular time and --

>>AVRI DORIA: Yeah, this is the transition.

>>EDMON CHUNG: Just for the transition? Why don't we just draw lots or something.

>>AVRI DORIA: Cut cards?

>>EDMON CHUNG: Yeah, something like that, because that wouldn't involve somebody else and it wouldn't involve a -- kind of a --

>>AVRI DORIA: Right.

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

>>MIKE RODENBAUGH: (Speaker is off microphone).

>>AVRI DORIA: Okay. Now, yes. Is this an instructive comment or another humorous one.

>>MIKE RODENBAUGH: Perhaps. Perhaps both, I don't know.

>>AVRI DORIA: Okay.

>>MIKE RODENBAUGH: Does it maybe make sense to have both the old and the new councils sit at that meeting and then have the hand-off at the end? Then you get rid of this problem. It would be added expense for everybody, but, on the other hand, I don't know, this council has done twice the work of any council in the past so --

>>AVRI DORIA: I don't know how that affects that. Because we're talking about -- I mean, the -- all the NCAs will be there because within the NomCom, the practice has always been they bring the new ones even though --

>>MIKE RODENBAUGH: Right.

>>AVRI DORIA: -- they don't actually start until after the meeting.

>>MIKE RODENBAUGH: Exactly.

>>AVRI DORIA: So -- but that doesn't answer this question.

>>MIKE RODENBAUGH: I thought it did because the problem is the NomCom wouldn't have the people there at the beginning as the -- or ready at the beginning, or, isn't that right? I'm sorry if I missed it.

>>AVRI DORIA: No. What this is -- at that meeting, you're going to have three NCAs still, and they're going to -- and it's basically going to be Olga, Terry, and me. And we're still the NCAs for that meeting.

Now, as far as I'm concerned, I'm definitely the homeless one and if somebody makes me go into a house, I'm going to complain, but -- and then we have to assign Olga and Terry, in my belief, one to each house for that meeting. For basically the -- the electing of the vice chair, which is probably the majority of what the house -- and then for any decisions that are made.

So Olga and Terry I believe need to be assigned to -- each to one house. Then after that meeting, Terry and possibly Olga or Olga's -- you know, and then the two new ones. Olga may be one, may not. Depends on what comes out of it. I definitely won't be one. Need to be assigned to houses.

>>MIKE RODENBAUGH: So if you're not talking about seating the entire new council the beginning of that meeting -- because I still got the old NomComers --

>>AVRI DORIA: Just Luke we've got -- no. The bicameral -- it's the bicameral council. Yes for that one meeting you still are struck with the old NCAs. But they go away at the end of the meeting and then you have new NCAs at the end and that's something that the --

>>MIKE RODENBAUGH: Doesn't it make more sense to just do the entire council at once?

>>STEVE METALITZ: Avri, this is Steve.

>>AVRI DORIA: Yes, Steve. Please.

>>STEVE METALITZ: (Speaker is off microphone).

>>AVRI DORIA: Please do.

>>STEVE METALITZ: Yeah. I think, first of all, I'm not sure how we could have both the old and the new council at once because the question is: Who would get to vote?

But the second problem is I think we're getting confused here between seats and individuals. Because we just had the discussion on the noncommercial side, this is about the seats, not necessarily about the individuals.

>>AVRI DORIA: Well, but the --

>>STEVE METALITZ: And in each case, we're basically leaving it up to the stakeholder group or to be decided in the stakeholder charter how those seats would be filled, right.

>>AVRI DORIA: In terms of -- yes.

>>STEVE METALITZ: Depending on what their terms are. So that's why I think it makes sense to say the Nominating Committee, since that's actually the source of legitimacy for the NomCom committee appointees to decide who -- how to allocate those seats. I hear you saying that the Nominating Committee may not be prepared to do that, and I'm not --

>>AVRI DORIA: Okay.

>>STEVE METALITZ: -- quite sure what the answer to that is. But I think that's why it's structured this way.

>>AVRI DORIA: Okay. I -- why don't we -- I'm suggesting that we leave it "by the Nominating Committee" and I will try to talk to the Nominating Committee and see -- and come back, if we can't get the Nominating Committee to do it and just have them do the assignment and see if they're willing. Ask them again. You're nodding. Will you help ask them again? Rob will help ask -- will help ask them again.

Okay. Thank you.

And so we'll leave that for -- you know, since that seems to be the easiest way to have them basically just make the determination, if they can.

Okay. In 5, there was basically a substitution of "After the adoption of this transition article and as soon" and just "as soon as practical after the ICANN meeting in October 2009 or another date the board may designate," so it was just basically a phrase substitution for "after the adoption of transition article and as soon." It's just "as soon as practical."

Any objection to that change?

>>STEVE METALITZ: Well, just a comment here about the current chair. I think the answer to the question is yes, but --

>>AVRI DORIA: Yes.

>>STEVE METALITZ: -- commenter is raising questions to --

>>AVRI DORIA: Right. And I did --

>>STEVE METALITZ: (Speaker is off microphone) specify that or --

>>AVRI DORIA: I did give an answer to them and I think they were satisfied. They were just checking that basically with the way this worked, and what would essentially happen is the new bicameral council holds an election as long as -- as soon as it's seated. It can either

hold it directly in Seoul -- in other words, in the room and have the new election then -- and in which case, you know, I would be replaced as chair as soon as the election was done, or perhaps at the end of the meeting, however it was done.

Otherwise, what would happen is the two vice chairs -- and as you would have the election by e-mail ballot right after the meeting and I would cease being chair when I ceased being a member of the council at the end of the meeting and the two vice chair -- the clause about the two vice chairs taking over the chair function would be the case until such time as a chair was elected.

So there --

>>STEVE METALITZ: What you say is correct but I'm not sure that's what this says, because this says after the conclusion -- this says they can't elect that -- they can't elect the new chair in Seoul. So maybe it's supposed to be "as soon as practical after the commencement of the ICANN meeting."

>>AVRI DORIA: That -- that's true.

>>STEVE METALITZ: (Speaker is off microphone) after the conclusion.

>>AVRI DORIA: Right. I mean, it's not --

>>STEVE METALITZ: (Speaker is off microphone).

>>AVRI DORIA: There's no reason why that election -- yeah. There's no reason why that election can't happen in Seoul.

>>STEVE METALITZ: The only reason is that this says it can't.

>>AVRI DORIA: Yeah. I know. You're correct.

>>STEVE METALITZ: (Speaker is off microphone).

>>AVRI DORIA: You're correct.

>>STEVE METALITZ: This says after the conclusion of the (Speaker is off microphone).

>>AVRI DORIA: Okay. So it's been changed now as soon as practical after the commencement of the ICANN meeting in October 2009 or another date the board may designate, et cetera.

>>STEVE METALITZ: Okay.

>>AVRI DORIA: And then that means you can get it done. You know, you can elect that person during the meeting to take over right after the meeting or however it works out or, in a worst case, you can start

a mail ballot right afterwards, depending on how it goes, but as long as the two bicameral -- as long as the two houses have elected their vice chair, then you've -- the clause kicks in that they carry on as chair until such time as the election is done.

Any other changes?

>>MARGIE MILAM: I just capitalized "board."

>>AVRI DORIA: Okay. Any other -- are we end at the end? We are at the end.

>>PHILIP SHEPPARD: Just one thought about Seoul. Are we -- I mean, supposing the action doesn't taken place, we won't have had the vice chair elections either. You've now got a council sitting with no chair at all, so you might just have a transitional chair for the meeting or something. Yeah? And is that --

>>AVRI DORIA: Well, the transitional chair -- I mean, at the moment, my election was for a year or until replaced.

>>PHILIP SHEPPARD: Ah. You'll be around to do that.

>>AVRI DORIA: I'll be around until the end of that meeting, yeah. You haven't gotten rid of me yet.

>>PHILIP SHEPPARD: Yeah, because the Nominating Committee --

>>AVRI DORIA: The replacement takes over at the end of the meeting.

>>PHILIP SHEPPARD: Yeah, okay.

>>AVRI DORIA: Right. So I'll be around for that meeting. I blink out of existence at the end of that meeting.

And so, yeah, so there will be a chair for that meeting, either a new chair that's elected at that meeting or -- right. And the vice chairs, I think they're -- it's sort of incumbent on the two houses to make sure they elect a vice chair during that meeting, if they haven't already done so.

But probably during that meeting.

Okay. So I think we've made it to the end of this. I think we have accepted all the changes --

>>MARGIE MILAM: Yeah. I have one question and I think it's just because I didn't realize that I needed acceptance. Let me just go back up.

I think this language -- was this language accepted?

>>AVRI DORIA: That no more -- okay. We've gone up to the "no more than one officer, director, employee, agent or consultant of any particular corporation or other organization (including its subsidiaries and affiliates)" -- sorry about reading so fast -- "shall serve on the GNSO Council at any given time."

I think that was accepted. Is there any objection to that, as written? What we were going through yesterday or -- yeah, yesterday -- was the "agent or consultant" language. But I think that was accepted.

>>MARGIE MILAM: Okay. Just wanted to confirm.

>>AVRI DORIA: So we have -- basically, we have the one pending in 4, which currently reads --

>>MARGIE MILAM: 4. Let's see. This one?

>>AVRI DORIA: Yes. "The GNSO Council shall make selections to fill seats 13 and 14 on the ICANN board by written ballot or by action at a meeting placeholder regarding manner of selection TBD by board," and then with the note that basically this revision is pending SIC approval.

And then we have the transition article for -- is it 4(d)?

>>MARGIE MILAM: Uh-huh.

>>AVRI DORIA: No. Yes. 4(d), related to the NCSG seats, which is also -- yes?

>>ROBIN GROSS: Yeah. I think the "pending the SIC exception" should apply to all, and not just the NCSG.

>>AVRI DORIA: Okay. Any comment? And that's based -- so basically you're saying that the NCSG -- I mean, that the comment "pending approval by the SIC" applies to whatever paragraph --

>>ROBIN GROSS: (Speaker is off microphone).

>>AVRI DORIA: Yeah. That's what I'm saying, the paragraph number.

>>ROBIN GROSS: Yeah. Not just --

>>AVRI DORIA: Yeah. What is the paragraph number? I'm trying to see. Yeah, no what you're saying. I'm just trying to figure out the paragraph number.

Paragraph 4 there. Any objection to changing it to basically that whole paragraph needs approval by the SIC?

Okay. Please put the note as referring to the whole paragraph.

>>MARGIE MILAM: Okay.

>>AVRI DORIA: Okay? And so basically we have three action items.

One is to get the SIC to clear both of these notes with a decision. And two, for Rob and I to try and convince the Nominating Committee to do the assignment of the NCAs to the houses for the council.

And in terms of Wednesday's meeting, the approval of these remains on the -- on the agenda. We'll discuss the thing. Even though it's been - - the motion's been made and seconded, I understand that there will be at least one constituency, if not more, that basically asks that this is delayed until our next meeting, which following our common practice, yes, it will be -- yes, Rob, wanted to say something?

>>ROB HOGGARTH: I wanted to ask about that step of the process. If, in fact, the council does not vote on this item at the end of or during the meeting this week, you had outlined the scenario where that might prevent the new council from being seated in Seoul. I wanted to share with you two thoughts that staff was having in this regard. One that I shared with you earlier today is that we're trying to work with the ICANN meeting staff to determine if there is some way to extend some of those or shorten some of those deadlines for declaring who might be traveling to Seoul to alleviate some of that time pressure.

The second is -- and wanted to explore this with you -- to the extent that the council has not recommended bylaw changes, is there potentially some room for this version to still be posted, you know, staff posting it at the direction of the board or of the SIC to post these for public comment so that that process could begin?

>>AVRI DORIA: I will look for others to comment, but I would think that as long as it met the board's posting rules -- and, indeed, I don't know whether the board actually needs a recommendation from the council for making a bylaws change, so that's really a board issue.

We won't have approved these. We won't have recommended them. But they're obviously the working draft. How that fits into proper board procedures is for someone else to determine.

Any other comment? Yes?

>>ROBIN GROSS: Yeah, I had a question. I'm sorry. I will come back to it.

>>AVRI DORIA: There is not that much time to come back to it today.

>>ROBIN GROSS: No.

>>AVRI DORIA: Because we've got 15 more minutes maximum on this one,

but if I can call this meeting done, I will. So any more comments on these? So as I said, the motion is there. It stands. I would argue that we can approve these with the two -- with the three action items.

I expect there will be others that will say that's not the case and so we will delay.

>>ROBIN GROSS: That was actually my question, is this issue of delay. What happens if there is delay? To be frank, this sounds like gaming. Why -- what's with the delay? And what happens then?

>>AVRI DORIA: The delay is -- I'm sure others can argue it better than I can, but the delay is basically that we have been wordsmithing this today. There hasn't been time for the constituencies to review that. We have a standing practice that basically if a constituency raises its flag and says, "Hey, we just haven't had time to review this, we want it delayed until the next meeting," that's not gaming. That's been a standard practice.

>>ROBIN GROSS: No, that's what I'm asking. So what you're saying is it will be delayed to the next meeting? That's what happens?

>>AVRI DORIA: Right.

>>ROBIN GROSS: Okay.

>>AVRI DORIA: I pretty much got the SIC's guarantee that they will have responded to those issues in time for that vote to happen. And if the review has already started, then, you know, of course --

>>ROBIN GROSS: And if the next time for the next vote should there be another delay -- I mean, is there some end to the delay?

>>AVRI DORIA: As the person that made the motion, and it has been seconded, while it could -- there could be amendments that could be voted on before that motion, it would have been delayed one meeting. We would vote on it and then it would get accepted or rejected, but we would have had -- we would have followed our standard practice of having a motion duly made and seconded, then postponed for a meeting because of constituency request for further time to talk, any changes, amendments that were offered, friendly or otherwise, and then it would get voted on at the next meeting.

>>ROBIN GROSS: This will be voted on in the next month or so regardless?

>>AVRI DORIA: That's my belief.

>>ROBIN GROSS: Okay.

>>AVRI DORIA: Yes, Philip?

>>PHILIP SHEPPARD: Let's also be clear. We are as council doing best endeavors to meet a timetable and meet notification periods required by the board. But the biggest delay in us moving forward is a decision by a subcommittee of the board. That's the key issue, huh? If we had all those answers now, we could move forward. So let's not kill ourselves about the fact that we can't move forward as fast as we want to.

>>AVRI DORIA: But if we had no questions, we could also move forward. So there's questions and there's waiting for answers. Trying to pin down exactly why we're waiting is we're waiting.

Any other issues or questions before I end this session and give us basically 25 minutes to get to the board meeting?

>>ROBIN GROSS: GAC meeting.

>>AVRI DORIA: GAC meeting, thank you. It is hard to tell the difference sometimes. No.

Yes, Tim?

>>TIM RUIZ: Where is the dinner tonight? Was that announced?

>>AVRI DORIA: I expect it was announced in the mail, but I have no idea. I have not looked. Yes?

>>DAVID MAHER: Glen told me the dinner tonight is the Zeta room on the fourth level.

>>AVRI DORIA: Thank you. It is the restaurant essentially. Right.

>>PHILIP SHEPPARD: Zeta is the bar, isn't it?

>>AVRI DORIA: Oh, it's the bar?

>>DAVID MAHER: It is the bar, but apparently they also serve food.

>>AVRI DORIA: And can you get in through the hotel?

>>DAVID MAHER: Yes.

>>AVRI DORIA: Or do you have to go to some funny elevator?

>>DAVID MAHER: In the evening, you may have to go out.

>>AVRI DORIA: We can check.

>>PHILIP SHEPPARD: If it is a private function, it may be obtained by the normal way.

>>AVRI DORIA: Yes. I should have paid attention to that, but I have not given it a thought. Well, thank you all for your patience during this exciting editing session. We don't do many of those.

This is kind of something the GAC does all the time, I'm told, editing sessions. We can all aspire to GAC. So thank you very much. Meeting is over.

>>STEVE METALITZ: Thanks, Avri.

>>AVRI DORIA: Thank you, Steve.