

**GNSO Restructuring drafting team teleconference
TRANSCRIPTION**

Tuesday 12 MAY 2009 14:00 UTC

Note: The following is the output of transcribing from an audio recording of the GNSO Restructuring Drafting team teleconference on Tuesday 12 May 2009, at 14:00 UTC. 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. The audio is also available at:

<http://audio.icann.org/gnso/gnso-restructuring-20090512.mp3>

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Present:

Avri Doria - GNSO Council chair, NCA
Chuck Gomes - GNSO Council vice chair
Philip Sheppard - CBUC
Jeff Neuman - Neustar
Alan Greenberg - ALAC
William Drake - NCUC
Mary Wong - NCUC
Steve Metalitz - IPC
Tim Ruiz - Registrar
Jon Nevett -Registrar constituency chair
David Maher - Registry constituency chair
Hector Ariel Manoff - IPC

Raimundo Beca - ICANN Board

Staff:

Margie Milam
Liz Gasster
Robert Hoggarth
Marika Konings
Ken Bour
Julie Hedlund
Glen de Saint Gery

Absent - apologies

Adrian Kinderis - Registrar
Olga Cavalli - NCA
Dirk Krischenowski - dotBerlin

Avri Doria: Has the recording started?

Coordinator: Yes, madam. The recording has started, yes.

Avri Doria: Okay, thank you very much. Glen can you read through the names of the people that we believe are here at the moment.

Coordinator: Excuse me, Mr. Hoggarth has now joined. .

Woman: William Drake has now joined.

Glen Desaintgery: We've got Raimundo Beca from the board, Chuck Gomes, Avri Doria. With Margie in San Francisco, we have (John Nevett), Jeff Neuman, and Mary Wong I believe. We have (David Maher, Bill Drake, and somebody else joined.

Steve Metalitz: Steve Metalitz.

Glen Desaintgery: Steve Metalitz and Alan Greenberg is on the Adobe Connect. And then for staff we have Marika Konings, I believe Rob Hoggarth. I see Liz Gasster is on Adobe Connect, and Margie Milam and Glen Desaintgery, myself. Have I left off anybody?

Margie Milam: Yeah, this is Margie. We actually have someone else here too. We have Hector Manoff is also here in the room with us.

Glen Desaintgery: Who was that? Sorry.

Margie Milam: Hector.

Glen Desaintgery: Oh, Hector yes, yes, yes. Thank you.

Tim Ruiz: Did you get Tim Ruiz, Glen? I didn't catch it.

Glen Desaintgery: (Tim) welcome. I didn't, no. And Julie Hedlund has just joined us to from staff.

Alan Greenberg: Do you have me on this teleconference? This is Alan.

Glen Desaintgery: Alan, yes thank you.

Ken Bour: Ken Bour is on also.

Glen Desaintgery: Thank you, (Tim).

Avri Doria: Okay, let's get started. First of all just in case anyone didn't see the email, the agenda is as I put it last weeks is that we're going to start from where we left off, which I believe is Number 7, and follow the same process as last time to see if we can reach an agreement on any of them. On any that we don't, basically state the differences, but move the discussion to the mailing list. Hopefully we will get through the rest of the list today. We really need to get through the rest of the list today. Then basically Chuck, Margie, and/or I -- and we've actually talked together -- will put together the question list as was done last time, send it out in both separate threads, and as a single question list so people get to work with their (preference).

We will give people a couple days to get their discussions started, then we'll try to put together at the beginning of next week a sort of compound set of questions and our best guess at reading the discussions where we are at the moment, and then we'll start going through it again in more detail trying to resolve the issues. I'm

suggesting that we do this weekly until we get this off our plates. There may be other board questions.

And I guess that's about it. Any questions on that?

Alan Greenberg: Avri, it's Alan.

Avri Doria: Yes, Alan.

Alan Greenberg: My only question is if we're going to start trying to go through them one by one and resolve issues starting next week, I for one -- I suspect I'm not the only one -- am going to not be available on that conference call. And I'm wondering how do we make sure...?

Avri Doria: Okay, what I would suggest is that we basically work on the list as much as possible, talk on the phone weekly. Anything we reach an agreement on on the phone one week we will come back to the following week so that somebody will have had a chance to see it on the email list, to sleep on it, to talk to constituencies, and then come back. And if the following week we still have agreement and consensus on it, then we call it discussed and move on. Does that sound like a way to make sure anyone who is forced to miss something still has a chance to contribute?

Alan Greenberg: That's fine with me as long as we cover the case where people have to miss two meetings, but let's assume that won't happen until it does.

Avri Doria: Well hopefully they will be able to also be on the list. If that happens, that's an exception case and we'll deal with it, but I don't want to make

rules that are so complicated we cover all the exception cases at this point. Otherwise, we'd (be writing bylaws).

Okay, 7. Basically 7 deals with electing a GNSO chair. There was -- and I'm trying to read this -- selecting a co-chair for a term, it's all highlighted. I think what was added was the or both - (meeting or both).

Man: Could we get the right page on Adobe Connect?

Avri Doria: What?

Man: Can we get the right page on Adobe Connect?

Avri Doria: Oh, I'm sorry. We do; we have the right page on Adobe Connect.

Man: Okay, I need to refresh.

Avri Doria: So was both just highlighted or was there a change there?

Man: It was added I think there. In other words, the answer...

Avri Doria: Oh, there were two changes. There was also and one or more vice chair, so there was a separate paragraph.

Man: Yeah, that was a deletion there. The reason I suggest or both is I didn't see any reason to restrict our voting at a meeting. We have our procedure for voting - absentee voting and so forth. So I just thought you know whether we do it by written ballot or a meeting or both, it doesn't really matter does it?

Avri Doria: Does anybody object to the or both? Okay, then I think we'll call that one okay. Now there was the deletion of the and one or more vice chairs in a paragraph below about vice chairs - each house selecting a vice chair who will be vice chair of the whole - the council. (Offer term of the GNSO specified) - the same wording as the chair. Is there any of the - or both is in there too. Is there any objection to that change?

I'm hearing no objection. And as I say, next time at our meeting we should also touch on these things where we have no objection just to make sure nothing has occurred to anyone. Hopefully it won't happen. Okay, so move on and mark those two as tentatively okay.

Moving on to 8 - oh, this is very choppy movement. Okay in 8, it was for voting purposes the GNSO Council shall be organized into (unintelligible) structure as described below, but recommend the change that was typically for (roading) purposes. And so basically, it was replacing only with typically. Any objection to that change?

Margie Milam: Avri, it's Margie. I just had a question. I think that was a change from Philip. Why the insertion? I think our understanding was that the house structure was purely for voting and that it wasn't meant to be a whole other organization with other obligations. And so I'm just trying to understand you know whether see the houses as having any other function other than just voting.

Avri Doria: Well we'll certainly - and just on a first (motion) myself. They will certainly have their own sort of housekeeping stuff to do and such. So just you know how they are going to do something, what you know - what process they want to follow for something. So I would think that we can't exclude it, and I think that's why typically would cover it. But

just again, to say that there's no occasion when the other house will take any action as a house or have any conversation as a house. I don't know.

Man: Given that we haven't decided on the NTA appointment process yet, that may be one of them.

Avri Doria: Do people object to the change? So I understand Margie you are concerned about it because you don't know what is not typical.

Margie Milam: Yeah, that's right. I don't really have an objection to it. I was just trying to understand whether we had a different viewpoint of what the houses would do. But that's - I mean everything you have described so far seems about right.

Avri Doria: Yeah, I tend to see it as you know any group has housekeeping, and so that would be an atypical circumstance where you know this would also be the case I would assume. So is it okay to leave that? As I said, we will come back again, but to leave that one as accepted.

Okay, the next one - I'm going to stay away from names because names is already an open topic that we're covering, so there's no need to get into the names discussion now. I'm sure we haven't reached closure on it yet. So as far as I can tell, the next two changes were names, then there was each member of the voting house is entitled to cast one vote in a separate matter. That was fine; that was left unchanged.

And then this one in blue.

Chuck Gomes: And then I have a comment.

Avri Doria: Okay, this one is yours Chuck, right.

Chuck Gomes: Sure. Yeah and like I say in my comment, I feel very strongly that the voting threshold needs to be in the bylaws or at least the bylaws must require changes to the threshold in a very rigid way. Rigid is a bad word. I mean it should be hard to change (this) because the thresholds were such a critical part of the compromises that we reached in the agreement of the structure that those should not be too easily changed.

Avri Doria: Sure.

Alan Greenberg: It's Alan. From my understanding, how could it be changed easier than the GNSO passing a motion? I can see a lot of thresholds, but I don't see any lower one.

Chuck Gomes: Well, it's harder to change the bylaws than it is for the GNSO to take action, Alan. That's what...

Avri Doria: Right, but they both require - even the bylaws. I mean even the operating rules and procedures as I understand them are board approved. They are just not bylaws.

Alan Greenberg: That's exactly what I was saying. I can't see anything less than requiring board approval.

Chuck Gomes: Do they both require the same threshold from the board for approval?

Margie Milam: This is Margie. That's what we envisioned. We envisioned those rules to be approved by the board - that they weren't some light rules. They were you know ones that had a board approval and then board changes. But we just felt that you know it might be best to keep them out of the bylaws, but it's not - I mean if that's a problem, we don't feel that strongly about it. It was just a suggestion.

Avri Doria: The bylaws have...

Chuck Gomes: Yeah, but do the rules require a super majority of the board to approve it? I believe the bylaws do.

Jon Nevett: Yeah, this is Jon .

Avri Doria: The majority of the board.

Jon Nevett: You need two-thirds vote of the board to amend the bylaws. So I thought that was an important and vital part of the compromise and should be in the bylaws.

Steve Metalitz: Is it - this is (Steve). I think Chuck was suggesting that we might need a higher threshold in order to change the thresholds, right.

Chuck Gomes: Well thanks (Steve). No, I put it as an or. Either they need to be in the bylaws and that to me is the best solution, or they - we would have to establish such a higher threshold that it accomplishes the same thing. So I was trying to be a little bit flexible there while at the same time - my best - my choice would be that thresholds need to be in the bylaws and not just in the operating rules and procedures.

Avri Doria: Does anybody object to them being in the bylaws? I understand that staff is fine with making that change. Does anyone object to that all being - all thresholds being in the bylaws and going therefore through a bylaw change anytime the council decided to change the thresholds?

I'm hearing no objection. That should probably be amended as recommended by Chuck.

Okay, as I said, we will go through it again next time just to see that the language is fine, but I guess I would...

Chuck Gomes: So just to clarify Avri. So Number 8 with the exception of the house name - everybody on this call at least is supportive of the changes.

Avri Doria: Right.

Chuck Gomes: Thank you.

Avri Doria: Yes, that we accepted the typically and that we are dropping the exception. Is that correct?

Chuck Gomes: Yeah, that's fine.

Avri Doria: That said it correctly. Okay, thanks. Margie, do you have that? I'm assuming that (one is good).

Okay, then moving on to the next one, which is Article 10 Number 1. "The following stakeholder groups are hereby recognized," and I don't see any changes in that. Okay, then there's, "The registry stakeholder group are presenting all (GTLD) registries under contract to ICANN

and including as observers organizations who wish to become registries." I guess this was a commercial stakeholder group - a proposed commercial stakeholder group amendment. And I know I was corrected last time for calling it a Philip.

Jeff Neuman: Hey, Avri, this is Jeff Neuman.

Avri Doria: Yes.

Jeff Neuman: I don't think that language should be part of - added to anything because otherwise we would say well why wouldn't we add that to the commercial stakeholder group or observers wishing to become members of the commercial group. And it just - it doesn't make sense. I don't think we need to in the bylaws or any documents state that the registry stakeholder group must include observers. We have a stakeholder charter that's out for public comment and people can comment on that. And remember, we need board approval to change our charter. That's the appropriate place for it and not here.

Avri Doria: Okay, thank you. Does the other side wish to sort of state why they believe this is a necessary change?

Steve Metalitz: This is (Steve). I have a question for Jeff. I saw that - if I'm not mistaken that the registry stakeholder group charter has been changed and is (out for vote again).

Jeff Neuman: It's been - we actually put more detail into it. There was some detail that we didn't (think we had). So we added that detail and then it's out for public comment, but it's not a final stakeholder group charter until it gets approved by the board.

Chuck Gomes: (Steve), this is Chuck. When we first submitted our charter to meet the deadline, there were a few holes that we left. And we identified those; we flagged those in the first (posted one). What we did is we went in and filled in those holes with some details in terms of voting procedures and so forth. And just for information, our charter in both cases, the first one and the revised one, does include an observer's ability to participate as an observer.

Avri Doria: Okay, thanks. So I'm assuming with Philip's admonition, which we really can't get by, that - until he's been included. Philip, you haven't joined yet, have you? No - that we need to take this one to the list. That there's a disagreement and it's not accepted by...

Alan Greenberg: Avri, it's Alan. One comment regarding Item B, which we're getting to.

Avri Doria: Yeah, we'll get there.

Alan Greenberg: Okay.

Woman: Okay Avri, Jon has a comment.

Avri Doria: Okay.

Jon Nevett: Well I was going to comment on B also, so...

Avri Doria: Okay, so A is on the list of discussion items.

Jon Nevett: You could put B on the list of discussion items too, or you could just delete the language that Philip suggested.

Avri Doria: Yeah, I can't - I'm basically - I'm not going to delete the language until we get agreement to delete the language.

Jon Nevett: Okay.

Avri Doria: So, yeah. Okay, does anyone (want to state the issues)?

Tim Ruiz: Was there (agreement) about the language?

Avri Doria: What?

Tim Ruiz: I'm coming at this a little bit late because I didn't get to the last meeting. This is (Tim). I guess I'm just confused about why we can't - so how this is - what the process is because I don't remember any agreement to include the language, but we need agreement to get rid of it. I don't - I guess I...

Avri Doria: We won't have resolved the issue. In other words, we have contention on the language and we won't have reached congruence on the language until either you all agree to the language or the person that's suggesting it deletes it. So it's not that it's added, but it's opposed change that we need to resolve before moving on. So it's...

Tim Ruiz: And again, I apologize if this has been covered, but I just want to be careful that by silence we don't assume agreement necessarily. In other words, it may not matter to somebody and they don't speak up. And so you know only a few actually object and it ends up staying in just because the majority (wasn't here to comment on it).

Avri Doria: Okay, I don't suspect that's going to happen, but I do encourage people to raise their objections.

Chuck Gomes: Avri I'd suggest a little different approach than Philip's because I thought his was a little bit problematic in the sense that if we applied that to anybody that's not on the call, we're not going to get anywhere. It seems to me it might be better to - if there's agreement on the call, to delete the suggested changes. Philip or anyone else for that matter still has an opportunity to object to that and do that on the list. And I think that's a cleaner way to do it, but I'll go with your decision on which way (to go).

Avri Doria: Right. Basically, I would say that by default, I would go with what you are suggesting, but then he specifically asked to basically count his opinion before making the call. I tend to go with that in this case.

Chuck Gomes: Yeah, I think that was a very poor suggestion on his part, but I will live with that.

Avri Doria: Yeah, but - and it really doesn't matter. I will ask the question though and then we'll hold it, but we'll mark it. Is everyone else on the call fine with deleting this language?

Steve Metalitz: This is (Steve). We would object to deleting the language.

Avri Doria: Okay, thank you. So that solves the issue.

Chuck Gomes: And why is that (Steve)?

Steve Metalitz: Well we're supporting the - Philip's proposal. I think the comparison that was made...

Chuck Gomes: I know you are supporting his proposal. Why?

Steve Metalitz: The comparison that was made to you know people that want to become commercially involved with the Internet or something is a false comparison. I mean someone doesn't become a registry unless ICANN decides that they are a registry and they agree to take on those obligations.

Whereas someone can become a commercial entity on the Internet, which I think is the phrase that's now used, without any ICANN action whatsoever. So the idea that they would have the same - you know that they are in the same situation as far as influencing ICANN policy I think is a false comparison.

Chuck Gomes: Oh, yeah. And by the way, I don't disagree with you on that last part of what you said, but what I don't understand is that when you add including as observers organizations who wish to become registries, that's kind of silly.

Man: You can't measure that. And look at the stakeholder group charter. It's got provisions in there for observer status. That's what gets reviewed by the board.

Steve Metalitz: I hear that point. I think that's a good point, but of course, the stakeholder group charter can change also with the...

Man: With board approval.

Steve Metalitz: Yeah, I understand that.

Tim Ruiz: Yeah, I think - this is (Tim). I think the question in my mind is at what level do we all want to be involved in each other's charters because that can open up a can of worms you know all the way around.

Avri Doria: Okay.

Tim Ruiz: If possible, we ought to be allowing these stakeholder groups to manage their charter. Observer status is whatever the case may be, and do as little - kind of you know fiddle as little as possible with it. And I think that's the same courtesy that the other stakeholder groups would be expecting. Otherwise, we're all going to be fiddling with each other's charters to the extent that we can, and I just think it's you know a bad way to go and opens us up to (gaming each other).

Chuck Gomes: Thanks for the response, (Steve).

Avri Doria: Okay, thank you. So obviously, we will continue this one on the list and come back to it. Certainly, the positions have been stated. Is there anything to add under B assuming the same status that (Steve) is still supporting it maintaining there, but others would like to see it removed and it goes to the list? Is there any extra reasons or explanations to add to B that we didn't have for A?

Alan Greenberg: Yeah, it's Alan. I think one of the confusing things about B is it could be read as precluding resellers forming a constituency within the commercial stakeholders group.

Avri Doria: Okay, thank you.

Alan Greenberg: You can't sit two places at once. And if you formally have a role as an observer on the registrars, are you allowed to form a constituency of your own, which would happen to be in the other house because the rules we've set up.

Avri Doria: Okay, thank you.

Alan Greenberg: A large group, which we don't want to disenfranchise completely.

Steve Metalitz: Well I - this is (Steve). I would certainly be glad to have a rule precluding them from organizing within the commercial stakeholder group. I'm not sure this does that though.

Alan Greenberg: I said it could be read that way, but clearly, they need to have a home somewhere. You can't rule them out as not being allowed on either side I wouldn't think.

Steve Metalitz: No, I agree. I think they belong in the registrar group.

Alan Greenberg: Well that's a different issue.

Avri Doria: Okay and when resellers put forward a constituency proposal, you know then they get to choose and the discussions happen with the stakeholder groups to find out you know what had happened, so okay.

Man: Well to me.

Avri Doria: So moving on. There were no changes.

Man: Hold on. Avri, just a second because I think (Tim)'s point is that - at least that's the way I took it is let's assume resellers would fit in the registrar stakeholder groups. The way this is worded and in the bylaws is that the observers (are a registrar stakeholder group) and could preclude them from being a constituency there. I think that's a problem.

Avri Doria: Yes, thank you. So...

Steve Metalitz: What do the registrars - well, no. I will...

Man: Hey, Chuck.

Avri Doria: As I say, we will take the discussion to the list, but thank you for reinforcing the argument. Any other new contents for B? Okay, I just want to make sure that the initial views get stated and that we carry on the discussion on the list. Otherwise, we won't make it to the end of the list. No change in C. In D, I'm not touching the name change at this point. And we have an addition - and members of the at large community added. Is there objections to that edit?

Man: Non-commercial members.

Avri Doria: Okay, so you would edit it to non-commercial members of the at large community.

Man: And I would have put commercial individuals in C.

Avri Doria: Okay, well certainly a change that you can recommend.

Man: I have an objection. First of all, the term at large is in lower case and it's not clear whether it's a generic, (the rabble), or if it is referring to the ICANN at large, which is a defined term.

Avri Doria: Isn't that one usually capitalized?

Man: It is.

Avri Doria: Okay.

Man: But using the same word I think adds confusion no matter how you capitalize it, so I would object on those terms. I'm not sure what it's - why it is needed. It's a non-commercial entity. These people - members of an at large community are non-commercial entities and they are (all over the world).

Avri Doria: Okay, any other comments to add? Anyone in support of keeping this in?

Steve Metalitz: This is (Steve). I support it.

Avri Doria: Okay, do you have a reason other than supporting the changes made by Philip?

Steve Metalitz: No, this was the expectation in the restructuring process was that members of the at large community (would) participate for that stakeholder group.

Avri Doria: Okay, thank you. Any other comments that haven't been raised yet on that issue? We will obviously take that one to the list.

The next one is each stakeholder gets a vote clause or is dependent upon the each stakeholder gets a vote clause, and that one has already been opened for discussion in our previous meeting. Does anybody see anything additional in this one that needs to be discussed at this point?

Man: This is the each constituency gets a vote clause, right.

Avri Doria: Yes, each constituency gets a (different seat) essentially clause, and then it has various ramifications throughout the bylaws.

Man: Right.

Avri Doria: And this is one of the ramifications. Does anyone see anything new in this issue? I'm sorry if I said it wrong.

Jon Nevett: Could you just recap? This is Jon . Sorry, could you recap last week where we left off on this? Does it...?

Avri Doria: Basically, it was left off that it seemed that there was understanding and also on the list in the intervening week that there is an understanding among those of us that are either council members or council liaisons that this was not the interpretation of the guidelines from the board that we took. And that therefore, that it should be struck from the bylaws and all of its implications.

The policy staff on the other hand has an interpretation that basically says in order to meet the -- distribution is the wrong word, but it's supposed to be the new members and the representation of minorities

goals that the board has, that something like this is necessary. Although there may be as I understand it other ways of solving that. I think that's a very quick recap. If anyone needs to add anything to make me not have said your thing wrong, please speak up.

Woman: No, that's right Avri. I mean we were concerned about making sure that the new voices could have representation. However, you know we could do that in the bylaws. We're trying to brainstorm on different ways. Our suggestion was one seat per constituency, but we hear that that obviously doesn't fly. And so we are exploring other ways to give them protections and deal with the issue of what is a constituency and what rights does a constituency have. You know should there be constituencies and that sort of - I mean those are those issues we will have to explore.

Avri Doria: Yeah and some of those we took to the board from our previous discussion, obviously. The one of interpretation was taken to the board. If the policy staff is going to propose some new bylaw language, is there an estimate of when that would happen?

Woman: We'll do that fairly quickly. I mean we know that we're working on the list. So we will see if we can come up with some suggestions.

Avri Doria: Okay, thanks. Any more issues on this one before I move on? I already moved on with the thing. I know people are looking at it. I forget that people are looking at what I'm changing.

Okay, then moving on. Nothing in the (two there). Okay and then the next one we have. The first two comments are yours Chuck and you basically changed approved constituencies.

Okay, "Each stakeholder group as identified in Paragraph 1 of this section, link to be done, and each of its associated constituency members as opposed to approved constituency." No, "In each of its associated constituencies as opposed to approved constituency members."

So would you like to explain Chuck?

Chuck Gomes: Well first of all, the first change I made was just to remove what I thought was some redundancy. Approved and recognition seem to be saying the same thing. And then on the second edit, I said that it may be that membership in some stakeholder groups is not on a constituency basis. It is actually possible for a stakeholder group to be you know one whole constituency. I'm to advocating that or anything, but it is a possibility and I don't think that goes against any of the board recommendations. So I just worded it in such a way that if that possibility happens, it's not a problem.

Avri Doria: Okay, is there any objection to that change?

Man: On the first one, the approved, I'm not sure it is redundant because that implies that there's an ongoing requirement as opposed - once it is approved the first time.

Avri Doria: It says maintain recognition.

Man: Right.

Man: I'm not sure approved is redundant. That is what I'm saying.

Avri Doria: Okay, Chuck do you object to leaving it?

Chuck Gomes: No, I can - it's not a big deal. Does anybody object to leaving it? Okay, then approved is back in about members...

Steve Metalitz: This is (Steve). I don't object to that, but I have a question.

Avri Doria: What?

Steve Metalitz: I have a question.

Avri Doria: On members? Please go ahead.

Steve Metalitz: Yeah, it's not clear. I mean when you're -"Each stakeholder group and each constituency shall maintain recognition with the ICANN board. Recognition is granted by the board based upon these factors." So obviously, constituencies might become unrecognized or new constituencies might be recognized, but is it contemplated that a new stakeholder group would be recognized through this process? Because I don't think that that's what's intended here. We'd have to have some other changes in the bylaws for that to happen.

Man: Yeah, I think you're right.

Avri Doria: Yeah, I don't see how a new stakeholder group would - because it's talking about each stakeholder group identified in Paragraph 1.

Steve Metalitz: Yeah, so maybe we want to say recognition of constituencies is granted by the board or something like that in the second sentence.

Man: That's a good point.

Avri Doria: Okay, I'm not quite sure I understand the wording change.

Steve Metalitz: In the second sentence, it would insert after recognition the word of constituencies.

Avri Doria: Within recognition of constituencies with the ICANN board. Oh, no recognition of constituencies is granted by the board. I get it. Okay, anyone object to that change? Okay, Margie do you have that one?

Margie Milam: So it goes in that second sentence. Right after the word, it will say recognition of constituencies is granted by the board.

Avri Doria: Yeah.

Margie Milam: I got it.

Avri Doria: Okay and just to go back to members, is there no objection to dropping the word members and changing constituency to constituencies as opposed to constituency members? Okay, I'm hearing no objection.

Man: Not only is there no objection, it removes the confusion whether you are talking about the members of the constituency or the constituency member.

Avri Doria: Okay, thank you. So going to the next one then, it's a CSG change in addition to - I guess it's in the same second sentence that goes on. Yes, it's still the second sentence - an addition of consistent with

prevailing privacy laws. I'm assuming no objection there. Is there one?
I shouldn't assume.

Tim Ruiz: This is (Tim).

Avri Doria: Yes, (Tim).

Tim Ruiz: Does this - this doesn't create any issue with what's what the prevailing privacy laws are - that legal opinion or whoever would be qualified to give that opinion I guess that this will work. I mean because we're talking about a global stakeholder group. I'm just wondering what the prevailing privacy laws would be.

Avri Doria: Well they would be different in different places and that would mean that different amounts of information could be - I mean and we've made various you know other things that we've done in the council where we've sort of said obviously you know you have to obey the laws of the country that you're in. And so I think this is just recognizing that even if I can have a bylaw that says you must list all of this information, if it's illegal to do so in your country because of its privacy laws, then obviously you have to be consistent with your privacy laws.

((Crosstalk))

Avri Doria: Two people at once. I didn't get it. So we had Chuck and Alan wanting to speak. I heard Chuck first, so Chuck.

Chuck Gomes: Yeah, would it better to say consistent with applicable privacy laws instead of prevailing?

Avri Doria: Okay, Alan.

Alan Greenberg: I would have thought this should be something at the top of ICANN's bylaws and not something buried in one particular clause that we're not asking - we don't ask people to violate the law where they live or work.

Avri Doria: Yeah, but it still would make sense to put in you know the specific type of thing that you're concerned with with that. Okay, so I guess that this one is close to being okay, but there's an alternate offered in language by Chuck and there's a question as to whether it creates problems that was also mentioned. So this one goes on the list of things to be discussed.

Jon Nevett: Avri, this is Jon - one other point. ICANN in its bylaws has a requirement for transparency. So my question is in the global bylaws, is there any kind of provision related to this kind of reference to privacy laws? Or - and if not, why would we do it on the stakeholder group level and not on the ICANN level?

Avri Doria: Okay, thank you. So this one we need to carry out on the list and come to an agreement on later. Okay, thank you. Moving on, we've got 20 minutes left - or rather 19.

Okay, I see yellow - okay, there's a sentence (deletion). I see no comments here. Is there anything in 4 - and edit of yours, Chuck?

Chuck Gomes: No, I don't (know).

Avri Doria: No, who did the cross out of prior to approval and confirmation? "Such new constituents should (self remit) the former charter to the board."

Man: It was just moved up.

Avri Doria: Oh, okay. Oh, I see it was moved up. Okay, so there's no change to discuss in that one. Am I correct?

Man: Yes, you're correct.

Avri Doria: Okay, 5 on the other hand has change and it's basically CSG change, which basically deletes a major section of this. So it deletes from the first sentence. "The board may create new constituencies within any stakeholder group in response to such petition or its motion." So it's basically removing from the board the ability to decide to create a constituency. Is that the correct interpretation of that one?

Woman: Yeah, that's how I looked at it. And I guess my question was why would we want to take that right away from the board?

Man: Why would we want to give it to them?

Avri Doria: Well they already have it.

Woman: Because of the way it was in the prior (body).

Avri Doria: Right.

Man: Right, but...

Avri Doria: Basically it's been that way since the beginning. Not that they ever did it, but it's been that way since the beginning. So it is a change.

Jeff Neuman: This is Jeff Neuman. I agree with that. I agree wholeheartedly with that change. It's just - it's supposed to be a bottom up organization.

Avri Doria: Okay, does anyone disagree with that change?

Man: No, I support it. If we can't get some people to put a document in, then (I don't think there's) much hope for a constituency like that.

Man: Exactly.

Avri Doria: Okay, so then we recommend removing that. Okay, now the second sentence is dependent on that - having removed the ability for a board to decide to create a constituency on its own motion. The -we don't need a sentence describing how it's done, correct.

Man: Correct.

Avri Doria: This is one where I don't believe we necessarily need to ask the board, but we probably should inform the board -- and of course, (Romando) is here -- that we are recommending that change. Any objection to that. So asking again, any objection to making that change? Okay, then we will consider that one as penciled in.

Okay, the next was formatted for French. Okay and the next page - okay, there's a note.

Chuck Gomes: Yeah.

Avri Doria: It doesn't appear that a transition is required and then Chuck I guess that's your comment.

Chuck Gomes: Yeah and I don't know if this - we need to spend a lot of time on this, but my point is that whether or not we need a transition article was less my point than the fact that we do. Obviously and (Rob) has made this point several times recently that we have - there are obviously some tasks that we need to do for transition whether there's a transition article or not.

Avri Doria: Right.

Chuck Gomes: So that's basically (it).

Avri Doria: Okay, so no issue there. Okay, then in 2 there's no changes suggested. The next page - in 3, there's a CSG parenthetical added, which basically says - which may itself of necessity be a transitional charter. And that's in reference to constituency charters. Is that correct? And basically, it's - I would assume that it may be a transitional charter because the constituency is going through transition and will rewrite its charter later or it will still be in negotiation with the board. I'm not quite sure I understand it.

Man: I'm not sure why it needs to be there. If a constituency supports what is clearly an interim charter and the board accepts it, so be it.

Avri Doria: Is anyone from the CSG able to explain the necessity of this parenthetical?

Man: I'm sorry, I can't. I'm just not sure why that's in there.

Avri Doria: Okay, this one we can mark as probably unnecessary, but we will check with Philip. Philip, have you joined yet? I haven't heard you, but I thought I'd ask.

Alan Greenberg: It's Alan. If it stays, the term of necessity is rather subjective. So I think it needs to be reworded if it stays.

Avri Doria: Okay, but I'm gathering that at the moment there is no one on this call that supports making this change other than in support of Philip's CSG position in general, but not with a reason (to lie).

Philip: Yeah, Philip has just joined the call by the way.

Avri Doria: Excuse me.

Philip: Philip has just joined the call.

Avri Doria: Oh, okay Philip. We've got a question for you. We are at Number 3 on Page 11 where you added a parenthetical, which may itself of necessity be a transitional charter. And I don't think anyone really understood the reason for the change.

Yeah, no it's just reflecting the fact that there may be organizations and certainly are -- this is one of them I think -- where because of uncertainty in terms of precisely how the elections are going to be either constituency based or SG based. We have got a transitional charter, which we may - which may change later. That was all.

Avri Doria: Okay.

Man: But if you make that case to the board and the board agrees, then so be it.

Avri Doria: Right, but basically this is the transitional arguments. I mean this is the transitional clauses.

Man: Yeah.

Man: And Philip, isn't it correct that this could - I mean what you are doing is understood and it's reasonable, but is this parenthetical really need to do it? It doesn't seem like it is.

Avri Doria: The board would still need to approve this transitional charter, correct.

Philip: Correct.

Avri Doria: Okay.

Man: So what we're saying is we could delete that and wouldn't really lose anything. Or in another way, it doesn't really add anything other than the subjectiveness of the term of necessity, which itself is going to be subject to perhaps debate.

Avri Doria: Would there be an objection to which may be an approved transitional charter in that space, which just covers the concern that Philip had without the subjectivity and includes that it is approved? And even if it is superfluous, would anybody object to that?

Man: I wouldn't object, but I don't see that it's necessary.

Avri Doria: Philip.

Philip: I'm fine with that change.

Avri Doria: All right and you think it's important though to keep a clause.

Philip: I think it's an important flag. It just you know indicates that charters may be presented to the board in rapid succession.

Avri Doria: Okay, so does anybody object to keeping a clause that says, "Which may be a board approved traditional charter?"

Man: No, I actually think it's a good thing to highlight the fact that one doesn't have to do everything cast in stone and that things can evolve.

Avri Doria: Okay, any objections to that change?

Okay, then let's leave that change in. (Oh, somebody bounced). Okay, the next two are October's instead of June's. That's something essentially that we believed, but it's also something that you know since the board gave us our target date we need to confirm with the board that you know they are fine with October. And I guess there's a meeting out in the next couple days that will take up that issue among others, and we talked about the issue of the delay earlier. Any further comments on October?

Man: Yes, the more I think about it, do we really need a date in the bylaws for this? Would it be better to have a generic statement as so determined by the board or whatever?

- Philip: It would probably actually much better (with such) a statement.
- Avri Doria: So what would you suggest? No later than the ICANN meeting or how would you reword it?
- Man: Prior to the - let's see.
- Avri Doria: It's the end of 3 and the beginning of 4.
- Man: At a date to be determined by the board, the GNSO Council (unintelligible).
- Avri Doria: Okay, you need to do a change for the one above too.
- Woman: I'm sorry, I didn't get that. Can you repeat what we are doing?
- Avri Doria: We're looking at different language than June/October 2009 in two instances, both at the end of 3 and at the beginning of 4.
- Woman: Okay.
- Avri Doria: And Chuck's suggestion - could you do that again, Chuck?
- Chuck Gomes: Sure, at a date to be determined by the board instead of in October or June or whatever. And again, I can live with October 2009. I just - you know it's kind of - you know it could change again for all we know. It's just...

Philip: Yeah I mean (unintelligible) in the first place is just a staff change from the ERC (version) of 2003. That has the advantage of a certain date there once the board had taken (a decision), which is probably why that 15 July 2003 exists. We don't quite have that luxury at the moment, so I think Chuck is on the right track here.

Woman: Actually, I don't agree. Because when this actually gets implemented, we will know the date. I think we need a concrete date in the bylaws when we've gone from the old structure to the new structure, ad to have some just kind of loose date doesn't make sense to me. I mean I agree that it will be a date determined by the board when that happens, but that we should know what that date is and we will just put that date in the bylaws when it's agreed on.

Avri Doria: Right, so you are thinking it's...

Man: I disagree with that because we don't know when the conditions that will be necessary to be satisfied for seating the new council will occur, so I mean I hope that the board will give us as much advance notice as possible. And from our constituency, we need to know because we've conformed the terms of our officers to when the new council is seated. But...

Avri Doria: But it's my understanding Margie what you are recommending is - oh, I'm sorry.

((Crosstalk))

Man: (Unintelligible).

- Avri Doria: If I understood Margie what you're saying no later than the ICANN meeting TBD by the board 2009.
- Margie Milam: Yeah, I just - whatever. I mean it doesn't have to be an ICANN meeting. It could be a date; it could be December 31. I just - I think that the bylaws need to have a date, and we will know what that date is when we get - you know as we get closer to finalizing the bylaws.
- Man: Margie, we will know when that date is. We will know when the board tells us.
- Margie Milam: Right, but that date that the board tells us will go in the bylaws. All I'm saying is that whenever it is - because this is the document that transformed everything from the existing structure to the new structure. And so I just think that's one of the things that needs to be clear whenever - I mean we don't know the date yet. But you know whenever it gets set, that's the date that should go. And we were suggesting that it would be the ICANN meeting in October in 2009, but maybe it's not that date you know.
- Man: And so may I suggest that you use an actual date. The ICANN meeting in October 2009 or whenever is not very definitive. We don't know if it's at the beginning or at the end or the middle. So whatever you use, I support ultimately putting a date in there with enough advanced notice that we can - so the various constituencies can actually meet it. But I do suggest a real date; (that's kind of necessary).
- Avri Doria: Okay, so the proposal would be no later than date TBD by board. And then prior to, date TBD by board in the second instance. Would that be acceptable to people? So is TBD by board or not (depositing) a date

now, but it's satisfying the bylaw necessity of having a concrete date in the bylaw once the bylaw is passed. Is that acceptable to people?

Man: Yeah, but I don't believe there is such a necessity. And I think you could just say prior to a date to be announced by the board at least 60 days in advance, and then the board adopts a resolution saying this is the date that's referred to in the transition article.

Avri Doria: Okay, so we need to take this one on the list because we've had several suggestions of language. I would suggest that somebody propose three or four you know to think a bout language and perhaps we could put a couple of suggestions in the question. It should be easy to resolve once we just come up with wording that everyone could accept.

Okay, the next one I have is Page 12 5D, and this one is already open. Oh, no this is - this one is basically an issue that we had in the previous meeting that has been - we've asked the board to take a look at. So we've got...

Man: Several of them.

Avri Doria: ...nothing to add to this one at this point I would suspect.

Philip: I just have a question for the board on the whole of this section here. Is the word in here consistent with the section in the staff written constituency model charters about elections? There seems a slight inconsistency between constituency versus stakeholder group, and it would just be useful to have that resolved. That's just a question to

(ask perhaps) offline, but I will pose it now because it occurred to me today.

Avri Doria: Okay, so that's a question that we should add to the board.

Woman: I don't understand the question. Philip, can you repeat your question? I don't understand.

Philip: Yeah, in this Section 5, it's talking about the seats are assigned to the stakeholder group. If you look at the model charters, it seems to be suggesting that seats are - council seats are selected by the constituencies. And I wonder if that - am I misreading or if one or the other needs to be changed.

Man: Of the constituency or stakeholder group?

Philip: If you read the model charter, it has to do with constituency.

Man: What do you mean by model charter?

Man: Yeah, I don't understand that.

Philip: (The staff drafted a model charter) the new constituencies are using in their petitions.

Tim Ruiz: This is (Tim). Doesn't this lead into the other question that we've got about whether they council seats are per constituency or per stakeholder group? It's the same question, right Philip?

Philip: Yes.

Man: Yeah, okay.

Avri Doria: But this is just for the transitional period until such time as the stakeholder groups have done their elections and their choosing. Is that correct? So I mean once the stakeholder group is fully in place and have done their selection procedure, however they do it for their seats, then it would no longer be in a transitional stage. So I'm not quite sure that I understand where the problem is.

Philip: If your understanding is correct Avri, then I believe that the model charter may need to be rewritten, but I may be wrong.

Man: That's probably true, Philip because they've given examples (of what would be inconsistent).

Ken Bour: Avri, this is Ken Bour. May I join?

Avri Doria: Yes, please Ken.

Ken Bour: Just a quick comment on that. There may be a host of constituency charter elements that will need to be changed once these bylaws and stakeholder group issues are resolved, and that would apply to new constituencies as well as existing ones.

Man: But I think Philip - I think that's true Ken, but I think Philip's point is well taken that this model charter should be fixed if in fact we do as the council has I think unanimously supported so far -- at least those participating. That this based on constituencies versus stakeholder

groups, the model charter needs to be consistent with what we finally decide.

Avri Doria: Okay, I think we've got an issue for continuing discussion on the list. I think part of it is to make sure that we all understand the issue the same, which I'm not sure we're at at the moment, and then to figure out what we want to do about it. But okay, so this one is an issue for the list. And Chuck, I'm glad you understand it and the writing. There's one more. And we're at the end of our time, but I want to look at that last one.

Man: Avri, on 5E, I raised the issue on an earlier one, but it applies here to. The term non-voting member should be clarified.

Avri Doria: Yes, okay. And we haven't ever covered that, so that one should just go directly to question so that we make sure that we create a definition somewhere of what non-voting member members.

Man: And use it consistently.

Avri Doria: Right. Okay, so that's an open question. Thank you for bringing it up again. That should be on our question list that gets published this time.

Then we have the last one with a couple edits, and I believe there's a Chuck edit. We utilized the following voting thresholds.

Man: Are we on Page 14 now?

Avri Doria: I'm on Page 14 Number 11. Yes, sorry. And so Chuck do you want to cover - talk - discuss your two changes?

Chuck Gomes: Well one of the things in our recommendations with regard to voting thresholds is we had an other category that just everything else will require a simple majority vote of both houses. I don't think that's in here as I recall in my thinking here. That was the catchall - the threshold that we had in our recommendations.

And I don't think we have anything for election of chair - thresholds for chair and vice chairs in the thresholds themselves. Now that could be covered in the catchall one, which is fine. I don't know that that's a problem.

And then my second comment there was is that the scope needs to be defined. I was assuming that it means within ICANN's mission and the GNSO's mission, but it could - people could interpret other things there. So I guess it's a comment somewhat like Alan's that we probably better be a little more clear in terms of what we mean by scope. If we mean like I assume within ICANN's mission and the GNSO's mission, that's a real easy fix.

Philip: Isn't scope a particular question that's currently answered by the issues report.

Jeff Neuman: Hey guys, this is Jeff Neuman. If I can jump in the queue.

Alan Greenberg: And Alan.

Avri Doria: Okay, so yeah I've got Philip speaking now and then Jeff and then Alan. Okay, anyone else in the queue while I'm taking a queue? As I say, I do want to end this and soon we're over our hour, but go ahead Philip.

Philip: Yeah, I'll just finish. To me, I think scope is currently a question answered by ICANN's general counsel in the issues report, and I thought that was its reference here.

Avri Doria: Okay, thank you. Jeff.

Jeff Neuman: Yes and so my comment here - it's actually as chair of the PDP work team and not necessarily what I personally believe. But - or I may - sorry. I'm just not offering an opinion.

But basically, the group discussed this. And during the discussion of the group, Ken Bour and others represented that there is currently a draft of other changes to the annex that's being circulated internally within ICANN, and we have not seen that draft of any changes.

In addition the PDP work team is not necessarily comfortable with making these changes at this point in time until they are done with their recommendations regarding the PDP because it is just not sure how all of this fits in with all of their discussions. And the kind of confusion it is going to create if this section appears in the new transition bylaws, how that gels with everything else that's going on.

So that's just a statement and it's an issue we need to get further clarification on.

Avri Doria: Okay, so I have two questions then. One is is this also part of that document that we will be seeing real soon now? And two, does that proposal from the staff also include the other things that Chuck was talking about like the catchall, like the election of chair, which I believe

we had a 60% threshold from each house if I remember correctly and so on? So Ken or someone can you answer that?

Ken Bour: I'm sorry. This is Ken. I missed the question.

Avri Doria: The question was based upon what Jeff just said, is that extra information part of what was discussed earlier as stuff you're discussing now and hope to get out to us real soon now?

Ken Bour: Not exactly. What happened independently was that the legal department in ICANN after they looked at this set of bylaw amendments, they decided that they thought it made more sense not to have a transition article. And so they took all of the elements of the transition article and they just parched them out to where they belonged whether it was Article 10, Section 5, or in the case of these voting thresholds, they wanted to put them in Annex A.

And so really, all they did was make an attempt to go through Annex A, find where these thresholds were, and take that language out of transition and put it into Annex A. There wasn't any other attempt to make any other substantive changes to Annex A, just the voting thresholds.

Avri Doria: Okay, thank you. So this is something basically we should put on hold until we see this other information.

Jeff Neuman: Just an FYI. This is Jeff and we've been waiting for that document for about two months now.

Avri Doria: Okay, is there any clue when we'll see it?

Woman: The reason we haven't distributed it is because as we had the discussion on for example the one voting for you know a seat per constituent, they (all accept) that's kind of (moot) now. The document that they gave to us has some of the you know old language, so it didn't make sense to circulate it. But if you want to see the language that relates to Appendix A, that's not a problem. It's just...

Avri Doria: Yeah, I think certainly the language that goes to the threshold if we could get it as soon as possible. However, even putting this one aside, we have enough work to keep us working through on the other stuff, just leaving a placeholder for this that we will have to come back to it. Any objections to basically tabling this particular discussion for now until we get more information from legal?

Alan Greenberg: This is Alan. I have no objection to tabling it, but I think we want to remember Chuck's comment on - that we're using the word scope (and it basically) has two different meanings. And we should make it be explicit which meaning we are talking about.

Avri Doria: Okay, well we can include the word scope - the issue about the word scope as an issue now.

Alan Greenberg: Yeah, I don't think it's a debate between...

Avri Doria: Well we just have to make sure it's properly defined and everyone agrees with it.

Alan Greenberg: (Understood) the meaning in any given place.

Avri Doria: Right and that - it means there is some discussion to make sure that we get to something that everyone agrees is the correct meaning. We don't have to have a disagreement to have a discussion.

Okay and I'm assuming that this October 2009 would fall in the same date category as something that you know needs to be a definitive date and we need to talk about it some more of how we're dealing with definitive dates.

Man: Avri, also the same is true of the reference to June 2009 in Paragraph 11.

Avri Doria: Oh yes, there is a date there. I have a feeling yeah that that's one that obviously the person that went through changing all of the Octobers - June to Octobers missed.

Okay, so I think we've made it to the end. I think except for the issues that are tabled and for any new content that we're going to get from the staff related to new ideas that they are bringing in terms of constituencies, stakeholder groups, and whatever else, we've got this first chunk of work cut out for us.

So as I said, the first bit of questions should show p tomorrow, and I'd like to ask people to get their first set of discussion points in by the end of the weekend. Hopefully we can reach closure on some of them. We did reach closure on some things today or at least the appearance of closure, and we'll be back at it next week.

Any other comments people would like to add?

Man: Is there a date and time for our call next week or are we going to have a doodle?

Avri Doria: I don't know of a date or time. You know I don't know if this Tuesday slot works out well for people, but otherwise Glen will need to do that. Doing the doodle takes about a week - several days. Does anyone object who is here now to this call at this time? Philip, is this an always problem for you or is this just a peculiar circumstance?

Philip: No, I just had a meeting today, which I think (unintelligible).

Man: I won't be able to make it next Tuesday at this time.

Avri Doria: Okay, so maybe we do need to unfortunately ask Glen to do another scheduling exercise, but it would be good if we could find a permanent slot for the next - it's going to take us several weeks to get through this. And of course the sooner we get through it, the sooner we can cancel any meetings we set up for the future. But not only do we have the issues that we've already got to go through and then we'll get the feedback from the board to go through, but then we're going to get some new content to be discussed from the policy staff.

So I think it's going to be at least several weeks. And I do think that this has a sense of urgency to it that we should try to meet on it weekly. And also I do think that I will schedule a face-to-face meeting for it if I could find the schedule to work for the weekend in Sydney.

Any other comments? And please let's continue discussing this on the list. The more we can resolve on the list, the fewer meetings we have to have.

In which case, I thank you all and talk to you soon.

Woman: Bye Avri.

Man: Thank you, Avri.

Avri Doria: Okay, bye-bye.

END