

**GNSO Restructuring Drafting Team teleconference  
TRANSCRIPTION  
Monday 275 May at 13:00 UTC**

**Note:** The following is the output of transcribing from an audio recording of the GNSO Restructuring Drafting team teleconference on Monday 25 May at 1300 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-20090525.mp3>  
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**Present:**

Avri Doria - GNSO Council chair, NCA  
Chuck Gomes - GNSO Council vice chair  
Olga Cavalli - NCA  
Philip Sheppard - CBUC  
Mary Wong - NCUC  
Steve Metalitz - IPC  
Raimundo Beca - ICANN Board member

**Staff:**

Margie Milam  
Liz Gasster  
Robert Hoggarth  
Marika Konings  
Glen de Saint Gery  
Gisella Gruber-White

**Absent - apologies**

Adrian Kinderis - Registrar  
Alan Greenberg - ALAC

Glen Desaintgery: Thanks, I'll do the roll call again.

On the call we have Avri Doria, Chuck Gomes, Olga Cavalli, Philip Sheppard, Steve Metalitz. And for staff, we have Rob Hoggarth, Liz Gaster, Margie Milam, Julie Hedlund and Gisella Gruber-White and

myself, Glen Desaintgery. Thank you, Avri, have I missed anyone?  
And Marika - sorry Marika, she's waving to me across the desk, Marika Konings.

Avri Doria: Thanks. First of all, I want to thank all of the people whose countries have holidays today for joining us. I'll try not to waste people's time for having done that but very grateful for those of you that have a holiday.

The agenda I put together is hopefully okay. The first thing was to talk about the drivers on the schedule of this thing because I have been working over the weekend. I'm trying to understand our schedule if we are going to be complete by Seoul.

So I'm just trying to figure that one out and it's actually rather frightening. Then I wanted to try and get an update on where the board and the SIC were on the questions. And I asked either staff not to put Raymundo necessarily on the front but staff or Raymundo to give us an update of - or at that point. And then just take some of the questions. And the ones I picked were ones that seemed to me to be still the most open where - and on some of them, we had points that we hadn't even discussed through yet, let alone start getting down to where we've got one or two alternatives.

So I put those on. I did not put the one on that I'm doing the doodle on because might as well give it more time to collect info and I didn't get any of the ones that are dependent on the board responses. And it's in the hour we can get to all of this; I think we will have done well.

Any changes that I should make to this agenda and any issues with it?

Okay, great, then we'll go with that. In terms of the drivers for the schedule and this is making an assumption that, you know, we obviously did not seat by Sydney so really we must be seated by Seoul is something that I'm sort of accepting as a base statement of need.

I'm assuming that's what the board wants. I don't think they've said that explicitly yet but I believe from conversations we've had with various board members that that is where they're looking at it. So I'm also trying to figure out if it's realistic.

Now to have a new board there, one of the gating factors is we have - I mean, have a new council there. The beginning factor is to make sure that we've got the travel arrangements made for all of those. I've put in a question to some of the senior staff to asking, you know, when the deadline will be for that.

Now I'm assuming at this point, until I get another answer, that six weeks before like this time would be the outside. And that takes us to, I believe, needing to know who we're sending by 8th of September. I've been told that that may be a week later than they really want so it actually could end up being a push to come in even earlier.

I understand that we need at least some months in constituencies than in stakeholder groups to do elections. I think it varied some three weeks to four weeks for progress. And please correct me if I've got that number wrong.

But if that number right, that means that the bylaws and the stakeholder group charters would need to be confirmed by the board as I understand at the 30 July meeting. The 30 July meeting, if they

have to have things - if they have to have, you know, everything in hand a month before - three months to a month is what I've been given and especially if there's going to be a public review which is a three-week thing, we need to have it to them a month before. So that would be 30 June.

Thirty June is just a week after our Wednesday meeting. So in terms of us finishing our work, we need to finish it either by Sydney or a week later. There may again be some flexibility in these times but not a whole lot. So what we're talking about is needing to, a week after Sydney - and we generally try not to have a meeting right after a major meeting - but we might need to have a voting event or a final decision or something if we can't find a way to do it in Sydney.

Doing it in Sydney and giving constituencies time to review it means we need to have it in place at least two weeks before the 23rd which is it gets us right down here to the first week of June which leaves us with two weeks to figure this all out.

And that includes getting answers from the board and the SIC. I'm not sure that all of this is doable at the moment because, for example, I don't know when we're going to get the answers from the board and the SIC. But in terms of laying out the schedule - and please, you know, those of you and the staff who are much more adept at schedule manipulation than I, please, you know, point out where I may have short changed us especially. If it's worse than I think it is, please point that out, too.

So that's the kind of schedule we're under which means that we need to have something - a motion, a sketch to start presenting to the constituencies for us to talk about in Sydney within two weeks.

And so this may be, you know, I don't know - but I'm hoping we can come to the rough consensus on most issues within the next two weeks, mostly the list and on telephone calls so that we have a chance of meeting the schedule.

Any comments? Anyone wish to speak to the...?

Chuck Gomes: Put me in the queue, please, Avri.

Avri Doria: Okay, I'm not...

Philip Sheppard: Philip.

Avri Doria: Chuck, Philip. Okay, go ahead, Chuck.

Chuck Gomes: Yeah, one thing that might help us a little bit.

If within the next two weeks, as you suggested, we don't totally come to a consensus on every bylaws change, if there's just one or two that still are open, I think we could still go ahead and have a communication to constituencies and make it clear that we're still working on these but we want you to, you know, to weigh in on the decision on these as well.

In other words, what I'm saying is I think if we as a group didn't totally come to agreement on every detail, having a couple that are still open might still work.

That's my opinion.

Avri Doria: Okay, thanks. Philip.

Philip Sheppard: Yeah, just three points.

One, if there was still some doubt about assumption, I agree with you in terms of Seoul being our target now. It might help, Avri, just to drop an email to the board saying our assumption is Seoul, we are working toward that time scale. Please tell us if your belief is any different, so at least we indicate that clearly.

Second point is on your sort of working back into the time scale, we may be able to save ourselves three weeks of public comments if we assume the public comments come after the board meeting rather than before. (Unintelligible) comments about what we've said. That might help.

Woman: I don't understand.

Avri Doria: In other words, I was thinking that the full three-week public comment came after we delivered it to the board, before they made their decision.

Philip Sheppard: I'm sorry, (unintelligible) counted as part of your working back. If you didn't then...

Avri Doria: No, I did. I basically said we have to give it to the board a month in advance because that includes their public review time. As if the board is going to decide on 30 July, then we need to give it to them by 30 June so that there is a full three month's review period...

Philip Sheppard: Okay, then that - then my point is what if they want to change something so then the public comments would be on - the public comments should basically be when council on board of any cycles of communication we're doing are signed off. We then get public comments on that thing.

So the (unintelligible) after board has taken the decision rather than fall.

Avri Doria: I thought normally they did their public comments before (unintelligible).

Philip Sheppard: Maybe someone could clarify it anyway. And my third point, came out of something (Chester) said and I forgot what it was. I'll shut up until I remember it.

Steve Metalitz: Avri, this is Steve. Can I get in the queue?

Avri Doria: Certainly. Okay, and Philip, I've got you in the queue for your third point.

Philip Sheppard: Thank you.

Avri Doria: Okay, Steve.

Julie Hedlund: Avri, Raymundo raised his hand as well.

Avri Doria: Oh, okay, that's right; I'm not looking at that.

Okay, Steve and then Raymundo.

Steve Metalitz: Yeah, I guess two questions; one, when you look at the list of questions that we have, there are some that simply don't - there's no way we're going to make progress on them until we get clear direction from the board. I would refer particularly to Question 1. That's not going to get resolved until the board decides what to do about that situation.

My second question is - and maybe this is coming up later on the agenda is - I just don't - I'm still not clear on what the board decided last week. I see we have this note from (Denise) that says that the structural improvements committee and the ICANN staff are going to propose changes to the SG charters. And then post the charters for GNSO consultation and public comment. Are they going to post them - where does that fit into the time table you're talking about because that obviously could change some of our decisions here.

Avri Doria: Yep. Okay, I've got Raymundo and Philip - I'll just answer the one question I had. The question in terms of the stakeholder group charters is one as I see as having the same time table but it's not something we're actually doing in this particular bylaws discussion. But it's parallel on the same time schedule because you guys can't have elections in your stakeholder group until everybody's bought off on your charters.

Raymundo, your hand.

Raymundo Segura: Okay, well on the first point regarding when the board is going to answer the question, please? (We have the potential) to look at those questions - of the board taking (unintelligible) last week. And while the decision is to - the board will not react (in the SIC) as the - well the board has to have the authority to the SIC to answer those questions. The questions are being discussed at the moment of the SIC list. And my hope is that by the end of the week, we will have the answer for all the nine questions of last week of two weeks ago.

It seems to me, looking at the no particular question for the board in the (ten questions - in the nine questions). And regarding the posting of the new draft of the charters, I don't know if (Denise) is on the call but my - what I'm being seen of last weekend on the SIC list is that the - we have not yet the consensus on the draft. So they were not going to be posted today as (wished but I think that or) next week.

And that means that the board will not be able - because they're going to go to public consultation. The board will not be able to have a decision on the charters at Sydney. I know you have some questions about both.

Avri Doria: I have one. There was the question that indicated that I should direct it to the board which is when the board expects the - at their point, new council to be seated and whether the assumption going forward is correct.

Raymundo Segura: At Seoul.

Avri Doria: At Seoul - okay. Philip, I had you on the list and then anyone else that has a follow up question for Raymundo.

Philip Sheppard: Yeah - and if I see dramatically different in terms of the new changes to the stakeholder groups, I mean, they're comfortable about moving to Seoul at the time table. It of course has caused problems with the normal cycle of elections that we've already built into our existing constituencies. So that made life easier for constituencies for stakeholder groups to organize elections because that will part of their normal cycle unless they've already done those somehow.

Avri Doria: Can I ask? So if the board does finalize decisions on charters on 30 July, which would be after the public review on the charters, would that still give the constituencies and the stakeholder groups enough time to have chosen their council members by the beginning of September so that we could do the whole travel thing?

Raymundo Segura: I think yes, I think yes, in terms of the time table which are working. I think the first priority now for the SIC list is to get seated the new council at Seoul.

Avri Doria: Okay. And from a constituency/stakeholder group perspective, in terms of how long it takes you to do elections, does that schedule work?

Philip Sheppard: Philip here. I think probably, I mean, yes, assuming a steady state which means to assume there were no new constituency applications will come in the mean time and change things.

Avri Doria: Okay. So it wouldn't actually be constituent applications but constituency approvals that would affect...

Philip Sheppard: Yes, right.

Avri Doria: Okay.

Philip Sheppard: Yeah, yeah.

Avri Doria: Okay, any other follow up questions on this, looking...

Man: I just had one. You mentioned the 30 July, I think.

Avri Doria: 30 July is a board meeting and that's the one that is a little - yeah, that's the one I'm assuming they would have to make the decision. I went through the schedule. So assuming the prints of the schedule online is correct about when the board meeting is, 30 July would be both the earliest and the latest that - it would be the earliest given the state of affairs at the moment and it would be the latest given the time schedule to have elections and then, you know, make travel arrangements.

Man: Yeah, I think that's right. The only caveat I would put in is that the way the board seems to be operating now, the resolutions are delivered by, you know, sailboat or something. They're usually three weeks - two to three weeks after the board meeting. So if we don't know until - if they decide on July 30th, it would be great if we would be fully advised by, you know, July 31st. And then I think we could meet the time table if it drags on well into August and becomes more difficult.

Avri Doria: We can certainly make a special request to the board secretary and (Denise), to make sure that, you know, those are posted to people immediately to make the schedule. I'll definitely make that request.

Man: Avri, can I get in the queue?

Avri Doria: Certainly.

Man: A question for you, Raymundo. And this regards the next couple of weeks where obviously the council and this bylaws working group needs to get quite a bit done on the proposed bylaws changes. Is it realistic that the SIC will be able to answer the questions regarding the - I think there are four issues on the bylaws changes that we've asked for direction from the board. Is it realistic for us to get a response on that real quickly here in the next week or so?

Raymundo Segura: Yes, I think - well, I'm doing my best to get an announcement from the SIC but it will be the end of this week.

Man: Thank you very much.

Avri Doria: Okay, anything more on this? I think we also got the update on status while talking about schedule. I don't know if there are any more questions on that so I'll leave that open. But Raymundo did give us a - pretty much an update.

So are we finished with the first two items? Okay, then.

So in terms - and thank you very much, Raymundo for (unintelligible).

In terms of the questions I put on immediately. As I said, I put on questions that still had either lots of possibilities with some support or lots of things that we haven't talked about it yet. And basically - yeah.

So the first one was Question 5 which was the distribution clauses in terms of how many from a single geographic region.

And we basically had non-contracted party to a point of four out of six. And of course, this is leaving aside any Question 1 issues. I'm assuming Question 1, you know, it's assuming what's currently the case.

So the - for - from one geographic region or up to three out of six council members from one geographic region, geographic diversity requirements be waived by non-contracting party - stakeholder groups, consider having exceptions apply only to contracting party signed and should geographic diversity requirements in the - okay, I can't even see this, it's way too small for me to look at.

I'm moving to the one where I can - so someone's going to have to show me when hands are up. So the exceptions should geographic diversity requirements in the -- okay, I can't even see this, it's way too small for me to look at, I'm moving to the one where I - so someone's going to have to show me when hands are up -- so the exceptions should geographic diversity requirements in the (Comm SG), so I'm not sure what I wrote -- the exception for sectoral diversity - commercial, I guess. And then allow more flexibility, no eligible qualified and available member representation.

And so we have these open issues that seem like every one of them has some support. But I'm not sure where we're at on geographics. I really just wanted to open the discussion to see if we can get some clarification on, you know, the variations on geographic region requirements. And the applicability of exceptions to that and the notion that diversity goes beyond geography.

Now one question I don't have; do we have - I don't believe we have all of the - if we have all of the stakeholder groups represented in this meeting at the moment, do we, Glen?

Glen Desaintgery: No.

Avri Doria: No, we don't - okay. We have registrar, registry, commercial - but we don't have non-commercial, correct?

Glen Desaintgery: Yes, that's correct.

Mary Wong: I'm sorry, this is Mary Wong on this call.

Avri Doria: Oh, fantastic. So we do have everyone - okay.

Glen Desaintgery): ISP is not...

Man: Well, we're talking stakeholder groups.

Avri Doria: Yeah, I asked them...

Glen Desaintgery: I'm sorry, stakeholder groups.

Avri Doria: Yeah, in terms of stakeholder groups. And I know a lot of people are missing from this one and hopefully they'll listen to the recordings and then we'll continue the discussions online. I'm really just trying to get some clarification of the issue.

So I'll take a queue on, you know, starting (unintelligible) there really do seem to be these three separate threads...

Chuck Gomes: Chuck please.

Avri Doria: Anyone else want to start out being in the queue?

Philip Sheppard: Philip.

Avri Doria: Philip - anyone else? Okay, go ahead, Chuck.

Chuck Gomes: Well, first of all, looking at the spreadsheets for Question 5, the first item says that where you show some support that a non-contracted party SG to support us to four increased from three out of six council members from one geographic region. Is that saying that as many as four council reps could be from the same geographic region/

Avri Doria: Yeah, that's what its saying.

Chuck Gomes: Did someone actually support that?

Avri Doria: I believe it was in the last meeting.

Chuck Gomes: It just caught me, you know, more recently that I don't recall that.

I do know there's been quite a bit of support for some possibility of exceptions and so forth and not making it too rigid so that if there is one geographic region that you just can't get anybody, you - that there would be some means of dealing with that.

But I didn't know that anybody was supporting, you know, up to four or even in the case of the contracted parties which isn't this issue but of allowing of, you know, an accepting number from one geographic region.

So I'm just curious; it doesn't seem like we want to be advocating four counselors from the same geographic region.

Avri Doria: Okay, thank you. Philip?

Philip Sheppard: I mean, Chuck, I think that original change to be myself and it was based on two bits of reasoning.

One which it was a straight application of the mathematics from groups of three to groups of six. And I thought we were going to have a different ratio then we should have some logic behind that.

The second point was more specifically really looking at the composition of one of the groups of six, namely the commercial group in that because this was only talking about geographical diversity, that lead immediately to a problem in terms of the greater diversity we will be seeking certainly within our group to have representation, not just for, you know, all (interproperty lawyers) or all general business users or all ISPs.

But we would want to have the existing diversity sectors - perhaps even greater than diversity sectors as part of the balance there. So we felt that if we were going to make a point about diversity also, we should make a more intelligent one, recognizing the needs of different groups.

Chuck Gomes: Can I respond to that?

Avri Doria: Go ahead, Chuck.

Chuck Gomes: Philip, by the way, I think you know I actually support your reasoning with regard to need to look at other areas of diversity too. So I don't want to come across as real firm on this.

My opinion is that four from the same region might be a little bit extreme but I don't think this is a scenario where I would see a hard place - some sort of a compromise to meet your objectives as well.

Philip Sheppard: No.

Avri Doria: I have one question on this. This does mean though that we can have - and if this is both the case in the three out of six and the four out of six, that we could have just two regions represented in an SG and I want to make sure that that's okay with people.

Chuck Gomes: I think we need to be cautious there. But this is an area I hope we could work together to come up with a solution that's balanced.

Avri Doria: Right. So is that - so basically we're talking about possibly in terms of this, it's some careful words missing that could get us to a point where

we'd have something that would sort of make both sides of who's talking at least at the moment comfortable?

Chuck Gomes: For example, if maybe three that was there before, that no more than three out of six could be from the same geographic region and no more than - and you can't have more than two in the case of a stakeholder group from the same region and the contracted parties. I don't know if that's the solution or not but again, I think it's workable.

Avri Doria: Anyone else want to comment on these? What I'd really like to know is if it's possible for Philip and Chuck, who were the two who spoke on this, kind of have some wording back and forth that they'd both be able to support to bring it to the rest of us who aren't commenting at the moment.

Chuck Gomes: Philip, are you willing to send me something based on our discussion now and I'll be glad to work with you and then we can...

Philip Sheppard: I am, whether I'm conscious that Milton had a particular view on this. I mean, I think one of Milton's concerns was it was in fact - basically we're actually overall we are weakening the existing geographically diversity requirements which currently require all three constituencies to be different. I think Milton was actually concerned about that. I didn't know whether we were going to meet a block there or not.

Avri Doria: So maybe Milton needs to be - either Milton or Mary, if she's willing...

Philip Sheppard: Yeah.

Avri Doria: To jump into that position to take part with the two of you and batting around some language?

Philip Sheppard: Yeah.

Avri Doria: I know we can't volunteer Milton since he's not here but Mary could volunteer herself since she's got the cycle free at this point.

Philip Sheppard: Sure.

Olga Cavalli: Avri?

Avri Doria: Yeah.

Olga Cavalli: Avri, this is Olga. I would like to volunteer to helping Mary and Philip if it's possible.

Avri Doria: Well, of course. And in fact, you're also in the geographic region...

Olga Cavalli: Region group - yes.

Avri Doria: So you can make it consistent with some of the concerns that are going down.

Olga Cavalli: That's the idea - yeah.

Avri Doria: Okay, fantastic. Mary, can you participate in this or should I talk to Milton afterwards?

Mary Wong: You can put me on for the moment. I'll consult with Milton and let you know if it's better if he does it.

Avri Doria: Okay, great. And I don't think we're going to build a list. I think it's just the four of you try and communicate on this over the next couple of days and see if you can't come to some language that would work. And I guess that would also include the division - the exception clauses. And I have a feeling that it might be in a carefully crafted set of exceptions that the concerns might be able to be dealt with - at least I'm hoping.

Steve Metalitz: This is Steve.

I assume you would want to kind of - you would want to set a rule that where you wouldn't necessarily need a - any provision for exceptions. Why would you want to have a rule and then start talking about exceptions to the rule? We don't have exceptions now, do we? On geographic diversity requirements?

Chuck Gomes: We don't, Steve. But one of the issues of this is that we could end up in a situation - well, you know, the registries' stakeholder group is one example where there is no registry in a particular geographic region at all. So we could - we don't know what the situation's going to be. And so exceptions might be the only feasible way of dealing with it.

I agree with...

Steve Metalitz: Have you needed exceptions in the past - constituency?

Chuck Gomes: We could really have used exceptions in the past. We didn't have any so what we had to do is we had to be terribly creative and find somebody who had dual citizenship or something that happened to be associated with a registry in some capacity.

And getting back to Philip's concern about other factors of diversity, we, you know, it wasn't always the best decision in the world. It was one that we were forced into because of the rigidity of the geographic diversity requirements.

Avri Doria: Also...

Steve Metalitz: We did that too in our constituency going back ten years. I mean, this is not new. We come up with these rules if geographic diversity is important. Now if geographic diversity is not that important, then let's do away with that requirement. But if it is important, let's set rules that we can live with.

Avri Doria: I think also there have been - the issue has been brought up by people in the ISPC constituency at one point because I know that at various times, whether it was in term limit rules, I think that term limits is where we did have at least discussion of a - of an exception for geographic. And basically that if it was necessary for geographic distribution, then we made an exception in terms of the time limit.

So this is sort of the adverse of that same situation. But I think that's great, you know, that people are doing the writing and let's take that into account and see if they can't grasp something that doesn't need an exception.

Anything else on this one? Can I ask that we try to have some wording by the end of this week?

Philip Sheppard: We'll give it a go.

Avri Doria: Thank you because we're trying to get these things.

Okay, any more questions on 5 before we move on? Okay, the next one that I have is 7. And 7 and 8 in some sense to me seems related in terms of - and this goes back to the thing that I sent in the mail about names of trying to come up with some pattern in our solutions that sort of in terms of locating where a particular decision needs to be made.

One of the processes that we've been doing is we've sort of been looking at each one and say, oh this one maybe should go here and this one should maybe go and bylaws and this one goes there as opposed to sort of looking at it and trying to come up with some general rule that can then sort of allow all the individual decisions to sort of fall into place.

And so that's where I see a similarity between 7 and 8 in terms of one, making decisions of what should be in bylaws and what should be in operating rules for GNSO. And then what should be in house rules versus stakeholder group rules versus constituency rules. And assuming each of those has some set of guidelines rules, you know, charters.

The only one that really doesn't have a charter is a house and it maybe have developed a set of procedural norms for those maybe council-wise. So you know, one of the things I was looking at is that one of the

simple rules that often - I don't know how simple it is - simple rules that are often followed is that you do a session at a bottom up, like, you do make a decision at the lowest unit of organization so that if the rule is only applicable to a constituency it's made by the constituency, applicable to a stakeholder group, it's made a stakeholder group.

Now I also applied that notion to the resolution of who gets to decide on names but I'm not bringing that one in at the moment because we're still waiting for the board to decide what flexibility if any there is on names.

So having said that, we've got 7 and 8 and you know, again, we've got many things with some support. The one exception on that general rule though I'm not sure it actually is an exception is that anything that has to do with, you know, the PDP process and contractual conditions because of the nature of the picket fence and contractual conditions pretty much seems that it has to be in bylaws.

It's on other things that we seem to have a certain amount of flexibility and choice.

Chuck Gomes: And Avri, in that - in the (unintelligible) would you include in the floating thresholds as being - needing to be in the bylaws? It seems to me they would be because they're directly related to the PDP but I just want to...

Avri Doria: I would think that floating thresholds that are related to the PDP and related to contractual conditions would certainly need to be. So as it is related to elections and such would probably need to be given the different houses. But there may be things that the council would vote

on, you know, various motions that the council will vote on, whether it's a scheduling or to update the milestone of a working group.

Chuck Gomes: I've gotcha.

Avri Doria: Or a charter, you know, some non-PDP work effort that people may say, you know, those things need flexibility. We're not even sure what all of them will be. Those things can be handled outside of bylaws.

Chuck Gomes: Yes, I got it - that makes sense.

Avri Doria: Right. And so yes, it would be covered by the rule but they wouldn't necessarily all fall into the bylaws, you know. We currently take both on, you know, lots of things that aren't PDP or contractual conditions. So where do those need to be? I'll open up the floor, I've given enough background. Anyone have any comment?

Philip Sheppard: Philip.

Avri Doria: Philip. Anyone else want to be in the queue? Okay, go ahead, Philip.

Philip Sheppard: Okay, well, as I posted to the list, I mean, I thought really the general point you made about subsidiary and decision to take into the lowest point was an extremely good one. It's exactly in the spirit of ICANN and I think we should put specific wording in the bylaws to that effect. And then all we need to do elsewhere is simply have a note in the bylaws saying when any particular thing is - decision is being taken. So that makes it clear where those things are.

But as a general principal, it will also help I think in the future for other things. I thought that was an extremely useful point that could get us through a lot of these more (on the list) issues that we're discussing now (in a more simple way).

Avri Doria: Okay, thank you. Anyone else want to comment?

So if that's the case, then we should talk about it more on the list. What I think we sort of need to do then is - and I can work with anyone that wants to work with me with staff, with others to try and basically go through all of these things, build a list with us and, you know, following this principle, this would go here, this would go there.

And I guess the general statement about, you know, following a rule of subsidiary could indeed be something that's written and floated on the list. And since I started writing it, perhaps I could take a first crack at it and pass it out on the list and perhaps talk to staff to see where it fits in best in the bylaws. Does that seem a reasonable procedure? And of course I'm willing to work on the language with anyone who wishes to work with me on the language.

Chuck Gomes: Sounds good.

Avri Doria: Anyone wish to comment on this one?

Great, okay - so we have a - now we have a process to follow for 5 and a process to follow for 7, 8 and it may effect some of the others. The other one I had put on the list for today was Question 10. And in Question 10, we basically had a lot of things where I didn't even know what the level of support was.

And perhaps it was because we hadn't been listening carefully enough or perhaps it was because we hadn't quite talked about it enough. So first, there was an article that needed to be looked at in terms of a bylaw article that said no individual or entity had been excluded from participation and constituency, mainly because of participation and another constituency.

So that was the main item in 10. But there were also items related to qualifications for serving on the board, both seats may not be held by individuals who are employed by an agent of or receive any compensation from an ICANN accredited registry or registrar. Nor shall both seats be held by individuals who are elected or appointed representatives to one of the four GNSO stakeholder groups or any constituency.

So was the item listed under line 42, both seats shall not be held by individuals who are employed by an agent or receive any compensation from an accredited registrar or that's divided into several.

Okay - both seats shall not be held by individuals who are elected or appointed, right, no limitation on board seat, only 60% house vote required from house that appoint seat. An individual - and of course that one is presupposing the, you know, the board's decision on the split - the houses each electing a seat.

An individual may not serve simultaneously as a GNSO council and an ICANN board member. Actually, I thought almost everyone agreed with

that one. That one lists some support but I don't know if there's anyone that actually is against that one.

And then there was 10A, which was Article 3, no individual or entity shall be excluded from participation constituency merely because of (participation) - so the one that started ICANN.

So I'd like to open up the queue on these, this is still sort of a motley assortment of statements that, as I say, don't even know what the support is on them yet and would like to try and figure them out and figure out how we get this one resolved.

Steve Metalitz: This is Steve. Could I get in the queue?

Avri Doria: Steve - anyone else want to be in this first queue? Okay, go ahead, Steve.

Steve Metalitz: I think most of these questions - not all of them - are tied up with the issue that's before the board which is how - as I recall, the board has not even decided how these two seats on the board should be filled. That's the unfinished business from the working group of last summer - unless I've missed something. I don't think they've made a decision on that. So...

Avri Doria: That's my impression too.

I went looking because it's like it fell through a crack. I went looking for the decision. I couldn't find it but not all resolutions are posted.

Maybe Raymundo knows if a resolution was actually posted but I can't find one and I did send mail to the secretary of the board asking if I had missed it and if they could point it to me. But they haven't had a chance to answer me yet.

Steve Metalitz: So on the assumption that that hasn't been resolved, I don't think we can revolve most of these other questions either as to which seat comes first, as to what the qualifications would be because we don't even know whether the council will continue to fill these seats or in what way.

So it seems to me, the only issues that we can address now are the last two, whether an individual can serve simultaneously as a council and an ICANN board member. And I agree with you. I can't remember anybody opposing that proposition. And in fact, there was some question whether it isn't already in the bylaws.

But in any case, I think everyone agreed you can't hold both those offices at once. And then the Article 3, which I think is - which I think is in the current bylaws, if I'm not mistaken about no individual or entity shall excluded in participation...

Avri Doria: Yeah.

Steve Metalitz: Because it participates in another constituency. I have no problem with that if participation doesn't necessarily extend to voting participation.

Chuck Gomes: Add Chuck to the queue, please.

Avri Doria: Chuck, okay, well I don't - I didn't understand the last.

Steve: Well, when it says not individual shall be excluded from participation in a constituency merely because of participation and another constituency, does that mean they can vote in both constituencies...

Avri Doria: Okay, I see. So any particular decision - and I guess there would be two conditions; one is that is determined by a particular decision or is it being a voting member into a constituency. Okay, I understand.

Philip Sheppard: Philip for the queue as well.

Avri Doria: Okay, Chuck, Philip.

Chuck Gomes: Okay, I agree with Steve on what he just said. I don't - I'm not aware of any disagreement on Line 45 there in the spreadsheet, an individual may serve simultaneous - no - may not serve simultaneously on the council and on - as a board member.

And then regarding Article 3, it's my understanding that it would - that participation would not need to mean that they can vote in more than one place. I think I saw it in the institutional confidence document where the recommendation of the strategic - the present strategy committee is that there will not be double voting by any entity. And I think that's a good principle.

So assuming that Article 3 means that observers - that could just mean observer status, I think that's fine.

Avri Doria: Okay, Philip.

Margie Milam: Hey, this is Margie. Can I...

Avri Doria: Sure, did you want to comment directly to...

Margie Milam: Yes.

Avri Doria: Chuck's question or...?

Margie Milam: Yeah, I want to comment on Chuck's question. Yeah, I think if we want to make that distinction, I would recommending doing - go ahead and be clear because it's really not clear what participation means. And so to the extent that there's consensus that participation is observer status and you can't vote in two separate constituencies, to me that seems like something that should be spelled out.

Avri Doria: Okay. Philip.

Philip Sheppard: Yeah, I mean, this Article 3, about - with this merely participation and advocacy wording is a bylaw that's been with us, I think, throughout the whole life of ICANN. But personally I have never understood. It seemed to be counterintuitive to any logic in terms of the construction of the names council and now the GNSO.

The whole way where assembling stakeholder groups now is by differentiation of interests. (It's almost like) we're saying, hey, there may just be some entity who wants to have a foot in both camps. So the answer is as in most areas of the world, well, you just choose where you want to be, where you want to put most of your weight. That's where you participate actively in vote and everything else.

And you don't try to behind the scenes influence that same major interest by covert activities elsewhere. And I just find it - it almost an unethical clause in the existing bylaws and I really would like someone to explain the original logical why it's there at all. It strikes me as quite bizarre.

Avri Doria: I can offer some things I've heard but if there's anyone else that wants to respond.

Chuck Gomes: Go ahead, you can respond first. I'll be glad to respond.

Avri Doria: Okay. Well certainly one of the things I've heard, in fact I think this was something that was even said by (Roberto) when he came in to talk to us was he can imagine certain companies that were the very large multi-segmented companies where, you know, we often see the right hand and left hand really have no connection within the company.

Where you would have a business unit in one place that was completely separate from an operational unit so one could, for example, be - now in this case they're in the same, you know, stakeholder group but not the same constituency of business participant and a service provider and have definite interests in both.

Now true, that does not explain the need for voting but it certainly did explain at that level the need for being part of two of them.

Philip Sheppard: Yeah, I mean, I (unintelligible), you know, I'm aware of that, you know, of that background. I mean, you can think of examples, like, I mean, (telecode) is a good example and their potentially simultaneously in almost every constituency if you think about the various interests of a

multi-national. I mean, they can be registries, registrars, ISPs, business users, intellectual property holders and have a foundation that's non-profit.

But the thing you need to look at is why are these guys interested in ICANN, you know? Why are they there? What are they doing? What is their main interest? And that should be the point of participation. If anything else, this strikes me, as I say, as opening the doors to be unethical.

Avri Doria: Okay, thanks. Chuck.

Chuck Gomes: So I would agree with Philip if we're talking about voting, that a decision needs to be made where you want to vote, okay?

But I disagree and certainly with his comment on ethics. Let's take my own company, for example. We have intellectual property interest that we're very concerned about. And it's not unethical for us to want to contribute, for example, in the IP constituency. In fact, we've been a member of the IP constituency in the regard and participated in IP constituency activities.

Also, you know, certainly an important part of our business is our naming business. But we're also very much in the security arena. And from a business point of view, we're very concerned about security.

So as long as we distinguish between - as long as we make sure that we're not allowing double voting by any entity, I think there's a lot of sense to allowing participation on an observer status in more than one constituency where companies do have sometimes just totally different

business units within their organization, not that we necessarily have to distinguish between that makes a lot of sense to me.

Avri Doria: I don't (unintelligible) Philip. Do you disagree with that, Philip?

Philip Sheppard: Yeah, I think the way that you - how would that be practical?

What you're saying, observer status is everything except for voting. Is that the same, you know, status we give to liaisons on counsel at the moment, you know? In other words, those guys can influence on discussion lists, they can participate in policy development processes, they can be on every telephone call discussing those things.

And it's only when a particular thing reaches that, you know, rarity of voting that suddenly they're not allowed to have any influence because that just strikes me as just allowing influence to go dramatically too far.

I mean, well, it's not. I mean - and what Chuck may well be correct is in terms of some organizations. But I mean, elsewhere where you have duality of interests, you only have that on the strict conditions of, you know, Chinese walls and organizations, etcetera. And we don't have a mechanism to monitor that within ICANN. So I just find it still to opening the door to, uhm...

Chuck Gomes: Well, let's look at the contracted party house and particularly the registry stakeholder groups. I think we all are expecting that there will be registrars who become registries, okay?

Now those registrars that do that, it seems valid to me because we want input from all impacted stakeholders in the process that they

would be involved and their input would be - could be valuable in terms of development of policies and so forth within the registry group.

Philip Sheppard: Yeah, but Chuck, if they do that, they're going to be forming a separate corporate entity as a registry, as they vote. You're asking very odd questions,(you may be a wholly owned subsidiary) but that's (not the issue).

Chuck Gomes: Well, you have to be careful there, Philip because then you start getting into gaming the process and then you have the double voting. So I think in particular, we've tried to deal with that in the proposed registry stakeholder group charter so that it's not gain.

Steve Metalitz: Avri, can I get in the queue, please?

Avri Doria: Certainly.

Chuck Gomes: Go ahead, I'll...

Avri Doria: Yeah, Steve, jump in because this is - yeah.

Steve Metalitz: Okay. Yeah, well, I mean, you know, it's kind of odd to hear Chuck talking about this because he can only speak in hypothetical terms.

His constituency has built a Chinese wall and refuses to allow anybody in it who doesn't have a contract with ICANN. And we just heard on the last call and on the list that they're refusing to budge from that situation, even to the extent of entities that want to - whose only reason for existence is to become a registry that's got a contract with ICANN.

But our constituency has many years of experience with this. We have always had quite a liberal membership policy and we accept virtually all applicants for membership, as long as they can demonstrate some connection with intellectual property interests. So we have many members who are also members of other constituencies. They don't vote because we restrict voting to organizational members, associations.

And while we've gotten a lot of criticism from some quarters about that, it has enabled us to have the type of diversity that I think is a goal of this provision. We do get the input of entities that are registrars and that are registries and so forth. And I think in general that's beneficial but it does have some side effects.

But that is on the basis as we've been interpreting this bylaw provision that membership and other constituency isn't barred of membership in our constituency but it may well be a bar to voting in our constituency.

I think if we asked our - and this may be a good idea - that we should ask our membership whether we want to continue with this policy or not. But I think this that's in the bylaws reflects our policy and I think we - it's on hold and positive.

Avri Doria: Can I - I want to make a comment before we're ending the meeting. One, first of all, I thought that at the last meeting Chuck had indicated that the observer status would be open to prospective registries?

Chuck Gomes: In our proposed charter.

Avri Doria: Right, that's what I thought.

So I wanted to bring up that one. I wondering whether, you know, and this one we can continue on the list. But from what I'm hearing, I'm almost hearing something that says, with the exception of voting, no individual shall be excluded from participation. The rules for participation within a constituency will be decided by that constituency. And I'm wondering whether that, you know, obviously words missing it to be better.

But it's basically saying voting is barred. And other - you pick whether you're a voting member. Participation is not excluded but the rules for that participation are following the rule we mentioned previously up to the constituency.

Would some formula like that work as kind of a question that I'm throwing out basically to the list. And I can certainly write it to the list. I don't know if there was anybody that wanted to comment sort of last thing.

Okay, so I think we talked through these - we've got a certain number of actions that I'll write up and send out to this list so that we can hopefully follow through on them. Again, I appreciate everybody's time today and we really need to try and set another meeting really soon.

I guess we automatically have another meeting Monday, is that correct? That we - while there were questions about today because of holiday, next Monday is penciled in and pretty firm, correct?

Glen Desaintgery: That's right. Even though it's a holiday in the Europe?

Man: I was about to say - yeah.

Avri Doria: What holiday is it?

Man: It's (Whitson Pentacle).

Avri Doria: So hopefully, you know, that will be a fair trade. Holiday for holiday.

Man: So we're now on a regular...

Avri Doria: We're on a regular Monday schedule. That seemed to be the only day that most people could make.

Man: Okay.

Avri Doria: And we'll go weekly, you know, for the next several weeks, hopefully finish. I will try as many things as I can do on the list with (Doodle) and any other means I can think of to try and, you know, find out where we're at and bring these things to, you know, the point where we can put together a motion at least two weeks before the 23rd. So the 23rd minus 14 - the 9th.

Okay, I thank you all. Have good days - well, have good days all of you but have a great holiday, those who are yet to celebrate a holiday.

Man: Thanks everybody.

Woman: Thank you, Avri.

Woman: Thanks, everyone.

Woman:       Bye.

Woman:       Bye-bye.

Woman:       Bye.

Woman:       Thank you, bye.

END