

**ICANN**  
**Transcription ICANN Hyderabad**  
**GNSO's new roles and obligations under the revised ICANN Bylaws DT**  
**Update**  
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James Bladel: So the next session -- and thank you for your patience, Steve -- is the -- an update on the bylaws drafting team report, which was published I believe very quickly in advance of our last council meeting, so many folks didn't have a chance to review that in its entirety. We have a motion also that was deferred until this meeting so it will be considered during our council meeting. And Steve, if you would like to give us an update, and if you can do anything to get us back on schedule too I'd be super grateful. Thanks. Take it away.

Steve DelBianco: Thanks, James. Steve DelBianco. We don't have to do an update on the substance of the drafting team's report, what we merely have here is a description of the motion and the process that you started in motion this summer. So this is not an update on anything that the drafting team did since that was complete and presented to you on the October meeting.

And I'll note that the drafting team's report is just over seven pages, and all of our recommendations are summarized on Pages 1 and 2. We did our best to make efficient use of your team. Nothing about that has

changed. There is - let me note the presence of a 28-page detailed report, which is a map of new bylaws requirements, and it maps them to the drafting team recommendations. And you also know there's a brief one or two-page minority report, expanding on the rationale for the minority views that were reflected in the actual drafting team's summary of seven pages.

So I'm available to answer your questions on that. The slides that staff has prepared are tightly focused on what the motion is before you today, the motion that was deferred. And if you scroll to the next slide, I believe that the text of the motion shows up there. And I might say to you, James, I'm available to answer questions on the substance of things but I certainly have a question of my regarding the process, if that's in order.

James Bladel: Yes absolutely.

Steve DelBianco: And that would be the - with respect to the public comment, when we pass this report over to staff, and ICANN staff is generally meant to imply GNSO staff but I hope also legal staff since we're talking about messing with the bylaws and procedure, and whatever staff comes back with, would it all go out for a public comment, not just within GNSO but a public comment, separately on changes to GNSO procedures as well potential changes to Section 11.3 in the ICANN bylaws?

Because bylaws themselves contain a special level of approval when it comes to making changes, even though it's just the GNSO section. We all know that the new empowered community can in fact block a bylaws change. So I want to be sure that those two processes are locked in to the expectations of this motion. Thank you.

James Bladel: I believe that's correct but Marika's going to set me straight. Marika?

Marika Konings: Yes this is Marika. That's correct. Any changes to the GNSO operating procedures or the ICANN bylaws always go out for public comment before the GNSO Council considers those. And I think for the bylaws it then even goes for another round of public comment, if I'm not mistaken, before the board actually considers those.

James Bladel: Yes, Steve?

Steve DelBianco: While the motion doesn't make this clear, I'm assuming that when Legal and GNSO comes back with the recommended textual changes to GNSO procedures in Section 11.3 of the bylaws, that council would receive that as a report I guess from staff. Would it pass through the hands of the drafting team again or would it go right to council and would council then consider approval of that specific language so that it could be posted for public comment?

James Bladel: Yes I don't know that it was intended to go back to the drafting team but I think it does go back to the council and then would be distributed to SGs and Cs. But I may be off course on that one. I'm looking down at the staff end here and they're all furiously Googling things. Go ahead, Marika.

Marika Konings: Yes this is Marika. I think that's something where the council can decide if indeed when the comments come back, staff usually does provide a summary of that and, you know, we can provide at least our interpretation of whether that would need to resolve in changes. And indeed then those either can be discussed by the council or if the

council wants to mandate the drafting team them to look at that, I think that's really up to you to decide.

James Bladel: Perhaps that decision would be determined by how substantial the public comments were and whether or not they warranted significant changes to the draft bylaws that would, you know, if it was all green lights across the board versus it was go back and do this again, I think it's hard to presume what that would be.

Steve DelBianco: But I'm aware that council often when it gets a report from staff, council does consider accepting and posting for public comment. You often will take reports from staff and council then will take a measure, a motion to post them for public comment. Is that anticipated here after staff prepares the detailed report?

James Bladel: I don't think it would be a motion. I think they would just go out for comments, Steve. I don't know that we would have to make that into a formal decision. I think we would just take them from staff and they would go out for comment. I'm just kind of doing this - I'm winging this here answering Steve's questions. If anybody - okay.

Marika Konings: Yes this is Marika. Just it wasn't specifically called out here because it's actually one of the requirements that I believe is in the operating procedures that does say that if there are changes those need to be posted for public comment or they need to be community consultation or something like that. So it's standard procedure that we've also been doing for example finding changes resulting from the standing committee on GNSO improvement.

So indeed it's - as it's foreseen basically on the direction of council, staff would, working together with legal staff, look at what changes

need to be made to the operating procedures and bylaws to implement the adopted recommendations. Those would then go out for public comment, and based on the feedback, indeed as James said, it would then be for the council to decide further changes needed and if so how, you know, how would those be managed.

Steve DelBianco: And the drafting team didn't have an expectation that it would have to touch and manage what staff comes back with but I believe the next part of the motion, maybe it's the prior part, indicates that the drafting team is asked to be available and we verified that we will be available to whatever extent possible to help, especially with the 28-page detailed report. So with that, James, I have lots of information about what's in the report as opposed to the motion and process before you. But since all of it was provided over a month ago, I'm happy to just answer your questions on that.

James Bladel: Thanks, Steve, and thanks for those discussions. You know, thanks, Marika, you helped me kind of understand what the next process will be as well. Go ahead and then we have a couple of folks in the queue.

Marika Konings: Yes and just to add and I think at least from a staff perspective, we would indeed anticipate, you know, any first draft to share that indeed with the drafting team to make sure that it would align with what the report said. I don't think we're envisioning that we would work in any kind of isolation and just put it out without anyone having seen it. So just to reassure you on that point.

James Bladel: Okay thanks, Marika. Paul, you're up first.

Paul McGrady: So maybe Marika could just do a paragraph to list on this question because I want to understand what will be done with public comments

they arrive. Because I want to make sure that that's a meaningful process and not just a hoop that we're jumping through, because I do anticipate there will be robust public comment in the event that the motion go - you know, goes forward on un-amended. Thanks.

James Bladel: Thanks. And did we have a remote question on this topic from Farzaneh? Not now? Okay. It must have been on a different topic. Apologies for that. Next is Wolf-Ulrich.

Wolf-Ulrich Knoben: Thanks, James. You all know that we have filed an amendment to the motion on short term yesterday evening (unintelligible) internal discussion within the Commercial Stakeholder Group, which I filed on behalf of the Commercial Stakeholder Group. And this is (unintelligible) or let me say points out - points to the issue we have with the, from our point of view, unresolved issue of who is going to be empowered. This is new powers derived from the bylaws and how is it dealt with in the future. So this is from our perspective. It's not solved - also not solved through the drafting team.

So I wonder - just wonder whether we should go into that discussion right now. I would welcome if you could go into that discussion right now prior to the council meeting itself because anyway it shall be - it is on the table and shall be discussed at the council meeting. So for my first question, whether there is interest to discuss that right now.

James Bladel: I'm not sure that everyone has had an opportunity to fully review that, Wolf-Ulrich, that amendment. I think it was posted yesterday evening. So I think maybe at our prep session might be a good time to talk about that as well. But I note that we have a queue, so if the folks who are in the queue would like to address Wolf-Ulrich's question, if this is the time. I'm just trying to get a sense of the room if that's - if folks

have had a chance to review that and are ready to discuss that now or need some more time.

Tapani, you're next in the queue. Go ahead.

Tapani Tarvainen: Thank you. This is Tapani Tarvainen, NCSG chair. And the amendment I find it almost totally changes the motion, and we have a rule that new motions should be brought ten days in advance and it's a good rule to have. And if friendly amendments can be used to change the motion so radically that they in effect introduce totally new motions, it kind of circumvents this rule, and I think that would not be a good thing to do. So I suggest that this kind of friendly amendment should not be accepted. Thank you.

James Bladel: Thanks, Tapani. And I don't know if that was your reason for raising your hand or did you also have - that was the reason, okay? Thank you. Michele?

Michele Neylon: Michele for the record. I agree with everything that Tapani just said. I mean there's a massive difference between an amendment and completely different motion. So I think on the matter of procedure, that's something that needs to be discussed.

James Bladel: Thank you. We have one other person. We have Farzaneh and then I can go to Steve. Farzaneh?

Farzaneh Badii: Yes hi, can you hear me?

James Bladel: Yes we can. Go ahead, please.

Farzaneh Badii: Okay. I'm sorry I just have to (unintelligible). So I just wanted to make a comment on the proposed amendment on the motion. Actually I don't think this is an amendment, this is a rewrite of the process by one stakeholder group, and it looks like that the stakeholder group wants to kind of define the process of how the proposal should work and be approved. And the intentions are quite clear and it has been throughout the drafting team process.

And I think that the CSG does not want the council to be the body that engages with the empowered community, and this is concern because the council provides a power balance among GNSO. How could any other mechanism do that? And I think that council is tried and tested and I really want to know if the council wants more power and a have more say in the empowered community by no accepting the GNSO Council to engage with the empowered community. And I think the amendment to the motion are to spearhead that intention not to have the council to engage with the empowered community. Thank you.

James Bladel: Okay thank you for that. And I just noted that the queue has then proliferated based on that, and we do have - we've run short of time. But next up is - I'll go Steve, (Ed), then I'll go to the microphone with Steve and Milton, and then come back with Matthew and Wolf-Ulrich and then we'll close it there, okay? Sound fair? Steve?

Steve DelBianco: Yes I want to remind everyone that these new rights and responsibilities available to us through the transition are a good thing. We're going to make ICANN great again. So this is something we're happy about. There can be and there are more legitimate difference about how the GNSO would exercise the rights and responsibilities whether through the stakeholder groups or council. And those have all been noted and delineated.

But it's my take that Wolf-Ulrich's amendments are strictly to the process by which the drafting team's recommendations that council make the decisions, how will that be analyzed by staff and by Legal, how will it be available for public comment. And that process is surrounding the core recommendations, but nothing about this motion messes with the drafting teams actual recommendations.

And so it might be rewriting the approval process motion but it does nothing to rewrite or change the underlying recommendations of the drafting team that were achieved with the consensus. Thank you.

James Bladel: Okay thanks, Steve. Next is (Ed).

(Ed): Thanks, James. It's a good proposal. The drafting team report is good. It should be adopted. The friendly motion on the other hand if accepted is a dangerous precedent to this council going forward. Let me first of all agree with Steve. We considered these issues being raised by the CSG ad infinitum during our DT deliberations. In fact I will state this: the reason we were two weeks late with our report is we spent most of the first three meetings talking about these same issues about where to situate the powers.

DT representatives representing three of the four stakeholder groups of the GNSO unanimously rejected the position of the CSG and voted to situate the power in council. We've heard these arguments before. We don't need to go to ICANN Legal, we don't need to change the process and adopt this new friendly motion.

But let me talk about my real concern if we actually accept the friendly motion. What a precedent this is going to set. Let me give you an

example in the RPM group. We're probably going to have in this whole big package we send up to council a statement that the trademark clearinghouse data should remain private. I don't agree with that.

And you know what? We have a little bit in our bylaws about transparency, so if we're going to start accepting friendly motions or even friendly amendments that send the results of a working group to (JJ) and Legal for approval before we go forward, you can expect from me on the RPM group I'm going to ask the same thing. And for virtually many of the other stuff coming back to us, if I disagree and think hey there's a slight chance that I get this overturned despite the fact it's been considered in the working group by referring it to ICANN Legal, I'm going to do that and it's going to make council dysfunctional.

I would encourage those who have made the motion and seconded it to reject this friendly motion. Thank you.

James Bladel: Thanks, (Ed). And now we'll go to the floor microphone. Steve Metalitz?

Steve Metalitz: Thank you. Steve Metalitz. I was a member of the drafting team. I'm not sure whether we're discussing the motion and the amendment or not. Steve DelBianco is entirely correct. The amendment doesn't change the recommendations of the drafting team. It proposes a process for getting more input on that.

And on the threshold question of whether the current bylaws permit the GNSO Council to take this responsibility or to take this power that is outside the scope of its bylaws remit responsible for managing the

policy development process of the GNSO, we've had a lot of discussion in the first part of this segment about operating procedures and public comment on those. Again, I would just ask people to look at the bylaws which says that the GNSO Council has the authority to adopt operating procedures to carry out its responsibility for managing the policy development process.

So if these powers are not about managing the policy development process of the GNSO, I think there's a real question about whether it can be included in the operating procedures. The operating - the bylaws also say the GNSO operating procedures shall be effective upon the expiration of a 21-day public comment period. They don't say anything about a very short public comment period, they don't say anything about the council considering the comments, it's just a hoop that has to be gone through before the operating procedures become effective if they're consistent with the bylaws remit.

These are some of the issues I think that underline the request that these recommendations be looked at by ICANN Legal, that they be subject to public comment, and that they be also considered by the other entities that make up the GNSO. If the council decides not to consider this amendment, consider it out of order, most bodies do have a way allowing their members to suggest changes to motions that come before them. But if the council decides it doesn't want to allow that, then so be it. But I would just encourage people to look carefully at the provisions that are relevant here and at the text of the amendment that's been put forward. Thank you.

James Bladel: Thanks, Steve. Next is Matthew - sorry, we're going to go with Milton, Matthew, Wolf-Ulrich, who kicked off this discussion. Paul, I note you're back in the queue but we closed that off. It's going to have be -

you're standing in for lunch now. Okay, a brief one. So Milton, Matthew, Wolf-Ulrich, and Paul.

Milton Mueller: Milton Mueller, Georgia Tech. My understanding of a friendly amendment is that it is something that the introducers of the original proposal accept, and it seems to me that this is not a friendly amendment, it's actually a rather unfriendly amendment.

I read the drafting team's report and it seemed that there was dissention, significant dissention, about this issue and that the drafting team hashed out this issue quite thoroughly and that the people who are proposing this amendment lost, that they could not get the other stakeholder groups or the other members of the drafting team to accept this proposal.

So I think that the issue that you're debating now has pretty much been resolved. I haven't heard a single reason why it should be reconsidered. I think the council is clearly the most efficient and appropriate mechanism for making these - both this approval and the exercising of the empowered - the communities powered under the new accountability arrangements. Again, the council reflects a balance of constituencies that was carefully worked out, and I think that trying to mess with that at this sort of delicate time is not a constructive change. So I hope you just continue with what you're planning to do and pass the original motion. Thank you.

James Bladel: Thanks, Milton. Matthew?

Matthew Shears: Yes thanks. Matthew Shears for the record, also a member of the drafting team. I'd like to first thank Steve for taking us through a very methodical approach in this drafting team and for reviewing all the

changes that are going to come about as a result of the bylaws changes. I think the report itself demonstrates that we considered all those. We took - that we considered also, as others have said, where those particular powers should lie, and I think it's a very fair and balanced report and clearly demonstrates that the finding was that the GNSO Council should speak for the GNSO.

I think it's important to remember in this process that we are not talking about the empowered community in and of itself but we're talking about the role of the decisional participants insofar as that we've talked about the GNSO Council role and we've discussed it, and I think we've put forward a report that clearly demonstrates that that is largely the will of the community in terms of where those powers should reside.

If there is a process to be followed, as was discussed earlier on that these proposals for changes has to go through and there's a review process and I think we should clearly follow that, but it would be unfortunate if that process were used as a rationale or an opportunity to review house structure issues which sometimes seems to be the basis for some of these discussions and rather that we actually act together and in the interest of empowering the community as a whole. Thanks.

James Bladel: Thanks, Matthew. Wolf-Ulrich?

Wolf-Ulrich Knoben: Yes, thanks, Wolf-Ulrich speaking. I have a couple of points. With regard to the process, we're really aware about the process when we drafted this amendment and we also are aware of the fact that amendments are allowed. And while it could be - it could refer to only one word or one phrase or even the entire motion, that is open from the procedures and that is entitled. Whether it's accepted as friendly, that's

a fully different story. So we're aware it's not easy to get it accepted as friendly.

Now to the reasons. And this is to some extent sometimes the impression that the reasons are - why we are coming out with that are differently understood by different parties. So just as Matthew was referring to, and I have to object to that, it's not about restructuring the - of the GNSO, it's not about that. It's just about putting the GNSO powers relative to this empowered community to the right community place, the place in the community. So.

And that is where we are struggling about and we were struggling about that in the past already. So we have former council chairs like Chuck and so also Stephanie here know about what I am talking about. So in the past, we had also had issues to tackle this which were outside the policy development process staffing review teams and other things. And it was done in a way through the community. In the end, the council well took over what the proposal was by the community but it went through the community, and that is differently done in this case when we are just going to accept what the drafting team has put to the table. So that is a big difference here.

For me, that is a - if I look to the past, it is a creeping process I would say, you know. In the past, to some extent sometimes the council took those decisions in several cases. But okay there was some rumor about that it was not fixed in a written way. Right now it's going to be set in stone here, and this is a big difference what we are doing right now. And if it's in stone, then everybody can refer.

So you know that we have different opinions about what is - whether the council is entitled to do that according to the bylaws or not and we

are of the opinion that should be in a broader community should be discussed that before we are going really to fix that here in stone. That is the reason why we are doing that.

This is also, you know, it's easy not all of things which are not literally written in a process, in a procedure, or in a law also are not automatically allowed. That is not - this is really not the case. So also, there may be other people managing their texts and so in this way.

And the last point is the timing, I also would say so we are not under pressure to decide that really. On behalf, we have had a motion to put the - as an interim period to put the council chair as the representative for the empowered community for that period of interim time. So the empowered community is just in the beginning. There are no really fundamental important decisions to be taken on the short term. So there is time to discuss that. I wonder whether we should do that right now. So that's my point. Thank you.

James Bladel: Thank you. I have Paul and then I put myself in the queue. So Paul, go ahead.

Paul McGrady: Sure thank you. Paul McGrady. So I would just say that this is - these are important issues, right? The expanding role of the GNSO Council, whether or not that should happen is an important issue, who gets empowered and who gets un-empowered after the expiration of the IANA contract when we voted on the bylaws, you know, as part of that accountability process and to change those after the expiration of the IANA contract in a way that could be viewed by some as pushing them to the margins, you know, these are significant issues and we need to discuss them.

But what I'd like for us to agree to around the table is we'll do it in a way that doesn't come outside sideways on other topics that are in front of us this week and that we have good communication on the list, in person, and that we make sure that we don't let tempers flare and we don't end up appearing unproductive in public session, and I hope everybody can join me on that. Thank you.

James Bladel: Thanks, Paul. Agree wholeheartedly with that sentiment. I just wanted to note that Samantha Eisner from ICANN Legal is here and I've been told that she's reviewed the motion and the friendly amendment, which I think also makes reference to the role of ICANN Legal in reviewing draft bylaws and she perhaps has some thoughts to contribute here. Is that still correct, Sam? For what it's worth, if you want to add your two cents or five cents or a quarter to this conversation, I think we would welcome them. And then after that we'll probably break for lunch here.

Samantha Eisner: Thanks, James. I'm Sam Eisner, deputy general counsel with ICANN. And so I've seen a bit of the motion. I haven't looked at the text of the revised motion. I'm not - I don't want to get involved in the internal discussions that seem to be happening about the particular roles.

I do know, and I want to be clear with the group, I was very involved in the drafting of the new ICANN bylaws out of the CCWG process and worked very closely with the external counsel that was hired by - or identified by the CCWG to assist them Sidley Austin and (Aber and Colvin) in the development of the bylaws, and they also confirmed at the end of the bylaws drafting process that they were consistent with the proposals. There were certain parts of the bylaws that we didn't change, right, so we didn't change the core role of the GNSO.

And in that realm there's also been other parts of the GNSO work that's gone through the council that isn't necessarily tethered specifically to policy items such as approval of CCWGs and charters and recommendations coming out of there, et cetera.

In terms of the motion here, I might have some specific procedural suggestions about it but it doesn't necessarily go to the role of the council. But I think, Steve, you might understand I have some specific concerns about just making sure that we have the correct respect of the role of the council, whatever you agree it to be, and then of the board in the approval of the bylaws while also recognizing that these are recommendations that come out of the GNSO and so the drafting team recommendations, whatever changes happen to either operating procedures or the bylaws, you want to make sure they're within the spirit of the recommendations but make sure we don't build in unnecessary loops into the approval process that might get some confusion.

So that be helpful. I might, if I can work with you, Steve, maybe we could come up with something that would be a friendly amendment, not a rewriting of particularly the last clause. But that would be my one concern, just to make sure that it's very clear that we don't have any question about who actually approves the bylaws versus the operating procedures and who has the masters over those realms.

James Bladel: Thanks, Sam. I think that was helpful and I'm glad you were here and thanks for taking the initiative and reading ahead. So thanks for that.

Okay and I note Stephanie that you raised your hand but we closed the queue, so if it's possible we can move on. And we're going to have a more - this topic is not going away. We're going to have a more

fulsome discussion of this in our prep session and I'm sure in our council meeting later this week.

I'd just like to say as the maker of the motion that I'm personally -- and just decoupling it from any of its substance of the material -- I'm personally just maybe a little uncomfortable with the extent of the amendment in that it does seem to rewrite quite a bit of the both the whereas and resolve clauses. And I think if we're going to go down that route and start accepting them as friendly or considering them as friendly, then I think perhaps another deferral might be on the table because the motion has changed so significantly from the first time we considered it back in I believe our meeting in October.

And we do have, as I think as Wolf-Ulrich and others have pointed out, we do have a stopgap in place. It's me. It's not the job I wanted and I'd be happy to turn it over to some other person or group, but for right now we have a placeholder on the empowered community that gives us the luxury of a little bit more time to work through some of this if necessary and if we choose to do that. So I'm just putting this out here as food for thought for our next session and our discussion on this in our public meeting.

I do want to thank Steve and all the members of the drafting team for giving us a little flavor of what you guys have been working on for the past few months here in the council meeting and certainly appreciate your work on this, on these draft bylaws and that's certainly - the work in not done.

So with that we'll close this topic. We'll stop the recording and we will break.

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