

**ICANN
Transcription ICANN Copenhagen
GNSO Bylaws Drafting Team
Wednesday, 15 March 2017 at 17:00 CET**

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Steve DelBianco: Good afternoon, everyone. Marika and staff ask that, this is Steve DelBianco speaking, chair of the drafting team, asked us to do as we promised which was to be able to reconvene this drafting team. Especially pursuant to questions that ICANN legal as well as GDD staff might come up with. And so we wanted to stand by and be read to do that if it came up. So this drafting team, we'll go around the table introduce yourselves so we understand who's here for whom. Because there's been some turnover, right? (Ommer) is now part of ICANN staff. So, Stefania, is (Ommer) here? Oh, good. You probably need to get to the table. You too, Sam. All right so again, I'm Steve DelBianco with the business constituency and I was chair of the drafting team. Go ahead.

Mary Wong: Mary Wong ICANN policy staff.

Julie Hedlund: Julie Hedlund, policy staff.

Woman: (Unintelligible), policy staff.

Matthew Shears: Matthew Shears NCSG.

Stefania Milan: Stefania Milan, NCSG and replacement for (Ommer).

Ed Morris: Ed Morris, NCA appointee to this committee.

(Malcolm Huddy): (Malcolm Huddy) IS CP.

Brian Cimboric: Brian Cimboric, PIR, registry stakeholders.

Paul Diaz: Paul Diaz, also PIR and chair of the registry stakeholder group.

Darcy Southwell: Darcy Southwell, for the registrar stakeholder group.

Lori Schulman: Lori Schulman for the IPC.

(Newton): (Unintelligible) (Newton) for the ISPCP constituency.

Steve DelBianco: Great, thanks everyone. Yes, when Marika sent this out last week it looked as if, oh, no problem, 60 pages of tables and there's only eight questions, right? But it took me 2-1/2 hours, right, to go through the other night each of the questions that Marika had posed to us as well as Sam and legal's assumptions. And to try to go back to that giant table, go back to the bylaws, go back to our thinking on it. It was pretty intense process. So let me first just thank everyone who spent some time preparing for it. Those of you who prepared in advance of say, last night, have the good fortune of having your draft responses in the document that we'll have in Adobe right now and that was the BC, the ISPCP, and the IPC.

But others, if you have answers in writing, we can either discuss them when they come up, it might be awkward to do all the cutting and pasting right now. But we'll discuss them when they come up. And if you share them with the list, we'll have them on our own machines as well which might be easier for some people that are following along. Marika this is scheduled for an hour and a half, I believe. Okay and so it's a working session. The idea is that if we can knock out these questions as well as any other business, we're done. If we can't knock out the questions in a way that achieves our consensus level, we would have to set up a call where our drafting team would come together again in the next week or two. Perhaps even more than one time.

And, you know, I'll note that this was a challenging team to chair because we had, sort of, a difference of opinion on the approaches. And yet, the CSG with a different approach was able to say given that we do not have support having council, always do everything for GNSO. We think GNSO should do some things directly through its constituencies and stakeholder groups.

But given all that, we'll go ahead and work hard to come up with a consensus opinion on given that it's council, what are the voting thresholds that should be there. And that's the spirit in which I hope we can continue, all right? And so my plan was go through all eight, one at a time. Now (Malcolm Huddy) had asked to make one overall observation for the consideration of the drafting team. And (Malcolm) if we can keep it brief, we'll take it onboard. Go ahead.

Mathew Shears: I'll keep it as brief as possible. It's just all this minor wording clarification on the specifics of the issues that need to be decided by the decisional participants. And it's in the wording, so if you look at- it applies to each of them. But for simplicity if you turn to Paragraph 36, you'll be able to see it there where the DT's recommendation there is that the GNSO representative on the empowered community will act in accordance when instructions provided by GNSO's super majority.

Now there's really two specific points there. One there is no such thing as a GNSO representative on the empowered community. It is a GNSO representative on the empowered community administration. And the empowered community administration has no decisional action in that decision on whether to approve an approval action. And indeed, this applies to the other ones that supplies (unintelligible).

So the clarification that I'm seeking there is that the GNSO representative on the empowered community administration will communicate the decision of the GNSO to the empowered community administration for passing on the secretary.

Steve DelBianco: Thank you Matthew and Marika's in the queue on this, but as you know, the drafting team recommendation said the GNSO rep would always act in accordance with the instructions that are provided by council with the majority of each house. And we thought that implied that our rep would convey what it was council's resolution duly appointed. I don't know where the ambiguity is.

Mathew Shears: The issue is narrower. It prevents the possibility of it being interpreted that the GNSO council on the GNSO action could confer a discretion on that representative to the empowered community to make the decision themselves which is something that is specifically prohibited in the bylaws.

Steve DelBianco: I'll ask you to clarify. The words we have in our (unintelligible) was GNSO representative on the EC-- and it was lower case R for representative-- okay, will act in accord with instructions approved by GNSO super majority for some, majority of each house for others. What words would you add to that phrase?

Mathew Shears: GNSO representative to the empowered community administration will convey the decision of the GNSO.

Marika Konings: So this is Marika. If I may clarify, we've noticed that in several instances there was actually a reference to EC instead of EC administration. We didn't want to go and change the drafting team recommendations because that's not within our remit. But as you can see in some of the assumptions, as well as the way things have been written up, we've made clear that it's EC administration. And here the assumption is directly to your point the assumption that is that this is a notification to the EC admin as a whole for tallying. Indeed, there's no discretion. It's just here is the decision. That's it. So that's indeed from staff perspective. Absolutely what we assumed.

Mathew Shears: That is the point that I'm trying to make because if this is written in a way that makes it clear that it is passing on something that has happened for tallying,

and not merely acting in accordance with the decision which could imply, which could include acting within the bounds of the things that were set out in that decision. Now that, the GNSO is not empowered to delegate that decision as to how to act as a decisional participant to somebody else. It must be- so there isn't that range of things that the representative EC administration might be required to do that's indicated in this wording at the moment. The only thing that they are doing is that they are passing on that statement.

So I think the staff have understood the way that this needs to be, but I wanted to make sure that those, the wording in that was narrowed so that it could only be done in a way that was correct. Rather than open to a potential argument later about whether or not we could- we were able to empower our representative to make conditional decisions.

Steve DelBianco: Thank you, (Malcolm). Could you past into the Adobe chat, the exact words that you have in mind? Because the emails you sent me on Friday didn't include those words. When they come up, we'll return to that. So Marika has a general understanding of it and I believe our intent was when the GNSO is asked what say you, to the exercise of a community power, along the way. Remember there's a decision to hold a forum. There's multiple decisions to be made and as practical matter you'll notice that in questions from staff, as a practical matter, some of the timelines on these step-by-step decisions then the escalation of the community power are very brief. There won't even be a council meeting to occur.

Mathew Shears: But those kinds of decisions, it is possible for the GNSO to delegate to the representative to the administration how to act. So for example, on the question of the forums, should there be multiple forums? That is something that administration is empowered to decide itself. And our representative can either be sent with the instructions that we support there or oppose there being multiple ones. Or they can be sent with discretion. But on the

decisional- on the questions where the decisional participants is the only required actor, we need to be narrow.

Steve DelBianco: Thank you (Malcolm). Staff, do you have some sense as to which of the rows in our monstrous table are of the nature of decision and not EC. Marika's nodding yes.

Marika Konings: This is Marika. Yes, I believe we have in our assumptions noted where we are viewed that is a question of tallying and where it's a question of, indeed, discussion.

Steve DelBianco: Even though those don't map to exactly the eight questions. There are other places in there that didn't- they're not a question, but they were part of the assumptions.

Marika Konings: Yes, correct. So if I can then maybe briefly talk about the document as a whole and what you'll find in there and that comes in as well to that point. So indeed, it took quite a bit of time for us to go through that and I think you all appreciate that amount of information that was in there. But in going through it- yes, it's not the one up there that's really the staff report. This is a, kind of, abbreviated version that we did for the executive summary. But what we circulated to you last week is the staff report on the recommendations. So basically it does include the table that will look familiar to you. But what we did, we added to... So yes, we added another... No, the number I think was already there.

But we added on the right side two additional columns. So we have, well and we added the column on the DT recommendation. So that basically literally captures what you recommended then we added a column that identified open issues, questions, assumptions and then there was a column for the legal assessment which was also specifically requested.

Steve DelBianco: Does everybody have that document? If you don't, we can resend it. Paul, anybody who wasn't on the team who needs it? Because it will be essential to have that to be helpful. If you can help with that? Thank you.

Marika Konings: So in going through the document, I think we quickly realized that there are basically three buckets in which, at least from our perspective, the recommendations fall with regards to whether changes need to be made to the bylaws operating procedures. And standing upfront as well, we basically took the approach here that what the minimum changes needed to implement drafting team recommendations, at least from a staff perspective.

So the three buckets are there where we believe no new procedures or modifications are needed as the current bylaws are GNSO operating procedures provide sufficient guidance. And that is mainly in those instances where the drafting team confirmed that decisions need to be taken by a simple majority, which is already recognized as the default voting threshold. And is actually the majority of recommendations as you can tell. Also those recommendations where no procedures or modifications are needed as a separate mechanism and that has now been approved or will be created which will actually deal with those required actions in relation to appointments and nominations. And for those who weren't in the council meeting today, the council adopted today that charter for a standing selection committee that is expected to deal with those nominations.

And then there are a couple of changes that will be required to the GNSO voting threshold for those voting thresholds that are different from the current simple majority vote of the each house or which, for which it's not already identified that there's a super majority vote as that is already a defined term in the bylaws. So a number of those that are new voting thresholds that will be added.

We did recognize that there are instances where further work may be needed or desirable. For example, developing, you know, templates for certain

requests or having more detailed information on how certain, which steps need to be taken. Most of that is in the bylaws, but it may be helpful for the GNSO to have some of that, you know, in a separate fact sheet or something like that available. But we didn't deem that as a gating factor for completing this particular piece of work.

So what we ended, in going through all those recommendations, there were a number where, indeed, we made assumptions. In certain cases where, indeed, it was EC, we assumed that you meant EC administration. So those are some of the things that we recorded. There are some other places where we made assumptions based on the discussions and what we believed was the intent of the recommendations. There were a couple of instances, I think, where there was an assumption that the empowered community would have a role where it actually doesn't have a role.

So those are some of the things that we noted down. And, you know, if you believe there's anything in there that needs further discussion or where we made an incorrect assumption please point those out. But to help your conversations here, what we did do is actually pull out those items that you'll see in the executive summary where we have questions that we believe do need an answer for us to decide how to deal with it. Or where, you know, legal assessment has been made that may need you to reconsider your original recommendation or another approach that may fit your recommendation but not as it was specifically called out.

So that was the approach we took. Following that, several of you did provide already input on the question that we flagged and that is the document you actually see on this screen and that we circulated earlier today. For making the document fit on the screen, I did put, you know, questions and legal assessment in one column. If there's any need to separate that out we're happy to do that again. But I think the main thing you probably want to focus on is indeed the input that has been provided to date and, of course, eventually the objective of providing a response to staff. Which then will allow

us to, kind of, finalize this document and then, you know, the next step would be to actually apply those changes.

And as I said, from what we've seen, the only specific changes at this stage would be to modify the ICANN bylaws with regard to voting thresholds as none of the other changes or other recommendations appear to require further changes. And publish that for public comment together with, you know, original bylaws drafting team report. I think we may also want to share this document as a background document and then go through the required 40-day comment period. Then review our comments back.

And I think the expectation or what, at least from the staff side we will do is, you know, take those comments back to the GNSO council and the council can then have a discussion or assessment where the comments were and any further discussion or changes or whether it's ready for adoption. And with the changes of the bylaws, of course, that will also require it going to the board and looking at Sam. probably that requires another public comment before the board considers or not? I mean it's not a big deal, but at least there's board approval involved for changes to the ICANN bylaws.

(Sam): On that point, I think, you know, we look at how the bylaw changes were posted. If they were posted in the name of the drafting team for drafting team inputs on the bylaws, changes to see if they served the drafting team's needs. Or if it was something that was ready to be pushed to the board for the board to initiate the bylaws change according to that bylaws change process. So if it was initiated by the drafting team, we'd likely need another public comment when it came to board approval time so that we could give the right notices under the bylaws because we're not starting to put in things about the empowered community notices and stuff in there to. Because that triggers an empowered community process and everything too.

Steve DelBianco: Thanks Sam. I mean process-wise, I don't why this drafting team alone, only one of the SO's and AC's, I don't know why this drafting team would go

straight into public comment on the bylaws changes. I mean our bylaws recommendations after staff implements them in a set of written recommendations that has to be approved by super majority of council. That's what this process calls for. So it's only after council approved it does it become even eligible getting outside of GNSO for review. And by that time, you may have several other ACNSO and other kinds of changes driven by legal. So they could all be batched. They have to be explained carefully, right?

But our change to the bylaws are relatively minimal. Most of our changes, sort of, GNSO procedures, right? We have very few changes to bylaws. And unless anybody here really thinks we ought to have a standalone thread of public comments on bylaws but I think we should let council do its work and then batch it into the other bylaws changes. Any discussion? Okay great. Thank you. And stay up.

When Marika went through the three batches, when we had our conversations, we understood early on that there was default scenario for how council votes on all other matters, and that long list of 20 ways that council votes. But Marika we put in our report, you know, the majority of each house, just for clarity if somebody who might read it without knowing, leave it for the default. So I think we anticipated that would require no change too. And that's great. So what would be the best way to proceed? And (Malcolm) has put his text into the chat. Would you be sure to capture that and we'll use that the default wording for the EC?

And the document that we need to go through while it's a little challenging to read the Adobe, Marika sent it around at 8:17 am this morning. So it will be under Marika's from address. And it was the attachment called bylaws DT input and draft responses dated 15 March and that contains, as Marika said just the inputs from the CSG. And we want to hear from the rest of you to get through that. Marika.

Marika Konings: Yes, this is Marika. One thing I do want to clarify because I see, indeed, now the suggestions by (Malcolm). But I just want to make clear because that basically means changing the drafting team recommendations which were adopted by the GNSO council. I think we are all on the same page that is what is meant. But we may want to consider what that means if we actually go back and change some of that wording.

Steve DelBianco: Thanks Marika. It's my impression that the staff report which is going to be which his going to include the recommendation of how to implement the drafting team recommendations. In the staff report, make a note that the drafting team on March 15th, considered that (Malcolm)'s language was an appropriate way to implement and you may or may not use the exact words. You may come up with better words especially with their looking at it. So if you come up with the right words, you're implementing the spirit of what we had in mind. Because we did not intend to impart discretion on the exercise of EC powers. And we thought that the discretion, if any, for EC administration decisions would have been part of the motion.

So when council drafted a motion telling, let's say it's (James) just for occurrence, telling (James) oh it looks like a petition got started on blocking the budget for all the decisions of the EC admin we do think we should proceed. And that would be blanket instructions that he could use without having council convene a call or a meeting just to decide on specific instructions. Lori?

Lori Schulman: Yes, I just have a question about that. So the EC admin would just be deciding whether to proceed. But the EC admin is not the decision maker. So there's like a two-part, it's a bifurcated.

Steve DelBianco: That's basically true. And the answer's complex. Because the EC Administration, capital A, you'll see that in the 60 pages of all the different pages in the bylaws that staff and legal pulled out for us. Every place they need to make a decision, you'll see EC admin written right in there. And they

mostly have to do with step-by-step moves. But there are a few other things they get to decide too. Let's just say they don't make decisions on the exercise of a power just the escalation. And (Malcolm) you wanted to clarify something?

(Malcolm): Yes, I think you put that right there. The exercise of these full powers can't be done by this representative, can't be done by the EC administration. They must be done by the decisional participants themselves. Now there are other things, the administration has been put together so it's around the process. That process would involve making better decisions about the running of the process. So for example, there's a forum that takes place. There may be more there may be more than one forum. That forum, there will have to be decisions about what day it happens on. Which city it happens in. Whether it happens in person or only by remote participation, these sorts of decisions. These are the decisions that are open to the EC administration to take.

Now as for the instructions when we way act in accordance with the instructions of the GNSO, in the resolution, that could mean all sorts of things. In relation- but it can only mean things- it is only proper for it to mean the things that the person who is being referred to would have the power to do. So it might be that the GNSO would pass a resolution that says oppose there being more than one forum. We only want to have one forum. Well, they might say we want there to be multiple- two forums, one to just raise the issue and another one for review of it. Or they might say see what the other SO's think and if it looks like there's support for it, then go along with it. And that would be conferring a discretion. Now with regard- all of that would be acting in accordance with the decision of the GNSO when the representative did this or the motion pass.

However, when it comes to the specific exercise of the power, the decision to dismiss the board, for example, that cannot be- you cannot pass a decision in the form of the representative will decide having discussed with what the other representatives in the EC administration think, how to cast a vote on

that. That's not how it works. That decision must be taken by the GNSO itself and cannot be delegated. And so it's this phrase act in accordance which can mean different things in different context that I was seeking to clarify and to make sure that when it is the especially narrow thing of exercising the power. Actually it's not the whole range of things that act in accordance with the decision might mean because we're not allowed to make a decision, certain kinds of decisions on that. The only decision we can make on those are yay or nay.

And the only thing- the only role for the administration representative there is to convey that. That's the point I was.

Man: (Unintelligible) as well.

(Malcolm): Yes, I'm sure we'll be happy with stuff. I mean I don't think I've seen Sam nod so often at something that I have said.

Lori Schulman: Lori you had something?

Lori Schulman: Just some thoughts. I'm going to sit in (unintelligible) shoes because now I think I'm beginning to get what the issue is. So I know like one of his issues was when you say the GNSO, or just don't raise it. All right.

Steve DelBianco: Don't go down that rabbit hole. That's the first point that Steve has in his document. We're going to get to that because that's the first part. That has nothing to do with (Malcolm)'s point that staff is agreeing to.

Lori Schulman: Okay, that's what I'm trying. I'm pinch hitting folks. So I'm trying to ramp up fast. All right, thanks a lot.

Steve DelBianco: Go through the document, it's a challenge to do in Adobe. So try to bring up the Word doc that Marika circulated this morning. And the first point in here was that the IPC added a caveat in there. But I believe this is verbatim. I

don't know for sure if it's verbatim. It looks pretty close to what I saw in the (unintelligible) report. Copy paste from the IPC comment, okay great. So the IPC is reiterating what I said at the outset of the meeting is that IPC and indeed CSG would have preferred the GNSO make the decisions instead of council and that's a caveat that's in here. Does the IPC want to have further discussion of the first row or can we get to the actual questions? Lori? I asked you a question. Does the IPC need to reiterate what Steve pasted into Row 1 or can we move on to the actual questions?

Lori Schulman: No, I don't feel that way. If it's in Row 1 and we're all noticed about that, I'm okay. I don't need to repeat what's written. I just want to make sure that I'm adequately representing them. Okay.

Marika Konings: This is Marika. If I can just note on that first part. It is, indeed, staff looked at the recommendations and I think we had this conversation before. Because I think I specifically rates to the definition of the GNSO council. But from staff's perspective, that is not limiting the GNSO role. So that's why, from our perspective, no further changes are needed. But of course, you know, there's a drafting team consensus that would be further need to made explicit. That, of course, is something you can discuss. But, from our perspective it's not necessary to implement the proposed recommendations.

Steve DelBianco: Yes because one of the things that came away from the December motion was we were asking legal to examine whether they bylaws had to be changed to reflect whether council could take on matters outside of policy. The conclusion that we received was that didn't need to change the bylaws to do that. Your belief is that the bylaws accommodate council taking on non-policy related matters. Do I have that right?

Woman: I think our position is that the council has acted in many ways over the years. So.

Steve DelBianco: That's not about prior practice. Because the prior practice to Steve's point may have been outside of what counsel was supposed to do anyway. So the real purpose of the question was not have we done it right or wrong before? But is it permissible going forward? Or do we need to change the bylaws?

Woman: So.

Steve DelBianco: I think you're fine. Somebody get some club soda to clean up.

Woman: For those not in the room, I've just poured club soda all over my computer. But it didn't really hit my keyboard. So we're thinking I'm in pretty good shape. But in any event, if you don't get any other legal work out of ICANN for the rest of the meeting, you know why and it's my fault. So, you know, I came to the Hyderabad session with the group and a very similar question was posed and I think from our position it's not really our decision to decide the role of the GNSO council. We believe the bylaws support- so we don't believe the bylaws need to be modified in order to accompany- in order to implement the recommendations of a bylaws drafting team.

Steve DelBianco: That's the answer I was looking for. Please put that in the Adobe chat unless it's in the report. I don't want to know about prior practice. That's not relevant. And we don't want to make decisions about what should happen to be normative. You're answering a descriptive answer to the question. Do the bylaws need to be modified for council to have the power to do what the drafting team recommends? I think the answer was no.

Woman: That's correct.

Steve DelBianco: Any further discussion on that? Lori?

Lori Schulman: Just a question. So then are you saying that the wording in they bylaw is sufficiently broad to cover it? Because based on what I'm reading from here, that's the IPC issue that it's not specific. It needs to be specific.

Marika Konings: This is Marika. I think from our perspective it's not limiting. It doesn't say only so that is why- I mean if you start spelling things out then you need to spell out a whole universe of things that the council may do. So.

Lori Schulman: So then I have a follow up question. So if we take that as a given, that the wording is sufficient, then in terms of addressing the IPC concern, where does that come in? Does that come in on how to articulate a procedure or what?

Steve DelBianco: No, it would come into the question of whether they bylaws where they describe the duties of council, whether the words at the very top about council's remit need to be modified in order to.

Lori Schulman: And legal is saying no.

Steve DelBianco: Legal is saying no, because if that were the case, it would open up the can of worms of whether there really is support for that bylaws change, you see? And legal's going to put their conclusion, very clearly, into the draft report that will come back from staff so that we tee up the question and the answer very early in the report, right? So that disposes of that issue with respect to what ICANN legal believes.

Lori Schulman: Right, as opposed to what IPC.

Steve DelBianco: You may disagree, but it's only about that question.

Lori Schulman: How the report will be drafted and presented to the public, that conclusion.

Steve DelBianco: Only two sentences in the report.

Lori Schulman: Got it.

Steve DelBianco: The rest of the report is going to say that given that, how would you implement what they bylaws drafting team recommendations were? And there are some bylaws changes for that with respect to voting threshold and a few things in the EC section. So we should move on, I think, okay/

Lori Schulman: Okay, I might ask post-meeting questions if that's okay.

Steve DelBianco: We may have another meeting at this pace anyway.

Lori Schulman: All right, I'm sorry. But I'm asked to sit here and do this. I just want to make sure that I'm clear. All right, thank you.

Steve DelBianco: It took a couple of months to get past threshold questions like that and we didn't have legal at our side, but we proceeded on the assumption that it was because we knew that's the way council has been acting. Council has been appointing people to review teams and that's not policy, per se. On that basis, we proceeded and legal is going to put in writing their conclusion and it might even be a few sentences long clarifying how you interpret. But let's move past that and get to the questions. Is everyone onboard with that? Okay, please.

So the first question we're considering is reconsidering requests. And what was put to us is that do we need guidance in the procedures? So this wouldn't have anything to do with the bylaws. And you ask like the helpful, should we do a template? Well if we did a template it wouldn't have to be in the procedures. If we recommended doing a template, that wouldn't be in the procedures, right? Marika is nodding yes. All we needed - all Marika is doing is saying hey to be helpful, to speed things up so when the time comes we are ready. Should we have a draft? And the BC said I don't think we should require a template at this time. But staff and legal can. We invite you to draft some text so that it would be right at your elbow if needed.

Because a template would still need to be approved by council when they dusted the template off and filled in the words for blocking the budget. So I don't get that a template would have to be approved by council. It would only be used to consider a motion that had to be approved in the instance. Go ahead.

Sam Eisner: This is Sam Eisner. I just have a question about what we can imagine the temperament might be around the time that let's say the GNSO determines that it needs to initiate a petition on a reconsideration or an IRP. At that point, my sense is there might not be a lot of good will around it for us to the ones who are drafting it. And so from my perspective I think there would be a benefit if we had something drafted out that was able to be shared at least, you now, with holes to fill in, prior to a point that we ever got that dispute. So that we were not then- our motivations in drafting something in a particular way wouldn't be questioned.

Steve DelBianco: And if you did so, it wouldn't be in the procedures. And it wouldn't be in the bylaws, but it could be in our report that we would invite staff, legal and staff, working together to draft text for motion (unintelligible) so that that would be ready if needed. Would that be satisfactory? And I have Marika and then Ed.

Marika Konings: Yes, this is Marika. I think just to echo what you were saying. I think staff on a number of occasions while we identified where it may be helpful to have templates. So what we can maybe do is pull all those out and list those. And then indicate that the drafting team, you know, welcome the suggestion from staff to develop templates on these and expect that these will be developed in the near future but not dependent on this work that may be a way of approaching that.

Steve DelBianco: To my mind that would be a perfect solution here. Can we take nodding of hands or hands? Any objections to that? That's great. Thank you very much and that would be helpful. Sorry, the next one is Item 4. And these are specific reviews which has nothing to do with the empowered community,

okay? This has to do with the four reviews we pulled in from the affirmation of commitments. It's not an empowered community thing. It involves all AC's and SO's. And they ask- they note that the bylaws do not grant special approval rights over the entire slate. They say that the chairs of the all seven AC's and SO's, when confronted with the list of nominees. If the list of nominees is less than the 21 total for the ATRT3, WHOIS review, SSR, or the CCT review, then the chairs of the AC's and SO's are in the bylaws. This is Section 4.6 are instructed to select from the pool of nominees with consideration of skills and diversity. I'm just quoting from memory, skills and diversity. Unless those chairs that do that, and we interpreted that carefully to say that we wanted (James) to come back to council and show the whole list of 21 and get council to approve it. And this was not something all of felt was necessary.

But staff is noting the bylaws don't grant that. We could still tell (James), look (James) you can't approval any of these additions to the team without coming out to council. And if we do it would be in our procedures. And then staff also notes in collaboration with the drafting team could consider interim decision (unintelligible) when participating in the process. Like where we could come up with a motion or a report where it says (James), we're submitting three people for the ATRT, but we have four alternates. As you are deciding with the other chairs to fill the extra slots on the 21, if there are any, remember if every AC and SO puts three names in, the chairs don't even need to meet. And if we give (James) guidance to say we really want to you fight hard to get Stefania on there. Because she's got special skills for the ATRT and we could do that. It wouldn't have to be in the policy procedures of the GNSO. It wouldn't be in the bylaws. Doesn't have to be in our report. So what would be- what do we need to do to address your question here?

Marika Konings: That is Marika. I believe the response you provided here is an excellent way forward. I think we just need to clarify, yes, exactly. I think that exactly means what you explained and I think it will require a footnote to say, the drafting team originally misunderstood what is required on the bylaws and has further

clarified it in this way. So that we make clear that this is the clarification of the original recommendations which was deemed to be inconsistent with the bylaws.

Steve DelBianco: So please look at the bold text that I put in, in the middle of the night the other night as a way to address that if it's done by a motion that the resolution must be approved a majority of house. If it's done by a motion at all, to (James). But it's not necessarily needed. Now IPC, Lori this might be fair to you. I'm sorry, but you may be asked to explain what Steve- is (Steve on the line as well?)

Lori Schulman: No. This Lori for the record. I apologize. Steve's saying something to me about what to say or not to say. But I think this goes back to this issue of the rule of the SO, AC's and perceptions of expanded powers by GNSO. I mean that's where I think this is coming from Steve. So I don't know. It seems that you're proposing something that seems reasonable. That the motion must be approved by the majority of the house.

Steve DelBianco: Right and this has nothing to do with the empowered community. These are.

Lori Schulman : I understand that, but there's a general theme running through the IPC comment that's very clear to me.

Steve DelBianco: Okay, so I'm going to ask Sam, when you draft your answer to the question, would the bylaws need to be changed in order to accommodate the council acting on matters other than policy. Put in parentheses, including the appointment of people to review teams. So that you can definitely answer that question. I think it was inherent in the question. It's a non-policy thing that council does and we have been doing it. We want legal to say whether they believe the bylaws allow that as.

Lori Schulman: Right and that's okay.

Steve DelBianco: And if they do, which we discussed with your first row, it applies to this one too.

Marika Konings: Yes, so this is Marika. I'm wondering if the concern expressed here may have been addressed by the formation of the standing selection committee. Because ten the formation and the membership is basically there's a veto for every stakeholder group or constituency. So that, I think, indirectly means that, you know, the decision power allies it just then the council confirms that selection- and as part of the selection committee, there's nothing preventing the SSE to also say well. These are our top three. And here are the rest of our recommendations and we would like to instruct the GNSO chair as part of the conversation to look at A, B and C or.

Steve DelBianco: Would you please make a note please, if you don't mind? To take today's motion and charter and if you didn't get it, I'll ask Marika to send it over to you. The motion and charter from today, it was approved unanimously and ask Steve if this addresses his point. I know Steve pretty well. He'll probably say no. Because Steve objects to right in the middle. He objects to the staff proposal to give the unilateral power of approving review teams to the GNSO chair and that ship sailed along time ago. That was in the bylaws we approved in October. That's already in the bylaws 4.6. So what Steve said there isn't exactly correct. And more importantly, the concern may be completely mitigated by the drafting team, sorry, the standing selection committee that came put today. And this was a motion that Ed Morris and Susan Kawaguchi got through the council unanimously today and Ed wants to speak to that.

Ed Morris: Yes, Lori. I just want you to know, we spent months dealing with this same issue. And speaking, just on my behalf, I'm here to get through this document. And we're spending our time dealing with issues that took up a considerable portion of what we were doing this summer. In fact, it should have just been this summer. It wound up in fall, I believe, because we were

dealing with these issues. We have stuff we have to get through here and ask Steve to start doing that.

Quick question for Marika. Do we need the second line of the BC proposal? Given the standing selection committee?

Steve DelBianco: Let's read that out. The first line said, "Council may provide guidance to its chair for priorities and criteria in selecting from nominees to fill the open review team slots." The second sentence that Ed's asking about says if this is done via a council motion, this resolution must be approved by a majority of each house. Ed's right. That any motion not dealing with the delineated special needs, always falls to the default. So it's not necessary. Question is whether it's helpful? Marika?

Marika Konings: This is Marika. I can just say plus one. I think this is not what goes into the bylaws or GNSO operating procedures. This is just a clarification. So I think it's helpful to be specific like you've been in any of the other recommendations to say the simple majority of each house.

Steve DelBianco: Which raises a question, what about the first sentence? Do you think the first sentence ends up in GNSO procedures or not? GNSO procedures have to say what council may do on the assumption that it always knows that it could do. How often do the procedures including things like this? May provide guidance.

Marika Konings: I don't think- I think this is an implicit. The council may in principle say whatever it wants in that regard.

Steve DelBianco: The council may provide guidance all the time. So I would suggest that neither of these sentences would end up in the procedures. And both are there only in the drafting team report. And I am proposing an amendment to what we had written earlier we said where we said it would always go back to a motion in council. I'm amending to be a little bit more permissive, but noting

that if a motion were required, it would require. So I think that I would prefer to answer Ed's question by saying let's have both sentences in our drafting report and neither of them in the procedures. Thanks, Ed. Lori?

Lori Schulman: Yes, I really feel the need to say something, okay? I'm here as a service to my constituency and as a service to this group. So I understand you want to get through this, but I think there needs to be a level of tolerance here. Because I am very amenable to reasonably anything and anybody in this room knows that. At the same time, I've been given the position to represent and I just want to make sure that I'm clear as we move through. So thank you.

Steve DelBianco: And that's noted. Thank you too. I appreciate that. Okay I think that's two down, right? Agreed everybody? Two down. Let's go to the third one. Which is community mediation, and should any specific guidance, you know, template. We covered this template question earlier. And the answer that the three of us gave is the same as we gave earlier on response to item one. If you remember that response is our report would say that we invite staff to prepare a template motion for council. Everyone okay at repeating that here? Rinse and repeat? Lori? Okay.

Let's go to the next one. Next one has to do with the consumers, customer standing committee which is, sort of, more of an IANA transition related item. And it is part of the new bylaws. The customer standing committee, how is it composed in terms of appointments, terms of renewal of people that are on it? And keep in mind that this is a very complex little chunk of the bylaws. The registry procedures, the registry stakeholder group and I'm looking at you guys. You have complete discretion to do it however you want and name whomever you want. And your procedures may or may not document how you do it.

So my recommendation is that we, in our report, we recommend but don't require that the registry stakeholder groups procedures document. And I

know about it because I stole from it when we were doing the non-contract party house selection of board seat 14. So we recommend but don't require that the document- that you document your selection procedure in advance. Which would make thing transparent to the rest of us and easier for you to exercise when the time comes to pick your person on the customer standing committee. So take a discussion on that recommendation? Wolf-Ulrich?

Wolf-Ulrich Knoblen: Thanks Steve. Wolf-Ulrich speaking. Well just for my clarification, maybe I was wrong here. So we are talking about the appointment of board members of the- no not board members or members to the CAC. Because on the other hand we are referring to a procedure to figure out to selection of board members, which board members? This is the PTI board members? Is this the?

Steve DelBianco: That was just an interpretation problem. Staff was giving us an example. Like for example, the registry stakeholder groups procedures indicate how they handle their procedure on selecting a board member. But none of this has anything to do with a board member. Do I have that right? Nothing to do with a board member. Go ahead.

Marika Konings: This is Marika. The reason why we gave the example of the board member is that the GNSO operating procedures contained the procedure of the contracted party house for selecting their board member. That's not a GNSO thing but it's still contained in there. And next will be the non-contracted party house procedure also is required to be included there. So the question is should...

Steve DelBianco: Good luck with that.

Marika Konings: Should something similar be done for the procedure that the registries have for selecting their members to the CSC?

Wolf-Ulrich Knoblen: So then I have an additional question.

Steve DelBianco: Go ahead.

Wolf-Ulrich Knoben: I understood that. So making reference is every time good. So if it fits. So the question here is then because when I referred to this document from the (unintelligible). I have a question mark to this procedure with regard to the NCA inclusion or not. I don't know whether that's has a role here or not. You know, and with regard to the board member selection, there's a question all that's going on is in our house. So whether the NCA should be included to be included here. I don't know whether this has a role here or not.

Steve DelBianco: Let's see if can answer that. The contracted parties house gets to write a procedure if the feel like it. For how they'll pick their person. And their procedure could or could not include their NCA. That's up to them. And I would recommend.

Wolf-Ulrich Knoben: It's a bylaws question.

Steve DelBianco: Not a bylaw. It's not a board member. Just to be clear, this is the customer standing committee. And the contracted party's house isn't even involved. It's the registries themselves and the nominating committee rep, the NCA rep, is part of the house, but not part of the registry constituency. So what we're going to do is remove any reference to this board seat. Promise me? It is not going to be in there. All we're going to say in the report is that the drafting team recommends but does not require that the registry stakeholder group document it's selection procedure in advance. So there will be no reference to the board seat. That was an example that completely put a couple of us sideways. Thank you. Go head.

Brian Cimboric: Steve, Brian Cimboric, registry stakeholder group and that's not particularly problematic for us. That's fine.

Steve DelBianco: If you wanted to, we could say that the EYRSG intends to document its procedure. That would even be better. Great, thank you. Let's go to the next one. It's inspection. Now this is Row 26 on inspection. And this abbreviated table, this is a little tricky. But on your computer if you go to Row 26, in the long blue, yellow, green document, Row 26, you'll get a better understanding of what this is speaking to. And this is something that was really vital to us in our group. We really worked hard to say that in terms of requesting inspection. And we did want to preserve the ability for the component parts of GNSO, not just council. But the component parts of GNSO. It's like one of the little few victories for the CSG preference here, Lori. One of the few victories for us because each group can do it.

So what they're asking for on inspection, we are saying that any stakeholder group or constituency, the IPC, can request document inspection. Ed let the way at the document inspection request as having gone through a couple of DIDPCs and from the beginning, it was meant to be in a very low bar to get over. That if the IPC wanted a document, you're not going to necessarily get the document, but you ought to be able to get a request funneled through to the part of the new bylaws. Where Sam has to look at the request.

Now along the way from the IPC to Sam, it has to get through council because the bylaws are assuming these come through decisional participants, is that right? Yes, a decisional participant. So for the decisional participant called GNSO to route Lori's request to Sam, what do we need to say in our procedures for that in the GNSO procedures? So I read Sam's assessment and I made a recommendation that we change it to the bold text. At any GNSO stakeholder group or constituency may request ICANN document inspection and added a sentence. And I don't know if this is the way to say it, but the sentence is that this request shall be deemed as approved by GNSO council as a consent agenda item.

What I'm trying to get to is that council itself while it has to send it to Sam, is not allowed to block what Lori came up with. I don't know if that's going to

work. You like that idea, but I don't know if that's going to work. We'll take a queue on that. We'll start with Marika and then Ed.

Marika Konings: This is Marika. Just one clarification. The assumption is that the request shall be deemed approved as soon as the GNSO council has passed the consent agenda item. I mean it does need a formal action and that's the only clarification to make sure that, my perspective.

Steve DelBianco: Ed and then Sam.

Ed Morris: Yes, well as long as Sam's okay with it, I'm okay with it.

(Sam): Well there's the existential is Sam okay with it? I don't know. But in terms of, I think for the purposes of meeting the bylaws which is what we're doing here. You know, we told the decisional participants you have the right to go and see how you want to do your operating procedures in order to allow this to happen? So I think from ICANN perspective, we need to make sure that we have clear indication that it's an act of the council. So, the way that this language is drafted, I'm concerned because it looks like it could even get approved before the council meeting, right?

And so I think it's important that a request does not get to ICANN until the council has acted by whatever means you determine is appropriate for the council to act. And then it can be forward to ICANN from the decisional participant. So we're looking for an act.

Steve DelBianco: Would you copy my words? Would you please copy my bold words, fix it, and put it in the chat. And we'll all get a chance to see. I think you just said it. Did you put it in the chat as well Marika?

Woman: (Unintelligible).

Steve DelBianco: Julie okay, it's in the notes. Why don't everybody take a look at that, Item 26 in the bottom right hand corner of Adobe. It says, "This request shall be deemed as approved by GNSO council as soon as the council has passed" you say "the" "consent agenda item." Passed- look at this changes as I'm speaking. As passed the request as a consent agenda item. Because it's the element here is a request, okay? (Darcy).

(Darcy): Thanks, Steve. One clarification any maybe it's just how my brain read this. But when we start off the first question and say any GNSO stakeholder group or constituency may request ICANN document inspection, do we want to clarify and tell them how to do that? By requesting it from the council or something like that. There's confusion there to me that they can request it but to request it of who?

Steve DelBianco: Would it be better to say they initiate?

(Darcy): Yes.

Steve DelBianco: An ICANN document inspection request.

(Darcy): Yes.

Steve DelBianco: How about initiate a document inspection request, go ahead Marika.

Marika Konings: And then I would add by requesting for the item to be added to the GNSO consent agenda. And then you have the second item that says, and once that consent agenda item is adopted, that it is considered approved.

Steve DelBianco: Julie's putting that into the chat. And for those of you who are very experienced with council, that means that it could be as much as a month, right? Between a document inspection request and action by council on the assumption that a consent agenda is only dealt with at a regular meeting.

How often does council hold emergency sessions and meetings and approve motions? Does it ever happen?

Man: We can do it.

Steve DelBianco: If you did do it, could it have a consent agenda?

Man: Marika would now more, better than I would.

Steve DelBianco: Or Sam, either one.

(Sam): Sorry, I think in order to achieve the purpose that I understand you're trying to achieve with this, you need to also include a bar that people cannot remove it from the consent agenda.

Steve DelBianco: Is there a way to do this?

(Sam): I think that's something, just looking at this, if you want to mandate that it gets approved on the consent agenda, you need to make sure that this is an exclusion from your regular consent agenda process. You have to put this in your procedures. Just a flag for you guys.

Steve DelBianco: Being an engineer, not a lawyer, I wrote the request shall be deemed as approved by council as a consent agenda item. That's still the simplest way to say it. But it may not work in practice.

(Sam): And I think that there's one other thing and this might be appropriate to go onto the template guideline Marika because so (Darcy)'s question that I heard. There's a separate issue to this, is that you want to make sure that whoever's acting and this will come then through the counsel is initiating it appropriately. So it says the right thing. So it's there for the right purpose. Because if you look at the bylaws, it has an explanation. The purpose for which you can do it. And so, if you're giving good leeway or great amount of

leeway to the- or to your subcomponents, to do this. And you're not really evaluating it to test against the standards and the bylaws, I would recommend you have a template that people can use so that you don't have a blackmark on your face for sending something over that doesn't meet that bylaws requirement.

Steve DelBianco: I consider that very helpful advice from our ICANN counsel. So you know what we're trying to do. Is it for the initial request- and by the way, stay, pay attention. Because the next row we're going to go to is what happens if ICANN legal comes back and says no, there's a remedy step. And the remedy step does involve counsel, okay, counsel decision making. This request step is not supposed to involve a council's decision for council to rubberstamp, ratify with any discretion the request the Lori together. So what should I look at? In the lower right hand corner? Because I think that Julie's been trying to keep up with all this.

So what Julie has now written, can you all see it? I don't have to read it outload. Look in the lower right-hand corner. Okay. Make it say may initiate an ICANN document inspection request- wouldn't be requesting. And shall have this be added as a consent agenda item in the next GNSO council meeting. You guys can clean that up and we'll come back to it later. That's fine. And make you insulate us from the risk that somebody tires to remove something from the consent agenda and stick it on the regular calendar and then we get into a voting situation. Because it could be BC makes a request that the contract parties hate a document inspection request that you hate. And what you should do is fight it out when legal looks at the document inspection request.

But you might try to kill the council motion and stop the request from ever happening and that would frustrate what we all agreed was the intent.

Marika?

Marika Konings: This is Marika just to note that that will require a change to the GNSO operating procedures which is described what applies to consent agenda. But it should probably be just one line saying these rules do not apply to requests for.

Steve DelBianco: If we can avoid that, then I just made up the consent agenda as a place to put. I just didn't know what else to do. If there's another mechanism or tactic that council has used in the past decade, where something that initiates from a stakeholder level perhaps from its councilor and that would be the appropriate way to start it. The counselor for the IPC would initiate this. Is there a way that, in your procedures, in our procedures were something as automatically ratified or cannot be deferred or defeated by an act of the rest of the council? Are you aware of anything?

Marika Konings: This is Marika. We can look at that but I think for the board's selection it's a bit similar. Because that nomination comes back to the council. But I think that usually actually comes as a motion but there's also the assumption that that, you know, it's not for others to decide on. And we can look how we've done that.

Steve DelBianco: That's only as assumption. I could find that in the written procedures.

Marika Konings: Right, but I think the way we've approached it that it does come. And I don't- we may have also done it as a consent agenda item, but there's no requirement. But as the understanding that it's a decision by one house and not a council. But it also needs to be passed through the council to notify the board. But we can look at that and see if there's another way in which it could be done. But from my perspective, in the consent agenda item, may be a.

Steve DelBianco: All right. Let the record reflect we did not- this group did not say you have to do it through the consent agenda. That was just Steve in the middle of the night. So please take that as a suggestion only. The consent agenda route could end up being more trouble than it's worth. If there's a simpler route

such as the one we all use to ratify your selection of (Becky Burr), right? Remember? And eventually, we select the other board seat, we'll get the chance to do it for us. But I do not want you to be focused on the consent agenda. This is just a suggestion. You pick the easiest way to ensure that it can't be moved to the regular agenda or blocked in any way of deferred, right? Is that what we're all agreeing to? And on this one, we may just have to wait for staff to get back to us with a suggestion for our report. Thank you.

Why don't we move onto the next one? Next one, I mean to walk through what happens here. If the document inspection request goes to Sam, and Sam says no. Council, in our recommendation, we said that the requesting constituency, to stick with the example the IPC, would on its own, decide whether to see the remedy. And what is staff- I'm trying to remember what staff- it was important here. I think staff's question is- yes, go ahead please.

(Sam): Thanks. So we wanted to call attention to the fact that the- when there is a no, and there's disagreement. If that happens, that that again, whatever remedy is sought, would be sought in the GNSO's name. And so again, an important need to make sure that there's buy in from that. How that gets demonstrated. And then I will have a comment after you present.

Steve DelBianco: Okay, thank you. So I understood that now that you reminded me, what your concern was. And this was not a technical correction alone. This was a technical correction that the requesting constituency and stakeholder group isn't even recognized at the empowered community level. So it has to go through council. I get that technical correction. But at the bottom of staff and legal's comments, was you know, there should be some process for indicating the GNSO agrees with this step up and remedy even if it's a low threshold. And you said because of the potential for use of ICANN's other accountability mechanisms up (unintelligible) that we do have council getting involved at that escalation.

So I just took a flyer and the stuff in bold said that the requesting group, stakeholder group or constituency may decide whether to seek the remedy and council must approve this decision by 1/4 of each house or a majority of one house. That was our low threshold that we developed for other elements in the escalation of the decisional request by council itself. So let's think that through. If IPC makes the request. ICANN legal says no. IPC says we'd like to seek the remedy. Which just begins a process. It doesn't mean you'll get the data. It just says process.

The decision on whether to (unintelligible) person who made the request. No doubt about it. What we have to do right now is decide should council have anything to say even at a low threshold about the decision to seek a remedy? Or should it still be this consent agenda trick that we were discussing earlier? We'll take a queue on that. Lori.

Lori Schulman: Yeah, I mean it looks very clear that our position is that the requestor should have the power there, but not the GNSO. Putting the GNSO in the middle of it, kind of thwarts the issue, doesn't it? Unless I'm not understanding it correct.

Steve DelBianco: Essentially, yes. Council still has to- the question is whether council would have to approve it or would it be a consent agenda? Steam it through. And you're right. Steve Metalitz and the IPC believes that it should still just the requesting party.

Lori Schulman: The stakeholders, yes.

Steve DelBianco: And that IPC prefers that we use that fast track through council. Ed, I'm going to ask you as the originator of the entire document inspection request regime. Looking at it in the sense of the escalation to seeking of a remedy. Is that something you think should - council should approve? Even at a low threshold.

Ed Morris: I mean if we need to do it, it should be even at a lower threshold. I actually with Lori in terms of wanting to do it- have the constituency. If it is a constituency, it comes back and we want to send it forward and want to work on this. I actually thing the IPC or the NCUC or the BC all these wonderful folks, should be able to do it, even if it's opposed by the rest of council and the rest of the GNSO. So one way to do that would be to lower the threshold even lower if we wanted to.

Steve DelBianco: Or just rinse and repeat from what we did on the previous row.

Ed Morris: We could do that as well.

Steve DelBianco: Which is, I just called it the consent agenda for shorthand until we work it out. So that would be you supporting Steve Metalitz. Let the record show that please.

Ed Morris: And the world is about to come to the end.

Steve DelBianco: Okay. And in Sam's argument, about why you might want to consider a threshold. You were comparing it to board recall, and other escalation methods for powers that are rather significant. This is not a destructive power. It's disclosure power. And Sam?

(Sam): So I wanted to post in some language here so we were clear about the different remedies. Because when we were providing some assessments, I want to make sure to recognize my colleague (Erica Randall) who's sitting here because this is not just Sam's time that was spent on it. Hopefully most of you or all of you know (Erica) and she's- So we were looking at this together.

And, you know, we didn't go into great detail on this one because we found it so tied to the prior one. But one thing that I would encourage this group to look at is for all of the- for Row 27, for all of these different potentials that

could come out of the remedy, right? Because there are different things that additional (unintelligible) could choose to do. And I put them in the chat. So you can appeal a matter to the ombudsman or board for ruling. Initiate a reconsideration request. That would be reconsideration request in the name of the GNSO. Initiate an independent review process in the name of the GNSO. Petition the EC in the name of the GNSO to initiate a community IRP or a board recall process. So you get to all of those to your things.

I would encourage you to see if there are differences in how you want to treat those. Would you have one that- would you have a few that you wanted to just say okay, just SG or see if you're not happy with how that happened, you have the freedom to do some of these, but not all of these. Because some of them reflect differently on the entity. So I think you should give some careful consideration to the thresholds that you apply. Like one of the easiest- so I think that there are two that are easiest. The appeal to the- well the ombudsman and the petition to the EC, those are the ones I see as easiest because you could deem that if you said that ICANN wasn't right in it. That SG would deem to have created a petition for the empowered community.

I think that the reconsideration and the IRP as those would be accountability mechanisms that would be initiated in the name of the GNSO might be something you'd want to give some other consideration to just because the seriousness of those matters. And how long that those could on. And what the GNSO would want to see as it was being represented in those.

Steve DelBianco: So Sam has clarified when you go to Row 27, you look in the chat. There are several different remedy tracks with different levels of difficulty. Who knows what they will produce? But I think your point is we should perhaps consider a council endorsement of the IPC's request for some but not all of them.

So, for instance ombudsman could still be a unilateral decision petitioning the EC administration to do an IRP could be unilateral. But the other three remedies, reconsideration request, community, IRP, you know, board recall,

would something that you should be done with the GNSO having an official endorsement. So this is getting complex. And I appreciate that. And if we decided that we wanted to make a distinction between the remedy tracks, we then still have get to the question of what the voting threshold would be.

Now you said, you know, making a document request and seeking a remedy in GNSO's name. Let's keep it clear. We have already, at this point of the process, initiated document inspection request in GNSO's name because Lori in IPC asked for it. So we're already on record. The GNSO had to pass it through. Question is, should GNSO be able to block the seeking of a remedy according to Row 27, if it doesn't agree should be pursued? That's really how to think of it. Because then we would have to come up with some kind of voting mechanism other than the fast track. Why don't we take a queue on that principle? (Darcy)/

(Darcy): So, I think we also have to consider and I'm just not familiar enough with understanding why it would be denied in the first place. Because I think that would influence how the GNSO would, you know, the council especially would feel about it.

Steve DelBianco: That's a whole section of the new bylaws that indicate the means Right Ed? The means by which a document inspection request could be denied and the way in which it has to be documented. So it's a long section. I'll ask staff to quickly dig up that section number and send it into the Adobe chat. And while you're looking at that (Darcy), we would still, even once you've read that, we would still need to make this threshold decision. IPC request goes up. It gets denied. IPC wants to seek a remedy. We don't even know which remedy. It's IPC's choice. They want to seek a remedy. Should their decision to seek a remedy in the name of GNSO be subject to any vote at all by the rest of the people on council? That's a yes, no question.

Brian Cimboric: Brian Cimboric, PIR. I'm new to this. So, you know, take this with a grain of salt. But it seems as though what Samantha just articulated was a two tier

bifurcated approach for possible remedies. And when the GNSO is acting in it's, you know, on behalf of the GNSO. Or we're actually requesting these three remedies. It seems as though there should be GNSO action, GNSO voting on those remedies where, especially where there may be fast track remedies available to the aggrieved or denied party.

Steve DelBianco: Great answer because it's specific. How do others feel on that question? Should it be bifurcating? That some are fast track and we'll delineate those and others will require some unspecified threshold we haven't come up with yet. Ed?

Ed Morris: Yes, I would like to hear from my friends in the IPC. But when we designed this, it was designed in some ways to take power a little bit away from council for the following reason. This stuff is going to be used, in some cases, to try to ferret out corruption. And at least my intent, was we have somebody in the IPC we all know and respect in Paul McGrady. Now Paul sometimes marches to his own drummer. And he may see something there that none of us do. And the IPC may see something there that none of us do. And we're going to-we want to get this out. And I don't want the rest of the GNSO to say no, Paul you can't get this.

It's not as if we're making an absolute decision per se. What's happened is we've made a request. ICANN's denied it. I still want to invest the power in the constituency if we can.

Steve DelBianco: Thank you, Ed. And one of the things to keep in mind is it could be a document request where the only part of the GNSO that represents registrants and users is the non-contracted side. And the document request could be that we want some document to do with, you know, interactions between the contract parties and ICANN, right? And if it's not an ICANN document, I don't now how we could get it. But it might be an ICANN document that revolves a contract item that you're going through. And if Sam

can't say no, because of the delineated reasons in the section you sent to (Darcy). IPC says, no. We really want it.

If we have any voting mechanism that involves council, everything's by split house and the contract parties could therefore block it. Now there are some voting mechanisms that don't require both houses. Are there any voting mechanisms that require a single house to push something through? I believe there are. Yes. Or issue report. So what is that threshold? Marika's probably memorized it. What's the threshold to initiate an issues report, 1/4 of one house?

The majority or I wrote that in there. It's in my stuff. It's what I wrote in here. One quarter of each house or a majority of one. So the majority of one house would mean, in this case, Lori and Steve would have to convince the ISPs and the IPCs. So there's certainly an escalated level of council. An escalated level of consent to move it ahead, but not so much that the other half of GNSO could block it under what I had proposed. Let's keep going on that topic. We've had two proposals. I think Lori is saying and Steve- IPC is saying no. Just straight through. My proposal was 1/4 of each or a majority of one. And Sam's twist on this is that we might actually say that the lower level remedy like ombudsman or petitioning the EC don't require council at all except for consent agenda. And that the other three would require 1/4 of each house or a majority of one. What if I propose that as the draft recommendation?

We're going to get a chance to look at this. This is not a vote on the final report. Lori.

Lori Schulman: Yes, I have a clarified question then. Because in the previous when we talked about the consent agenda. We wanted to make sure there wasn't a power to remove. So then we would imply that that power, right okay. Go it.

Steve DelBianco: Assume that whatever- and I made it consent agenda may have been the wrong thing. Council can't block it. Can't defer it. That's what I mean by fast track. Council cannot block or defer.

Lori Schulman: And I don't know the rules of the council well enough to know that once a consent agenda is fixed, it's fixed. In my organization once a consent agenda is fixed, it's fixed. You don't amend it. So I don't know if that's done here or not.

Steve DelBianco: Let's not use it. We'll do that after they come back. Because they may not even recommend consent agenda. The principle that staff's going to take onboard is that for the request, council itself cannot block or defer it. And that same fast track would be used for an ombudsman, and a petition to the EC. But the other remedies in 27 I'm proposing go to a different procedure. They have to make their way through counsel just like an issues report request 1/4 of each house or a majority of one. Notice I didn't say that means council can't block it. If the IPC couldn't convince at least the BC or if you couldn't convince at least two more councilors, it could be blocked okay? You could live with that. Sorry/

Lori Schulman: We don't want right, we don't want blocks.

Steve DelBianco: To be clear, you'd have to get two more councilors on your side of the house. Because all it takes is a majority of our side of the house. So if the two IPC councilors wanted to escalate, okay, and for a reconsideration request. Because that was one of the heavy ones you talked about. Okay. So if you wanted to escalate, you would have to get two more votes to get the majority out of the seven that we have in our side. And if you couldn't get the two, it could be quote, unquote blocked by your own house. Because the rest of the councilors felt it was a fool's errand. So my recommendation would result potentially in something being blocked if it was of the heavier weight remedy escalations.

What if I asked staff to write it up that way and we'll all have a chance to review it including Steve. Because you can't really guess what he's going to say because we haven't bifurcated it before. Would anyone have any objection?

Lori Schulman: It's not.

Steve DelBianco: Go ahead.

Lori Schulman: I just want to clarify it's not just Steve. I mean this is IPC positions. So the IPC will review it.

Steve DelBianco: Okay so without any objections, we're good with that? Okay so staff's going to write it up with the bifurcated approach and the lightweight methods go through the exact same way that the initial request went through, whatever method that is. The heavyweight methods would require what I put into the amendment. Okay? Great thanks.

Next one. We only have seven minutes to go on this and how many more items? We have one, two, three, four, five- four, four more. We'll never get done. So we know we're going to have to have another call. I'm sorry to say. So the resurrection of the bylaws drafting team is going to last at least one more crucifixion of the team, one more time.

Man: I'm off the hook.

Steve DelBianco: (Ommer) and feel free to pipe in if you remember things differently. So with only six minutes left, I'll spare you of diving into Number 37. But let's make a marker that we got up to 37. We're half way through. Wolf-Ulrich.

Wolf-Ulrich Knoben: Thanks. Maybe just for clarification, diving in, because maybe I'm not familiar with this overall petition process. Maybe my question can with less knowledge. Because I was thinking about why we should deal with this

process at all. Isn't that something which could be detailed by the existing team we have here? That's my general question on that.

Steve DelBianco: I had questions too. My recommendation was all full of questions because staff doesn't- staff is saying we need standards, but there's no standards in the bylaws. So I didn't quite get that. And then the issue of timing is a real problem. I don't know how to solve the issue of timing. And Sam- would anyone else want to comment on questions we'd like staff to address? So that when this document comes back to us and I think I did all the docs for the first phase of life of this drafting team. But I would so much appreciate if staff is able to just continue the work you've been doing Marika and get this back to us with all the edits today. Great.

And those edits could include potentially answers to the question that Wolf-Ulrich and I put in here. Would that be possible? I can tell you than Column A from the giant table would be so convenient to have right here. Because I'm bouncing back and forth to the giant table to pick up call name with is the bylaws language. And if you could put that in there, that wouldn't take any time. There's only four rows to do it. Marika?

Marika Konings: Yes, this is Marika. And actually one way of integrating everything would actually be just to move the DT response table to the actual report and I can add there maybe the bylaw language and the executive summary so you have it there together. But at least when we start working on a more integrated report, then documents, kind of, as well what has happened and why we are where we are.

Steve DelBianco: I would appreciate that. I realize it means our document would be 66 pages long, but you'd only have to look at the first four, in fact, half of the first four since we are already are half done. Wolf-Ulrich, so your question is phrased here. But do you have any other questions you wanted to add for them to take onboard prior to getting back to us?

Wolf-Ulrich Knoben: No.

Steve DelBianco: I asked the hardest question of all. How does council deliver motions that are needed on a very short notice? And I only got a slight reply that occasionally you've called a meeting. But you have meeting notice requirements?

Man: Didn't we do one last year? We did sort of a email meeting to approve (James Gannon) sort of a more of an emergency email meeting to get him onto CSC?

Mary: This is Mary from staff. So I don't recall if that was the specific one because I think it's important that there's email voting which can be done. And then there's a meeting outside the regular meeting schedule. I think, Steve, you're asking about the latter. And for that, our understanding is that you would presumably respect the regular motion deadlines and such. Unless and there are ways that we can get around that. I shouldn't say get around. There are ways that the council can waive that, but there's no special procedure that expeditedly applies to that kind of meeting.

Steve DelBianco: In the discussion column and this is Column B, questions identified in legal assessment. Would you please- you wrote the word what about special timing considerations to meet the timing? Put a, for example, the new power of escalation could require a 14-day turnaround. Give us the shortest turnarounds that are baked into our new bylaws for escalation so that we'll have a better idea about whether that's going to clash with a meeting notice requirements. Would that be all right? Go ahead, Sam.

(Sam): So one of the things that I've been working on with Mary and with (Trang) as well. Is we've been talking to across the decisional participants about places where there might be other holes in their procedures. That don't account for the new powers and so, you know, we're working on some documentation that I think might help identify some of these questions as well. I don't know

the answer of this drafting team is the right place for that or not. That's not really the issue.

Steve DelBianco: We need that information.

(Sam): Right.

Steve DelBianco: To decide whether we need a special procedure. If we had that by our next call, that would be sufficient for us to take up with the board.

(Sam): We'll get you whatever we can get you on it.

Steve DelBianco: All right. So I'm guessing now that we're nine minutes over what we should ask staff assistance at circulating a Doodle poll for. If we book 90 minutes, I'm going to be we could finish in 60 because we're so close, okay. So would that be okay to circulate a Doodle poll for a 90-minute call as soon as next week or put a window a little further out? Good further out. So next week, but the week after. Everybody okay with that? Any final comments or all other business. Lori?

Lori Schulman: Yes, I'm going to be asking to be put on the email list just in case I have to pinch hit again. Maybe I'll even double team with Steve so we don't have this issue with.

Steve DelBianco: If anyone wants to be on the list, should do so. Give your email to Marika please. Send Marika a note. Stefani are you on the list already? Okay. Yes, of course. Thank you. All right, any other business? All right thanks very much. We'll wrap this up and I'll see you on the phone in the next two weeks. Stop the recording.

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