

**GNSO
Operations Steering Committee (OSC) GNSO Council Operations Work Team
30 September 2009 at 16:00 UTC**

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Participants on the Call:

Ray Fasset - Registries
Eric Brunner Williams - Registrar
Ron Andruff - CBUC
Avri Doria – GNSO Council Chair

Staff:

Rob Hoggarth
Glen de Saint Gery
Gisella Gruber-White

Apologies:

Julie Hedlund
Wolf Ulrich Knobon - ISPC

Coordinator: The recording has been started.

Ray Fassett: Thank you very much. Ray Fassett. Glen, can you do a roll call?

Glen DeSaintgery: I'll leave it to Gisella thanks Ray, because she's on the meeting view.

Ray Fassett: Very good. Thank you.

Gisella Gruber-White: Good morning, good afternoon to everyone. On today's call we have Ray Fassett and from staff we have Rob Hoggarth, Glen DeSaintgery and my

Gisella Gruber-White. We have apologies from Julie Hedlund and Ron Andruff will be joining us shortly. Thank you.

Ray Fassett: Okay. Thank you. So where to begin. All right. So we have us. Others may be joining soon into this call. Actually it's not - I don't mind because I have a couple questions with regards to the rules of procedure that Rob is on the call thankfully and to help us with.

So first of all I would like to go ahead and say that we will move back to biweekly meetings. And if somebody has an objection to that, we could - they can do that on list. So that would help Gisella and Glen and update our Wiki page, et cetera.

Secondly we'll try to keep our call to an hour today. And third I would like to try to move right into the - to an open issue that surfaced it appears to me, and Rob can jump in and help me out here, as it pertains to Section 4.2 voting thresholds and particularly as this relates to abstentions.

Rob is there in background on exactly what happened here from the time it left the GCOT's hands into the OSC hands and now in public comment? What happened?

Rob Hoggarth: Yes. I'll attempt to recount that history. Basically what happened is that Council members engaged in discussions on the open list and had a number of questions about the counting of abstentions, Council members who abstained on votes, and agreed at their meeting that because there were different views that the best approach would be to provide some alternatives in the proposed operating procedures for public review and comment.

So the thought being that in providing the two alternatives in a public comment forum that the new Council would then have the benefit of different points of view in the different viewpoints expressed during the 21 day comment period.

If you'd like I can go through the two different options. I mean because I understand them in terms of your original language and the substitute language. I think the fundamental issue comes down to what is the denominator of the votes. And I think this work team has discussed that.

In the past in our standard example if you have 10 votes and you 60, you know, more than 60% what happens if you create a scenario where an abstention is now a non-vote and you're now calculating not 60% of 10 but 60% eight.

And I think what became clear in the dialog over the last couple of days just before the GNSO Council meeting, was that folks really were not - number one I think the Councilors recognized that their decision at the 24 September Council meeting was solely to place the recommendations of the work team as reviewed by the OSC on the public comment forum, not to rule on them positively or negatively. That was one fundamental agreement that they had.

The second was it was clearly lack of time and understanding for various Council members to really sit down and parse through what they wanted to accomplish and what they wanted to say with respect to abstentions. In some respects there just wasn't a clear understanding of what it meant not to have, you know, the denominator being all the Council members versus a subset of the Council members who participated in a particular meeting.

And that's sort of where things stand right now.

Ray Fassett: Okay.

Rob Hoggarth: One thing that we - one thing that we committed to do in staff in providing a contribute to the comments line and where we've just embarked on that this week is to provide an analysis for the community of what the different breakdowns might look like depending upon how you did calculate the votes.

And I don't have that on the tip of my tongue right now but Philip Sheppard had suggested three different categories.

You know, one, the denominator being all Council members; two, the denominator being just the quorum of members who were present; and then three, some hybrid of those two which counted the abstentions as no votes versus just an expression of concern.

Ray Fassett: Okay. Yeah. That's a good background and it is also refreshing me a little because I've seen stuff in different places, sometimes an email going back and forth. So yeah, that helps me.

Now fundamentally, and you said a point earlier which I agree with, the work team, our work team landed very strong on the concept that while we didn't use this language but it means the same thing, the denominator must remain fixed. We landed pretty strong on that point.

Now I'm looking at the original GCOT language and I'm trying to interpret the proposed language which I've read each probably more times than I'm embarrassed to say. And I'm trying to understanding in either one of those, doesn't the denominator remained fixed in both of those paragraphs?

((Crosstalk))

Ray Fassett: Now one comes out and says it, don't get me wrong. But doesn't the practical sect of both.

Gisella Gruber-W: Sorry to interrupt, Eric Brunner-Williams and Avri Doria have joined the call.

Ray Fassett: Good.

Rob Hoggarth: I think that's a reasonable interpretation of that, Ray. The second sort of substitute language was an attempt to make the - make the original language

more specific and clear. And with Avri joining the call, she may be able to provide a perspective on that as well.

Ray Fassett: Okay. So that's a good starting point. And the reason I wanted to mention that is that was what I thought and I was somewhat involved in some of the flurry mostly out of courtesy when OSC was sharpening some fangs and staff was making some contributions at our request, you know.

So I did see this and I landed at the same place at the time. While I may not have commented or I didn't want to speak on behalf of the GCOT unless I absolutely had to, we are reaching a deadline. But as I read it, I understood that this fundamental point that the denominator remains fixed and all we're doing is sharpening it and making it perfectly clear which I thought was an improvement is - you know, substantively speaking does not change the GCOT position.

Rob Hoggarth: Yes. But under - but understand too that, you know, in the comment form now that it's been made a little bit more clear, someone could comment and say well, I don't like that.

((Crosstalk))

Ray Fassett: Oh sure. Well it could do that anyway.

Rob Hoggarth: ...discussion.

Ray Fassett: Yeah. It could do that anyway because even in our original language we were coming out and saying that, you know, an abstention counts the same as a vote against. That would - that to me would - if you had an issue on that, that would bring it out anyway. I suppose maybe we're drawing - more attention has been drawn to this now because we're saying okay we need to know from you which one you like.

But - and therefore that could bring attention to it and the people will bring in the opinion that an abstention should not count as the part of the denominator as they say. So now that's - Eric is on the call now and I have already seen an email coming from him where he's sort of thinking or rationalizing that, you know, the abstention should not be part of the denominator. Eric, do you want to go ahead and comment on that.

Eric Brunner-Williams: My issue was that there should not be included in the numerator; that is of negative votes.

Ray Fassett: Okay. Okay. That's different.

Eric Brunner-Williams: It's distinct from whether or not they're counted as votes at all but in presence in the denominator or whether or not any rule is made about non-votes by members present.

Ray Fassett: Right. So it's really the denominator that we're focusing on and why. Why the denominator? Because the bylaw - you know, obviously there are - there are scripted percentages on depending on what the issue is or what the motion is or - you know, in the bylaws, things are scripted. And it's all scripted on percentages.

Avri Doria: This is Avri.

Ray Fassett: Hello Avri.

Avri Doria: Hi. But the ones in the bylaws that are scripted by percentages are against - at the moment they're written as against a denominator of full population.

Ray Fassett: Exactly. Exactly. But the point is this - I could sit here today and say I can make the assumption when someone uses percentages they're assuming the denominator is not going to change. Otherwise they wouldn't use

percentages. They'd use hard coded numbers. Right. You need 8 out of 13. They would come out and say it that way.

But if you assume that the 13 denominator isn't going to change then you can go ahead and use percentages. So our point was that if you don't use - if you don't keep the denominator fixed, people - and abstentions can be used to manipulate the percentages.

Ron Andruff: Mr. Chairman, Ron Andruff just weighing in. Just got on the call. Sorry to be late gentlemen, ladies.

Rob Hoggarth: Ray, if I can - just a process clarification point just for my benefit and maybe for others.

Ray Fassett: Yeah. Yeah. And for me.

Rob Hoggarth: Well at this point, and please Avri correct me if I'm wrong, at this point that the work teams work on this piece is done. It's now out for public comment. Community members including members in this work team are free to comment on the entire package or individual pieces of that.

When that comment period ends, the staff will provide a summary of the comments that have come in. And then presumably in Seoul Council members particularly the new members of the Council will have an opportunity to discuss those. And then they'll be voting on what the new procedures package will look like.

Ray Fassett: Yeah. And I might be jumping ahead of the game. I do have an aim here of what I'd like to do as a work team, discuss as a work team, is should, you know, reaffirm our position as part of the public comment process. I think that could be healthy.

But I - but it has to be, you know, what we - what we believe, you know, or what we feel together as a group, not - if we can. Otherwise we can all as individuals of course do a comment. But I think it's - you know, we have sort of a vested interest in this. It's our work.

And if we could put in a public comment that explains our position or why we favor one versus the other and reaffirming that the denominator should be fixed, that is the spirit. It was the intent. It could be beneficial to others to understand.

Avri Doria: This is Avri. (Unintelligible.)

Ray Fassett: Yeah. Please Avri, go ahead. I'll be quiet now.

Avri Doria: I want to add one thing to what Rob said which is indeed the process is as he described it. I think the one other piece is that on the weekend prior to the meeting when the Council is reviewing the comments, Council and, you know, associated - everyone in the room is reviewing, is there will be a time for people to propose amendments and that those amendments would be voted on in the Wednesday meeting before the package.

So if the comments bring up something that needs to be amended, that's when an amendment will probably be crafted.

The other thing is I think yes, you're right. If this group has either a explanation they want to give that the group can agree on or has, you know, changes it's mind about something and wants to offer an amendment or further, I think it definitely should do it as a group if it can.

Ray Fassett: Yeah. That's where, you know, as the Chair I would like to try to lead us down this path if possible. I'd like to investigate it. I think today is a good time to do that.

Obviously - if you don't mind Gisella, could you provide for Avri and Eric and the recording who is on the call right now?

Gisella Gruber-White: Yes. On the call we have Ray Fassett, Eric Brunner-Williams, Avri Doria, Ron Andruff and from staff we have Rob Hoggarth, Glen DeSaintgery and myself. Thank you.

Ray Fassett: Welcome Ron.

Ron Andruff: Thank you. Nice to be there.

Ray Fassett: Okay. So we have three of us. Well actually - yeah, three of us with Avri of course. We should - we should just adopt Avri I think. She really helped us get through I think to the finish line.

But as work team, just those on the call, I'm going to say myself, Ron, Eric and Avri, if you could each give me your opinion on one real specific issue. Do we believe as a group that the denominator should remain fixed when it comes to abstentions? We'll start with Eric. My position is yes.

Ron Andruff: Can you - but can you define that term please so we're all speaking to the same issue? Just your definition.

Ray Fassett: Yeah. Yeah. Yeah.

Eric Brunner-Williams: As well as...

((Crosstalk))

Ray Fassett: Yeah.

Eric Brunner-Williams: Why you ask the (unintelligible) (or the no), or I don't know.

Ray Fassett: Okay. Let me try and answer Ron's question. So there's going to be seven Council members from the contracted party house and 13 from the non-contracted party house. That's 20 total. So whenever vote is taken, the percentages of the vote will be based on a total of potential possible of 20. It can't change. Can't be 19, can't be 18. There always has to be 20.

So if somebody doesn't vote, if somebody doesn't vote, the - it's still however many people did vote either way as a percentage of the 20.

Avri Doria: Can I comment?

Ray Fassett: Yeah. Please Avri go ahead.

Avri Doria: I think - I mean I agree with you in principle but I think we're always talking about denominators being either seven or 13. I don't...

Ray Fassett: Yeah.

Avri Doria: ...think 20 is actually every...

((Crosstalk))

Ray Fassett: That's exactly correct. I always fall into that trap. This is Ray speaking so everybody knows who's falling into this trap again. That's exactly right. It's of seven or of 13. It's never of 20. Thank you Avri.

Eric Brunner-Williams: And we never consider the possibility then that one of the seven or one of the 13 is in route stuck at under a, I don't know, under a bus? Not of question of abstention but rather of absence without a - without a proxy.

Ray Fassett: All right. That - proxies are going to complicate the discussion.

Eric Brunner-Williams: Right. But the assumption that all seven are present is an assumption. What about the case where one is absent and we have six out of the seven?

Ray Fassett: Okay.

Avri Doria: This is Avri. That's exactly the question. You know, is it always out of the full count of the house or is it out of the quorum leaving aside that what happens to abstention? So that is indeed the first part of the question.

Eric Brunner-Williams: And Actually what if there's a quorum in one of the houses and there's not a quorum in the other?

Ron Andruff: No I think quorum is quorum. I don't think that it's about - you know, that doesn't break down on house lines I don't think Erick as far as I understood it.

Eric Brunner-Williams: But we have a meeting in which 13 of the non-contracted party people show up and non of the contracted party people show up and there's a vote. Is it a real vote?

Ron Andruff: There's no quorum I think in that case.

Avri Doria: Yeah. I think quorum is defined as quorum in both houses.

Ray Fassett: That's right.

Avri Doria: Have to look at the text but I think that's...

((Crosstalk))

Eric Brunner-Williams: I was - I was just told the converse of that or i...

((Crosstalk))

Ron Andruff: Well he misunderstood your question. The answer is a quorum at each house.

Eric Brunner-Williams: Okay. So back to the six out of seven. We have a quorum but the question is is it six or is it seven?

Ray Fassett: That's the question.

Eric Brunner-Williams: And that's without the abstention of one of the six. It's the absence of one of the seven.

Rob Hoggarth: Well this is Rob. If I can just interject in the hope of providing some guidance here. You're going to be looking at these votes in a collective way also considering, and Glen can help potentially on this, considering the absentee voting provisions, right.

So depending upon the topic, I guess your position Ray is that any topic is fair game for this. But depending on the topic, if someone is not present then there are absentee voting processes that will be in place to ensure that if that person is not there on that particular call or was dropped off or disconnected that through the process of an email vote subsequent to the meeting, they would still have their opportunity to cast their vote.

Ray Fassett: That is exactly - I couldn't have said it better. That's what I think.

Ron Andruff: Well I would agree with that as well. I think that solves the problem a guy being stuck on his bus and couldn't get off, you know, to get to the call. He can place his vote as an absentee vote but the question did we have quorum - did we have quorum to even bring that vote about? And I guess that's a - that's probably in the - in the other procedures about quorum and about the absentee balloting I'm guessing.

Eric Brunner-Williams: Yeah. I only hesitate because our hypothetical guy or gal could be from Honduras and in the (pokey) right now or not likely to get out or off the bus for some time.

Ray Fassett: Right.

Eric Brunner-Williams: You know, what occurred to me that (unintelligible) managers can happen to a person who's a Council member. So we would be then stuck between a scheduled time when a vote has to complete and the process for creating the alternative for that person who was no longer able to - who would temporarily we hope unable to vote.

Ray Fassett: Yeah. Yeah. And I don't want to mix apples and oranges here and Rob correct me if I'm going off on a tangent. But I don't want to mix up absentee quorum with absentee vote, if you will.

The assumption even getting to this point of talking about absentee vote is the fact that there is a quorum.

Rob Hoggarth: Well, if I can interject again and I hope - this is also Rob again. Again the percentages are based on the denominator. It doesn't say that anyone has to vote. Right. So and that's where you'll get into the abstention question. But in the case of our mythical person from Honduras, they're in jail or can't vote, Glen is still going to do the calculation and say gee was it 60% or not...

Ray Fassett: Right.

Rob Hoggarth: ...of the 20 whether that person ultimately has a chance to vote within the timeframe or not.

Ray Fassett: Right. I think the issue here too that we have to look at is there are - we have scripted scenarios that absentee voting can be used. Do we need to expand that?

Ron Andruff: Well I think - this is Ron speaking. I think what Rob just said, you know, takes that issue off the table for me in the sense that, you know, there's a - there are provisions in place to still check for quorum. And there are provisions in place for voting. So then it comes down to the question about the denominator and how that's going to work.

And so the question is - then the question you posed again Chair was do we agree with the denominator or disagree? Is that correct.

Ray Fassett: That is the - to me that is the fundamental question. Others can pipe in that I'm off base. But yeah, should the denominator remain fixed on all votes or should we allow abstentions to not be counted as part of the denominator? To me that is - that's exactly the fundamental question.

Ron Andruff: Well the - you know, I caught a couple of the quick emails that you and Eric exchanged. And I think that the issue about abstention, I felt when it first came up that if abstentions were cast as a non - as a no vote wasn't correct. I didn't feel comfortable with that. But we were told that the Board uses that process now. So in order to kind of maintain...

Ray Fassett: Yeah. Yeah.

Ron Andruff: ...the process, I had pushed and said let's got with what the Board's doing. But now that this is, you know, coming around again and it's being really looked at very hard, I'm inclined to say if I abstain from a vote, that was not a yes nor a no and as a result of that whatever the other votes count up to be is the - will be the determinant factor.

Ray Fassett: Yeah.

Ron Andruff: But abstention should not be cast as a no vote because it's not fair. Basically abstention and no is, you know, counted together and...

Ray Fassett: Yeah.

Ron Andruff: ...yes is counted singularly, it's not correct.

Ray Fassett: Yeah. And I think that's why this new working came in is because it's really not, correct me Rob if I'm wrong, it's really not the case that abstention counts as a no vote at the Board level.

But it does count as part of the denominator. So in order to really be in line with how the Board does things, the language was sharpened to clarify. No. No. No. It's not a no vote. It's - but it is - the denominator will remain fixed just like at the Board level. Have I - have I said that correctly Rob?

Rob Hoggarth: I think so. I mean the bottom line is as you guys have set it up, your recommendation, it takes positive votes (unintelligible).

Ray Fassett: Yeah.

Rob Hoggarth: And so an abstention is a non-positive vote just as a no vote is a non-positive vote. You either reach - if you keep the denominator the same, you either reach 60% or you don't based upon yeses.

Ray Fassett: Yeah. And that's the key question. And I'm talking too much. Does anybody else have any comments?

Eric Brunner-Williams: I'm convinced that it should not be - the denominator should not be fixed. That is abstention removes the vote from determining the percentage.

((Crosstalk))

Eric Brunner-Williams: Otherwise then abstention is a vote whether you call it affirmative for a yes or affirmative for a no, it's still an affirmative act rather than a non-act. And as...

((Crosstalk))

Ray Fassett: Yeah. I'm following...

((Crosstalk))

Eric Brunner-Williams: I can imagine that a person might be disinclined to clear their conflict and hence to abstain knowing that doing so would actually determine the outcome rather than have no affect on the outcome.

Ray Fassett: So okay so if I'm hearing this correctly if there are seven in the contracted party house and one that abstains then you would like the denominator to be six.

Eric Brunner-Williams: Correct.

Avri Doria: (Unintelligible.) (This is Avri).

Ray Fassett: Avri, your position was - do you agree with that?

Avri Doria: I am (unintelligible) opposed. I...

Ray Fassett: Yeah.

Avri Doria: ...actually think that especially with something as small as seven but even something as small as 13 that what really counts is getting the right number of affirmative voices for something. Now yes the quorum rule does help a little in terms of keeping us away from the complete (unintelligible) of, you know, they're just being one person left I guess to decide something. Because - but

not really. Because if we have a quorum and six people abstain then one person gets to decide.

And so that result strikes me as problematic...

Ray Fassett: Yeah. That's 100%.

Avri Doria: ...when you're moving denominator.

Ray Fassett: Right.

Avri Doria: We've taken care of it in half by saying you always have to have a quorum before you start to vote. So, you know, it'll never end up adjusted by more than one person based on quorum rules, I don't think. I haven't done all the tables and math but I think that quorum rules mean there's a leeway of just one.

But first of all, I think if there is a conflict of interest, everyone on the Council would declare that conflict of interest honestly whether they thought it was going to affect the vote or not. And that's just an assumption I'm going to make about Council members that they would always declare their, you know, their conflict of interest honestly if only because it'll fail the Smith test if they don't or giggle test, however you want to name it.

But if - let's say there is conflict of interest in a financial sense or other sense for a majority of the members, then a very small number of people end up making the decision. And that's why I tend to favor in general a positive requirement.

Ray Fassett: Right.

Ron Andruff: Yeah, but Avri I agree with the - with your thinking in general. But I just find the scenario that six would be abstaining in any circumstance that - I just

don't see that happening. But the concern happens - the concern that I'm feeling is that because I abstain all of a sudden that goes to a negative where had I not abstained it would have been perhaps positive. I voted in the affirmative.

But I think our SOI DOI statement of interest and declarations of interest work that we did earlier on forces all Board - all Council members to put it out there before the discussion begins about that topic. So I think if the Chair found that there were six people abstaining on that particular topic, maybe the Chair would then take some action and say we really need to re-discuss this, rework this or figure out another way around it. Would not the Chair have the ability to do such a thing?

Ray Fassett: Possibly but let me - let me just bring it back here. It is my idea. I want to have this discussion and everything but just a quick procedural thing is we've already stated our position as a work team. You know, it's already out there. I don't see it likely that we'll - that we would submit a public comment that now goes - states something differently.

What I was looking to accomplish is can we reaffirm our position.

Ron Andruff: And reaffirming the position would be that we would hold the denominator at a fixed...

Ray Fassett: That was what we have already decided.

Ron Andruff: That's what we stated. Okay.

((Crosstalk))

Ron Andruff: Well, you know, as a work team Chair, I mean our job is just to deliver a work product and then the community has to weigh in on whether that product is acceptable or not acceptable or needs to be revised. So I don't know if our

work team needs to, you know, make a statement to the affirmative. We believe this is correct. That's why we said it. I think that's a given.

But I think the bigger issue really is maybe, you know, is it for us to continue to debate this argument or to allow the community to come back with their position on it?

Ray Fassett: Well we, yeah, I hear you. But...

((Crosstalk))

Ron Andruff: ...position is stated, you know. Is it Answer A or Answer B? I don't know if the community sees it that way. They may see it...

((Crosstalk))

Ron Andruff: ...more abstract.

Ray Fassett: Some in the community might want to know what does the GCOT think. You know, some in the community might - it might help them. You know, if we - if we provided why - you know, why do we agree with the modified language as proposed? Why do we agree with changing our own language?

That's really what it is. I think the proposed language is sharper and better than what ours originally was. It could be helpful for us to provide an explanation of why we think go with the new - not what we drafted but go with this new language and here's why.

Ron Andruff: But here's the bugaboo is that on this call there's Eric and I standing on the side saying we should reduce the denominator and there's you two standing on the other side saying we should keep it. So we're kind of at a deadlock. That's the problem.

Ray Fassett: Well I think we can - yeah. And, you know, debating is healthy. Now let me just state why I think it would be very dangerous to be moving around that denominator. Because it's going to manipulate the percentages. If you base something on percentages, you can't move the denominator. And the bylaws are scripted in percentages.

So we're - you have to go back - if we say you can change the denominator, then that means the people that are doing - that did the bylaws have to back and start hard coding the different thresholds. Five out of seven. Two out of seven for a motion. What - 25%. They can't say 25%. They're going to have to say okay it's going to be three out of six. If we do that it's just going to cause an effect the other direction.

Avri Doria: This is Avri. Can I comment?

Ray Fassett: Yeah.

Avri Doria: I have two comments. One on the one of whether this group should comment or not. I think if it has a unanimous position it should comment I think. Otherwise individuals should comment.

I think in terms of the bylaws we really have two issues. In terms of the bylaw fix, they're actually already declared in a positive vote because they're saying 25% of - I don't have the words in front of me, but I believe they're saying 25% of the house.

And they're not opening it to 25% of those, you know, with abstentions and whatever. So I think in terms of the rules that this group put out, the only one that's really open is the default when there isn't a bylaw.

Then what the new Council will have to deal with is if the new Council does amend the operating principles or procedures that have been put forward

then they're faced with the decision of do they want to make a request to the Board for a equivalent change in the bylaws to the PDP rules.

And personally I would recommend leaving that kind of request until after we figure out what the new PDP rules are anyway. Because the bylaws will need to reworked once the new PDP recommendations come through remembering that the PDP thresholds that are in there now are in there as a placeholder.

Ray Fassett: Right.

Rob Hoggarth: This is Rob for one last little piece on this. And I think what Avri said is very important with respect to the thresholds and I think it follows directly with the team that reached the consensus or near consensus on it.

And that is that 25% of each house, 60% of each house and that was with the intention I suspect, not reading anybody's mind, but I think the correct interpretation is that is of the house. And when you say the house, you do have that denominator which is all the voting members of that house. Hope I didn't just complicate things further.

Ray Fassett: Could you just restate what you just said Rob. I'm not sure if I grasped what you said.

Rob Hoggarth: In the case and here I am restating what I think Avri said. But, you know, essentially the thresholds say for example, 30% of a house, 30% of the house. And in that case that reference to house refers to all the Council members who are eligible to vote in that house and therefore 30% of a 10-member house would be three people.

The distinction being as Avri stated when you don't have a hard wired threshold in the bylaws then what is the view of the Council going forward and that's where you get into the debate you're in now. It's okay if it's not a

hard-wired percentage. How do we want to treat more regular business that's not directly connected to a PDP or an election or leader or something like that?

Ray Fassett: Understood. Yeah. So if we say the bylaws are clear which I'll accept that then we, you know, does it make sense to be inconsistent, to have different - to me it doesn't...

Ron Andruff: No. It doesn't make sense to be inconsistent for use not - that's not the objective of the work team. We need to try to bring some consistency and coherency to the whole process. So I mean - what I'm kind of hearing is, you know, you know, pick your poison. And, you know, you know, there's no solution here that I would be happy with.

So I guess, you know, if we say a percentages is a better way to go because it's an easier way to do the counting and it's understood and it's carved in stone and all the rest of it as opposed to a floating denominator, then I would - I would come down on the side of maintaining the denominator as static.

Ray Fassett: Okay. So that's where I'm at. I think where everybody on this call is there from the work team except for Eric right now. So Eric, what is your - what is your - what is your opinion on the fact that percentages could potentially be manipulated if the denominator is not static? Does that both you. Does that cause you any concern.

Eric Brunner-Williams: My first issue is really on change which is the choice to not act is re-purposed into an - into an act.

((Crosstalk))

Ray Fassett: Yeah. There's a balance though. I mean yeah, that's true. I can, you know, reasonably look at that and say that's true. But there's also a balance. I mean there's the balance that against the potential percentages being manipulated.

((Crosstalk))

Ray Fassett: Balance that against the bylaws...

Eric Brunner-Williams: And that's the issue.

Ray Fassett: I'm sorry.

Eric Brunner-Williams: The individual issue - the individual issue is what is the semantics of an individual vote. Is it yes, no or neither of the above or is it yes or no and only those two choices. That's the - that's the choice that each voter has. That's the - independent of anything else that is whether or not - how any collection of votes is dealt with. And that's where my problem lies.

Ray Fassett: But you have to look - and then balance that though against the bylaws which are for again just a few scripted scenarios but obviously all of them that are important already are saying that the - basically that the denominator is fixed.

So again now becomes an issue for us do we - are we striving for consistency?

Avri Doria: This is Avri again.

Ray Fassett: Yeah.

Avri Doria: But as I was saying, not that I'm necessarily advocating but taking a neutral position, bylaws can be changed and especially the ones relating to PDP will be changed once the PSE PDP group finishes its work.

Ray Fassett: Okay.

Avri Doria: So the drive for consistency doesn't force us to pick one decision or another. Yes it means we may have a period, an interregnum where there is some inconsistency. But if that is truly the belief of this committee and of the GNSO Council and community at large that varying denominators is a good thing, for whatever reason it's a good thing, then, you know, the community bottom up, et cetera, et cetera, should go to the Board and say fix it.

Eric Brunner-Williams: I'm sorry Avri. I couldn't hear everything you said because the operator decided that since there was some noise on my line I should be ask to mute...

Avri Doria: Okay. Yes and you went through that section where you can't hear anything while you're going where your...

((Crosstalk))

Eric Brunner-Williams: Yeah.

Avri Doria: Basically what I was saying is the PDP, the PDP stuff is temporary.

Eric Brunner-Williams: Yeah. I know that.

Avri Doria: So all of these fixed ones are that. If consistency is really the rule, and by the way I'm not necessarily sure I vote for consistency in all cases but that's beside the point. Different rules may apply at different times.

Eric Brunner-Williams: Agreed. Ray is pushing that but agree, go ahead.

((Crosstalk))

Ray Fassett: Sorry for coming across that way. I'm really not...

Eric Brunner-Williams: Go ahead Avri.

Avri Doria: But if consistency is that then, you know, basically if it comes bottom up from the community that we want a sliding denominator for PDPs, when it's time for the PDP changes to be taken to the Board, which is when the PSE PDP groups finishes it's work, then, you know, what gets proposed is something with sliding denominators.

And so there may be inconsistency in this interregnum, you know, of waiting for that to happen. I would recommend making an immediate plea to the Board to change the bylaws for this because, you know, there's too much going on.

But certainly three, four months down the road, hopefully sooner, when the PDP group is finished, you ask for sliding denominator and you come back to consistency. It's basically the PDP numbers are a transition element. And they're what we're going to use until either they're changed or until the new PDP processes are decided on and become bylaw.

Eric Brunner-Williams: Good. Thank you. My apologies for the noise in my (amped) environment.

Ray Fassett: We never heard a thing.

Eric Brunner-Williams: Well then I'll sniffle louder.

Ray Fassett: Well I guess, you know, hearing what Avri just said and trying to interpret it, I mean we could qualify our position and say as long - you know, for as long as the bylaws are identifying the, you know, each house assuming that it's the total number of member of each house, this is - you know, this is our position on the denominator being fixed or not. Should the bylaws be changed in the future then the - our position is that the rules of procedure would then have to be changed.

Eric Brunner-Williams: Yeah. But I think that's - you know, your point is well taken but I don't think we need to put that text in there saying that - as Avri said, bylaws can be changed. If there's a reason to be changed and everyone agrees then it happens. So I think that's understood.

The question really comes down to how we - how we as a work team want to take this forward or not. And I'm hearing that there are really two ways. One is individually to, you know, weight in on it in a public forum. The other is as a work team. As a work team I don't think we've got a unanimous position on here. And neither (Will Fobic) or (Tony) are on the call so we don't know how the ISPs feel about this idea.

Ray Fassett: Yeah.

Eric Brunner-Williams: So I'm not quite sure where we go Chair.

Ray Fassett: Well the 21 day public comment period just began and one option is to - even though we don't have unanimous and I don't think we're going to get unanimous, then we could have a dissenting opinion. Now these members of the work team have this opinion and here's a dissenting opinion.

Eric Brunner-Williams: The problem with bringing things with dissenting opinions at least in my experience dealing with PDP with GNSO is that that's where the cranks are. And nobody wants to get stuck in that box.

Ray Fassett: Well thing is Eric is...

Avri Doria: I'm always there. I'm sorry about that.

Ray Fassett: Yeah.

Eric Brunner-Williams: Yeah. Yeah.

Ray Fassett: The thing is - the thing is Eric is and, you know, this is important and I'm glad you're on the call. Don't take anything I say the wrong way. The thing is is that we already have a position. And now you're position is not sharpening it up but changing it. And that's difficult. That's not - this is not the time. The time was before when we were going through all this, not now.

But again, don't take that the wrong way because I opened the discussion. I wanted this discussion. The feedback is important. So - but I'm just saying it's causing a bit of a problem because we already have stated our position.

Now really it becomes do we want to make it better? Do we favor this language being better? That's what I think the new language accomplishes. It's better than what we drafted originally.

Eric Brunner-Williams: I'll drop off the call at this point.

Ray Fassett: No. Eric, okay. All right. All right. Thank you for your contribution.

((Crosstalk))

Ray Fassett: I hope I wasn't out of line. I hope everybody didn't take anything I just said out of line.

Ron Andruff: No. No. No. No. I think that the - you know, Eric's comments today are well taken that, you know, people that take that position (unintelligible) is maybe a fringe. I can kind of understand that. But I don't think that that's necessarily the issue.

I think what we're hearing is that we as a - as a community - as a work team cannot come back here with a statement of, you know, support for this or a recommitment to it. But we could do it as individuals. And just leave it at that.

Ray Fassett: I'm pretty much landing in the same spot...

Ron Andruff: Yeah.

Ray Fassett: ...Ron. Avri, do you have an opinion on us as a discussion?

Avri Doria: Yeah. I think it's pretty much what I said before that I believe that if there were unanimity in this group then putting out a statement would be the right thing to do. I think as long as there's any, you know, difference of opinion then we should all state our opinion individually.

I think you're right when putting together the process. Then the whole raw consensus with dissenting opinions is the applicable standard. I know this is the standard that we've always sort of used in the Council also when trying to send out a letter and saying the Council's position is thus. We needed to have unanimity or at least unanimity with an abstention as opposed to having a difference of opinion.

As soon as there's a difference of opinion, it's everybody go say what you want to say.

Ron Andruff: And I think the language here is good. The new language, you know, keeps in the concept of - that an abstention the minute - the reason for the abstention was recorded in the minutes. I think that satisfies the issue. You know, I'm abstaining because I have a financial interest in this. Clear as a bell.

I'm abstaining because I don't agree with the position that my colleagues are taking for whatever reason though there may be some other reasons. But it's I can't vote no against this but I just want to step back from the - from the vote completely because of the mitigating circumstances, let's put it that way.

So I - here, you know, what are those circumstances. Well then it'll be stated. So think that, you know, makes a pretty clear line for anyone. But as far as,

you know, where we stand as a work team and where the idea of maintaining that denominator, it's a real tricky one. As I said before, I think it's, you know, the - which of the two evils would you like to select?

Ray Fassett: Yeah.

Ron Andruff: Because, you know, and I don't think we can - we're going to get around it. I think the argument you guys have made about the denominator being a fixed thing in the bylaws is much more logical than trying to create some workaround. It doesn't make sense to me.

Ray Fassett: Okay. I'm going to go ahead and close this discussion then and based on the fact that we're not going to reach a unanimous position on this as a work team, I thought it was worthwhile to have the discussion given the - in light of the fact that it's in public comment right now.

So if anyone disagrees with that, we will - we will not plan to submit as a group a public comment on this specific Section 4.2.

Ron Andruff: Agreed.

Ray Fassett: Okay. Very good. Before you joined the call Ron, I think I put out the request and asked that we go back to biweekly meetings. I don't think we need to go to weekly meetings. But I wanted to hear anybody else's opinion.

Ron Andruff: No, that's fine for me. I'll be available next Wednesday or no, I'm sorry, Wednesday in two weeks, right. Is that what you're saying?

Ray Fassett: That's what I'm thinking. Yes.

Ron Andruff: That's fine. My question actually Chair is what more work do we have or maybe I should be asking Gisella or Rob or someone in terms of our long list of things to do. What sill is on that agenda?

Ray Fassett: Well gees, we got to double back to your structure document. We still have to do that. We never - we never answered...

Ron Andruff: Oh, right, right...

((Crosstalk))

Ron Andruff: Yeah. We have to - yeah, we have to finalize that.

Ray Fassett: (We have) to discuss that. There's still certain areas of the rules of procedure. One of them is proxy voting. You know what, if we - we don't have enough people on the call today to do it. But another potentially helpful perhaps constructive public comment would be for the - for the work team to - and we would have to discuss this, don't get me wrong, but I mean I don't - I don't think that proxy voting is going to be realistic inside of ICANN's GNSO for legal reasons.

And there's an opinion that Liz Gasster gave me and gave me the history and I'm reading this. I'm going, you know, I don't - I don't think it's going to be reasonable for us to even come up with a solution for proxy voting. But this is a work team discussion. So that's another item for us to work on.

Ron Andruff: Before you move...

Ray Fassett: Yeah.

Ron Andruff: Before you move off of that one, just a quick - do we have proxy voting today?

Ray Fassett: No.

Ron Andruff: No.

Avri Doria: We used to but it was - an end was put to it a while back - about a couple years ago.

Ron Andruff: And was there - was there some rationale behind ending that?

Avri Doria: Basically the - I believe, and I think this is in Liz's note, I believe that Council looked at it at one point and said hey, wait a second, you know, you can't do what you're doing.

Ron Andruff: Legal counsel.

Avri Doria: So then we started to format - formulate a new proposal to them and that's what eventually ended up as the absentee voting bylaws change.

Ron Andruff: Okay. Thank you. Okay.

Ray Fassett: Yeah.

Ron Andruff: I just wanted a little background on that before we move off of that. Thank you.

Ray Fassett: Yeah but (relatedly) then, you know, there we have - up to now there are just these certain areas that we allow in the rules of procedure absentee voting. You know, and if we say, you know, proxy voting is sort of off the table here, it's just never going to get past legal review or I'm not sure of the intricacy of the issues.

But a work solution to that would be to expand the ability for absentee voting.

Ron Andruff: Well, you know, I see that, you know, we've got a placeholder in there now and then we mentioned that after, you know, post or Seoul or post-Seoul we'll, you know, we'll take this up again. But maybe Seoul is the ideal place.

We'll have the - we should have maximum or a larger number of people on the call from the work team and we can have counsel come in, legal counsel come in, explain the situation, ask our questions, do the debate and make the vote and get it checked off right there and then at Seoul.

((Crosstalk))

Ron Andruff: Because I think it's - I think it's really about us all understanding what the issues are.

Ray Fassett: I agree.

((Crosstalk))

Ron Andruff: You know, chewing them up and then get it done.

((Crosstalk))

Ray Fassett: (I agree with you.)

Ron Andruff: So let's check that off the list in Seoul.

Ray Fassett: I agree with you. That's - otherwise we'd just be kind of guessing anyway, so.

Ron Andruff: It'd keep going on. Right. Exactly.

Ray Fassett: Yeah. Yeah. So that's an excellent suggestion for our agenda in Seoul Ron. And it's really - what is it - it's the proxy absentee voting issue.

Ron Andruff: Yeah.

Ray Fassett: So good.

Ron Andruff: And actually if you want, why don't we put on there the same - the same issue about the expansion of the, you know, that - what we tabled and we didn't finish and we put out to the community, the kite. Let's put the kite document on there and get that - get a vote on that and get that checked off too right then and there.

Ray Fassett: Good.

Ron Andruff: That should be a relatively easy one at that point. Because people can go out and talk to various members of the community individually and then bring it to the table and say well, I spoke to five people and they say it's a really stupid idea or I spoke to five people and they kind of like it.

Ray Fassett: Right.

Ron Andruff: At least we can, you know, get that nailed down as...

Ray Fassett: Okay.

Ron Andruff: ...opposed to us guessing with the people - the small team as we have always been.

Ray Fassett: Right. Right. Right. Yeah. We had some comments come back. I think Julie tabulated a...

Ron Andruff: Yeah.

Ray Fassett: ...table but - yeah but point well taken.

Ron Andruff: Pretty slow. Yeah.

Ray Fassett: Yeah. So point well taken. So I think we've just formulated our Seoul agenda.

((Crosstalk))

Ray Fassett: I'm not sure about - I'm sorry. Avri.

Avri Doria: Yeah. I think there's one more TBD that you have on there. Based on the comments that come in there may be topics that don't need to be dealt with immediately by the Council in terms of amendments. But are things that require a longer term, you know, or another term conversation by this group. So I would just leave it open for, you know, comment issues or issues that came up in comment that, you know...

Ray Fassett: Oh yeah.

Avri Doria: ...consideration.

Ray Fassett: In other words, review the public comments and discuss...

Avri Doria: Yeah.

Ray Fassett: Yeah.

Avri Doria: It's always good to do that.

Ray Fassett: Yeah. That's...

((Crosstalk))

Avri Doria: Because though the Council will be doing it in terms of trying to figure out whether to approve or what to approve, I think for this group to take it back. And the one thing I'd like to add on the proxy voting is just because what we did before and what is currently conceived of may not be legitimate bylaws. It doesn't necessarily mean that there's no formulation that could fly.

Ray Fassett: Okay.

Ron Andruff: Agreed.

Ray Fassett: That's perfectly fair. Absolutely. I don't think I have anything else for today. And so we're approaching our one hour. Anybody else?

Rob Hoggarth: Ray, this is Rob. Just one housekeeping item that I thought you would want to formally acknowledge as a work team.

Ray Fassett: Okay.

Rob Hoggarth: Last week on the - at the GNSO Council meeting the Council approved a restructure implementation plan. Item 12 of that plan reads the charters of the GNSO policy, process and operations steering committees are extended until the end of ICANN's first general meeting in 2010.

As you all may recall, when they were first approved, the steering committees were going to have a limited life, which would have ended in Seoul. As part of this implementation plan there's now been that extension and so presumably that would also extend the charter of this work team until the Nairobi meeting. So just so that you are generally aware of that.

And you've all been discussing some future work. Just thought as a housekeeping item you needed to be aware of that.

Ray Fassett: Yeah. Thank you.

((Crosstalk))

Ron Andruff: Thank you very much Rob. I think - I think what you're suggesting there is there may be more work for us to do but I'm hopeful that under the guidance of our Chair we'll have it all checked off before 2010 rolls along.

Ray Fassett: Oh there's no chance. There's no chance. I mean we got to go back to the whole BGC document and discuss, you know, how different teams are established to take on issues that we can't even think of. And all we did so far is accomplished the rules of procedure. Not to a - and that's, you know, to a point.

We've - there's the whole host of things inside that BGC for this work team to get to...

Ron Andruff: Pardon me. I wonder if we could just ask someone from staff if they could prepare then for us kind of a, you know, a statement. Julie was - had been sort of leading that kind of, you know, where we're at in our list of things to do and maybe get a refreshed list of things to do published shortly so we get our head around that. Because I've - when you say the whole host of things in the BGC, I'm not sure or GCG, I'm not sure what there is.

Ray Fassett: Yeah. I know.

Ron Andruff: So it'd be nice to see a list of that so at least we get a - all have a sense of what we're still working on.

Ray Fassett: Yeah. Yeah. Yeah. That's and plus, you know, time has gone by and maybe...

Ron Andruff: Yeah.

Ray Fassett: ...some things are different than before. And that's just really a reprioritization process.

Ron Andruff: Yeah.

Ray Fassett: So...

Rob Hoggarth: I will - I will certainly talk with Julie about that and we'll work on preparing a document that gives you guys that guidance for your next meeting. That might help you with your additional agenda items for Seoul.

I'd also just observer (Riley) that - Ron I wasn't quite sure about your laughter in things whether you were pleased to know or not or...

((Crosstalk))

Ron Andruff: No. I was - may laughter and (thanks) was I thought we were winding this thing down. And what I heard from you is in fact we're not winding it down. In fact we're kind of winding it up. That's what I was chuckling about.

Rob Hoggarth: Well and actually - and Avri's in a better position to interpret that section. I think there was just a recognition that there is certainly work from the work teams that still needs to be done. And at the very least - while it's not a declaration of additional work, it was there to provide some flexibility.

Ron Andruff: Yeah. No, I understood and thank you for that.

Ray Fassett: Okay. That's all I have. If anyone disagrees, we can adjourn the call and end the recording. Okay. Can we please adjourn and end the recording?

Avri Doria: Okay. Thanks. Bye bye.

Ron Andruff: Bye everyone. Thank you.

Ray Fassett: Thank you. Bye.

END