
ICANN Transcription
GNSO Drafting Team to Further Develop Guidelines and Principles for the
GNSO's Roles and Obligations as Decisional Participant in the Empowered
Community.

Wednesday, 02 October 2019 at 21:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening, and welcome to the GNSO Drafting Team call, taking place on Wednesday, the 2nd of October 2019 at 21:00 UTC. In the interest of time, there'll be no role call. Attendance will be taken by the Zoom Room. If you're only on the audio bridge, could you please identify yourselves now?

Hearing no one, I would like to remind all to please state your name before speaking for transcription purpose, and to please keep your phones and microphones on mute when not speaking, to avoid any background noise. With this, I'll turn it back over to our Chair, Heather Forrest. Please begin.

HEATHER FORREST:

Thanks very much, Terri. Much appreciated. And hello, everyone. Thanks very much for joining the call. I understand from Terri, although you all might have been on during that discussion, that

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Steve DelBianco will join us, but will be a few minutes late. We'll see if we get [Maxim] to join us as well. But I think what we do, is we push on, since we have a fair bit to do today.

I'd like to exercise a little bit of prerogative here with apologies, and just add in a sort of item 1A to the agenda. So, in the review, let's say I'm proposing a revision, which is that we have two items of AOB that I think ought to be mentioned up front, just to make sure that we get to them. Before we do that, are there any updates to statements of interest? Tatiana, over to you.

TATIANA TROPINA: Thank you very much, Heather, and sorry for taking time. At least there was a reason why I missed quite a few calls. I moved to Holland from Germany, and I'm now working as an Assistant Professor in Cybersecurity Governance at Leiden University in The Hague, so I live in The Hague now. Thank you.

HEATHER FORREST: Congratulations, Tatiana. It sounds brilliant. Very happy for you. Any other changes to SOIs? No? Alright. Any other changes to the agenda, I should say, just to be very sure. And I've noted, in terms of our agenda, as put in the e-mail, I think we'll spend the bulk of our time in 3.2. And I've noted the question or concern that David's raised around 3.3—a particular provision in 3.3. So, David, we'll make sure we get to that. Thanks very much for flagging that.

Two quick any other business-type items, which are really by way of update ... The first one is this. Kim Carlson has been

coordinating with the ccNSO GRC to establish a time to meet with us—with the drafting team. Initially, I think the suggestion was that we all meet at ICANN66, but it's very clear that we couldn't really make that happen in the schedule. The request came in too late, after the GNSO schedule was already locked down.

So, we're looking for a time prior to ICANN66. Julie has just advised this morning that it looks like the only time that works is Monday, the 21st of October, at 12:00 UTC. Julie or Ariel, if you're able to type that into the chat, that would be brilliant, so our visual learners can see it. And I've confirmed that that works okay for me. Let's see if it is super problematic for lots of folks. If it is, we'll figure out what we do.

But that is largely ... And thanks for confirming that David. Great, since you're the linchpin between us. That is largely to discuss how we're going to move forward in relation to those joint consultation guidelines around 1812, and how that can be approached by the two Councils on the ground at ICANN66. So, that's one item to note. And thanks, Steve. Brilliant. And thanks for joining, Steve.

Second item of note here is that Keith Drazek, the GSNO Council Chair, has circulated a note to Council, just in the last few hours—I think it's come in while I was sleeping—raising to Council's attention the fundamental bylaws change that the ccNSO has put forward, and asking Councilors if they have any concerns, or questions, or so-forth around that. I think for us, really, it's just to offer, I suppose, an advice service, to the extent that it's needed, if Council has any questions.

What will take place is the Approval Action Community Forum, which we envisaged in some of our earlier work. There are some interesting aspects to the bylaws change. It makes perfect sense, to my mind, the bylaws change that the ccNSO is proposing, but of course the GSNO ... This is the first time they'll really have to fulfill their empowered community responsibilities. So, we may be fielding some questions from Keith and the Council on that.

Ariel says it's particularly related to the Guidelines, Section 1.3, 1.4 of Annex D. And you remember, 1.3, 1.4 is something we dealt with ages ago, very early in our work. And so, I think I will benefit, in our go back and review process of all of our documents, of quick review of that, so if Keith does ask any questions, I feel like ... And Steve is right. It makes perfect sense, the question that they're raising. They don't really have an individual who can stand up and do this, so it makes perfect sense. And Mary's joined us. Hi, Mary. Thanks very much. Mary's offered a bit of explanation as well.

Those are two items that I just wanted to note that are percolating. Do please post on the list if the 21st at 12:00 UTC is a problem for you, so we can work out what we want to do with scheduling with the GRC. Otherwise, we'll carry on.

Last thing to note, by way of housekeeping, is of course that we are coming to winding up our work. Today is actually meant to be our last scheduled meeting, and it is the case that today we're meant to be reviewing the package. Now, we're obviously not reviewing the package. We have to finish 3.1, 3.2, 3.3.

I think what I'm going to propose at the end is a way to deal with the review of the package—see if we need a meeting at all in order to do that. But to even get to that point, we're going to have to finish 3.1, 3.2, and 3.3 today. So, unless there are any objections, I'd like to jump right into 3.2. Let's pause, take a breath, see if anyone puts up a hand. No? Brilliant. Alright.

Ariel's given a link to the Google Doc as well, for those who would like to work in it live. I probably will not do, just because it's a little bit too hard to manage too many different screens all at once. What I am going to do, though, in the background, is try and pull up—and not lose my own track here—is pull up the list of things that I had raised in relation to 3.2 The first item on that list is 4.2.2. I had raised a number of questions in this document when I first looked at it, which now, I think, is several weeks ago. You can see the comments in the margins go back as far as July.

The question around this particular item here ... You'll see this one is headed "Requirements for an SO/AC Director Removal Petition." Let's just summarize where we are in this document—what we're doing—to provide a bit of context. This is for removal of a GNSO Board member. By GNSO Board member, what we mean is, each house is able, under the ICANN Bylaws, by its own processes, to appoint a Board member. So, that means there are two Board members who sit on the Board representing the GNSO—one for the Non-Contracted House, one for the Contracted House.

The questions that I had raised in the margin throughout this were really going to the point of what is the other house doing? While one house is removing its appointed Board member, what is the

other house doing, and what is the other house's responsibilities? And I think, largely, some of the open questions that were in my mind around that stemmed from that. How do we manifest that?

But in particular around ... And Ariel's taking us to some of those comments. In particular around 4.2.2, to the extent that we have a petition that gets made ... And you'll see that this is another example of where the requirements for the petition are really pretty slim. There's not a whole lot that you have to do—that you have to articulate—in the petition.

To the extent that a petition is lodged, and it does not meet the requirements—these very basic, that you see here in dot points—name and affiliation, name and term of the director, the rationale, and the confirmation that they haven't actually been subject to a prior removal forum. That really, I think, is best described as double jeopardy rule. To the extent that a petition is missing one or some of these basic requirements, the question is, should people be allowed to resubmit?

I understand from the comments that have been made ... And Wolf-Ulrich, I thank you very much for your responses in the e-mail, directly. I have a feeling we're all on the same page here. As I understand it, if folks are of the mind that if you haven't submitted the petition properly the first time, then we're probably not very keen to encourage an immediate second submission. How is it that we want to mechanically do that? Do we want to say there's some sort of time limit before another petition can be put forward? What do you think about that as an idea? Tatiana, please.

TATIANA TROPINA: Hi, Heather. Hi, all. I'm just wondering ... And I had this question even before. Do we think it should be about time limit, or maybe new circumstances? So, imagine someone submitted the petition. For whatever reason, it was declined. Then, the new circumstances emerge, like, for example, some grave circumstances. Shall we still provide the time limit, or shall we say that under new circumstances or new whatever, they can resubmit [inaudible] was rejected. That's it.

You cannot resubmit for the same reasons. It just makes no sense to me, time limit or not. But if there are some new circumstances which appeared, emerged, then time limit makes no sense to me. Thanks.

HEATHER FORREST: Thanks, Tatiana. I think you raise an excellent point, and David agrees with you. I think the one thing that we need to then clarify here ... So, Steve says, "But even where the circumstances do not change, we should expect a petitioner who will want to fix errors and promptly resubmit it."

I think that's the point, and I think the way that we need to deal with this is there will be procedural reasons for why a petition is rejected. In other words, suppose they missed one of these four dot points. Suppose they do not confirm the last point, that the affected director hasn't been subject to double jeopardy. Then, there's also a substantive reason for rejection, which is that Council leadership ... And we'll go on to see this in a subsequent section. Council leadership reviews the application and says,

“Something is wrong,” in a slightly different way, potentially—maybe substantively—with the application.

Steve says—or sorry, Tatiana, “Steve, yes. There should be the thing. Agree.” Application declined for procedural reasons gets to resubmit. Application declined for substantive reasons, resubmit only if new circumstances emerge. Ariel can you takes us to ... I think it’s 4.3.4 where Council leadership reviews it. Oh no, that’s it. It’s 4.2.3. It’s right there.

You’ll see, then, in the third paragraph, “If the GNSO Council leadership determines that the petition does not address all of these requirements ...” Now, in our previous work, we had really not put on Council leadership any sort of substantive review, if you like, that we considered that that was the role of Council—that by and large, if there was something plausible that had been articulated, that it looked like it met the four requirements, that we didn’t ask leadership to go beyond that, and rather put it onto Council in its determination to decide that, on the merits, the thing was poor.

I’m inclined to say that I think that’s the better approach. And I know that maybe there’s a surprise I consistently try and minimize the role of Council leadership, because in my experience, I’m just not convinced that Council leadership—that those roles are anything more than administrative. Yes, I understand they’re representative, as regards to acting in the community and so on. But I think it’s a slippery slope to open it up that Council leadership has substantive responsibilities—or substantive power, if I want to use that word to make a point—any more than any other Council member does.

So, for that, let's say ... Wolf-Ulrich says, "I understand the Council leadership just checking on completeness." I think that's where I am too. And Tatiana says, "That's even better. Then, if Council leadership says no for procedural reasons, they can resubmit. If Council decides for substantive reasons, only if new circumstances ..." I think, Tatiana, to my mind, that determination on substance happens later. It's not Council leadership that's doing it, I don't think. Yeah, and she says yes. Okay. David, over to you.

DAVID MCAULEY:

Thanks, Heather. I think I agree with everything that was just said, but I wanted to highlight that when the leadership is exercising an administrative role, to me, that has a little more wiggle room than we might be describing. Let me give an example. That example would be the point that there has to be confirmation that the affected director, during the same term, was not previously subject to a petition, etc. If the person who filed the petition didn't say that, it seems to me pretty easy for the leadership to waive that part of the petition if they know for a fact that that director was not subject to such a petition before. And so, I think there's just a little more wiggle room.

And then, the other thing I would say about all this is Annex D, Section 3.2b itself doesn't require these four points. I think what we envision those being required by is what the bylaws call our ability to create a process, or a procedure, around submitting a petition. And so, if it's pursuant to our petition, it seems to me that we could put in there a waiver, if it makes no sense to hold someone to this. Thank you.

HEATHER FORREST: Thanks, David. It makes really good sense to me, and I wonder if, in view of what David's just said, what we do is we give leadership the—whether we specifically articulate that, or we simply leave it open for Council to determine this. But I wonder if we give leadership the flexibility or the power to communicate with the petitioner, to fill in any gaps in terms of information that's missing. I think maybe what we need to do, then, in 4.23., is make a bit more clear that what ...

I know we've done this on a previous document, and this may well even be the wording that we came up with on a previous document, but it's still not 100%. Yeah, to fill gaps. I agree, David. Alright, and Tatiana's on board. I wonder if in that third paragraph ... I know this is language I've tinkered with before. "If the GNSO Council leadership determines that the petition does not address all of these requirements ..." I'm fairly certain I had changed it to "address" rather than "meet," because "meet requirements" suggested to me some sort of substantive review.

Are we comfortable ... As I think about it, I think there needs to be some clarifying point here, rather than leave this open to Council's interpretation, because if we're debating for this long, and if we have an over-zealous leadership, or even a leadership team that's extremely well-meaning, and thinking they'll do a bit more ... Yes, I like Steve's language, "Is not complete with respect to required information." Yeah, "determine that the petition is not complete ..." Or actually ... Sorry, Ariel. I'm making you crazy.

We could say something like, “For the avoidance of doubt, this means that ...” And we’ve got lots of pluses. I have a total of four, which sounds promising. “For the avoidance of doubt ...” Yeah. I think what do is we go back and just tidy this a tiny bit—grammar, and punctuation, and so on. But is everyone comfortable with ... I thought maybe, Tatiana, that was a Dutch thing. Just giving you a hard time. Everyone happy with the concept? It looks like everybody’s delighted with the concept, which I think is great. I am too. I support that. Alright, and Ariel’s going to tidy that up for us.

David, your hand is up, and forgive me. Is that an old hand or a new hand? Old hand. Okay. Great. It sounds to me like we’ve fixed that problem. What we now need to do is circle back. When Ariel’s done, she’s going to take us up to 4.2.2, but we’re not going to rush her. And we’re going to work on this business of what happens ... Back up Ariel, if you would, for me, please. Thank you. Good.

What do we want to do with this idea of if the application does not meet these requirements? We see the requirements here. Do we need to add an additional sentence to one we’ve just added in 4.2.3 that says, “Council leadership may work with the petitioner to fill any gaps?” Does that help? Does that make sense? Nobody’s screaming like they hate it. Ariel could you ... You would not make that promise or grant that permission. Okay, so you think you’d leave that to determination. David, over to you.

DAVID MCAULEY: Thanks, Heather. Just on the suggestion you made, using the verb “work with,” I wouldn’t say that, because that then puts

Council leadership in the position of helping to create the petition. I don't think they ought to do that. They made advise the petitioner of gaps or something—something like that. But I don't think they should adopt the petition, at this point, by working with the petitioner on it. Or at least, that might be an implication that somebody draws that could complicate things. Thanks.

HEATHER FORREST: That's a good point, David. Thank you. Tatiana?

TATIANA TROPINA: Thank you. I agree with David. I thought about "may communicate information about gaps" or whatever. So, probably there is a better language—not work with them, but rather communicate the information about missing points or information.

HEATHER FORREST: Great, Tatiana. I think that makes sense. It sounds to me, again, like we're all on the same page. So, I think what we do is we leave the text as is. Ariel, when you're back in the document and clean it up, I think we can clean all the comments out of it in respect of this particular section, and look at the language that we have with your added sentence. I think that's going to do it for us. Any objections to that? Have I misunderstood? No. Looks happy. Happy campers. Okay, the next point that we need to go to is down in 4.2.5. Ariel, over to you.

ARIEL LIANG: Sorry. I can't raise my hand. Just a quick confirmation. I wanted to check the phrase, "and for the avoidance of doubt." Is that placed after the added phrase, "the petition is not complete with respect to the required information?" I was just not sure where you want to add this phrase.

HEATHER FORREST: Thanks, Ariel. I think, from my perspective, you've got it in the right spot. What I probably would have done is end the previous sentence in a full stop, rather than continue them with "and." So, full stop, and then capital F, "For the avoidance of doubt." That's probably what I would recommend. What does everybody think? Does that make sense? David?

DAVID MCAULEY: Thanks, Heather. I'm looking at the document on the screen, and I think that makes sense. But then, the next sentence is highlighted, and I imagine for the following reason, that the next sentence wouldn't then logically follow right there—that sentence reading that "The SO/AC Director of Process shall automatically be terminated." It seems that we need a bridge of some sort. "For the avoidance of doubt, the petitioner and GNSO Council will be informed that the petitioner is not complete." The bridge would be that there would be a reasonable chance to tidy it up, absent which the process would automatically terminate. But I think it doesn't follow right now. I don't think it logically follows. Thanks.

HEATHER FORREST: Thanks, David. I'm just typing in the chat, and badly here, some language. Do we say something like what I put in the chat? "And the petitioner--" and maybe it's "may—" "may be given a reasonable time to resubmit." Does that work. Tatiana says yes. Now, I'm not sure if Tatiana is a yes to David or a yes to the additional language. Yes to me. Alright, Ariel, could you add that for us, before the full stop—no, you're good—before the full stop at the end of "required information."

So, we're going to say, "The Petition is not complete with respect to the required information ..." Yeah, good. I would even add that, Ariel—well, either way. Steve doesn't think we need "for the avoidance of doubt." Alright. Hang on, Steve. Before we deal with that, are we comfortable with this? I was thinking, do we want to join it to the previous sentence and say, "and the petitioner will be given a reasonable time to submit," so that it's all one linked concept? Yeah. Yes to and. Okay.

Alright, it looks like we're in a reasonable place with that. Let's go back to "for the avoidance of doubt." Yeah, "failure of which will lead to ..." Yeah. So, yes, "failure to resubmit a petition containing the required information?" Yeah, now we're there—"all the requirements will result in automatic termination," or "shall" is fine. Yeah. Great. Yeah, and as to Steve's point about "for the avoidance of doubt," we're tinkering with language. "Failure to submit or resubmit ..."

STEVE DELBIANCO: "A Correct and complete ..."

HEATHER FORREST: [inaudible] want “submit,” David, because that opens up the question of can they resubmit? But over to you.

STEVE DELBIANCO: Heather, it was me. I was saying that “failure to submit a correct and complete petition” covers either resubmission or submission, and it covers the correct and completeness part.

DAVID MCAULEY: Heather, Steve just made the point that I was getting to. It’s just as we wordsmith on the fly, it’s very difficult to read the whole this holistically. I just wanted to make the point that Steve just made, so thanks.

HEATHER FORREST: Yeah, good. Thanks. Thanks, David. Thanks, Steve.

STEVE DELBIANCO: Then, Heather, the words “for avoidance of doubt,” I see ...

HEATHER FORREST: Hang on, Steve. Hang on. I get it, but let’s finish this point first. I agree with the both of you, but I don’t want to try and bleed them together. Let’s give Ariel a bit of sense here to finish this one first. Tatiana gets it now. Ariel, I think what we’re describing is where we’ve said “failure to resubmit,” Steve has provided language in

the chat that says, “failure to resubmit a correct and complete petition.” Okay, Steve and David, does that handle the concerns about that one?

STEVE DELBIANCO: Well, you would drop, then, the words “addressing all the requirements.”

HEATHER FORREST: “Addressing all the requirements,” yeah. So, we can get rid of, Ariel, “addressing all the requirements,” and it’ll just say, “will result in ...”

STEVE DELBIANCO: That’s right.

HEATHER FORREST: I’m inclined to agree with Ariel, that I’m not sure we need “correct,” but I do think we’re probably getting a little bit into the weeds here.

STEVE DELBIANCO: So, when do you know when they have failed to resubmit? What is the clock on resubmission, so that we would know when you automatically terminate? That doesn’t make any sense.

HEATHER FORREST: We’ve given a reasonable time. And David’s got his hand up. David, over to you.

DAVID MCAULEY: Thanks, Heather. The hand is up, just because it's very difficult what we're asking Ariel to do. As we wordsmith, maybe we ought to close this ... Maybe this is not a good suggestion, but close it on list. I don't know, but as we wordsmith and we change one part, a reliant part somewhere else might be affected.

Let me just read the introduction to this, as I can read it on my screen. It says, "If the GNSO Council leadership determines the petition does not address all of these requirements ..." and then it has a period. And then, it goes, "for avoidance of doubt." We'd need to tidy that up. That's just hard to do on the fly. That's my point. Thank you.

HEATHER FORREST: Yeah, David. I fully agree, and I'm sure Ariel's frustrated with us too, and doing a great job of not saying so. I propose that what we do ... If I summarize where I think we are, and that we make sure that we capture that in the spirit of this, I think Ariel can go back and try and tidy a little bit more before we all take a look at it.

So, am I understanding correctly that everyone thinks that what we have here now ... In the process whereby Council leadership looks at this thing to see is there information that looks like it meets those four points that are set out in out in the previous section, if Council leadership determines that there's something missing, that Council leadership goes to the petitioner, provides them with notice that they are missing information.

The petitioner may then have a reasonable period of time to resubmit, that Council leadership can determine in the circumstances what reasonable time means. And to the extent that the thing gets resubmitted, and it doesn't have all the four bits of information, or to the extent that it doesn't get resubmitted—so, meaning you've only had the one submission that still doesn't meet those four requirements—then the whole process is terminated.

Have I articulated that accurately for everyone's perspective? David is agreeing with what I suggested. Hopefully that's to the substance and the procedure. Wolf-Ulrich has made a suggestion, the first sentences should be combined. Yeah, I think we're all on the same page with that, Wolf-Ulrich.

Okay, I'm going to propose, then, that we move on from this point—that we come back to it. Ariel, I think what we can do is when the document goes around, we just flag ... We leave this one in. We make sure that the language ... You're very welcome to have a stab at it, Ariel, although if you're sick of it, we completely understand. And we'll all have a review.

Okay. That takes us then to ... Now I think we go to 4.2.5. Well done, Ariel. You're a star. Okay, in relation to 4.2.5, you'll notice that this one is headed "GNSO Community Feedback on a Certified SO/AC Director Removal Petition." There is an opportunity for feedback here. And the question I have raised from the beginning is who's giving feedback? Should both houses of the GNSO be invited to give feedback on the affected house's director?

Imagine the situation that we have ... House A submits a petition for the removal of its director. Does House B have an opportunity to comment on that? My comment in the e-mail was that the feedback [inaudible] of the information the Council considers when it goes about making a decision. I'm personally of the view that I think the other house shouldn't be prevented from making comments on a petition.

To Ariel's question, should this be narrowed down the soliciting feedback only from the affected house? I'm not convinced that that's necessary, and I'm also not convinced that that's appropriate. Thoughts on that? Wolf-Ulrich, in his e-mail, agreed with that logic. Anyone disagree with that logic? Great, David's on board. Yeah, "Not appropriate to limit." Great, Ariel. So then, we can resolve that comment. Super.

Okay, next item is 4.2.6, which is a subsequent section. You'll notice this one is headed "GNSO Council Decision on Whether to Accept an SO/AC Director Removal Petition." There are, as Ariel kindly noted in the chat ... This is pretty confusing here. Tatiana's on board, too. Great. Thanks, Tatiana. It's confusing here that there are effectively two votes. There's accepting a petition. This is, if you like, our substantive review. And then, there's approval of the petition. The review of the petition is done by Council.

Ariel asked the question, "Does the entire Council need to meet, or is it just the Councilors from the affected house?" My thinking here is the voting requirement is three fourths of the Councilors from the affected house. I am still not swayed by that language to say that I don't think that Council should meet as a whole.

In other words, to be super precise here, I think the whole Council should be called. I think the vote should take place. The entire Council should be able to vote, but the threshold—because I think it's informative, to the extent that the other house all votes differently, or something like this. It's not material to the voting result, and the bylaws don't care, but nevertheless, I think we set a dangerous precedent if we start calling Council meetings wherein only part of the Council votes. I'm personally not with that precedent. Thoughts on that? Tatiana, please.

TATIANA TROPINA:

Heather, I understand what is behind your concern, but honestly, even for the purpose of informative vote, I personally wouldn't be really comfortable that the part of the Council—the other house which didn't appoint this particular director—would have any even informative vote.

What I was thinking of, a Council meeting would be a requirement. Why don't we put discussion on the Council and make vote for the house, outside of the Council discussion? In this way, I believe, yes. Everyone can participate. Everyone can consider the circumstances, but voting's to be done by the house, because at the end, it is that house which elects the particular director, and it is the house which should address the issues.

So, I totally get your concerns, but I'm not sure I'm comfortable with the entire council voting. It provides so much room for lobbying, for political situation, whatever. You name it. I don't know how it might be in the future. I hope we will not have it, but

it's an accountability mechanism, and I want it to be really belonging to the house where this director belongs to. Thank you.

HEATHER FORREST: Thanks Tatiana. I appreciate your comments. Wolf-Ulrich?

WOLF-ULRICH KNOBEN: Yeah, thanks. I have just the opposite opinion to Tatiana here. I think really, with regard to accountability, every board member is accountable to the entire community at least, and the entire GNSO as well. So, I would really request here for asking the entire GNSO for their vote and their opinions with regards to this petition. This is one point.

The other point is then, which I was referring to is the more procedural issue on that. Who is going to provide the motion? I think it's not easy to decide here who's going to provide the motion, because we don't know who is going to submit the petition. So, this is my point here, that I would like to see that more, or to discuss that—whether it's more appropriate that the motion is provided by the Council leadership itself, rather than by one of the houses, which may be the house which appointed the affected Board member, but which is not submitting the petition itself. So, in that case, I would say that it should be another body, like the Council leadership, to provide the motion. Thank you.

HEATHER FORREST: Thanks, Wolf-Ulrich. I think you've made a number of really cogent points, and more clearly articulated what's in my head. I

am worried about the accountability aspect of this, [even] if this is an easy mechanism. For all that I had made comments weeks ago in this document about, almost unsure of the role of the other house, I think I've swung the other way on this. How do we feel about ... So, Tatiana, I know [with interest to] your comment in the chat that you understand the rationale behind what Wolf-Ulrich has said. Over to you, Tatiana.

TATIANA TROPINA: Thank you, Heather, and thanks to Wolf-Ulrich and all. I understand your concept. I wouldn't say that I am 100% comfortable with this, but this discussion made me also uncomfortable with my concept, so you just go for what you guys think would be the best solution. I understand the rationale.

HEATHER FORREST: Thanks, Tatiana. I think it's very brave of you to say that something's forced you to question your own thing. I've felt that way throughout this whole process. Mary, over to you.

MARY WONG: Thanks, Heather. Hi, everyone. I apologize for dropping in and out of your calls, and I apologize in advance, too. This is not something I've looked at before, so I'm not speaking as a staff member that supports the GNSO now, but speaking more as a staff member that supports the empowered community, and generally the community at large. I think my only question right now—and I apologize, too, I don't have a fix—is the potential

relationship between this particular action and the ultimate action, if everything moves forward, to approve the removal as such.

I think, as everybody knows, and you discuss that next, that the final, final decision requires a supermajority vote of the whole Council. While I recognize that we are really talking about here a preliminary step, whether to accept or reject the petition in the first place, and then allowing the rest of the process to move forward, I wondered about, a, if there's any kind of relationship in your minds between this step and the final, final step. Secondly, realizing that in a case of this particular type of director removal, there isn't the step of a support from another decisional participant, you move ahead, essentially, to a community forum.

Then, quite aside from all the other factors that have been raised, I just wanted to highlight that. If you've already considered these points, I'm sorry to raise them again. But it is an important point for accountability, as Heather said. Obviously, within the GNSO, you have other concerns, such as essentially creating a new precedent for voting, in this particular case, that's never existed. So, I hope that's helpful. Thanks, Heather.

HEATHER FORREST: Thanks, Mary, very much. I appreciate that. Indeed, it is in the back of my mind. In introducing this, again, it's unfortunate that the bylaws are so complicated here. There are two votes, as we said. The one vote is just to confirm the petition, or to accept the petition. The other one is the director removal. I'm not convinced that the accountability mechanism picks up—accountability and

transparency, for that matter—that it only picks up with the community forum.

As Mary has identified here, there is obviously a provision later on about this forum and what happens. There were some questions raised in the chat about this. Does the other house participate and so on? There's really nothing to suggest that the other house is hampered, particularly when the other house has to vote at the end, and we need a supermajority vote of the Council at the end to remove this director.

I just don't see what the benefit is of putting a hurdle up here and not having the whole Council vote. You can imagine that the other house goes to that community forum, and they said, "Look, we talked about it, and we have concerns. We have the following issues." Yeah, we want to know all the concerns early in the process. I think we do, and I think it provides a fuller record for Council's decision at the end.

Since the Council has to vote as a whole at the end, the more we have of a record of that ... And you might well find that one house makes an extremely sensible point, that the other house says, "Oh, hey. I didn't see it that way, and now I feel better about it." Maybe it's the conceptual equivalent of the discussion we're all having now. Yeah, and as Ariel says, "No matter how the other house votes ..." That's why I say there's no way to game on changing the other house's vote, but I think it gives us a fuller record.

Tatiana says she's more comfortable now. I find that reassuring. David says persuaded by me. I hope you don't think I'm trying to

push a point here. I think Council needs to turn in unison. I really do. I think we need a full record for Council. Steve, comfortable? Steve's comfortable, and Wolf-Ulrich, are you comfortable with where we are? Cool, alright.

So, Ariel, can I suggest that what we do here—and then we pick up Wolf-Ulrich's point—is before the sentence that's been added there in green, I think what we need to do ... We need to add ... And at this point, I would just say make a note to add, rather than wordsmith. We'll learn from our previous discussion. Make a note that the whole Council votes, but that only the vote ... Per the bylaws, the dispositive vote is the affected house.

“Do you think it's necessary to get some support from the other house, even if it's just a third?” Mary, I don't think we need it at this point. I think what we're doing is we're just making a record, my view. I think when it comes down to the supermajority vote, that's where that's going to kick in, in my thinking.

Okay, the next point is the one that Wolf-Ulrich made. I'm mindful of time. We have 10 minutes left. We have one more point in this document, and then David had raised a point in document 3.3. In this document ... Hang on. Before we move on, Ariel, we've got to get to Wolf-Ulrich's point about who makes the motion.

Now, Wolf-Ulrich had made a comment in the e-mail that said, “In case the petition is submitted by somebody from the other house, or from elsewhere, could you imagine how enthusiastically the motion would be drafted? Should it be attached for Council leadership?” Wolf-Ulrich, what I understand, what Ariel has added here is ... Let's say it's the Non-Contracted house. We'll pick our

house. I think that motion should be drafted by someone from our Non-Contracted house, is the point.

I don't think it ought to be made by Council leadership, and the reason for that is the same reason that we articulated earlier in the document—the idea of Council leadership not manipulating the petition. I don't think that that's really Council leadership's role. So, I think to the extent that the house that is affected makes that motion is probably the way to deal with that. And Ariel's hand is up. Ariel, over to you.

ARIEL LIANG:

Thanks, Heather. Actually, I have a clarification—why that green sentence was added here. I'm just going to try to find it. Yeah, it's actually under the part I've highlighted on page two. “Add a provision to clarify that all petitions concerning a director removal ...” Oh, wait, actually ... Sorry. I actually [circled] a part in the operating procedure that says, for this particular petition, that needs to be submitted by the affected house. So, that's why I added that sentence. I'm sorry I didn't quickly identify where it is, but its on page two. I just wanted to clarify why that sentence was added.

HEATHER FORREST:

Thanks, Ariel. Super helpful. Wolf-Ulrich?

WOLF-ULRICH KNOBEN:

Thanks, Heather. Heather, maybe I wasn't clear about that. My question was only ... A motion is a motion, whether it's policy-

wise, or it's with regards to removal of a Board member. So, the question is, usually on Council, a motion is made by somebody who has an interest that motion comes to success. In this case, I was thinking about a situation where it's not in the interest of the affected house that the Board member is going to be removed. So, that is my question about what is going to happen. Why should this house [have] the motion to remove that Board member? That is my only question here.

HEATHER FORREST:

Thanks, Wolf-Ulrich. And in the meantime, David and Ariel pointed out the language from the ops procedures that requires this. I think the first point, Wolf-Ulrich, to answer you is that the GNSO operating procedures that it has to come from the affected house. The second point out of this, I think, is to the extent that the Non-Contracteds put up a director, it's really in their power to initiate the removal of that director. They're the ones that put that director on the Board. I think they're the ones that should be responsible for initiating the removal. In other words, we are dissatisfied with the directors of our house, representing our house.

So, I think on the one hand, we don't have a whole that of change that we can do here, because it's required by the ops procedures. I think we are providing ... As to an enthusiastic motion, we are providing a motion template with these guidelines, that really is a very basic thing, that simply says, "Such and such house director is appointed. A petition was submitted, and we accept the petition. And then, later on we go to a vote. I'm not sure that I share your concerns, Wolf-Ulrich.

What does everybody else think? Are we comfortable with this idea that the petition ... And I think we have to be comfortable with the idea that the petition has to be submitted by the affected house, because that's what the operating procedures tell us we need. Alright, Tatiana's okay. Wolf-Ulrich, I think it might be a case of ... Yes, the petition has to be submitted by someone—the motion, not just the petition, the motion. The motion has to be ... And Ariel has added the text in.

So, to Wolf-Ulrich's question, the GNSO house that appointed the affected director shall submit the motion. And that mirrors the GNSO operating procedures. Yeah, "I think so, but what if no one steps up?" David, that to me suggests we don't then have a ... To the extent that that's the case, let's think about the practicalities of that. David says what if nobody steps up?

If there is no motion, there is no motion. But I think it's only a Councilor that can make a motion. The GNSO operating procedures tell us that it has to come from the affected house. You have at least six Councilors from either side. Yeah, it sounds to me like that's an internal issue, as opposed to a Council issue. Council can't compel anyone to make a motion.

Right, and as Mary's pointed out, the petition is the individual. That will come from someone within the house. That's a registry or a registrar submits a petition to Council. It then has to be, if you like, approved. First it gets looked at by leadership. It ticks all the boxes, contains all the information. Then, it gets looked at by Council, and the house says, "We're satisfied. We approve that it meets the requirements." And then, it goes to the community

forum for discussion, and then it goes to the Council for a vote—the full Council.

Yeah, did it include or exclude the NCA? Mary, I think that's an excellent question. Given that the NCA is appointed to represent a house, I would assume ... No, the NCA rep's not a director, but Steve, Mary's asking does the NCA get to vote? We've got two voting NomCom appointees—one for the Non-Contracted House, one for the Contracted House—and they count in an ordinary Council vote towards that house. So, I see no reason why the NCA for Non-Contracted would not count towards the Non-Contracted vote, and the Contracted NCA towards the Contracted vote.

Tatiana says, "I would assume they're not excluded. They're to assign a vote to either house, so we can't exclude them." Yeah. Not only that, they're appointed to represent one or other house, and for all other voting purposes, their vote constitutes a vote of that house. So, I don't think we really have room in the remainder of the GNSO operating procedures to change that. So, a voting NCA can both submit the motion and vote for sure, because they represent the house. For sure, I think, in the same way that someone who is in the house for other purposes can vote and submit a motion.

"But the NCAs were not included in appointing the affected Board member." It's a good point, Wolf-Ulrich, but I wonder, is this a break on ... Is this some kind of a check on the concerns that you were raising, Wolf-Ulrich, about someone's not motivated? At the end of the day, what we're doing is we're certifying ... We're

approving the petition, meaning we're going to continue with this petition and move it forward.

Just a time check. I notice it's 8:00. I'd like us to ... Sorry, it's 8:00 here in Australia. I'd like us to finish out this point. Wolf-Ulrich, Tatiana, I'm going to close the queue there, and then we need to work out a path forward.

WOLF-ULRICH KNOBEN: Yeah, thanks, Heather. I will only speak real briefly. Just wanted to bring up, I'm all for that, and all are included to vote on that, so the NCAs as well. Since they have not been included in the appointment process ... The other house was also not included, so they should vote as well. That's what I mean. Thank you.

HEATHER FORREST: Thanks, Wolf-Ulrich. Tatiana?

TATIANA TROPINA: Sorry, I was on mute. I was going to say the same, and also was going to say that we have the rules of GNSO voting anyway—like majority, supermajority, and whatsoever. And if we exclude NCA, we are in trouble anyway, so they have to vote in any case, in my opinion.

HEATHER FORREST: Thanks, Tatiana. While the question's a good one, I think we've come to a view that the NCA is in—that we're not doing anything to restrict the NCA. Have I misunderstood? Sounds like it. Okay.

Alright, here's the deal, gang. We have still one remaining point here, which is 5.2.2. May I steal a further five minutes of your day? I have to be a little bit mindful, too, because I've got to get ready and go to work, but if I be greedy and push us to 10 past, is that hugely problematic for everyone? I know, Tatiana, we're keeping you up quite late, and I apologize for that. Yeah, fair enough, David—the Registry call.

If everybody's willing, with your patience, I want to push us to the last point—the one that I raised in the e-mail, which is 5.2.2. I think I can fairly confidently take us to this one, because I really don't think it's a big deal. This one is headed "GNSO Community Feedback After SO/AC Director Removal Community Forum."

Imagine in your mind what has happened. The Council has had its vote, that we've just discussed extensively. Three quarters of the affected house has said, "We approve the petition and want it go forward." What then happens is a public comment period, and there's a community forum, where folks can ask questions. "Why are you removing this director," and so on and so forth, "What is it you think that they've done?" There's a dialog with the director. There's various discussions that happen.

There is a process of GNSO community feedback after the SO/AC Director Removal Community Forum. In other words, the GNSO has the opportunity ... All the various SGs and Cs have the opportunity to say, "Wow, there was some interesting feedback that came in during the community forum, and we think that there's something there that Council ought to consider."

Ariel's comment in red—Ariel's additional language in red ... Mary's asking, "Can I take this last point to the Public Comment Team?" I think that's perfectly appropriate, Mary. But for everybody, just so we're all on the same page of what this is, the question is does everyone give feedback? Do we in any way restrict anyone from participating in the public comment period?

You see my lengthy comment in the margin there, from the 30th of August, that I said, "After the community forum, members of the community, GNSO members of the affected house, GNSO members of the other house, and other non-GNSO community members, may have comments on what transpired in the forum. These comments could influence the GNSO Council's decision, and on the ultimate vote to approve or reject, it's the whole Council that votes, not just the affected house. Hence, I think that the comments, if any, should be coming from the SGs and Cs, and perhaps any or all SGs and Cs, including those from the non-affected house."

The reason I think that is the whole Council votes, and to stop the non-affected house from communicating in the public comment period, to me, seems an undue restriction, given that house is going to have to vote. This is isn't the same as the previous point, where it's only one house that votes. David says, in the margins, "No restrictions on this comment. Effort seems right to me at this stage."

The added language that Ariel has put in is at the end of that first paragraph. "All GNSO stakeholder groups and constituencies are free to participate in this comment period, in accordance with their

own internal procedures and bylaws.” Steve says, “If all Councilors can vote, then all of the SGs and Cs can comment.”

Given that there’s no screaming objection to this, can I propose that we turn this one over to Mary, to confirm with the Public Comment Team that they don’t foresee any—there’s nothing that we’ve missed here from a bylaws point of view. I’m not so much worried about whether it’s convenient for Org, but from a Compliance point of view, as long as this is okay that we leave the language, we accept Ariel’s change, and we leave it as it is.

David says he’s agreed on that. Anyone object to that? We turn it over to Mary, provided we are compliant? Okay, there’s a plus there. Super. Thanks, Steve. Wolf-Ulrich is plus. Great. Tatiana, “All of the SGs should be able to comment.” Sounds good. Great. Alright, super.

So, here is what I think we need to do. Ariel, if you’re willing to do a bit further cleanup, the only point that I think we need to come back to and really ... Obviously, we want to look at the document as a whole, now that we’ve made some on-the-fly decisions. We want to make sure that the whole thing is internally consistent. We want to make sure that there’s nothing bizarre. We need to come back to the articulated point about the review by leadership, and the resubmission and so on—tinker with the language.

So, there is the point outstanding that David has raised about 3.3. It’s a single point in 3.3. David, may I ask you, are you comfortable ... Do you think that we can manage that one on the list? Given that that’s the only point, and I read your e-mail, and I was very comfortable with what you said ... I didn’t respond right away,

because we were just before the call. David, do you think we need a discussion on that one, or you think we can handle that?

DAVID MCAULEY: Heather, hi. I think that we can handle it on list, and I was just going to put a note in chat that I'm going to have to leave in just a minute. But I think that's handleable, if that's a word, on list.

HEATHER FORREST: Great. Thanks, David. Super. Off you go to Registry, David. Thank you very much. I appreciate the extra eight minutes. I'm going to make a proposal, then, for how we deal with the review of all of the final documents. We have a week and two days to do this, to meet Council deadline. I will work with Julie and Ariel to come up with a proposal for how we divvy up the review, and how we report back on the review, and we'll, I think, work from there. I think we can do this without a meeting. If anyone objects ... I'll put that in the proposal. Then, that's what we'll do. All going to plan, we have another maybe 10 days of work to do.

I'll also note just very quickly that in the background, Legal has been reviewing the documents that we have prepared, to make sure that we haven't made any material misinterpretations of the bylaws. To the extent that Legal finds anything, they will flag it. So far, so good. They haven't flagged anything yet. They're aware of our deadlines. They're aware of our timelines. So, that is in process. With that, I very much appreciate your patience—your hard work, particularly here at the finish, to try and get us all the way done.

You will have an e-mail from me and staff in the next 24 hours or so, to deal with this. How do we move forward on this document, 3.3, and the final review. So, thanks very much to everyone. Terri, thanks for your patience in letting us run over a tiny bit. And Ariel, you've done an amazing job as always. Great. Thanks very much, everyone. To be continued. Terri, you can wind us up.

TERRI AGNEW:

Wonderful. Well, thank you, everyone, for joining. Please remember to disconnect all remaining lines, and have a wonderful rest of your day.

[END OF TRANSCRIPTION]