
JEAN-BAPTISTE DEROULEZ: Hello. Welcome, everybody, to the NomCom Review Implementation Working Group meeting on Thursday, the 3rd of September, 2020, at 19:00 UTC.

I'm going to do a quick roll call.

VANDA SCARTEZINI: Hi, everyone.

JEAN-BAPTISTE DEROULEZ: Hi, Vanda. Welcome. I'm going to do a quick roll call and ask if there are any updates to your statement of interest and take a look at the agenda and then pass it on to Tom.

On the call today, we have Cheryl, Tom, Zahid, Leah, Nadira, Remmy, and Vanda. From ICANN Org, we have Pamela, Yvette, Betsy, Jennifer, Jia, and myself on that list.

Are there any updates to statements of interest? If that is the case, please let us know.

All right. So we'll take a quick look on the agenda. Today on the agenda is Recommendation 10 with input received from the GNSO Chairs, the followed by discussion on the bylaws updates, then Recommendation 27 on independent directors, and finally the standing committee process diagram, followed by information on the next meeting and Any Other Business.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

I'll turn it over to Tom. Thank you.

TOM BARRETT:

Thanks, Jean-Baptiste. Welcome, everyone. Let's talk about the feedback from the SO/ACs regarding our proposed bylaw change for the GNSO-allocated seats. We did receive three responses from obviously the IPC, BC, and ISPCP. They all were coordinated and they all basically the bylaw change. The rationale for the opposition—both the BC and ISPCP supported the IPC's positions; obviously, they coordinated this to some degree—was that, first of all, they didn't want to any rebalancing. They felt their current rebalancing was justified and fair. Second of all, they felt like a holistic review should take place before any sort of balancing.

I'll give you my take on this. Certainly, I think Cheryl is of the same page, but I'll let Cheryl speak for herself. Our sense is that they are jumping the gun here since our bylaw change doesn't actually rebalance anything. We're simply paving the way for a future rebalancing exercise. In the spirit of our new continuous improvement philosophy, which are really small incremental steps, the idea that we should first do a holistic review before we think about rebalancing is counter to the idea of continuous improvement. So I'm certainly of the position that we still recommend these bylaws changes, especially since there is in fact no rebalancing happening simply because of the bylaw change and we take on board this feedback. I should note that we also received feedback from ICANN Legal. We had a quick call on that a few days ago. Their input was, "Hey, why don't you do more community outreach?" which,

again, I'm in favor of, but, certainly, as part of this process, is not a prerequisite for the proposed bylaw change.

Cheryl?

CHERYL LANGDON-ORR:

Thanks, Tom. Yeah, absolutely on the same page. They certainly have taken the "If we say we have to do this holistic thing, which will be years down the track, then maybe that'll give us some more time and everyone can leave us alone and we won't have to go into the difficult area of dealing with politically sensitive interactions within the GNSO. And the GNSO may very well had had its own next review by then and blah, blah, blah." Well, thank you, but there you go. I understand the sentiment, but it makes absolutely no difference to my opinion on why our very basic and very fundamentally open and permissive outcome from our bylaw change recommendation, which, as Tom says, doesn't actually say, "And now you've rebalanced." It simply means that any rebalancing that is decided upon in the future is already set up and ready to go because all it does is take away the specificity of what seats belong to whom in the GNSO. So they do not have to change a damn thing if they don't want to, even with the bylaw changes.

So the situation continuing as normal is certainly my opinion and indeed my advice to the rest of the group at this stage. Thank you.

TOM BARRETT:

Thanks, Cheryl. Zahid?

ZAHID JAMIL:

Thank you. Of course, as you know, I completely agree with the fact that, if there is a position we've taken regarding how we want to proceed, although I belong to the BC, obviously, we need to be transparent, we need to be neutral, and we need to be independent in trying to do what is our job in our mandate. So I completely agree with it.

The only thing I would say is I think, in our own narrative, we need to just be a little careful. I understand that we haven't rebalanced, but I do believe that our actions do, based on the recommendations we've received, of course, create what I would call instability because there's a stability right now written in stone in the bylaws as to where everybody ... Let's say the parties are forced into this, say compromise or whatever you want to call it when they'd agreed. Now we're going to create an instability that they're going to have to now stabilize within the GNSO.

So I'm not going to say that's good or bad. That's not the point. The point is that I don't think we should come across as saying it hasn't changed anything. We need to be clear that, yes, it does change something and now they have to handle this internally within the GNSO.

So just a slight modifier on what language you use. Otherwise, we'll sound tone-deaf and we'll sound like we don't know what's going on. And that's not the case. We do understand what's happening, but let's not come across as pretending that nothing has happened. I think that's very important. That's all I'd say. Thanks.

TOM BARRETT:

Thanks, Zahid. I guess a question—I'm thinking out loud—is, if we basically are saying that, with this bylaw change, we are declaring victory, basically, on this recommendation and it's completed as far as the NomCom review is concerned, then whatever steps take place after this is not something we're going to enforce or drive or oversee in any way. So the GNSO could decide to do nothing, in which case I understand the instability is more anxiety, I guess, more than instability. There'll be some anxiety, but if the GNSO chooses to do nothing, then the status quo remains the same, I guess. Certainly, certain groups might feel pressure at that point to do a rebalancing, but we're saying that, as far as our review efforts are concerned, we are out of the picture at that point and we're not involved after this bylaw change. I think that's certainly what you were proposing, Cheryl. This is it. This is all we're going to do in terms of this recommendation. We're not actually going to do a rebalancing, but [inaudible] to say, "Let's facilitate rebalancing down the road," by the GNSO or after holistic review or whatever the community wants to do. We're simply facilitating those future efforts.

Seeing a big yes from Cheryl in the chat. Any comments from anyone else?

We may still be receiving input from the NCSG. Clearly this is, what, three of the six SOs. I've heard back from the Registrar Stakeholder Group. I don't think they've planned a response at all. I think the registries are the same way. So we're looking at perhaps three out of six raising some concerns. Again, I think our response will be in terms of doing a comprehensive big-bang-approach holistic review versus some

continuous improvement. Ours is a very small step to get us down that road.

I see a +1 from Vanda and Dave. So, if we don't receive any more input, I guess we've completed the task of looking for input from the GNSO Chairs regarding these bylaw changes. So I think, to Zahid's point, we have to be careful with the narrative because it may well cause some anxiety or instability, but, in reality, nothing may change. And thanks, Leah, for that.

All right. Well, we'll move on if we don't have any more comments on this.

What we're trying to do, I think, is get some closure on the edits to the bylaws. We had a meeting early this week between the leadership team and At-Large and Jean-Baptiste, just talking about how we want to present next steps for the bylaw changes. I know that's not on the screen here, Jean-Baptiste, but I can read off your e-mail that you just sent, unless you can bring it up real quick. Sorry if we're surprising you with that.

JEAN-BAPTISTE DEROULEZ: [Sure].

TOM BARRETT: Yeah. So we just have a series of next steps. I thought it would give you a quick overview of what we're trying to do to go forward on the bylaw changes. So I'll give Jean-Baptiste a second to bring that up.

CHERYL LANGDON-ORR: While he's doing that, please note, the rest of the group, that this is now the proposal of how we treat all the bylaw changes coming out of our work as a bundle. So all bylaw changes, including those resulting from our work on Recommendation 10, now need to be managed in a transparent, accountable, and, indeed, involving-the-necessary-outreaches-and-engagement-regarding-them way. So this the plan we're suggesting going forward as to how we approach all the resulting bylaw changes resulting from our work. Thanks.

TOM BARRETT: Thanks, Cheryl. Just to summarize, this is really what we see as the next steps for all these bylaw changes. We're working on this Google Doc of redline bylaw changes, which we'll get to in a second. We want to finalize those changes and get the working group consensus on those changes as the right way to go. Perhaps we can get through that today. Then we'll send those redlines off to ICANN Legal and say, "Here's our final set of proposed changes. Please give us feedback." We then will invite ICANN Legal to come back to the full working group or a small subset of the group just to give us our feedback and to note any significant objections. That will then go through another iteration/a redline, and then we should, at that point, be ready to send something off to the OEC for their review and feedback and so on. My understanding is, at that point, once they accept these changes, the OEC will drive the bylaw change process with the community. It's not something we do.

Any questions on this?

Zahid?

ZAHID JAMIL:

Thank you, Tom. I just wanted to say that's a very clear-cut process. I think it's a testament to the work that you've done and Cheryl has done and the group has done in trying to make what is fairly complex fairly simple. That's very good. I just wanted to support that. Thank you.

TOM BARRETT:

Thanks, Zahid. All right. So that's what we're trying to get done. I see the chat: "Process belongs to the Board at that point."

Let's go back to the agenda, if we could, Jean-Baptiste. All right. Can we go bring up that Google Doc? Because this is basically what we're trying to finalize: the redline to the bylaw changes. [There's] that link at the top of the screen that you see right now.

JEAN-BAPTISTE DEROULEZ:

Yes, Tom. I have it open. Just let me find it for projection. Thank you.

TOM BARRETT:

Sure. I made some minor edits to this to get them all in the same Google Doc. My edits are in green, I believe. Or maybe not. No, green is not mine.

Anyways, you have here the edits that we had been proposing to the GNSO. Those are in green. It just simply says we have seven voting delegates to the Nominating Committee from the GNSO. That's Item G. Then we struck all the sub-items to that. I made some minor edits above C, D, and E to take out the word "none," since those are now all voting members. I don't know if we want to still call those liaisons. What did we call them down below, Jean-Baptiste, like from the registry group? We don't call them liaisons, do we?

I don't know if you're in the Google Doc, but I would propose—

JEAN-BAPTISTE DEROULEZ: Yes, I am, John.

TOM BARRETT: Yeah. I would say, instead of liaison for C and D, we just call it a member. We drop the language here for C and D.

CHERYL LANGDON-ORR: Yeah. I agree, Tom. I think—Cheryl here. I note "Cheryl here," but I think—sorry. Obviously, my coffee is good this morning, and I was making a joke. My apologies. And my coffee is good this morning. I will hold that for the record. See? I am in a good mood. Scary. But, yes, we need to make that change that they become members, and I think we treat everyone as members because the whole non-voting thing doesn't affect anybody other than the specific non-voting chair/chair-elect. So that member is the way forward from now on.

TOM BARRETT: Okay. Thanks.

CHERYL LANGDON-ORR: A delegate. Whichever they want. Or we can stick to “delegate.” In fact, “delegate” we might want to have a quick conversation about. Does “delegate” do justice over “member”? But one or the other of those terms should rule.

TOM BARRETT: Well, we have “delegates” in Item G. So let’s use the same language if that’s what we’re using elsewhere in this. So I would go “delegates.” I think we use those words interchangeably elsewhere, but for these bylaws, why don’t we go with “delegates”?

Let me ask people about Item E, which is the GAC. Shall we strike the word “liaison” there and call that a delegate as well?

CHERYL LANGDON-ORR: Yeah. Be absolutely the same throughout. I think it’s a good opportunity to tidy up. This was written in the days when a liaison meant non-voting. And, of course, “liaison” in some situations still means non-voting, as in the GAC liaison to the ICANN Board and, for example, the ALAC liaisons to the ccNSO, GNSO, and ... I was going to say “and the SSAC,” but that’s not the case. The SSAC is different.

TOM BARRETT: Yeah. Thanks, Cheryl. If we can scroll down a little bit, I'll get back to the comments in the chat. Keep scrolling. I made, if you can keep scrolling to my comments—there you go ... Mine are in pink. I simply struck Item H and just added, as you can see in the pink, one voting delegate from each of these three groups. Again, we're using the word "delegate" in this case to be consistent with what we had for GNSO.

Can you scroll down some more, Jean-Baptiste? Yeah. Here I also went ahead and made some edits for the terms in 8.3. As you know, each delegate shall serve two-year terms and, at most, two successive two-year terms with a two-year gap. Is a two-year gap still what we're proposing? I forget. Does anyone remember what our gap is?

ZAHID JAMIL: I think generally what I've seen, Tom, is that some of them won't be consecutive. Right? We want to give them a break. Is that what you're trying to get at?

TOM BARRETT: Right. Well, I think we also specified how long the break had to be. I don't recall what we said for the break. We'll just double-check that. I don't remember if it was two years or for something else.

Then, of course, we have a bunch of other rules in terms of what happens if someone leaves early [inaudible] to the operating procedures rather than [inaudible] these bylaws.

Nadira and Vanda are saying it was two years for the gap.

So there's a bunch of other details obviously which we had thought we'd need to specify in terms of, as I say, what happens if someone leaves earlier, what happens to their replacement, etc.

Then we have Item C. I've obviously struck the line about non-voting liaisons, so those no longer apply.

Are there any other redlines here, Jean-Baptiste? Scroll down a little bit more. Yeah, okay. Again, Item E.

ZAHID JAMIL: Sorry. Just—

TOM BARRETT: Go ahead.

ZAHID JAMIL: On the non-voting liaisons, what's happening with the SSAC? Are they voting now?

TOM BARRETT: Everyone should be voting.

CHERYL LANGDON-ORR: Everybody comes voting, yeah. Everybody becomes voting.

ZAHID JAMIL: That's great.

CHERYL LANGDON-ORR: Only the leadership team are non.

ZAHID JAMIL: Sadly.

CHERYL LANGDON-ORR: Hey, I have no problem with that at all. I always think that leadership in any group should be basically non-voting unless you got one of those silly systems where everything is so perfectly balanced that you've got to have a tie breaker. Then of course this casting vote is extremely useful. But I prefer odd numbers for committees anyway. So that tends to avoid that risk.

ZAHID JAMIL: Yeah. Got it.

TOM BARRETT: All right. So, in Item E, basically I just removed all references to non-voting. So the word "liaison" should come out as well.

ZAHID JAMIL: Yeah. "Delegates" [inaudible]

TOM BARRETT: So we can strike “voting liaisons” entirely here, Jean-Baptiste. I always struck the “non” part, but I guess we can strike the whole “non-voting liaisons.” The whole thing can come right out. And the second one, too. And the third one.

Prior to that last strike we have the word “a.” It should be “an” advisor, I guess. So this might be something different here. An advisor ... yeah, I’m not sure we should have struck that. So this last one maybe doesn’t get struck. It’s “non-voting advisor to the chair.” So you can get rid of—

CHERYL LANGDON-ORR: That is correct, yeah.

TOM BARRETT: Yeah.

CHERYL LANGDON-ORR: Because that is what it is.

TOM BARRETT: Yeah. So my mistake, Jean-Baptiste. You should reject my edit here for “non.” Yeah. Perfect.

NADIRA AL-ARAJ: May I ask something? Because I’ve been absent for two meetings. Are you including also the standing committee in the bylaw here or not?

TOM BARRETT: If we could hold off on that, Nadira. I'd like to come back to that.

NARIDA AL-ARAJ: No problem.

TOM BARRETT: Okay. Are there any other edits in the rest of this document as it stands, Jean-Baptiste? Okay. That's it.

With these edits, then, we have covered the recommendation for voting, the recommendation for terms. If people are comfortable with this level of detail for terms, we're not going to specify all the additional detail about what happens if someone leaves early, etc. That's just going to be going to the operating procedures.

CHERYL LANGDON-ORR: That belongs in the operational procedures and not in bylaws.

TOM BARRETT: Okay. So this covers two recommendations that have bylaw changes. There are two others that I want to talk about. One was a standing committee. The other one was unaffiliated directors.

I actually wanted to start with unaffiliated directors, so maybe we can go back to the slides. We'll bounce back and forth here. Here you have the proposed rewrite that we discussed last week about unaffiliated directors. "During each NomCom appointment cycle, the NomCom shall recruit the nominated Board of Directors to the ICANN Board. We have

no or very limited prior involvement with ICANN, and we have no or very limited chances of being appointed to the Board through any of the SO/AC-appointed seats. The goal of this stipulation is to appoint directors to bring an outside perspective to ICANN without predisposition towards any of the ICANN community groups. However, given the unpredictability of the candidate pool, the NomCom is allowed to make exceptions of candidates not meeting this requirement or candidates who are reapplying from the Board.”

Are there any comments on that?

CHERYL LANGDON-ORR: I’m still happy with the rewrite. I think it’s fine.

TOM BARRETT: All right. We had gone back and forth about whether or not this would be a bylaw change or if this would be in the operating procedures. If you can recall, we’re still waiting for advice back from ICANN Legal about how we could add a picket fence to the operating procedures so that some things are more fixed and require public comment periods to change, and others are more flexible for each NomCom to change.

But, separate from that, I’m going to lobby that I think we should add these as a bylaw change. The reason for that is that, if we go back to the ICANN bylaws, it actually tells us it provides some characteristics of ICANN Board directors.

I’m sorry, Jean-Baptiste. If you can switch back to the ICANN bylaws. Do you have the entire bylaws of that Google Doc or just Section 8?

CHERYL LANGDON-ORR: This is where I differ from you, Tom, and it's because of exactly what you're saying now: because it is not something that is in our part of the bylaws; in other words, the Nominating Committee part of the bylaws. It's part of the wider bylaws. I would suggest we should be leaving all of that very much alone. That's a much bigger kettle of fish to interact with where we can in fact make these changes.

TOM BARRETT: I'm actually in agreement, but I was going to propose something different.

CHERYL LANGDON-ORR: Okay, good.

TOM BARRETT: If you can scroll up, Jean-Baptiste. This is Section, I think, 7. Keep going until you see Qualifications of Board Directors. Keep going.

ZAHID JAMIL: I think you passed it.

TOM BARRETT: Yeah. There you go. So right here. Right before Additional Qualifications. Right above that. So Section 7.3. 7.3 are criteria for nomination of directors. You can see there are just five bullets here:

accomplished persons of integrity, blah, blah, blah, persons with an understanding of ICANN's mission, persons who will produce the broadest cultural and geographic diversity, persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars. So this in the bylaws and it's supposed to be for the Board writ large.

Now, Item D here is actually not as in conflict with our recommendation for unaffiliated directors. What's interesting, if you go to the NomCom operating procedures, is they actually cut and paste this entire section right into the NomCom operating procedures—

ZAHID JAMIL: Can I clarify?

TOM BARRETT: Yeah. Go ahead, Zahid.

ZAHID JAMIL: If you look at the word, it says "Directors shall be person who, in the aggregate" ... So the idea always was that, if you had somebody who did not have, say, all the stuff that's in D, it didn't matter if there was another director who had that qualification. So it's not a stipulation for every single director. It's a stipulation of the Board as a whole in the aggregate. Somebody there has to have that on the Board.

TOM BARRETT: I guess the question is, who's responsibility is it to ensure that exists?

ZAHID JAMIL: That's interesting because people who get elected from different SOs and ACs don't necessarily get better for this purpose. If there is a gap, then the NomCom is asked by the Board—for instance, in its letter that it sends out (and the NomCom reaches out and should reach out to everybody else as well)—“What is it you think this year we should do?” and everybody sends in their input. It's totally up to the NomCom to reject it, to accept it, or to do whatever it wants with it. In that respect, this comes into play. So the NomCom looks at it and goes, “Well, let's look at the Board composition. We say that nobody here understands how (maybe) a ccTLD (or gTLD) operation works, so we need someone technical up there.” And the Board may say that in its guidance letter. That's how it usually works.

TOM BARRETT: Right. So the recommendation, however, basically says that the Board should not look to the NomCom to fill that kind of gap.

ZAHID JAMIL: Right.

TOM BARRETT: So it's the NomCom's role to find people who understand the operation of gTLD registries and registrars.

ZAHID JAMIL: Let me explain why that's been a problem. The reason why the independent reviewer said that was because they saw the NomCom struggle with trying to basically [inaudible]

TOM BARRETT: Zahid, we're losing you a bit.

ZAHID JAMIL: Oh, I'm sorry. My hand was covering the mic. And the NomCom's role ought to be to find people who can't get to the Board from any other way. So technical people can find their way through other SOs and ACs. It's easier for them to do that. And there was always a pressure on the NomCom to try and fill that. So, effectively, the NomCom's role should be to appoint people who otherwise wouldn't come from the community. At least in part they should try to. I think that what the review has tried to do here.

TOM BARRETT: Thanks, Zahid. Cheryl?

CHERYL LANGDON-ORR: Thanks, Tom. Just following on from Zahid—I've put it in the chat as well, but I just wanted to bring it home a little more forcefully—I see this as part of the ICANN bylaws that our future fundamental rule of procedure for ongoing Nominating Committees going forward would be

hanging off. So this is the lynchpin that ensures that the rewrite ... I see Larisa's point about "external" and "outside" is one we should come back and briefly consider because I value Zahid's ideas if one is less than ambiguous than the other, but I think she's got a good point with a change or, perhaps, [one-wording] that. But I see this as a lynchpin on why that proposed language belongs as otherwise sacrosanct to the vagaries of any NomCom coming forward without a wider process, such as going out for a community review of whatever. That is, I said, community review. I didn't say public comment. That's something else that we might need to think about when we get to how those more sacrosanct fundamental rules of procedure need to perhaps be enshrined. Thanks.

TOM BARRETT:

Thanks, Cheryl. Jean-Baptiste, if you could scroll back down to Section 8 here, we saw those overriding objectives. So what I was going to propose is, right up here in Section 8.1, that we add a paragraph that basically is our statement for what the Nominating Committee strives for in terms of ICANN Board directors. So that one paragraph we just talked about we can change the word "external" to "outside." I'm proposing we perhaps insert that in here and say, "Notwithstanding the attributes mentioned in Section 7, the NomCom is focused on the following."

Cheryl?

CHERYL LANGDON-ORR: I'm going to go back now to the results of long and, I think, well-debated arguments that the two behemoths of cross-community groups [vetted] on the IANA transition and those that resulted in Work Stream 1 and Work Stream 2 went through. That is that we agree that our ICANN bylaws are [inaudible], bloated, and ugly, but they were a product of their time, and that any changes we make to them in the future, such as resulted from those massive pieces of work, we need to be lean, clean, and minimalist and as light a weight as possible to get the job done. So I would argue the opposite of putting it into ICANN bylaws. I think you find a way to enshrine it in actual activity that the future Nominating Committees are more likely to even read, which is their own rules of procedure. Very few Nominating Committee members, for example, I think would have ... If we did a pop quiz—I might be wrong—of most of the Nominating Committee members over the last year or two and the current year, I doubt they'd have a really detailed working knowledge of even Article 8 of the bylaws, let alone the bylaws in general.

So I'd argue we should keep our fingers out of other bylaw changes and just stick to referring as this does to the ICANN bylaws because that's where that Section 7 is going to allow us, if we ever need to [argue] why it's important that the intentions are followed. Thanks.

TOM BARRETT: Thanks, Cheryl. Zahid?

ZAHID JAMIL: I was looking at the actual recommendation, which talks about clarity to be provided on independent directors. It says that basically what needs

to happen is that the NomCom should appoint three. “We recommend that three seats be designated for independent directors with three-year terms so that one seat is considered each year,” which basically the NomCom is going to fill. Then they give criteria—a couple of sets of criteria for that.

So I think that I agree with Cheryl, which is that that’s our mandate. It can be in Article 8. I just wanted to check, are we getting three separate seats that we’re going to play with within the NomCom? Through that, we can add this criteria. So what I saw earlier doesn’t necessarily ... I wasn’t sure it matches what we’re trying to do here right now. Thanks.

TOM BARRETT:

Thanks, Zahid. Yeah, we have adjusted the original recommendation a bit from the IE. First of all, we don’t use the word “independent directors” anymore. We use “ICANN unaffiliated directors.”

I guess my concern is that—I take the point that we don’t want to bloat the bylaws—at the same time, this does reference Section 7.25, and that is in contradiction, I think, with the mission of the Nominating Committee. So I think it’s worth making a point that the Nominating Committee strives for something else.

CHERYL LANGDON-ORR:

Yeah. That I can get behind: changing Section 7.25 to the language I quoted, which was in reference to Section 7. Then that Sub-D is in there. So that’s a very minor change, but it’s a change in our Article 8 area without [blunting].

TOM BARRETT: So you would just strike .25.

CHERYL LANGDON-ORR: Correct.

TOM BARRETT: And just say "Section 7."

CHERYL LANGDON-ORR: Yeah.

ZAHID JAMIL Can we look at 7.25 again?

TOM BARRETT: Yeah. I'm just wondering if that goes far enough, but let's go back. No, I'm sorry. 7.25 is something else.

ZAHID JAMIL: Yeah, exactly.

CHERYL LANGDON-ORR: It is. 7.25 is different. But if we just say "Section 7," then we've got it all covered.

TOM BARRETT: Yeah.

ZAHID JAMIL: No. So that's about promptly informing. That's got nothing to do with the criteria.

CHERYL LANGDON-ORR: Yes, I know, but if we say "Section 7," in total, everything is covered.

ZAHID JAMIL: Yeah, but the thing is—

TOM BARRETT: I'm sorry. Go ahead, Zahid.

ZAHID JAMIL: The reason it's there is because it's specific about the communication so there's no confusion that it's mentioning everything else because 7 deals with a whole bunch of other issues as well. So I think it's good to have 7.25 there. That doesn't impact criteria.

CHERYL LANGDON-ORR: Okay. Fair enough. Then again, criteria is in 7 as well.

ZAHID JAMIL: Yes. So that's not here. We're looking at the wrong part, basically, Tom.

TOM BARRETT: Yeah. No, I agree. 7.25 is a red herring here.

ZAHID JAMIL: Yeah.

TOM BARRETT: But the question is, even making this Section 7, if it referred to all of 7, that doesn't really address, I think, my concern that the Nominating Committee is striving for a different set of criteria than what is listed in Section 7. So we don't want to imply that that's what the Nominating Committee is going by as its complete objective.

CHERYL LANGDON-ORR: It's not a different set.

TOM BARRETT: It's additional.

CHERYL LANGDON-ORR: Yeah. It's a set that facilitates [inaudible]

TOM BARRETT: I think they're in direct conflict with each other, Cheryl.

CHERYL LANGDON-ORR: Oh.

ZAHID JAMIL: Not so sure, Tom.

CHERYL LANGDON-ORR: Hmm. Yeah, I don't think it's direct conflict.

ZAHID JAMIL: You know why? 7 is about—not 7 but I can't remember the number now because it's not in front of me. But the specific part, where it says—D—that, in the aggregate, you need to have this qualification on the Board, is what the Board needs to comply with, which Legal needs to make sure happens. But the NomCom can have a subset rule, which is that the people they appoint need to comply with—you can decide whatever they need to comply with.

TOM BARRETT: Yeah. So that's conflicting directions. Does the NomCom need to care about D or not?

ZAHID JAMIL: It needs to care about D or 7.3 to the extent that it doesn't have more specific responsibility that may be laid out under 8. If you were to go

under Section 8 and specify something a little more deeper or more specific, then NomCom would have to comply with that.

TOM BARRETT: Agreed. Then that's my point. We don't have anything in 8.

ZAHID JAMIL: I think that's the point Cheryl and I were trying to make: if we want that to be set in stone, we can actually include something within 8. And I would—

CHERYL LANGDON-ORR: But only to mention 7.3, not to put in our specific words. Or 7.3, if you want to.

TOM BARRETT: Well, I just wanted to indicate where we deviated or had additional criteria besides 7.3.

ZAHID JAMIL: One could say that [for] the NomCom. I don't know. I'm trying to help but I don't know if this is the intention. If I'm getting the intention wrong, stop me, but you could put language within 8 saying that one of the rules of the NomCom is to try and nominate directors which use the word "independent" and use some other word and you could actually put it there and explain what that means. And I don't think—

TOM BARRETT: We have that language. That's what we just talked about previously in the PowerPoint.

ZAHID JAMIL: Exactly.

TOM BARRETT: So I'm proposing taking that language and pasting it into 8.

ZAHID JAMIL: Yeah. [inaudible]

CHERYL LANGDON-ORR: But, Tom—and Zahid now—for me, all that would be referring to the new term used by us in that specific language that we want to see as a fundamental rule, right?

ZAHID JAMIL: Yeah.

CHERYL LANGDON-ORR: The term "unaffiliated."

ZAHID JAMIL: Yes.

CHERYL LANGDON-ORR: That's all it does ... We don't need the rest of ... Again, let's not bloat even our changes to 8. Let's be minimalist. If you want to find a space in the beginning of 8 to refer to the unaffiliated aspect, that's fine, but we don't need to detail it because that's referred to in detail in the ongoing rules of procedure. You see where I'm trying to come from here, Tom?

TOM BARRETT: I see a hand from Vanda, but can we just switch back real quick, Jean-Baptiste, to the PowerPoint slide with our two sentences? I guess the question I have, while he brings that up ... This rewrite is adding this bloat? That's all I'm proposing: adding these two sentences [inaudible]

CHERYL LANGDON-ORR: Yes. Any word more than is minimally necessarily is bloat when you come to bylaws.

TOM BARRETT: Okay. I think this is necessary because without it the bylaws don't convey how the NomCom selection criteria is different from what the goal is for the Board. So it's not bloat in the sense that the bylaws are completely silent on this.

CHERYL LANGDON-ORR: Bylaws should not be going into details like appointment cycles, prior involvements, stipulated blah, blah, blahs. All of that. That proposed

rewrite is the definition of unaffiliated members—sorry, not the definition: of how we get what we define as unaffiliated members [in]. The bylaws can refer to unaffiliated members without it being bloat, but getting into the mechanisms in an ICANN bylaws, at least in my very biased view, is bloat.

TOM BARRETT: Okay. So let's come up with truncated version of this rewrite that you do not consider to be bloat and add those to the bylaws to Section 8. That's what I'm proposing.

ZAHID JAMIL: Correct me if I'm wrong. I think what we're trying to get at is to create an obligation or encourage the NomCom, if not an obligation, to prioritize if not mandate them to do so to find non-affiliated directors in their appointments. Is that the goal?

TOM BARRETT: Well, the goal is to make sure it's not subservient to Section 7.

ZAHID JAMIL: Right. Same [inaudible]

TOM BARRETT: So on parity with Section 7. So it has to be in the bylaws.

ZAHID JAMIL: Let me suggest some language. “Notwithstanding anything in Section 7.blah, blah, blah, the NomCom shall make best efforts to recruit and nominate”... And then you say who. Very simply. Very short. And how they do that? I agree with Cheryl: [inaudible]

TOM BARRETT: How about if it’s just the first sentence ending with the word “ICANN” if you don’t want bloat? We can stop there.

ZAHID JAMIL: Hmm.

CHERYL LANGDON-ORR: Can I just remind you all about the beartrap of reappointments? If you get too detailed, if you get too wordy, if you lock things in to somewhere that is inviable or very difficult to change, like a bylaw, then you may write yourself into a corner that says, under this proposal, “No Nominating Committee can reappoint a sitting Board member,” because, after all, by definition, they will no longer be unaffiliated. They will no longer have this virginal aspect that we’re trying to encourage towards, making sure we get [churn]-freshness or but not limit the ability of a NomCom to reappoint. We all know there’s been NomComs that actually thought that there’s job: out with the old and in with the new, regardless of what the standards of the new might be. And, boy, we’ve seen some messes turn out of that in the past.

So we’ve got to be so careful with unintended consequences when we get into changing bylaw language. I’m just encouraging us to be

minimalist in the bylaws ad use the next level of tool for the details.
That's all. Just saying.

TOM BARRETT:

Thanks, Cheryl. So that's the balance we want to meet here. We don't want to, again, send the wrong message and go to either extreme, which is why I thought what we had here covered that concern about reapplying members.

ZAHID JAMIL:

I've shared something in the chat. This is a very crude way of putting it. I don't think this is the right language. I don't know if it's closer what we're trying to do because it creates the exception that Cheryl is trying to get to, which is: don't close this off too much. At the same time, it unhinges you from and unshackles you from the issues of 7.whatever—
D.

TOM BARRETT:

Thanks, Zahid. In fact, the word "prioritize" is similar to the original language on this slide: "strongly consider." We wanted to make something even stronger than "prioritize."

But I'd love to let other people have a chance to participate. So Leah has her hand up. And, Vanda, if you want to come back in, we'd love to hear from you as well. Leah?

LEAH SYMEKHER:

I was going to actually suggest, given that our proposed rewrite seems to be a bit too long, actually, for adding it into the bylaws, and maybe too specific—in that sense, I agree with Cheryl—and definitely, looking at Zahid’s proposal, I think that’s really good, actually ... We could massage a little bit more if need be, but I think that really does help to meet our goal and the goal of the recommendation and what the community wants and also giving the NomCom the space that it needs or the flexibility to make suitable selections. So I think we should look at more of what Zahid is proposing and maybe Tom here what you are proposing too in terms of streamlining this addition. But what Zahid is proposed seems pretty good to me. Thank you.

TOM BARRETT:

Thanks, Leah. Vanda, I’m sorry. I want to go back to give Vanda a chance. I know you had your hand up earlier.

VANDA SCARTEZINI:

No, I put down my hand because the conversation was going the right direction between Cheryl and Zahid. I believe Zahid could reduce a little bit this sentence that he just put on that and it could be good. Anyway, it’s done. I don’t need to go to the same point again. Thank you.

TOM BARRETT:

Thanks, Vanda. Nadira?

NADIRA AL-ARAJ:

I just want to bring the point of the reappointment up because, instead of the NomCom tackling it, already these people are in the process. If they want to [reappoint], that has to be done at the Board level. So in sense we are reviewing the bylaws. So, to reduce the pressure of the ... Because we got a lot of recommendations from reappointed members about this issue. So it's better not to direct the reappointment to ICANN Org. That's my point here. Thank you.

TOM BARRETT:

Thank you, Nadira. I think we have consensus that we should add something to Section 8 to differentiate the focus of the NomCom selection criteria. So we'll wordsmith the documents. I know we're running out of time but I think this has been good progress.

The last entry from Zahid, if you're not looking at the chat: "Notwithstanding Section 7, the NomCom shall ensure the nomination of unaffiliated Board members with the exception"—I would say "if appropriate"—"of reapplying Board members." Something to that effect. So we'll wordsmith that and see if we can't do that on the list.

Was there a comment?

All right. I want to come back to one other recommendation, which is a standing committee. We have a draft charter for that, but, again, should we mention "standing committee" at all in the bylaws, which would give it more prominence? Or we saying the bylaws are completely silent on it and it just has a charter? Any thoughts on that?

Leah?

LEAH SYMEKHER: Sorry, Tom. I think the point that Nadira brought up in the reappointment—have we addressed that or have we not addressed that?

TOM BARRETT: I thought the understanding of the reappointment was that, even though they're being reappointed, if they originally were an unaffiliated director, they would remain with that designation, even if they're reapplying.

CHERYL LANGDON-ORR: Correct. That we wouldn't bias their minimalist service of their first term as tainting their unaffiliated status because, as we've heard from many Board directors, regardless of how they get to the Board, often in your first term you've still got your training wheels on anyway. So that green text should stay. If anyone wants to argue otherwise, I guess we can open it back up. But that is what our extensive debate was about last week.

TOM BARRETT: Right.

LEAH SYMEKHER: Got it. Thank you.

TOM BARRETT: So the green text, Cheryl, is ... But we're not proposing that. We're saying we'll mention that for the bylaw sentence just to make sure that the NomCom doesn't go to the extreme and think they have to replace a brand-new member—

CHERYL LANGDON-ORR: Exactly because with NomComs, like any group, once they're let out of the paddock, the rush of blood can get to their heads and they can always think their interpretation is going one way when in fact it's going the other. So it's important to have the guardrails around the outer edges of the big paddock.

TOM BARRETT: Excellent. All right. So we've added—go ahead, Zahid.

ZAHID JAMIL: Just saying some analogies from cattle-herding there, I hear.

CHERYL LANGDON-ORR: Ooh yeah.

TOM BARRETT: So I just want to recap. We're going to add in a proposed bylaw change to handle unaffiliated directors, but then the last question I posed was that the standing committee, we're saying, will not be in the bylaws but it will have a formal charter and that is sufficient.

Everyone agree with that approach, or does anyone think it should be part of the bylaws.

CHERYL LANGDON-ORR: I agree with it.

TOM BARRETT: All right. Anyone else want to weigh in?

All right. So I think we'll just have some final tweaks on the bylaws. Maybe we can do that on the list this final week so that we can finalize that for next week's meeting.

It's 3:58. Shall we go back to the next meeting? Is there Any Other Business before we just talk about the next meeting?

CHERYL LANGDON-ORR: The only thing just in relation to this, Tom, is that I would recommend that, if the work group is comfortable, perhaps, you and me and Zahid and one other, if they're brave enough, I guess, should interact with, I'm assuming, Sam or whoever from Legal. I think we should go as a small team going forward. We have a core group of our membership that turn up regularly and who really have the background of all our discussions and debates. But we have a bigger group of members who, to be honest, if we ran into a corridor, we wouldn't recognize because basically they never really turned up. If we open this interaction on bylaw final drafting to the whole working group, I fear that we could end up with interesting loops going backwards if it's open to everybody.

So I'm hoping you might get the work group to agree to let the leadership team do the next phase of drafting with legal and then bring back the final stuff to the meeting as a whole just from an efficiency point of view. But happy to have one or even two others who are brave souls join us.

TOM BARRETT:

All right. Thanks, Cheryl. Yeah, if anyone wants to join us, just let me know off-list.

Our next meeting—Zahid has put up some more language, which I think looks great. I like this last set of edits; thanks, Zahid—is September 10th, 13:00 UTC. So I think we are done for the day. Thanks, everyone. It has been a great meeting.

CHERYL LANGDON-ORR:

And excellent progress. Thanks, everybody. Bye.

[END OF TRANSCRIPTION]