
JEAN-BAPTISTE DEROULEZ: Yeah. And if you can move to the next slide, Yvette? Thank you. Hello. Welcome, everybody, to the NomCom Review Implementation Working Group meeting on Thursday the 10th of September 2020 at 13:00 UTC. I'm going to do a quick rollcall.

So, today we have Tom Barrett, Vanda Scartezini, Arinola Akinyemi, Cheryl Langdon-Orr, Dave Kissoondoyal, Ken Stubbs, Nadira Al-Araj, Remmy Nweke. And from staff, we have Pamela Smith, Yvette Guigneaux, Elizabeth Andrews, Jia Kimoto, Teresa Elias, and myself, Jean-Baptiste Deroulez.

I'm going to ask whether there are any statements of interest. If that is the case, please raise your hand. All right. And I'll give the microphone to Tom, now, to go through the agenda. Thank you.

TOM BARRETT: Thank you, Jean-Baptiste. Welcome, everyone. So, let's review some of the input we have received regarding the rebalancing recommendation. We have received one additional input from the Registries Stakeholder Group. Can you go to the next slide, please? One more.

JEAN-BAPTISTE DEROULEZ: Next one up, please. Next one.

TOM BARRETT: Perfect. All right. So, we'll briefly go through the IPC, BC, and ISPCP, but the Registries Stakeholder Group input is at the bottom of the screen. I'll

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read it for people. “The Registries Stakeholder Group does not support the proposed bylaw amendment as we do not believe that the amendment will result in any substantive change to the status quo and will not address in a meaningful way the underlying concern or finding in the final report.”

And then, quoting the finding, “The NomCom may not accurately represent the constituencies, both across SOs/ACs and within SO/ACs.” Instead, we ask the working group to focus on the second part of the Recommendation 10. That is to “convene a working group immediately to study how to best rebalance the NomCom based on input from each of the organizations with representation of the NomCom and the broader ICANN community.”

And the end was saying they think this is the most appropriate course of action at this time. I’ll pause there before we jump into the IPC and the other feedback. This is new for everybody. Any thoughts or comments on this feedback?

CHERYL LANGDON-ORR: Nothing new from me.

TOM BARRETT: Thanks, Cheryl. So, yeah. I guess the only comment I would make on this is that I guess we’re going to do this; we’ll address this for the bylaw-related amendments or recommendations. We do want to do a sanity check and go back and say, “Did we, in fact, implement what the recommendation said we would implement?”

So, we want to go back and revisit that. So, here, they're saying that the independent evaluator recommended this working group be convened. So, whether or not we go through with our bylaw change, that appears to be another element of this recommendation. And so the question is, is that something we want to take up, or not? Cheryl?

CHERYL LANGDON-ORR:

Tom, you're going to squeeze it out of me. As we have already discussed, we have a way forward for anything that we are proposing to do with bylaw changes, and my mind is not swayed on change from that that we have already discussed, and we'll continue discussing in a package approach.

But what we need to implement is what the board has approved from our implementation plan. So, this approach, conveniently, overlooks the fact that our job is not to implement recommendations from the final report.

Our job is to implement the approved implementation plan based upon what we proposed in our very first parts of our work, where we looked at the recommendations in report and looked at what and how we could or could not practically do in the time available, and that plan went through a process, was approved, and it's that that we get to implement, not some direct hop from an external evaluator's thought bubble and making it happen. Thank you.

TOM BARRETT:

Thanks, Cheryl. Jean-Baptiste, maybe while we're talking you can bring up the implementation for this recommendation, just so we can remind ourselves? Awesome. Look at that. Right on the dot, here.

So, Recommendation 10: "Representation on the NomCom should be rebalanced immediately and then be reviewed every five years." We have the IE finding. We have the benefit. "How soon can it start?" We say, "Immediately. Completion will take time and may require a number of public comment periods."

So, if you can scroll down to the task list? Let's just make sure we feel like we have followed our process. So, "Define relevant terms/identify the intended purpose of the recommendation," is one. Two, "Determine what principles were used to determine the current composition."

Three, "Decide what principles should apply to determine their optimal composition, based on a current ICANN community." Four, "Determine a gap analysis."

Five, "Examine the gap analysis and decide which principle should apply, and then decide whether 'rebalancing' in this context means to rebalance the seat allocations to all SO/ACs, or whether the overall seats allocated to each SO/AC should remain constant, and the SOs/ACs should, if desired, reallocate their seats to ensure adequate representation of all their constituent groupings."

Second bullet, "Decide whether the GAC seat, even if unfilled, should remain allocated to the GAC or absorbed by another SO/AC." "Determine if we envision a future where there might be more SO/ACs, and whether this would have an impact on a proposed review period."

“NomCom Working Group to draft one or more rebalanced NomCom seat allocation scenarios and present this to the community for input.”
Seven, “Revise the rebalancing proposal and initiate the bylaw change.”
Eight, “The bylaw change is accepted. The NomCom is rebalanced, or a bylaw change is rejected, and the status quo is maintained.” So, that was our implementation. Obviously, we have done most of this. What? Go ahead. Comments?

VANDA SCARTEZINI: No, no. I’m just following. Thank you.

TOM BARRETT: Okay.

ZAHID JAMIL: I’m sorry, I know I was late to some of this stuff. So, we’ve done every one of these steps? gap analysis, and then rebalancing, what does it mean in that context, all the decisions regarding GAC, etc.? All this is done, I imagine, right?

CHERYL LANGDON-ORR: Well, all the early stuff, absolutely. We’ve had very spirited discussions on it.

ZAHID JAMIL: Okay.

CHERYL LANGDON-ORR: And some of our scenarios would have been extremely unpleasant for everybody across the ICANN community, as in, “Right, you all get three seats. That’s it.” We looked at all sorts of options.

TOM BARRETT: Right. So, I think where we are now is the first bullet under five, which basically talks about ... We discussed what we thought “rebalancing,” in this context, was meant to mean, whether ... We decided not to change the allocations to SO/ACs. But the key part is, should we rebalance the seat allocations to all SO/ACs, or whether the overall seats allocated to each SO/AC should remain constant?

And the SO/AC should, if desired, reallocate their seats to ensure adequate representation of all their constituent groupings. That last part is really where we are now. We have made a proposal. We narrowed it down to the GNSO as the most likely area that needed rebalancing. We asked them for their feedback on a bylaw change to facilitate that rebalancing, and we’ve gotten their feedback on that request.

So, that’s pretty much where we are now. Cheryl says we’re more down in six, that the NomCom Working Group shall draft one or more rebalanced seat allocation scenarios and present this to the community for input via public comment or face-to-face, etc. All right. So, why don’t we ... So, the question is, given the feedback—

CHERYL LANGDON-ORR: We’ve done our interaction.

TOM BARRETT: Yep. Sorry. Let me just bring up all my chat buttons, there. We have some hands? Cheryl, go ahead.

CHERYL LANGDON-ORR: Just to say that, without face-to-face meetings going on, we chose to do the interaction over conference with the GNSO, which was as a result of all of our deliberations—the only party that, at this stage, was going to be affected. So, rather than a face-to-face—that’s not possible—we did, of course, reach out, and that’s why we’ve got the feedback we have.

TOM BARRETT: Thanks, Cheryl. Let me just jump to Jean-Baptiste real quick. Do you want to jump in?

JEAN-BAPTISTE DEROULEZ: Yes. Sorry, Tom. I just wanted to mention, when there was this question as to where is the group right now in the implementation work, that, looking at the progress report that was produced, the steps from three to five were replaced by a new step, number three, which was consider Recommendation 8 and assess whether the SO and AC seats need to be redistributed, and this was complete, I believe. So, I just wanted to mention that what appears on the screen, in fact, differs from what was submitted. Thank you.

TOM BARRETT: Thank you for pointing that out. Zahid?

ZAHID JAMIL: Yeah. I'm looking at this document. It seems to me—correct me if I'm wrong, and please do, because, as I always say, you have more details on this than I in recent memory—the first line says that we had implemented this document to the board for them to bless it, which is what they did, and send it back.

So, at the end of the day, when we get criticized, we'll be criticized to have a plan which didn't conform, necessarily, at least in the eyes of the three constituencies of the GNSO, to what the expert's report was. We need to be ready to respond to that if we move ahead.

CHERYL LANGDON-ORR: Zahid, that is absolutely the case, and it's absolutely why a group, an Implementation Review Working Group, always has the job of putting together a feasibility assessment statement. And it's out of that feasibility assessment statement that the specifics of the implementation plan is borne.

It is a multiple [stick] that goes on with the absolute intention of the affected parties in ICANN having at the report of the independent reviewer. And in the case of some entities, everything has been rejected wholesale and absolutely a minority, if any, of the recommendations are ever put forward for implementation.

Now, that's not what we did. We, in fact, are putting forward all of the recommendations for implementation, with some minor modifications

and some additional details in some circumstances. So, we have no problem standing by the process at all.

ZAHID JAMIL:

So, just to understand that more, at what stage did that assessment the community has to do, and all that stuff that basically these guys are throwing back at us, get dropped?

CHERYL LANGDON-ORR:

Between the independent examiner's report going to the Organizational Effectiveness Committee and the meeting that the Organizational Effectiveness Committee then has both with representatives of us and in review with the opportunity for the independent examiners to speak to their recommendations. Then, it is the Organizational Effectiveness Committee that agrees, or not, with the potential implementation, or not, of any or all of those recommendations. So, that's way back, almost ... What? It must be nine months ago, now, that that all happened.

ZAHID JAMIL:

So, I would just say that, when messaging this out to the community, we shouldn't just say, "The board has told us to do this." We should say, "The OEC decided not to have this there—that was part of the discussion between us and them—and the board then blessed the plan afterward." I think that's important, because OEC is a whole bunch of people.

CHERYL LANGDON-ORR:

Sure.

ZAHID JAMIL: Yeah.

CHERYL LANGDON-ORR: Yeah. But I think more important is that this is a process that is the current methodology at this time. We're not the first to go through it. We're about the third or fourth to use this specific methodology, if not fifth. It is public. It is transparent. It should be well-known, if you care to know it. I'm not saying you didn't, I'm saying this is Joe Community. And what we get to implement isn't even that. It is what is accepted out of the detailed implementation plan, including analysis of any budgetary implications; that is where we were coming up for seven months ago.

ZAHID JAMIL: So, [inaudible].

CHERYL LANGDON-ORR: So, it's that piece of paper. It's that piece of paper that we have to work from. Okay?

ZAHID JAMIL: Yeah. No, I'll just admit that I was ignorant to the whole process, and I think many people in ICANN, within even the GNSO, wouldn't have the same knowledge [inaudible]—

CHERYL LANGDON-ORR: Sure.

ZAHID JAMIL: [And others do]. And so, I think—

CHERYL LANGDON-ORR: Understood.

ZAHID JAMIL: I'm not saying that we change what we do. All I'm saying is that we need to get a narrative going. Because, in my opinion, this is the one thing that's going to come back and hit us hard. We need to have a narrative that doesn't just sort of speak on process, but on the substance as to why this happened and who was responsible. Otherwise, it looks like we decided this, we submitted it, we got the same response, we decided to drop that requirement, and that's dangerous.

TOM BARRETT: Thanks, guys. Can I just jump in?

CHERYL LANGDON-ORR: [inaudible] no problem standing by the process.

TOM BARRETT: Yeah. In terms of where we are, I guess I'm less concerned about just looking at the gap analysis with the IE report, and more interested in looking at the implementation plan itself that was approved by the board

and, perhaps, where not/where completed this, and, if we have it, where we have deviated from this, and how we justify that.

And so, we can certainly explain our thought process today. We've gone out to the GNSO and decided they were the focus. There was feedback on folks' interest. They're giving us feedback. So, now the question is what to do with that feedback. Should we go out to the larger community and ask for their feedback, or do we forge ahead, or do we make some adjustments based on the feedback?

ZAHID JAMIL:

Tom, I think going to the community on this ... I haven't thought this through, but I would think that it's not going to help because you're just going to get a lot of naysayers coming back at you. In order to make sure that we're protected in our process, it may be you may want to talk to the OEC, or the board, and let them know about this, if we're going to do anything.

But other than that, I don't think going to the community is going to help us at this stage, unless we decide that we want to create a new process for this one recommendation that, basically, allows people to discuss. So, we could try to do that. But again, that's an outlier. Right, Cheryl?

CHERYL LANGDON-ORR:

It is an outlier because, in fact, our current incarnation, our current form as the Nominating Committee Review Implementation Working Group, is a result of the resolution of the board associated with the acceptance of

our implementation planning document. That means that it's us and the OEC, at this stage, that need to do any editorial or change.

They're the parties that have to agree on any editorial or change on that plan, and we're not actually doing any editorial or change on that plan associated with this or, to my knowledge, any other of our implementations of recommendations at this stage. If we do want to make a change to that plan and the way we have described we would be doing it, then we need to take that back—not to the community; to the OEC.

TOM BARRETT:

Thanks, Cheryl. I just want to read the chat real quick. As Nadira says, we did submit a mid-year report to the board. So maybe, while we're talking, Jean-Baptiste, you can bring that up, as well, for Rec 10. Go ahead, Zahid.

ZAHID JAMIL:

Yeah. So, I was thinking about what to do. Sorry, it just came to me. We are in the process of exchanging communication with these constituencies. I think that, to test it out as to how this plays out, it may be, as a precaution, you might want to write back to them saying, "Thank you for your response. But in fact, it's a board-approved implementation plan. Here is a reference to it. What you refer to is not part of that implementation plan, and all we're doing is implementing what we have been asked to do," and that's it. And then, let's see what they say, because it seems like they don't realize that. Let them know that.

TOM BARRETT: Thanks, Zahid. So here on the screen, now, you should see our status report at the end of June to the OEC. It talks about the fact we reached out to the GAC and received the input on what they want to do with their seat. If we can scroll down a bit, you see the implementation plan has been revised a bit. Namely three, four, and five are crossed out. So, if we scroll down some more?

So, the new three: "Reconsider Recommendation 8 and assess whether the SO/AC seats need to be redistributed." It has a checkmark. The new four: "Draft one or more rebalanced NomCom seat-allocation scenarios and present this to the impacted SO/ACs. Inform the ICANN Board and the ICANN community during a public meeting webinar, etc."

CHERYL LANGDON-ORR: That's where we're up to.

TOM BARRETT: Yeah. That's where we're up to. We have communicated to the impacted SO/ACs a scenario. And then the question is, where do we go from here to ... Where's the next step? So, new hands from Cheryl and Zahid?

ZAHID JAMIL: Cheryl, do you want to go first?

CHERYL LANGDON-ORR: It is a follow-on for me, yeah. It is a follow-on hand. I will hopefully take it down after this. I think what's important as well is that, in our next

report, these are the sorts of things we say. We make note of that. We include in our next report, which is due at the beginning of the next calendar year, that, “Here are, appended, the correspondence we have received. Here is the page where we have that publicly available.”

And so, we do follow, in many ways, the suggestions you’re making, Zahid. But as I said, and I’m happy to stand by most of what I say, including this, this is not a negotiation. It is not a negotiation. So, let’s not fall into that, what I think is come in, spin a trap, to try and make it one.

We’ve got our task. This is one of 27 things we need to implement, and in no way does what we suggest in the bylaw force any change upon the GNSO at all. What it does is lay the ground for any change in the future, the way the GNSO wants to do it, to be made, because it takes away the hard-coding from what the GNSO has to do with the allocated seven seats, and there is nothing wrong with that.

There is no downside, other than hysterical fear and loathing, in my view. And as I say, yet to see what the downside of cleaning up a bylaw to take away hard-coding which clearly is not representative of the current structure of the GNSO, so that when the GNSO decides how, or if, it wants to play with how it has its seats allocated, it has the ability to simply do so. You may write that down, and put it in a report, and quote me.

TOM BARRETT:

All right. So, Zahid, you’re asking, “The strike-through changes were made how?” I guess per the consensus of this working group, but go ahead.

ZAHID JAMIL: Yeah. No, that's what I was asking. I mean, if it is ... Here's the other thing. If we're going to say that the board has given us an implementation plan and it's set in stone then, when I look at this ... I'm just asking, who made those changes? If it was us who requested those changes, we can still do—

CHERYL LANGDON-ORR: We did. We gave the board the implementation plan, as modified, as you're seeing it on the screen.

ZAHID JAMIL: So, eventually—

CHERYL LANGDON-ORR: Over many, many meetings.

ZAHID JAMIL: Right. So, it basically comes full-circle. At the end of the day, we can't pass the book to the board or the OEC. Eventually, it is us, right? It is us. So, the question will be asked of us that this is what was in the independent reviewer's report. They said, "Do A, B, C, and then do the rest." And so, they'll continue to ask us why you did not do that. So, I think that comes full circle, though.

CHERYL LANGDON-ORR: [But yeah], comfortable, but it's a virtuous cycle, because the part of the cycle that's important here is that an Implementation Review Working

Group actually does a feasibility study, then, from the feasibility study, the detailed plan is borne.

So, there are those three distinct steps before anything is even finally approved, and that's done in transparency and with interaction with the community. We met with the community, we reported to the community. We told the community what was happening each step along the way. So, it's sort of a non-problem.

ZAHID JAMIL: I'm not going to keep pushing at this, but it seems to me that, even after everything that you mentioned was done, we went back and amended it. So, we received feedback from the community, or the people [inaudible].

CHERYL LANGDON-ORR: No, we did not go back and amend it, Zahid.

ZAHID JAMIL: Oh, okay.

CHERYL LANGDON-ORR: What you see as redline ... The redline then became final. That final then went as a—and this is the title of the document—detailed implementation plan, and it is that that the OEC gets and then the board does or does not, in part or in whole, ask us to implement.

We have put it in. 27 things were recommended. 27 things were planned for implementation. The mechanisms of that planning has been modified

and adjusted, and that's part of what you see in front of it, and that is what the board has said "thou shalt do." And with that "thou shalt do," our current form of committee is formed. We are actually not the same committee as we were, is a click-over with that resolution. Okay?

ZAHID JAMIL: Sorry. I'm confused. Yeah. I'm trying to wrap my head around this. So, the things that were struck out weren't after the final implementation plan was given by the board to us?

CHERYL LANGDON-ORR: No.

ZAHID JAMIL: It was before it?

CHERYL LANGDON-ORR: Correct. It's the opposite way. We give it to the board, and then the board does or does not approve it. This is what happened to create what we gave to the OEC, and then the board approved.

ZAHID JAMIL: So, since we have received it from the board, no changes have been made. Then we're fine.

CHERYL LANGDON-ORR: And if we make changes, then it has to go back to the OEC. Right now, we haven't made any changes.

ZAHID JAMIL: Do we have the ability to do that?

CHERYL LANGDON-ORR: Back to the OEC? Absolutely. It's the purpose of the six-monthly reports. We have to report every six months to the OEC.

ZAHID JAMIL: But that all comes up, whether we should be doing that or not, and that's the question we need to decide, right? Do we, based on what we—

CHERYL LANGDON-ORR: Well—

TOM BARRETT: So, can I bring this to a close?

CHERYL LANGDON-ORR: It takes an awful lot to make this do that.

TOM BARRETT: Yeah. I think we're certainly taking the position that these mid-year reports are our ability to propose revisions to the implementation plan to

the OEC. It's up to them to accept or reject those revisions. And so, I think, certainly, this is different from the original detailed implementation report, but certainly it is within our remit to make adjustments as we learn on the fly, so to speak.

So, in terms of our next steps, if I can stay focused on that, I think we all agree that this bylaw change, although somewhat controversial, does not actually change any of the balance of the NomCom. It's a good thing to do. We certainly need a narrative to explain to the OEC and the rest of the community how we arrived at that approach so that it doesn't get ... To address a lot of these objections we received from these various SO/ACs.

I also think, to Zahid's point, we should respond to these people who have given us input and, without getting too verbose, point out if we think they have misinterpreted what we're trying to do, or trying to bring in something that's not part of our remit, such as the Registries Stakeholder Group has done here.

And so, go on record as, certainly, letting them know that, perhaps, their response wasn't on point. So, I think that's our two next steps regarding this recommendation. Any final thoughts or comments? All right. Any disagreement/agreement? We will move on. So, let's move onto the next agenda item.

So, bylaw updates. We'll quickly run through these, if we could. I'm sorry. So, the next steps for the bylaw updates. We have the Google Doc, and we'll run through them real quick after this, of the redline bylaw changes. There is a link here. The working group will review those.

We have started to do that. Once we have a nice, polished version, we send those off to ICANN legal for review and any redlining they might have. I propose just a small group of, say, four of us would get and discuss the feedback from ICANN legal and make any changes that are appropriate.

And then, we have a document we can send off to the OEC for review and feedback. So, that's the process we're in right now. We are, basically, trying to agree on step two to see if there are any final thoughts on the redline bylaw changes. Shall we bring up the Google Doc, Jean-Baptiste?

ZAHID JAMIL:

We had agreed to some language last time on the call. Am I right?

TOM BARRETT:

Yep. Yes, we did. We can bring that up, as well. I think we're just waiting for the doc to be brought up, right? There we go. All right. Real quick. So, this is a redline of the bylaws. So, if we scroll down, we have made everyone, all members of the NomCom, to be voting delegates. There are no non-voting delegates, other than the leadership team of the NomCom.

We are proposing that the GNSO seats no longer be hard-coded. Scroll down some more. If you have any thoughts or comments on this ...? Otherwise, at the end, I'll ask you all to approve it. So, again, just minor wordsmithing for the ccNSO, ASO, etc.

On terms. So, this is a course where, again, we want to provide some narrative for the OEC, or more explanatory detail. So, all the terms, we're just talking about two two-year terms with a two-year gap. All of the rules

that we came up with for what happens if a member resigns prior to the end of their term, and how do they get replaced, that will be supplemental information that we will surely provide to the OEC.

So, let's scroll down some more. Keep going. So, in all of the redlines here, it looks like ... So, we wanted to insert in here the proposed text that Zahid had. I think that's the only thing we would have to add. Another paragraph is part of 8.1. We put in Zahid's proposed language. There we go.

ZAHID JAMIL:

And again, of course, legal has to look at it, right?

TOM BARRETT:

Yeah. So, notwithstanding, and we will reference the section of the bylaws that talks about appointment of directors. Was it 5.3, or 6.3? Can we get that section right? So, notwithstanding, can we look that up real quick, Jean-Baptiste, what the other section is? Just to get this completed. Unless someone knows it offhand.

ZAHID JAMIL:

There is a typo. My apologies. It's not "proposed" but "proposed."

TOM BARRETT:

All right. Shall we have section seven of the ICANN bylaws? Would that be sufficient for people?

CHERYL LANGDON-ORR: Yes. I argued for that, so yes.

TOM BARRETT: Yeah. Okay. So, notwithstanding section seven of the bylaws. So, I would just say that in this blank space. The NomCom shall ensure the nomination of non-affiliated board members. For the purpose of this section, reapplying NomCom board appointees shall not be deemed to be non-affiliated. Yeah. Okay. So, where did we define “non-affiliated board members”? Was that in the bylaws, or is that somewhere else?

ZAHID JAMIL: I thought that you said that we had come up with that language ourselves or something, because we decided—

TOM BARRETT: Yeah. We had the language. The question is, do we add it to the bylaws themselves?

ZAHID JAMIL: I think you should. Yeah. I agree. We should, because everybody should know exactly what we mean by that.

TOM BARRETT: Jean-Baptiste, can you just find that language, and we’ll paste it in here and see what it looks like?

ZAHID JAMIL: And just a form issue: you wouldn't say "of the bylaws." You would just say "section seven," and you'd be done with it.

TOM BARRETT: Yeah. Okay. Nadira?

NADIRA AL-ARAJ: Yeah. I missed the meeting where you discussed this inclusion. Why not include this into the document of the NomCom procedures?

ZAHID JAMIL: We can't bind them, and it will conflict, basically, with the bylaws, then. That's the concern.

TOM BARRETT: Yeah. So, the concern ... We can still do that, but we don't want to do that exclusively. Currently, the NomCom operating procedures, simply there is a cut-and-paste of section seven.

NADIRA AL-ARAJ: Okie-dokie.

TOM BARRETT: And so, they're relying on the bylaws to take their direction, so to speak. And so, absent something like this, they'll just rely on section seven.

ZAHID JAMIL: Right.

NADIRA AL-ARAJ: Thank you.

TOM BARRETT: They're free to change anything they want right now in that operating procedures until we come up with a way to define a picket fence for what they can't change.

ZAHID JAMIL: And there are enough lawyers in the room, usually, in a NomCom, to tell you that you're violating the bylaws.

CHERYL LANGDON-ORR: Oh, yeah. Oh, yeah. My jolly word, yes. Even the non-lawyers will tell you that, sometimes. But Tom, we are still waiting on advice, are we not, on how we protect those fundamental principles?

TOM BARRETT: Yes, we are.

CHERYL LANGDON-ORR: At this stage, that shouldn't affect what we're doing here. Yeah.

TOM BARRETT: Right. Jean-Baptiste can define that. "Correct," he says." So, I'm swapping back and forth. There is no preamble to the bylaws defining definite defined terms. I just want to go back and check.

ZAHID JAMIL: May I ask Jean-Baptiste to delete "of the bylaws"?

TOM BARRETT: Yep.

ZAHID JAMIL: Okay. Thank you.

TOM BARRETT: So, Jean-Baptiste, are you able to bring up our definition of "non-affiliated"?

CHERYL LANGDON-ORR: Remember, of course, that the rest of the ICANN bylaws do use certain terms of art, including the terminology "independent director." So, we've got to be very clever and, obviously, ICANN legal will need to be scrupulous with anything we do that is intended to be enshrined in the bylaw, as far as new definitions and terminologies.

TOM BARRETT: Thanks, Cheryl. So, Jean-Baptiste is displaying a version of a definition for non-affiliate. This may not be the most recent.

ZAHID JAMIL: So, is that what we're seeing right now?

TOM BARRETT: Yeah. You see that. And so, [inaudible] use the word "independent" in our definition. We don't want to be confused with ...

ZAHID JAMIL: It's a negative definition. So, it's the opposite. It's saying ... Yeah. Oh, okay. I get it. It's not really a definition, then. I see. Okay. Great.

TOM BARRETT: Hi, Ken.

KEN STUBBS: Yeah. I know this sounds ignorant, and if I'm missing something obvious, please let me know, here. But we are in effect saying is, anyone or any person who has a current contract for employment, or any sort of compensation received from anybody in the ICANN community, that appoints to the ICANN Board is disqualified as candidate for being eligible.

I'll use a perfect example: time you work for a registry. I worked for a registrar. A Contracted Parties House appoints a board member to the board. Is this [meaning], under this new definition, that we are preempted from anyone in the Contracted Parties House applying for the Nominating Committee, just because the house itself ... Because

NomCom does say ... I think ALAC appoints people, although this is the definition of whether or not you're employed. I just would like a little clarity, there. That's the first statement.

Second, once we get done with this thing, there have been a lot of concerns expressed in the comments about the council. ICANN legal has to go make sure that we don't have issues here and there. I don't see any problem at all in putting together a memo from the leadership of this committee, or even from the committee, without getting too formal about it, bringing to legal councilors' attention our concerns over certain issues and requesting a little more clarification, because I'd hate to get down the road and discover that, for some silly reason, they didn't like what we did, and if they had told us about it earlier, it wouldn't have had this problem at the end. Thanks.

TOM BARRETT:

Thanks, Ken. Yeah, and we have had several consultations with ICANN legal, so I think they may have even provided a reaction to this, as well. Cheryl?

CHERYL LANGDON-ORR:

Yeah. Thanks, Tom. Indeed, I was going to pick up on the ... We have to and fro'd a couple of times with legal, but this text we're looking at right now, I still maintain, does not belong in something like bylaws, but does firmly belong in the operational procedures that we will be creating, remembering that it is a result of our work that an enduring set of operational procedures can even exist for future nominating committees.

But also, we are still very much in discussion on this. This is not decided. This is still open for the work we need to do with implementing here. So, the questions like, “Does travel support apply? Does GAC apply?” all of these things are open questions. This is early material that we’re coming back to, so don’t treat this with the same degree of “done-ness” as what you see in a redline of the bylaw document that we just finished looking at. They’re not in the same status. Thanks, Tom.

TOM BARRETT: Thanks, Cheryl. Good point.

KEN STUBBS: Yeah. I’m sorry to keep coming back to this. All I’m asking for is somebody to clarify or not ... I will use a specific example again. The registry constituency, every year, appoints somebody to the Nominating Committee. At the same point in time, the registry constituency participates in a vote for a representative from our house to the ICANN Board. Does the action as I just outlined preclude the registry constituency and the registrars from having a member on the Nominating Committee? Because at face, this thing kind of is confusing, for me at least. Thanks.

TOM BARRETT: Thanks, Ken. Yes. So, just to be clear, we’re talking about candidates to the board, not members of the NomCom. So, these are candidates. So, as an example, if an employee of a registrar was applying to be a board director via the NomCom, they would be disqualified. They’re not eligible

to apply for a board seat via the NomCom. That's the most clear-cut example. Cheryl?

CHERYL LANGDON-ORR: Thanks, Tom. And to be equally clear, the nature of where we are with any of this text, because it is still very much open for discussion and development, some of us—and I'd be amongst those—may very well argue that proposed disqualification of this nature is not what we should be hard-coding into anything, but rather we should be being very clear on the mechanisms for actual or perceived conflict of interest to be properly managed. So, as I say, this is not at the same level of done-ness as the other work, so we have still got a lot of opportunity to make this function more clearly and more effectively. Yeah.

TOM BARRETT: Go ahead, Ken.

KEN STUBBS: Yeah. Thank you. I'm sorry, but I'm still confused. The reason I'm very confused basically boils down to the fact that, over the years, the Nominating Committee has always looked at the ability and the experience of potential candidates for the board.

One of the key indicators is experience within the industry and experience dealing with the Domain Name System and the identifiers that go with it. It sounds to me ... And I'm going to get very arbitrary and say, number one, it would appear to me that no one could apply for the ICANN Board, for the Nominating Committee, if they ever worked in a

registry, registrar, NSO, ASO, and of these organizations. In other words, what we're saying is we need fresh blood and we don't want anybody that has anything to do with any organization that ... You know.

And I'm just trying to get more clarity because I don't want to get into a dumb argument down the road that somebody just starts off by saying, "Well, that's not what we really meant." I have [this] tremendous capacity in the various country codes, and ASOs, and technical organizations. I just don't want to see us lose the opportunity for that experience. Sorry, Tom.

TOM BARRETT:

Yep. No, no worries. Thanks, Ken. So, before I get to Zahid, as you'll see here in this proposed language, we do try to handle the fact that, if an applicant was at one point ineligible, such as working for a registry or registrar, there must be a minimum gap before they would be considered eligible. So, it's not like it's a forever sort of thing.

But secondly, this level of detail, I agree with Cheryl, probably doesn't need to be in the bylaws since, perhaps, we want to give some flexibility here for the NomCom, and there is a lot of detail in here that doesn't really belong in the bylaws. So, this is where we want to put it into the operating procedures of the NomCom.

And we have discussed, Ken, the idea of a picket fence. Just as the contracted parties have a picket fence concept where there are some things that are negotiated only between the contracted parties, and ICANN, and others that are subject to consensus policy, there needs to be a picket fence within the NomCom operating procedures that, if the

annual NomCom wants to change, needs to trigger a public comment sort of process.

So, we're still getting advice from legal about how we accomplish that, but the idea is that, once we have that mechanism, then perhaps something like this goes into the other side of that picket fence, so that it's not arbitrarily changed by each NomCom. Zahid?

ZAHID JAMIL:

Yeah. So, I think Ken is right to ask the fundamental question, "What is it that we're trying to achieve?" because we don't want to get it wrong or, if somebody asked, we don't want to be saying, "That's not what we meant." So, what I did was I went back to the same document we were discussing earlier, which is the implementation plan approved by the board.

TOM BARRETT:

Do you want to bring that up? I'm sorry. Let's bring that up, Jean-Baptiste, while Zahid's talking about it. Yeah.

ZAHID JAMIL:

Recommendation 27, page 56. You will see that. And I've copy-pasted some of the language, because you can't copy-paste all of it, but some of it into the chat. And what it basically says is that we need to clarify the definition of what it means to be an independent director.

So, this is what we're trying to do. The question arises, here, which I don't know the answer to. What we've just done by what we're doing is saying

that the NomCom exclusively shall appoint independent directors. So, that's something new, I think.

And to that extent I would say, let's just consider that. This is something completely new. And if we accept that this is something new we want to do, because that's something that the community or we think should happen, then the next question is, well then, what's the definition?

In that case, it's fairly simple. I think the definition then makes sense, the one that you have outlined, because what it does is, just to be clear, says, "Anybody who has a conflict, plus two years." So, if you are contracted by, say, PIR, and you are the CEO, this won't apply to you two years after you have retired from there. So, that's what the definition says. That's just a factual statement of what you proposed. Thank you.

TOM BARRETT:

Yep. Yep. Absolutely. So, if you scroll up a bit to the text of the recommendation, here, Jean-Baptiste? So, "Provide clarity on desire for a definition of independent directors. Upon clarification of desire and definition, determine the number of specific seats for independent directors."

So, as you recall the IE report, they actually were recommending three seats. So we, as part of our feasibility implementation, have gone away from that. And of course, we no longer refer to these as "independent directors" as it causes so much confusion with ICANN legal and the rest of the community. And so, we're calling them "non-affiliated directors."
Ken?

KEN STUBBS:

Yeah. I'm really sorry to bother you. I guess I'm going to have to go somewhat on the record. I'm somewhat troubled by the two-year requirement. The reason, very simply, is that what you're really saying is, as long as you're working, as long as you have employment that may indirectly be tied through a membership in an organization that meets these requirements, you can't apply as a director. Which means you're really saying to people, "Well, you can forget about being a director, as long as you're in the industry and working."

At the same point in time, I'm going to take it one step further, and that is, what if you're providing [and solving services], or you may be a member of a faculty of an organization that is involved in the selection of people that go to the board?

I just don't want to stretch it out to the point where we end up in a situation where the ICANN Board consisting ... The definition of independent directors gets stretched out so far that we end up with a bunch of people that really don't have the experience or have reached a point in time in their life where you may not get the enthusiasm that you need.

You can't rely on retired people. That just does not work. Sure, we have competent retired people on the board, but let's be frank — we have people like George Sadowsky who, for years, was doing work and still acting as a member of the board. Vint Cerf, who worked for an organization that actually participated actively with ICANN.

I still think that we have to give members of the Nominating Committee ... I won't call it "swag." There has to be some sort of flexibility because I think, if not, we get so arbitrary and so capricious that people are competent and capable of providing material benefit to the organization are exempted because they got sucked in under an innocuous clause that makes it impossible for them to participate.

That's my personal opinion, and I do want to go on the record on that. I will be advocating in the future for something along that line. It's not like we're waiting until the very end and then, all of a sudden, everything has been [submarined]. It's a matter of this is important enough to talk about; are we willing to do it? Thank you.

TOM BARRETT:

Thank you. Thanks, Ken. Yeah. And as you know, we've gone through a public comment for the IE before, the public comment for the feasibility, the public comment for the implementation plan. And so, this has been there since the beginning to address the fact that, if you're an employee of a contracted party, or a consultant, then you have another route to the board. And so, this is intended to ensure the NomCom finds other types of candidates for the board. But your points are noted. Zahid?

ZAHID JAMIL:

Yeah. I mean, I understand what Ken is saying. Sometimes you are faced with a situation where they've got some really good candidates in your pool of the NomCom, but if this is there then you'll be forced to say, "I don't look at them. I will look at new blood first." So, that's a decision we need to make because, as I said, there are two parts of this.

One is defining what we mean by “independent director,” which is what the IE report says. It doesn’t actually say that we should only do independent directors. That’s something we, I think, in this working group, may have come up with, or it’s part of the implementation. I don’t know. But it’s definitely not part of the IE report.

Now, the first thing we need to decide is, is that a policy thing that we agree with, that the NomCom should only appoint new blood, or not just new blood, but blood that’s not contaminated—I mean conflicted.

Now, if we say that’s the case, then we also need to have exceptions. Number one, we have an exception for, as you can read up there, a previously appointed NomCom Board member. So, that’s one exception already accepted. The second one could possibly be that, in the case that they don’t see any eligible candidates, then they should be able to go after that to somebody who falls outside this definition. That may be a solution.

TOM BARRETT:

Thanks. Yeah. And that’s where we get into the picket fence idea is, if they decide that they have to, obviously, provide a rationale for that, it may well have to be, somehow, communicated, certainly to the Standing Committee, if not to a larger body. Ken, you get the final word. Ken, I’ll give the final word before we wrap up.

KEN STUBBS:

Thank you very much.

ZAHID JAMIL: Just one other thing that I think—

KEN STUBBS: Go ahead, Zahid.

ZAHID JAMIL: Sorry. Sorry, Ken. We want to make sure that the definition that we put in here doesn't bleed over to the definition of independent director that's used throughout the bylaws. Otherwise, it will start contaminating and affecting everything else that's happening elsewhere. This should just be, for our purpose, within section eight. So, just [silo way up] there.

TOM BARRETT: Yep. Thanks, Zahid. Ken, final word?

KEN STUBBS: Yeah. Final word is I see this section here could turn the entire Nominating Committee or the board ... I won't say upside down, but I'll give you examples. Let's assume, for the hell of it, that Avri had done consulting work for one of the organizations two years ago, or under two years ago. She never would have been eligible to be appointed.

Significant numbers over the last 20 years of directors that have been appointed through the Nominating Committee have had some sort of experience inside of that two-year timeframe. And I just don't want to get into a situation where suddenly mandating a complete change because that's the way we think it ...

And the other thing is this, Tom. This is no reflection on you or on anything. I don't care if we have had releases and public comments and stuff like that. I defy us to look back and just see how many people actually comment, because I've got news for you; with all the crap that has been going on over the last six to eight months, an awful lot of this crap has just kind of slid under the table.

People don't even read it. We know it. Come on. We have been, most of us, around for a long time. This is not nearly as material to many people as the issues that have been covered under disclosure of domain ownership, and privacy, and other things.

I just don't want to have a situation where somebody looks and says, "Well, we had public comments. My God, there were three people that commented on this!" I want to make sure that any material changes that we make are clearly vetted, clearly supported, and the public doesn't feel like they got sandbagged because we just decided it was the best thing to do and we slid it through at a time where there weren't too many other distractions. Thank you, Tom. I appreciate you giving me the time.

TOM BARRETT:

Thanks, Ken. I look forward to having you on the rest of these meetings. So, next meeting is next week. Hopefully, we can get some response back from ICANN legal about how to put these kinds of definitions into the operating procedures, with the kind of oversight we were looking for.

Then, also, I believe we have closure on the proposed bylaw changes, so we'll do ... If you have any objections or comments on the redlines you saw today, please let us know in the next week or so, because we're going

to try to put those to bed, as well. Next meeting is September 17th at 19:00 UTC. So, thank you, everyone, for attending, and we'll talk to you next week.

JEAN-BAPTISTE DEROULEZ: Thank you, all.

VANDA SCARTEZINI: Okay. Bye. Have a nice week.

CHERYL LANGDON-ORR: Bye for now.

[END OF TRANSCRIPTION]