
JEAN-BAPTISTE DEROULEZ: Welcome, everybody, to the NomCom Review Implementation Working Group #63 on the 10th of December 2020 at 13:00 UTC. I will quickly do the roll call and pass the microphone to Tom to go through the agenda.

Today on the call from the working group, we have Tom Barrett, Cheryl Langdon-Orr, Vanda Scaretzini, Arinola Akinyemi, Dave Kissoondoyal, and Remmy Nweke.

From ICANN Org, we have Brenda Brewer, Betsy Andrews, Jennifer Bryce, Jia Kimoto, Teresa Elias; and myself, Jean-Baptiste Deroulez. I believe there are no apologies for this call.

CHERYL LANGDON-ORR: There is. Just me. [Just skip past me. It's all right.]

JEAN-BAPTISTE DEROULEZ: Sorry?

TOM BARRETT: Cheryl may have misunderstood you.

BRENDA BREWER: I muted Cheryl's line. Excuse me.

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.

JEAN-BAPTISTE DEROULEZ: If there is any update to statements of interest, please raise your hand. And seeing none, I will pass the microphone to Tom. Thank you.

TOM BARRETT: Thank you, Jean-Baptiste. And before we jump in, we have one more meeting after this before year end. What is the official deadline for submission of our mid-year report?

JEAN-BAPTISTE DEROULEZ: They should be submitted to the [OEC] normally before the end of this year, so the 31st of December. But if there is any delay, we can obviously inform them. But normally the [date that was confirmed to] organizational reviews is 31st of December.

TOM BARRETT: All right. Well, let's try to make that deadline, but again, probably not the end of the world if we don't and we need a few weeks to January. Okay, we're going to talk about the review of the standing committee charter, some of the questions for recs 11 and 12, and then spend most of our time on the year-end report. So, could we jump right into the first agenda item, Jean-Baptiste?

As you will recall, last week we received some feedback from ICANN Legal and we did a walkthrough of this last week. I did another pass through. I didn't see anyone else making comments but I did do another pass through of the charter, made some additional additions, comments. We'll scroll down and summarize those just for everyone's benefit.

So, under the purpose ... Again, no changes to the purpose. Under scope of responsibilities, it's beefed up these three main scope items. So, provide continuity across annual NomCom cycles—just added a sentence there. Build the institutional memory of the NomCom—again, added one or two sentences there. Then, three, help coordinate processes and communications between the NomCom and other bodies. Again, just added a sentence there as well.

So, take a look at this. Let me know if you've got any objections or edits. I don't think anything here is too controversial.

And then, of course, if we continue to scroll down, the rest of these sections are pretty much the way they were last week with one exception, if we keep scrolling. So, number four—added another bullet for number four, bodies that appoint members to the NomCom. So, we already had ensure that a process is followed for the appointment of NomCom members and I just added a second bullet, ensure a process is followed for any member termination due to non-performance or any other reason. And the subsequent process for replacing a new member to serve the remainder of the term. So, just a summary of some of the details we've gone over in terms of term limits and how we replace vacancies, etc.

JAY SUDOWSKI:

Maybe replace termination with removal.

TOM BARRETT:

Sure.

JAY SUDOWSKI: I want to say that ... And I'm saying that because I think the NomCom operating procedures talk about removing a member, not terminating them.

TOM BARRETT: How about instead of ... How about using the word vacancy?

JAY SUDOWSKI: Yeah, because it's really for any reason, right?

TOM BARRETT: Yeah. So, if we could replace termination with vacancy, that's a good update. And then the rest of this, I don't think there's any changes. If we can scroll down Jean-Baptiste, these are all the same as last week. Keep scrolling. I did move some things further down.

So, under composition, we have ... There's no new content but I moved content around. So, for example, this fourth bullet, no SO/AC shall hold more than one standing committee seat at any given time. That was already there but it was under "Term Limits" so I just moved it up to here.

Membership requirements, again the new text you see there already was existing but it was under "Term Limits". Member preference will be given to ... So, I just moved that up to this section. If we can keep scrolling down

And then you can see under “Terms” the stuff that’s crossed out was just moved up. And I modified the last bullet.

So, let me back up for a second. The fifth bullet down, you can see an edit. Any vacancy that arises during a term shall be filled via a public EOI process. And I just added “conducted by the standing committee” to make that clear.

And the last bullet, non-performing members may be removed by majority vote of the committee. I just modified “the determination of non-performance can be due to a variety of factors including, but not limited to, attendance and participation.

So, I think the sense of the group last week was let’s not limit the factors for removal, but basically leave it up to the discretion of the committee to decide if someone should be removed.

VANDA SCARTEZINI: Yes.

TOM BARRETT: Is that a comment, Vanda? Okay, maybe you’re on another call. If we can scroll down, Jean-Baptiste.

VANDA SCARTEZINI: I just agree with you.

TOM BARRETT: Okay. Thank you, Vanda.

VANDA SCARTEZINI: Thank you.

TOM BARRETT: First sentence under “Meetings” we had a question about the feedback from ICANN Legal, if they were referring to [inaudible] or annual meeting and the feedback was clarified they meant the annual meeting. They weren’t sure if we were referring to an annual meeting of the standing committee or ICANN’s annual meeting. So the text here has been clarified to be the ICANN annual meeting.

And then I did make an edit to the last sentence here. Previously, it said there will be no travel support associated with this activity. This is where it talks about will meet by remote participation no fewer than six times a year.

I did add in red here—or pink, “The standing committee may elect to meet face-to-face but there will be no travel support.” So just make it clear that they’re not prohibited from meeting face-to-face if they so choose to.

And I think that’s it. Scroll down a little bit more. Okay. So, on the last sentence, I just reworded the last sentence to make it clear that we want the charter to be reviewed at least every five years, preferably as part of the NomCom’s organizational review. So all that did was reverse the order in that sentence to make it clear that we wanted this review

to happen even if the organization at large decides not to do its own reviews anymore.

Any comments about these edits before we move on?

All right. So, Jean-Baptiste, if you can accept all these edits as friendly amendments and we'll have a draft of the charter done.

Next agenda item.

So, questions on recs 11 and 12? So, we briefly discussed these last week. So, recommendation 11 has to do with NomCom staff reporting to the CEO. Again, I made some minor edits to this. Basically, we have one question that we want to present to Goran—I'm calling the office of the CEO if he decides to delegate this to someone. But the working group would like to schedule a meeting with the office of the CEO to discuss and receive their feedback on how they would like to implement this recommendation. And that's it. I don't think we have any other questions that we want to plan ahead of time unless anyone else has some suggestions. And then the rest of this, basically, there's a cut and paste of the recommendation narrative from the final report.

So, is everyone happy? This is what we send off to Goran or does anyone think we should add more to this?

JAY SUDOWSKI:

I think short and simple is fine. I think it looks good.

TOM BARRETT: Okay. And Cheryl gives me a thumbs up. All right. So, this could be an email, then. It's not even a letter. We can clean this up a bit, Jean-Baptiste, and just send off an email, ask for a meeting in January.

All right. Next page, I guess, here is recommendation 12. This is NomCom leadership should have input of a NomCom budget and staffing resources. So, obviously, this would be targeted towards the finance department. Again, we had two proposed questions last week. We decided to drop the second one. So the only question, again, here is the working group would like to receive feedback from the ICANN finance department on their suggestion and mechanism for implementing this recommendation.

I guess the only sentence I would add is, basically, request a meeting with them. Well, I guess we'll ask for a response by ... We should in both of these letters ask for a deadline for a response, say, by January 15th. Is that a reasonable deadline for Goran and Finance to respond to these emails?

JAY SUDOWSKI: Real quickly, Tom, on this email that we're sending to Finance, should we also ask them if the mechanism would need to be modified if NomCom got moved to the office of the CEO or another structure within ICANN? I don't know if that changes anything.

TOM BARRETT: Sure. That's a good question. We can just draft something now. Second sentence would be, "Please be advised that recommendation 11 of the

review entails moving the NomCom staff to report to the office of the CEO. Let us know if this would impact your mechanism in any way.”

Yeah, so to Vanda’s comment, I guess we would send this to Xavier and let him respond in writing, then we can schedule a follow-up meeting if need be. So, I would take that sentence and put it right after the sentence above, Jean-Baptiste, rather than put it in italics. I mean, right above this whole section. It should follow ... Or above “for reference”. Put it above “for reference”. Get rid of the italics.

Then add a third sentence underneath that saying, “Please respond by January 15th,” so that we can plan next steps. Something like that. All right. If you could cut and paste that sentence and add it to the previous recommendation 11 as well.

All right. So, is everyone happy with these two recommendations in terms of next steps?

VANDA SCARTEZINI:

Yes.

TOM BARRETT:

All right. Thanks, Vanda. All right Thanks, Cheryl. So, next agenda item is the year-end report. So, I was able to give some more thought to this as well. Again, our objectives right now are to ... We have been spending a lot of time on the proposed bylaw changes and the proposed charter for the standing committee. Both of these we think are fairly at the stage where we want to hand them off to the Board OEC, so that they can conduct a process to gain community consensus and approval.

So, what we could do is use this year-end report as the vehicle for making those requests to the Board OEC. So, as you know, we spent all of time on drafting a letter or a preamble to the bylaw changes. I'm suggesting we merge that letter with our year-end report and again focus on the two asks that we have of the OEC.

So, if we bring up the draft implementation report, we can talk about how that might look. I made some preliminary edits, so if you can scroll down Jean-Baptiste. Let me scroll back up for a second.

So, you can see here we have a table of contents that's been pretty formulaic. We have executive summary, a background, an implementation summary and an implementation details 1-27. Then there are some appendices, attendance record, outreach and responses, then we have the bylaw in the appendix. We had the charter in the appendix, etc.

So, I'm proposing we elevate, basically, the bylaw changes and the charter to be in the body of the document because that's what we want people to read, rather than burying them as an appendix. So, if we keep scrolling down, you'll ignore these edits right now in the Table of Contents.

So, the Executive Summary basically will talk about these two asks that we have. We have proposed changes to the ICANN bylaws. We want the Board OEC to run with their process for getting review of those and approval of those. And we have the proposed charter to the standing committee. Again, we're asking the Board OEC to follow a similar process to get approval of that.

So, that's what we talked about here in the executive summary. We can summarize, as I've started to do here, what the proposed bylaw changes are all about. So, what we haven't done yet is really take the preamble that we wrote earlier for those bylaw changes. I would suggest adding a lot of that right into this executive summary or at least even summarizing that.

And we can highlight some of the more noteworthy or controversial parts of those bylaw changes. So, you can see here I have a paragraph on the rebalancing recommendation which obviously we've done a lot of outreach on and how we're recommending to proceed with that recommendation.

So, this is just a general approach different from what we've done in the past. Any thoughts or comments to this approach before I keep going?

VANDA SCARTEZINI:

Well, for me, it looks better in my opinion because that's where the focus from the Board will be and most of the community will focus on what's going to change.

TOM BARRETT:

Thanks, Vanda. All right. So, we still have some work to do in the next week or two to look at the preamble we wrote and add something to this executive summary. And we can approach this a few different ways. If we can scroll down, Jean-Baptiste.

So, we'll talk about the bylaw ... So, I took out all this background stuff that was really repetitive. It ended up in the next section, if you can

keep scrolling, called the “Background” that basically gives a timeline of this group. So, I just added in towards the end some red or pink. The new activities that have happened in the last six months. So, again, nothing ... It’s just a narrative of what the group’s been doing the last few years. So, we can keep scrolling.

This is the background section. You can see again, added two additional sections of what we’ve done this year.

Then the next section is called “Implementation Summary” and I basically scrapped this. I’m proposing that maybe we call this “Implementation Update” and the update here, if you can scroll down, Jean-Baptiste, will basically talk about proposed bylaw changes. In the Executive Summary, we just have a summary of it here. We actually have the actual bylaw changes and that full letter that we wrote to the OEC can just be popped right into here, along with the actual bylaw changes. That’s one section.

Next section will be the Standing Committee charter. Again, whatever preamble we want to add to that, we can just pop the charter right here.

So, if people are reading ... Most people I think give up after five or ten minutes of reading a document, so we want to make sure they read these things first if they’re not going to read the whole document.

Then we have ... I’m suggesting as the next section here—you can scroll down, Jean-Baptiste. So, here we have a summary of community outreach. So, as you know, whenever a PDP goes through a public comment period, it gets hundreds of comments, there’s typically a staff

summary—maybe a one-pager. So, I'm suggesting we do the equivalent here for the outreach that we performed the last six months. It could just be a table. It was mainly the GNSO stakeholder groups, so we can list all the stakeholder groups that we reached out to. We can then indicate which ones actually responded and a one-sentence summary of the tone of the response, and of course we also reached out to ICANN Org, ICANN Legal, and HR, etc. We can include that. So just a real ... No more than a page summarizing the community outreach that we've done in the last six months. That would be the implementation summary.

Then, section four basically has all the details where we list all 27 recommendations with all their gory details that probably no one ever reads. And then finally, the rest of the document will have the attendance summary, it can have the actual detailed feedback that we received from all the SO/ACs, and then I think we're done.

So slightly different, doing a lot of surgery to this document, but hopefully we focus on what we want people to read up front and what we need actions on up front, rather than bury them in the appendices.

So I don't necessarily want to take everyone's time to do that kind of work today, but if everyone's okay with that, we can end this meeting early and spend the next week doing that proposed approach. Thoughts, comments, feedback?

VANDA SCARTEZINI: I'm okay with that. I really believe that people don't read the full document and we need to call for attention for what we want them to read. Thanks.

TOM BARRETT: Thanks, Vanda. So I don't want to keep you guys. I don't think we need to take a full hour here. But I will ask you that—so if we have an executive summary and an implementation summary that really just wants to pull out the highlights of what we've been doing, we've already mentioned that the rebalancing recommendation is obviously a controversial one, mainly I think because of ... not what we're proposing to do in the bylaw change but what might happen after that. So we'll certainly address that in the executive summary and implementation summary.

The other, I guess, question that came out of the legal review had to do with the unaffiliated directors and whether or not we're simply going to propose this bylaw change and let the Board OEC handle the rest of this process or if we want to continue to do any sort of outreach in parallel to that process. So I just want to confirm. I think our current position right now is we're available if the OEC wants us to be involved, but we're not currently planning any additional steps when it comes to unaffiliated directors and we're going to let the Board OEC handle the next step of this process. Is that our current thinking?

VANDA SCARTEZINI: Yes, for me.

TOM BARRETT: You're okay with that, Vanda? Okay.

VANDA SCARTEZINI: Yes, I'm okay with that.

TOM BARRETT: Okay. And just to summarize, so we might have to adjust the details, but did say that we were going to go back to the community, get clarity on the definition of unaffiliated directors and the need and how many, and we basically kind of accelerated that saying, yes, we need them, the goal is that all of the NomCom directors should be unaffiliated, and if they're not, there needs to be a process for allowing that exception. So that's our plan going forward. Any thoughts or comments? Going once, twice, three times.

All right, so one last topic before we'll wrap this up, and this is more ... no decision making here, but the question is, how do we declare victory on some of these recommendations? So let's just talk about the Board process of the bylaw changes. Assuming these get approved, there are some final loose ends that need to be done to fully implement the changes. For example, the two-year terms, if that bylaw change gets approved, we then have a transition plan to arrange on which SO/ACs start off on two years, which ones start off on one year.

So the question is, do we expect this working group to be around still at the conclusion of that bylaw process to implement that transition change, or do we expect that to be done by the standing committee? So

two-part question. I guess part one is, how long do we think the bylaw process is going to take?

VANDA SCARTEZINI:

Okay. First of all, we need to, in my opinion, set up the first standing committee as we agree, if the Board agrees too. That's one thing, that we need to get the approval of that, and then set up, in my opinion. We should be at the end of this work after the approval to set up the first standing committee. In my opinion, this is the most important task that we should, as a committee, to finalize, and the delivery, organized for the community. That's my view.

The other things, normally, the Board's ... the legal staff analyze and propose. The Board just in one of those meetings make the approvals, and each one that is involved on that will define how they will be compliant with the new bylaws. So I don't think that the other issues we have any issue as a committee to do that. But the standing committee setup, I believe, is our job to do that. I would like to hear from others. Thank you.

TOM BARRETT:

Thanks, Vanda. So, several-part question here. How long do we think that the bylaw process run by the OEC will take? What's our estimate? Two, how long will the—

VANDA SCARTEZINI:

I believe that's the middle section. After we've finalized, the next Board meeting, maybe it's during some time, the two occasions, in the middle

of the first semester or the middle of the second semester, depends on when we delivered that and the Legal just finished the job to propose the agenda to the Board.

So I believe that after we've finalized completely, we'll take two, three months to reach the approval process. for instance, in our ATRT group, we had finalized in the end of May, and just now ... But it was very large work, so took six months, until last week, approval from the Board.

So it depends a lot on how long is the document and the changes in bylaws. If we have one, two, three, four, five changes on bylaws, I do believe that we'll take more than three months, maybe five months or something like that after we deliver it to the Board. Thank you.

JAY SUDOWSKI:

I just have a question about kind of the general trajectory of the process. So we send our draft changes to the OEC, right? And then they say yes or no, and then we open it up for public comment? And then there's ...?

CHERYL LANGDON-ORR:

Jay, we propose and would work with Legal on final wording. Then the OEC accepts it, sends it to the Board. Assuming they recommend that the Board support it, then once the Board resolves to make those changes, the Board runs the change process, not us.

JAY SUDOWSKI:

Okay. That makes sense. I'm just looking at—and this is from 2017, but they had kind of a timeline that they published for another fundamental bylaw change, and it was a 30-day comment period followed by a 21-day decision period. So that's 51 days after the Board adopts a resolution.

CHERYL LANGDON-ORR:

It's even longer than that, because it's after the Board adopted the resolution, then it would have to be queued, prepared as the public comment document that's then posted. Once the public comment goes up, then yes, it will take a minimum of that amount of time.

Noting these are not fundamental bylaw changes, but bylaw changes. After that period of time, which is a minimum of 40 anyway but likely to be longer, if there is no comments, then the next stage of the process of actually implementing those changes might be reasonably quick, but if there are comments, then those comments have to be collected, collated, reviewed, and responded to, and that can add another month or more on before they become enshrined as such. And they'd need to be probably enshrined as such in a further Board meeting, but that particular point, we probably need to check with staff, but it's a matter of between one Board meeting or the next. So it could be another month or not. In other words, [inaudible] months.

JAY SUDOWSKI:

Are we sure none of these would be considered fundamental bylaw changes?

CHERYL LANGDON-ORR: I don't believe any of them are fundamental bylaw changes, but ICANN Legal would be also double checking that.

TOM BARRETT: What does that mean?

CHERYL LANGDON-ORR: Well, a fundamental bylaw change has to be supported by the community. In other words, it has to go through the empowered community process. It's very specific.

JAY SUDOWSKI: Yeah, it's one of the accountability mechanisms that was implemented in the IANA transition. Changes to certain parts of the bylaws have to go to the EC.

CHERYL LANGDON-ORR: Correct. And that's that additional, quote, "21-day" process that you mentioned.

JAY SUDOWSKI: Yeah. Okay. Based on all of this, I think it's at least a six-month process, because I know at least personally, it takes resolutions a while to show up on the Board agendas.

CHERYL LANGDON-ORR: Yeah, [at least six months.]

JAY SUDOWSKI: When I had to step in as chair elect three years ago now, it took them like eight weeks to officially appoint me. This is a very simple, noncontroversial resolution, right?

VANDA SCARTEZINI: Yeah.

JAY SUDOWSKI: So I think at least six months, maybe nine is realistic.

CHERYL LANGDON-ORR: And just by way of example, the ATRT3 report, as Vanda referred to, which involved Board—Board were part of that committee, so it's not as if they had to find someone to explain what it was all about—we handed that in in the very beginning of June. It's been a full six-month process for just those recommendations to be endorsed and resolved. Now implementation starts. So some of the implementation will be another 6 to 12 months before it happens.

JAY SUDOWSKI: Yeah.

TOM BARRETT: So I think the gating factor on how long this bylaw change process will take is really going to be driven by recommendation 10, which we're calling rebalancing. So there's been a lot of resistance to this from the various SOs within the GNSO. Although our bylaw change doesn't actually make any change in the composition for GNSO, there's a lot of fear that any subsequent exercise would. So I think we're seeing this with the ATRT3 as well where there's a lot of lobbying to undergo, have the ICANN undergo a comprehensive, holistic assessment of all their stakeholder—

CHERYL LANGDON-ORR: Well, that's now approved. That's a done deal.

TOM BARRETT: So that's a multi-year exercise, yes?

CHERYL LANGDON-ORR: The actual enactment of the recommendation now it's been resolved, yes, the implementation specified how that was to happen 18 months to three years out. But your question was, how long would it take for the bylaw changes to perhaps happen after we pass our material off. It would probably be something along the six-month period, but it's also out of our control.

TOM BARRETT: My point is there's an effort underway to say, before this recommendation 10 bylaw change gets approved, that the holistic assessment happen first.

CHERYL LANGDON-ORR: If you think one squeaky wheel is going to make all that much of a difference, then maybe. But again, it's not our problem, it's the Board's problem by then.

TOM BARRETT: No, I'm just suggesting—I want to make sure that we do a good job articulating why this change should go through prior to or in parallel to that assessment effort. We don't want them [inaudible].

CHERYL LANGDON-ORR: I wouldn't be supporting any indication that we believe there is dependency or interdependency with that other ATRT3-based issue. The fear and loathing shown by some parts of the community is their issue, not ours. We are proposing a minimal—if any—I think noncontroversial change, but the Board will either accept it or not.

TOM BARRETT: I agree, Cheryl. I just want to make sure we make that point in this summary, that there is no dependency from the ATRT to do these bylaw changes. So I think you've captured the right language, and I'll wordsmith this to make sure it's spelled out clearly here.

And then the standing committee that Vanda mentioned, that should also be a priority for us to get some structure around the standing committee. Obviously, a lot of what we're doing is helping to provide that structure. Is there a comment? Okay.

So we'll wordsmith this executive summary. It sounds like the consensus is that all these recommendations that involve bylaw changes, those are basically on—we're waiting until the bylaw change gets approved before we spend any more time on them. And the standing committee, of course, we can continue to work on in parallel while the OEC is getting community feedback on that.

All right, that's all I wanted to really talk about today. Any other thoughts, comments, Any Other Business that we should talk about?

VANDA SCARTEZINI:

None for me.

TOM BARRETT:

Thanks, Vanda. I like that you have a permanent checkmark. All right, so we have one more meeting next week, so I'll work with staff, Jean-Baptiste and the others to see if we can't reorganize this document to elevate the two main objectives, which is to get the Board OEC to move forward on bylaw changes and standing committee, and that's really our focus for this report. And we'll get this hopefully wrapped up, have something more complete to show you by next week, which is our last meeting of the year.

I suspect we may want to do a few more readthroughs before we submit it after. So it may or may not happen by December 31st, but that'll be our goal.

So here are the next meetings. Next Thursday, 19:00 UTC, and then we've already scheduled four in January.

VANDA SCARTEZINI: Okay.

TOM BARRETT: Any Other Business, guys?

VANDA SCARTEZINI: No. Thank you.

TOM BARRETT: All right. Thanks everyone. Have a great day.

JAY SUDOWSKI: Thanks, Tom.

VANDA SCARTEZINI: Thank you. Bye.

JEAN-BAPTISTE DEROULEZ: Thanks everyone. Bye. Brenda, if you can stop the recording. Thank you.

[END OF TRANSCRIPTION]